RECORDING REQUESTED BY
WHEN RECORDED RETURN TO:

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

(Space Above For Recorder's Use)

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

between

THE CITY OF OAKLAND

"City"

and

THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

"ORSA"

and

PROLOGIS CCIG OAKLAND GLOBAL, LLC

"Developer"

Effective Date

TABLE OF CONTENTS

ATTACHMENTS TO LDDA

Attachment 4	Billboard Agreement
Attachment 5	Property Management Agreement
Attachment 6	Scope of Development for Public Improvements
Attachment 7	Scope of Development for Private Improvements
Attachment 8	Schedule of Performance
Attachment 9	Memorandum of LDDA
Attachment 10	City's Environmental Assessment Reports
Attachment 11A	Consent Agreement with DTSC
Attachment 11B	RAP/RMP
Attachment 11C	RWQCB Order
Attachment 12A	Covenant to Restrict Use of Property
Attachment 12B	Army EDC Deed
Attachment 13	Due Diligence Right of Entry
Attachment 14	Approved Title Exceptions
Attachment 15	Community Benefits Matrix, with Operations and Construction Jobs Policies and certified MMRP
Attachment 16	EBMUD MOA
Attachment 17	Amended CSA
Attachment 18-1 Attachment 18-2	Forms of Guarantee
Attachment 19	Permitted Contracts
Attachment 20	Amended Baseline Agreement

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

This Lease Disposition and Development Agreement ("**Agreement**") is entered into as of the Effective Date listed on the title page of this Agreement by and between the CITY OF OAKLAND, an independent municipal corporation ("**City of Oakland**"), the Oakland Redevelopment Successor Agency ("**ORSA**"), (together, for ease of reference in the body of this Agreement only, "**City**"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company (the "**Developer**"), (each individually referred to a "**Party**" and collectively referred to as the "**Parties**").

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

A. In 2003, in order to enable local economic redevelopment and job creation and ease the economic hardship on the local community caused by the base closure per Section 2903 of Title XXIX of Public Law 101-510, the U.S. Department of the Army ("**Army**") transferred via No-Cost Economic Development Conveyance ("**EDC**") certain real property (the "**EDC Property**") located in the City to the Oakland Base Reuse Authority ("**OBRA**"), a joint powers authority composed of the City and the former Redevelopment Agency of the City of Oakland ("**Agency**") under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code through that certain EDC Memorandum of Agreement between the Army and OBRA dated September 27, 2002 ("**EDC MOA**") and by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel ("**Army EDC Deed**"), recorded August 8, 2003, as Document No. 2003-466370 in the Official Records of Alameda County ("**Official Records**"). Immediately thereafter, OBRA transferred portions of the EDC Property to the Port of Oakland ("**Port**"), such that the Port now owns approximately 241 acres of the EDC Property (the "**Port Development Area**") and OBRA retained approximately 170 acres, known as the "**Gateway Development Area.**"

B. Pursuant to the Oakland Army Base Title Settlement and Exchange Agreement dated June 30, 2006 by and between the State of California, acting by and through the State Lands Commission ("**SLC**"), the City, the Port, OBRA and the Agency ("**Exchange Agreement**"), there was an exchange of public trust lands such that the public trust was terminated on all of the EDC Property then owned by OBRA (see State of California Patent and Trust Termination recorded in the Official Records on August 7, 2006, as Document No. 2006-301853), except on one, approximately 16.7-acre parcel conveyed from the SLC to the Agency by State of California Patent and Trust Termination recorded in the Official Records on August 7, 2006, as Document No. 2006-301850 ("**Parcel E**"). Parcel E was transferred to the Agency pursuant to the Exchange Agreement.

C. Also in 2006 and 2007, the portions of the EDC Property owned by OBRA that were not subject to the public trust were conveyed by OBRA to the Agency by the following Quitclaim Deeds recorded in the Official Records on September 19, 2006 as Documents

Numbers 2006-354006 and 2006-354007 and on May 17, 2007 as Document Number 2007-190760.

D. On March 3, 2011, the Agency and the City entered into a Purchase and Sale Agreement, approved by City Council Ordinance No. 83254 C.M.S. and Agency Resolution No. 2011-0025 C.M.S. (the "**Agency-City PSA**"), whereby the Agency agreed to sell and convey, inter alia, the Agency-owned portions of the EDC Property, excepting Parcel E, to the City under its own auspices, and the City agreed to accept assignment of all agreements related to such property (the "**EDC Property Agreements**"). The EDC Property Agreements include, but are not necessarily limited to, the agreements set forth in Attachment 12.

E. On June 29, 2011, the California Legislator passed, and Governor Jerry Brown signed, Assembly Bill 1x26, and on June 27, 2012, the Governor also signed Assembly Bill 1484, which amended Assembly Bill 1x26, which require the dissolution of all redevelopment agencies (collectively, "**AB 26**").

F. On January 10, 2012, the City Council passed Resolution No. 83679 C.M.S., electing to serve as the successor to the Agency ("**Successor Agency**") pursuant to AB 26.

G. On January 31, 2012, the City closed escrow under the Agency-City PSA and took title to the Agency-owned portions of the EDC Property (excluding Parcel E) pursuant to the grant deed recorded January 31, 2012 as Document No. 2012-30757 in the Official Records and assumed all of the Agency's right and obligations under the EDC Agreements with respect to such property.

H. On February 1, 2012, the Agency was dissolved, and Parcel E and the Agency's rights and obligations under the EDC Property Agreements with respect to Parcel E were transferred to the City as Successor Agency by operation of law pursuant to AB 26. On July 17, 2012, the City formally established ORSA as a separate entity per ORSA Resolution No. 2012-0002 (July 17, 2012) and City Council Resolution No. 84017 C.M.S..

I. Any transfer of ownership and assumption of the related contractual obligations under the EDC Property Agreements from the Agency to the City and the City as Successor Agency/ORSA are subject to approval by the Army pursuant to the EDC MOA, and may require Department of Toxic Substances Control ("**DTSC**") approval in accordance with that certain Consent Agreement between the City and the DTSC, dated September 27, 2002, as revised on May 19, 2003 and amended on May 2, 2005 and September 8, 2008 ("**Consent Agreement**"). In addition, ultimate disposition of the EDC Property and this Agreement may be subject to approval or other action by the Oakland Oversight Board established on April 19, 2012 pursuant to AB 26 ("**Oversight Board**"), State Controller and/or the California Department of Finance, as applicable, pursuant to the requirements of AB 26. The foregoing approvals have not yet been finalized.

J. Nevertheless, the City has contractual obligations stemming from the EDC to the Army and DTSC that require remediation and redevelopment of the EDC Property that

necessitate the continued pursuit of redevelopment, and therefore, the City desires to continue the redevelopment efforts in the Gateway Development Area, and the City Charter Section 305 authorizes the City's Mayor to encourage economic development in the City.

K. To guide redevelopment of the EDC Property, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per City Ordinance No. 12734 C.M.S., and adopted the Base Reuse Plan on July 31, 2002 by Resolution No. 21002-17, which plans affect and control the development of the EDC Property.

L. In 2008, the City issued a request for qualifications to identify potential development teams for redevelopment of certain portions of the Gateway Development Area, generally consisting of the West Gateway, Central Gateway, East Gateway, and AMS Site as depicted on the site map attached as Attachment 1 ("**Site Map**"), and selected Prologis, L.P. ("**Prologis**") (then named AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("**CCIG**"), a California limited liability company (successor-in-interest to California Capital Group, a California general partnership) to negotiate with regarding development on portions of the Gateway Development Area. Prologis and CCIG are the joint venture members of Developer.

M. The City and Developer (through their joint venture members) entered into an Exclusive Negotiating Agreement ("**ENA**") on January 22, 2010, a first amendment to the ENA was executed on August 10, 2010 ("**First Amendment to ENA**"), a second amendment to the ENA was executed on April 11, 2011 ("**Second Amendment to ENA**"), and a third amendment to the ENA was executed concurrent with this Agreement ("**Third Amendment to ENA**").

N. During the ENA period, the City and Developer evaluated the design and financial feasibility of a proposed mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project and related infrastructure needs on approximately 130 acres of the Gateway Development Area and adjacent Port-owned lands (the "**Project Site**").

O. To support redevelopment of the EDC Property, beginning in 2008, the Port, then the City and the Port together, pursued Trade Corridors Improvement Fund ("**TCIF**") grant monies under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 for infrastructure improvements to serve the EDC Property, known as the Outer Harbor Intermodal Terminals ("**OHIT**") improvements.

P. On December 10, 2009, the Port, the California Department of Transportation ("**Caltrans**"), and the California Transportation Commission ("**CTC**") entered into the Trade Corridor Improvement Fund Project Baseline Agreement ("**Baseline Agreement**"). On May 15, 2012, the City, by City Council Resolution No. 83864 C.M.S. authorized the negotiation and execution of an amendment to the Baseline Agreement, and at the CTC meeting on August 22, 2012, the CTC approved that Amendment No. 1 to the Baseline Agreement, which has been executed by the City, the

Port, CTC and Caltrans, attached hereto as Attachment 20 ("**Amended Baseline Agreement**").

Q. The development contemplated in the ENA, the Project (as defined in Recital V, below) and this Agreement are dependent on the OHIT improvements, including a port rail terminal, being funded in part by the TCIF grant funds. To that end, the City and Port have entered into that certain Amended and Restated Cost Sharing Agreement, dated June 19, 2012, attached hereto as Attachment 17 (the "**Amended and Restated CSA**"), which agreement describes how the City and Port will cooperate on developing the shared infrastructure included in the OHIT improvements and funding the related costs.

R. During the term of the ENA and pursuant to the Second Amendment to the ENA, the City and a Developer Affiliate agreed to prepare a master plan for the Project and the related improvements, which resulted in the preparation of that certain Oakland Army Base Master Plan Design Set, dated April 2, 2012, prepared by Architecture Dimensions Master Design Team ("**Master Plan**"), that has been approved by the City and Developer and is subject to final approval by the Port pursuant to the provisions of the Amended and Restated CSA.

S. The Master Plan identifies the public infrastructure to be funded by the TCIF grant under the Amended Baseline Agreement, which are summarized for the purposes of this Agreement on Attachment 6, Scope of Development for the Public Improvements ("**Public Improvements**").

T. The City desires to have the Developer (and in the case of only subsection (b) below, its Affiliate, California Capital & Investment Group, Inc.): (a) act as the franchisee/licensee for the construction and operation of certain billboards on the Project Site; and (b) act as the City's agent to manage the Gateway Development Area for leasing, pre-construction work (e.g., site control and security and soils handling), the remediation of Hazardous Materials, and the construction of the Public Improvements through a design-build delivery method. The City has determined that pursuing construction of the Public Improvements under a design-build delivery method, as provided for in the City's Charter and Municipal Code, is in the best interests of the City, is consistent with the Request for Qualifications, and enables TCIF project timelines to be met.

U. The City also desires to ground lease to Developer approximately forty two and one-half (42.50) acres of land within the Gateway Development Area designated on the Site Map as the "**Central Gateway**" and approximately thirty and thirty-three hundredths (30.33) acres of land within the Gateway Development Area designated on the Site Map as the "**East Gateway**". The City also desires to ground lease to Developer approximately thirty four and fifty-three hundredths (34.53) acres of land within the Gateway Development Area designated on the Site Map as the West Gateway and the Railroad R/O/W (collectively, "**West Gateway**"). The West Gateway, Central Gateway and East Gateway are hereinafter referred to collectively as the "**Lease Property**". The Lease Property is being leased for purposes of developing and operating mixed-use industrial (warehousing and logistics), commercial, maritime, rail, and related support uses, as defined in the Scope of Development for the Private Improvements attached as

Attachment 7 ("**Private Improvements**"). The Lease Property may be revised to exclude certain portions currently included or to include additional portions of the EDC Property and adjacent areas that may come into City control in the future in accordance with this Agreement.

V. Together, the Public Improvements and Private Improvements to be completed in accordance with this Agreement and the applicable Ground Lease are considered the "**Project**."

W. Consistent with the purposes of the EDC transfer from the Army to create local jobs, the City and Developer desire to provide community benefits as set forth in this Agreement and have negotiated a plan that commits to, among other things, creating jobs for the local community in West Oakland. To that end, the plan includes efforts to create a jobs center in West Oakland and negotiated employment policies and procedures specific to the Project. The policies relating to the Private Improvements construction and operations jobs create obligations that otherwise would not be applicable through the City's social justice policies. The policies related to construction of the Public Improvements apply specifically to the City's public infrastructure portion of the Project and expressly supersedes the employment portions of City Council Ordinance No. 12389 C.M.S. adopted December 18, 2001, as amended by City Council Ordinance No. 13101 C.M.S. adopted December 20, 2011, as more particularly set forth in this Agreement. The other community benefits provided in the plan include funding, implementation of the City's social justice policies, and environmental and green development measures.

X. The City has found that the Project will implement the goals and objectives of the Oakland Army Base Area Redevelopment Plan.

Y. Consistent with the purposes of the EDC transfer from the Army, City amended the Base Reuse Plan to reflect the Project by City Council Resolution No. 83930 C.M.S. adopted on June 19, 2012.

Z. In furtherance of the Project, the City, CCIG and the East Bay Municipal Utility District, a municipal utility district created pursuant to Municipal Utility District Act ("**EBMUD**"), have entered into that certain Memorandum of Agreement, dated July 19, 2012, which is attached hereto as Attachment 16 (the "**EBMUD MOA**").

AA. The City has conducted all required hearings on the Project and has by City Council Resolution No. 83930 C.M.S. adopted on June 19, 2012 fully analyzed all potentially significant environmental effects in compliance with the CEQA and the CEQA Guidelines, as more fully described in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report ("**EIR**") and the 2012 OARB Initial Study/Addendum ("**EIR Addendum**").

BB. The actions contemplated in this Agreement are authorized by City Ordinance No. 13131 C.M.S., dated July 3, 2012 ("**Ordinance**") and ORSA Resolution No. 2012-006 C.M.S., dated October 2, 2012.

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

ARTICLE I

GENERAL

1.1 Effective Date and Term.

1.1.1 Effective Date. This Agreement shall become effective as of the last to occur of the following (the "**Effective Date**"): (1) the Ordinance is effective, (2) each of the Parties has duly executed and delivered this Agreement to the other Party, (3) the Memorandum of LDDA has been recorded in the Official Records pursuant to Section 1.6. The Effective Date will be inserted by the City on the cover page of this Agreement; provided, however, no failure to do so by the City shall in anyway invalidate this Agreement. The Title Company shall be instructed by the Parties, and in accordance with those instructions shall, (i) insert the Effective Date in the appropriate place in the Memorandum of LDDA and (ii) to record the Memorandum of LDDA when and only when the Title Company is irrevocably committed to issue, at the Developer's request and sole cost, a CLTA owner's title insurance policy on this Agreement in form and content and in a dollar amount reasonably acceptable to Developer, subject to only the Permitted Title Exceptions and any exceptions related to any of the matters set forth in Section 2.2.1.

1.1.2 Term. The term of this Agreement (the "**Term**") shall be from the Effective Date until the Close of Escrow on the last of the contemplated Ground Leases, unless this Agreement is earlier terminated in accordance with its provisions. Upon termination of this Agreement, in whole or part, the Parties agree to promptly execute and record a memorandum of termination with respect to the applicable portion of the Lease Property in form reasonably acceptable to the Parties.

1.2 Definitions.

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

1.3 Execution and Relationship of this Agreement to Attached Agreements.

In furtherance of this Agreement and the development of the Project, the Parties shall execute and deliver (or cause to be executed and delivered) the following agreements prior to the expiration of the applicable time periods set forth on the Schedule of Performance.

1.3.1 Billboard Agreement. This Agreement and the Billboard Agreement establish the rights and obligations of the Parties as to the development and operation of the billboard sites identified in the Scope of Development for the Private Improvements at Attachment 7. Prior to the time set forth on the Schedule of Performance, the City and Developer shall enter into a Billboard Agreement that reflects, in material content, the form Billboard Lease and Franchise Agreement provided at Attachment 4 and executed in a form acceptable to the Developer, City

Administrator and the City Attorney (the "**Billboard Agreement**"). Subject to the provisions of Section 2.2.6.2 below with respect to the billboard sites located on the property to be transferred to Caltrans, upon execution of the Billboard Agreement, the Billboard Agreement shall exclusively govern the rights and obligations of the Parties with respect to the subject of the Billboard Agreement. The Parties contemplate that, in accordance with the terms of the Billboard Agreement, the Billboard Agreement may survive termination of this Agreement.

1.3.2 Property Management Agreement.

This Agreement and the Property Management Agreement (defined below) establish the rights and obligations of the Parties as to certain site management activities, including lease management, soils handling, and oversight responsibilities for the design and construction of the Public Improvements on the Project Site. Prior to the time set forth on the Schedule of Performance, the City and the City's Property Manager shall enter into a Property Management Agreement that reflects, in material content, the form Property Management Agreement provided at Attachment 5 and executed in a form acceptable to the Developer, City Administrator and the City Attorney ("**Property Management Agreement**"). Upon the execution of the Property Management Agreement, the Property Management Agreement shall exclusively govern the rights and obligations of the Parties with respect to the subject of the Property Management Agreement.

1.3.3 Ground Leases.

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

1.4 Security Deposit.

1.4.1 Amount and Form. Developer's obligations under this Agreement shall be secured by a FIVE HUNDRED THOUSAND DOLLARS ($500,000) cash security deposit (the

"**Security Deposit**"), which shall be deposited with the City. The Security Deposit shall be deposited as follows: (i) immediately upon the Effective Date of this Agreement the City shall apply the FIFTY THOUSAND DOLLAR ($50,000) security deposit under the ENA that is on file with the City ("**ENA Deposit**"), and (ii) within ten (10) days of the City's compliance with subsections (1)-(3) of Section 2.2.1, the Developer shall deposit the remaining FOUR HUNDRED AND FIFTY THOUSAND DOLLARS ($450,000) with the City ("**Second Deposit**"). Alternatively, Developer, at its election, may satisfy its obligation to deposit the Second Deposit by depositing a letter of credit with City in the amount of FOUR HUNDRED AND FIFTY THOUSAND DOLLARS ($450,000). If Developer elects to deposit a letter of credit, the financial institution, term and form of such letter of credit shall be subject to the City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Subject to the foregoing, if the Security Deposit is in the form of a letter of credit and such letter of credit is for a term less than the entire Term of this Agreement, Developer shall cause such letter of credit to be renewed, re-issued, amended or replaced at least ninety (90) days prior to its expiration in order to assure that there is no lapse in the effectiveness of the letter of credit or the Security Deposit. If Developer shall fail to comply with its obligations under the preceding sentence, then the City may draw upon the whole of the then-posted letter of credit and hold the proceeds of the letter of credit as and for the Security Deposit. In the event any portion of the amount of the ENA Deposit is used under the terms of that certain Oakland Army Base Environmental Review Funding and Indemnity Agreement Associated with Initial Project Approval executed concurrently with this Agreement by the City, Prologis, and CCIG, the Developer shall deposit such amount to the City within ten (10) days of a written demand by the City.

1.4.2 Application at Closing; Reduction of Amount of Security Deposit. The Parties acknowledge and agree that the Security Deposit shall be reduced by the applicable pro rata amount, based on acreage, set forth herein for each Phase at each Close of Escrow and, in the event of a cash Security Deposit only, such amount shall be credited against the security deposit required under each applicable Ground Lease. The pro rata amounts of the Security Deposit are as follows: (i) for the West Gateway, ONE HUNDRED AND SIXTY THOUSAND EIGHT HUNDRED AND THIRTY DOLLARS AND FIFTY ONE CENTS ($160,830.51), which amount includes THIRTY NINE THOUSAND THREE HUNDRED AND NINE DOLLARS AND TWENTY CENTS ($39,309.20) that may be allocated to the Railroad R/O/W Property, as that term is defined in the Ground Lease ("**WGW Security Deposit Allocation**"); (ii) for the East Gateway, one hundred and forty one thousand forty one dollars and eighty four cents ($141,240.84) ("**EGW Security Deposit Allocation**"); and (iii) for the Central Gateway, ONE HUNDRED AND NINETY SEVEN THOUSAND NINE HUNDRED AND TWENTY EIGHT DOLLARS AND SIXTY FIVE CENTS ($197,928.65) ("**CGW Security Deposit Allocation**").

1.4.3 Partial Application of the Security Deposit Related to Developer's Default or Failure to Close on a Particular Phase. If Developer is obligated pursuant to the terms of this Agreement to Close Escrow on the West Gateway and fails to do so (after application of the applicable notice and cure provisions), then, pursuant to Section 9.3, the City shall be entitled to retain the WGW Security Deposit Allocation. If the Developer is obligated pursuant to the terms of this Agreement to close Escrow on either the Central Gateway or East Gateway and fails to do so (after application of the applicable notice and cure provisions), then, pursuant to Section 9.3, the City shall be entitled to retain both the EGW Security Deposit Allocation and the CGW

Security Deposit Allocation, unless the Security Deposit has been reduced previously at the Close of Escrow on either the Central Gateway or East Gateway, as applicable. *For illustration purposes only, if the Developer Closed Escrow on the Central Gateway such that the Security Deposit has been reduced by the amount of the CGW Security Deposit Allocation, but later fails to Close Escrow on the East Gateway, the City would be entitled to only the EGW Security Deposit Allocation.*

1.4.4 Disbursement of the Security Deposit Upon Termination/Expiration. If this Agreement terminates or expires prior to the Close of Escrow on all three (3) Phases, the Security Deposit (or remaining portion thereof) shall be disbursed as follows: (i) if this Agreement is terminated due to Developer's default hereunder (after application of the applicable notice and cure periods), the provisions of Sections 1.4.3 and 9.3 shall apply; and (ii) in all other events, the Security Deposit (or remaining portion thereof) shall be returned to Developer.

1.5 Potential Modifications to the Lease Property.

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

1.5.1.1 AMS Site. The City has excluded the approximately seventeen (17) -acre property identified on the Site Map as the "AMS Site" from the Lease Property ("**AMS Site**"). If the City does not enter into a binding lease of the AMS Site within a year of the Effective Date, the City and Developer shall enter into exclusive negotiations for a period of ninety (90) days, which time may be extended by mutual agreement in writing by the Parties, to enter into a ground lease for the AMS Site, subject to fair market rate terms. The Parties agree the AMS Site shall in no event be included in the Central Gateway or East Gateway. Neither Party shall be liable to the other for any failure to enter into a lease for the AMS Site.

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

1.5.2 Potential Additions to West Gateway. The City shall have the right to include that certain property referred to as Parcel I-2 in the Document No. 2006-301854 recorded in the Official Records ("**Outer Claw**") as part of the "**Railroad R/O/W Property**" as that term is defined in the West Gateway Ground Lease. If the City does not enter into a binding agreement for the acquisition of or acquire title to the Outer Claw prior to the time set forth on the Schedule of Performance, the City's right to include the Outer Claw in the West Gateway shall terminate.

1.6 Recordation of Memorandum of LDDA.

Concurrently with the execution and delivery of this Agreement, the Parties shall (a)execute and cause to be notarized the Memorandum of Lease Disposition and Development Agreement in the form attached hereto as Attachment 9 ("**Memorandum of LDDA**") and (b) deliver the Memorandum of LDDA to the Title Company for recordation in the Official Records by the City. In the event the Parties agree to extend the Outside Closing Date pursuant to Section 6.6.2, the Parties shall execute, deliver and record in the Official Records an amendment to the Memorandum of LDDA which incorporates the extended Outside Closing Date.

ARTICLE II

THIRD PARTY COORDINATION

2.1 Cooperation by the Parties

The Parties acknowledge that the Project requires a number of discretionary approvals and agreements with non-City governmental entities and other third parties which have a material effect on Project feasibility, the Schedule of Performance, and the implementation of this Agreement. Therefore, the Parties agree to communicate regularly and to cooperate in good faith to implement the Project and this Agreement. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations to and attendance at meetings, copies of correspondence, execution of the mutually agreeable forms of the agreements provided in Section 2.2, below, and execution of mutually acceptable applications as owner and applicant where necessary and appropriate. Each Party, as applicable, shall use commercially reasonable efforts to (a) enter into each of the agreement set forth in Section 2.2 and (b) obtain the permits or other rights set forth in Section 2.2 prior to the time period set forth in the Schedule of Performance.

2.2 Third Parties Agreements, Approvals and Permits; Meet and Confer.

The following is a summary of the agreements, approvals and permits that the Parties acknowledge are essential to the success of the Project. The Parties shall cooperate as set forth in Section 2.1 above with respect to the City's pursuit and acquisition of such discretionary approvals and agreements. For each such matter, during the time period between the execution or acquisition of the same and the termination of this Agreement: (a) the City shall use its best efforts to perform its obligations and secure the material benefit of its rights under such matter, each prior to the times set forth in the Schedule of Performance, if applicable; and (b) the City shall not seek or agree to amend the provisions of such matter without Developer's prior written consent, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing to the contrary, Developer's prior consent shall not be required for any amendment to the Cooperation Agreement (as defined in Section 2.2.4) other than an amendment thereto which would require the City to obtain a third party's consent prior to the City agreeing to any amendment to this Agreement or the related documents (e.g., Ground Lease(s), Billboard Agreement or the Property Management Agreement).

2.2.1 Third Party Approvals of Prior Transfers and this Agreement

The City shall, at its sole cost, use commercially reasonable efforts to obtain the approval or other applicable form of confirmation from: (1) (A) the Army, pursuant to the requirements of the EDC MOA and the ESCA; (B) DTSC, if needed pursuant to the requirements of the Consent Agreement, both with respect to any transfer of ownership and assumption of the related contractual obligations under the EDC Property Agreements, as applicable, and (2) the Oversight Board and Department of Finance, as applicable, pursuant to the requirements of AB 26 with respect to the ultimate disposition of the Lease Property under this Agreement, and (3) the Title Company with respect to a written commitment to issue a title policy, subject only to the Permitted Exceptions, at the Close of Escrow for all Phases, in a form and substance subject to

the reasonable satisfaction of the Developer. If the City has not obtained the approvals and confirmations of subsection (1)-(3) of this Section 2.2.1 within three hundred and sixty (360) days of the Effective Date or, this Agreement shall terminate, unless the Parties have agreed in writing to an extension of time.

2.2.2 Amended and Restated CSA; Master Plan Approval.

The Parties acknowledge that the Amended and Restated CSA was executed on June 19, 2012. A final copy has been inserted as Attachment 17 to this Agreement. In the event the Port fails to meet one or more of the milestones set forth in the Amended and Restated CSA, and the City is entitled to exercise a self help remedy under the Amended and Restated CSA, then, to the extent permitted under the Amended and Restated CSA, the City shall assign such remedy to the Developer at Developer's written request therefor. The City and Developer acknowledge that the City and Developer have reviewed and approved the Master Plan. The City shall use commercially reasonable efforts to cause the Port to approve the Master Plan pursuant to the time set forth on the Schedule of Performance. The Developer shall have the right to review and approve the final Master Plan, which approval shall not be unreasonably withheld or delayed.

2.2.3 Amended Baseline Agreement.

The Parties acknowledge that the Amended Baseline was executed by all parties. A final copy has been inserted as Attachment 20 to this Agreement. The City shall use commercially reasonable efforts to obtain CTC's approval of the G-Max Price and Design-Build Contract (as those terms are defined in Article III) pursuant to the terms of the Amended Baseline Agreement prior to the time set forth on the Schedule of Performance.

2.2.4 Cooperation Agreement and Project Labor Agreement.

The City shall use commercially reasonable efforts to enter into a cooperation agreement with the applicable third parties in substantially the form of the draft agreement included in the Staff Report for the June 19, 2012 City Council meeting ("**Cooperation Agreement**") and a project labor agreement for the Public Improvements as set forth in Attachment 15, associated with Article IV, Community Benefits ("**Project Labor Agreement**") prior to the time set forth in the Schedule of Performance. The Developer shall have the right to review the final execution forms of the Cooperation Agreement and the Project Labor Agreement. Based on the Developer's review, if, after meeting and conferring pursuant to Section 2.3.1, the Developer determines in its reasonable business judgment that there has been a material and adverse change in the Community Benefits, the Developer shall have the right to terminate this Agreement.

2.2.5 Rail Access Agreement.

The City shall use commercially reasonable efforts to enter into a "**Rail Access Agreement**" (as defined in the Amended and Restated CSA) with the Port and, if applicable, the "**Port Rail Terminal Operator**" (as that term is defined in Section 10 of the Amended CSA), which shall provide a definitive, written agreement regarding (i) the rights of use with respect to the "**Port Rail Terminal**" (as that term is defined in the Amended and Restated CSA) to be reserved in favor of the Lease Property, (ii) the services to be delivered by the Port Rail Terminal

Operator, and (iii) the rates to be charge for such services, all as contemplated in the Amended and Restated CSA, prior to the time set forth in the Schedule of Performance.

2.2.6 Caltrans.

2.2.6.1 Construction Easement

The City shall use commercially reasonable efforts to cause Caltrans to vacate its right to occupy the portion of the West Gateway subject to that certain temporary construction easement recorded in the Official Records on February 13, 2002 as Document Number 2002-72862 (the "**Caltrans WGW Easement**") prior to the time set forth in the Schedule of Performance. Developer shall have the right to, at its election, negotiate directly with Caltrans with respect to an early vacation of all or a portion of the Caltrans WGW Easement area, and the City shall cooperate with such efforts at no loss of prepaid rent or third party cost to the City.

2.2.6.2 Billboard Sites

The City shall use commercially reasonable efforts to obtain Caltrans' consent to the City's reservation of the sites for billboards No. 1 and No. 2 as identified in Attachment 7, Scope of Development for Private Improvements, and reasonable access and utility easements thereto, from the City's conveyance of parcels C-1 and U-1 to Caltrans for the inclusion of such reserved sites in the Billboard Agreement premises. If Caltrans initially refuses to agree to the proposed two reservations, the City shall continue to use commercially reasonable effort to obtain the right to locate billboard No. 1 on such site (at no third party cost to the City) and if the City subsequently obtains such right, the site for billboard No. 1 shall be added to the premises under the Billboard Agreement for the additional consideration as outlined in the Billboard Agreement.

2.2.6.3 Underfreeway Easement

The City shall use commercially reasonable efforts to obtain Caltrans' agreement to amend the terms of the Grant Deed recorded in the Official Records on February 5, 1995, as Document Number 95028117 (the "**Underfreeway Easement**") by the time set forth on the Schedule of Performance to add the following uses to the list of the rights reserved to the City pursuant to the Underfreeway Easement: the right to install, maintain, repair and replace (a) improvements related to two railroad lines accessing the West Gateway and the Central Gateway; (b) the vehicular, bike and pedestrian access improvements to the West Gateway; and (c) any other Public Improvements intended to be installed and maintained in such location, each as contemplated by the Master Plan. The City may satisfy its obligations under this Section 2.2.6.3(a) by obtaining the right to install at least one rail line.

2.2.7 EBMUD MOA

The Parties acknowledge that the EBMUD MOA was executed prior to this Agreement. A final copy has been inserted as Attachment 16 to this Agreement.

2.2.8 Other Non-City Approvals

City shall use commercially reasonable efforts to obtain all necessary permits or approvals necessary to construct the Public Improvements in accordance with the Schedule of Performance, and shall cooperate with Developer in its pursuit of third party permits and approvals related to the Private Improvements. If City is unable to obtain a required permit for the Public Improvements, the Parties will commence the meet and confer process set forth in Section 2.3.1 below.

2.3 Meet and Confer; Process for Material Issues.

Various provisions of the Agreement refer to the Parties' obligation to meet and confer pursuant to Section 2.3.1 or 2.3.2, as applicable," prior to either party having the right to terminate this Agreement or otherwise proceed with the enforcement of any applicable remedies. If such a provision becomes effective pursuant to the provisions of this Agreement:

(a) if the event causing the meet and confer obligation occurs prior to the expiration of the time periods set forth in Section 2.3.2, the Parties shall meet and confer pursuant to the provisions of Section 2.3.2; and

(b) if the event causing the meet and confer obligation occurs after expiration of the time periods set forth in Section 2.3.2, the Parties shall meet and confer pursuant to the provisions of Section 2.3.1.

2.3.1 Meet and Confer, Generally. The Parties acknowledge that mutual, good faith cooperation and effective communication is essential to the success of the Project. Therefore, in the event of any potential disputes under this Agreement, the Parties shall make commercially reasonable efforts to meet and confer informally for a period of thirty (30) days to try to resolve such disputes. In the event the Parties cannot resolve the matter in such thirty (30) day period, the Parties may pursue the remedies pursuant to Article IX.

2.3.2 Meet and Confer for Material Issues. The Parties desire that this Agreement and the ability to develop the Project or substantial portions of the Project not automatically terminate upon the occurrence of an event of the failure of a condition precedent (a) related to (i) the inability to secure or the loss of any of the funds set forth in Section 3.3.1.1 (the City Contribution or the TCIF grant funds); (ii) the inability of the Parties to agree upon the matters set forth in Article III related to the design, funding or Completion of the Public Improvements; or (iii) the Port's failure (for any reason) to cause the Port Rail Terminal to be Completed and operational in a timely manner and (b) which would result in (i) the City's inability to construct the Public Improvements and/or (ii) obtain the benefits of the proposed Rail Access Agreement, which event occurs prior to the expiration of the time periods set forth in this Section 2.3.2 (collectively, the "**Section 2.3.2 Matters**"). Therefore, upon the occurrence of any of the Section 2.3.2 Matters and as specified in this Agreement, the Parties agree to meet and confer and exclusively negotiate with each other in good faith to determine a means to preserve the mutual benefits of the Project and this Agreement given the changed circumstances with respect to the TCIF grant funds. During the initial period to expire on December 1, 2012, the Parties shall negotiate regarding the feasibility of developing a project substantially similar to the

Project, with no change in the "**Permitted Uses**" set forth in the Scope of Development for Private Development or the "**Rent**" contemplated under the Ground Leases. If the Parties are unable to agree upon a means to deliver such project during such initial period, the City can elect to cease funding the infrastructure constructing documents and the Parties shall continue to negotiate exclusively and in good faith through May 31, 2013 regarding the development of a different, but mutually beneficial project to be developed at the Lease Property and the amendments to this Agreement that are necessary to implement such project. The Parties shall not be required to perform any other obligations under this Agreement during the meet and confer period set forth in this Section 2.3.2. Notwithstanding the terms of this Section to the contrary, the Developer shall have the right to terminate the negotiation period and this Agreement upon written notice to the City. In the event that the City Administrator deems it to be in the best interest of the City in his or her sole discretion, the City Administrator shall have the authority to extend the exclusive negotiating period on behalf of the City by entering into a minor amendment to this Agreement.

2.3.2.1 The Parties acknowledge and agree that the right to negotiate regarding an alternative project does not constitute an approval of any such project by the City, and the subsequent approval of any specific project by the City Council are subject to CEQA, where applicable. If any agreed upon alternative project requires any additional environmental analysis pursuant to CEQA, then after completion of any such additional environmental analyses, such project shall return to the City Council for consideration for adoption and approval. The City reserves all of its rights and duties under CEQA with respect to any alternative project agreed upon by the Parties pursuant to Section 2.3.2, including, without limitation, the authority to do any and all of the following:

2.3.2.1.1 Prepare an environmental study evaluating the impacts of the proposed project, feasible alternatives to the proposed project, and feasible mitigation measures;

2.3.2.1.2 Adopt any feasible alternatives and/or feasible mitigation measures to lessen any significant environmental impacts resulting from the proposed the proposed project;

2.3.2.1.3 Determine that any significant environmental impacts of the proposed project that cannot be mitigated are acceptable due to project benefits overriding any significant unavoidable impacts; and/or

2.3.2.1.4 Decide to modify or deny its approval of the proposed project, and not to proceed with the project, due to the results/findings of the CEQA process.

If the Parties mutually agree to pursue a revised project that necessitates additional CEQA review, Developer agrees to reimburse the City for its pro rata share of third party contractor CEQA costs (to be calculated based on the lease area as compared to the overall acreage of land covered in the environmental document project description).

2.4 Subdivision.

The City shall use its best efforts to complete and record in the Official Records a subdivision map for the Lease Property that is in substantial conformance with the draft subdivision map No. 10095 prepared by Ruggeri-Jensen-Azar & Associates in substantially similar form to the draft dated June 26, 2012 1:50:16 PM ("**Draft Parcel Map**") prior to the time set forth on the Schedule of Performance. The City shall provide Developer with copies of all material drafts of the proposed subdivision map and any conditions of approval that the City may impose on such subdivision map in the City's regulatory capacity. Developer shall not unreasonably withhold, condition or delay its approval of (a) any subdivision map that is in substantial conformance with the Draft Parcel Map or (b) conditions of approval that are consistent with the provisions of this Agreement. Developer shall review such drafts and provide the City with written notice of Developer's approval, disapproval or comments on such drafts within ten (10) business days after receipt of the same. Any disapproval or comments shall state with specificity the basis for such disapproval or comment. The City shall not unreasonably refuse to incorporate Developer's comments into the final subdivision map (to the extent such comments in substantial conformance with the Draft Parcel Map and conditions of approval (to the extent such comments are consistent with the provisions of this Agreement).

2.5 Western Area Power Administration ("WAPA").

A portion of the electrical power for the Project Site is obtained by the Port of Oakland through Base Resource Contract No. 00-SNR-381 by and between the OBRA and WAPA dated December 29, 2000 ("**Army Base WAPA Contract**"). The City is the successor in interest to OBRA under the Army Base WAPA Contract. The Army Base WAPA Contract has been assigned to the Port of Oakland for operational reasons. The City and Port of Oakland entered into the Utilities Program Management Agreement on January 17, 2007, subsequently amended July 1, 2011, and the Resource Management Agreement, dated October 16, 2006, subsequently amended July 1, 2011, to jointly operate and own the Army Base utilities and Army Base Utilities Program. Parties agree to work in good faith to determine if and how the Lease Property could continue to be served by WAPA, if such service is financially beneficial, and if and whether the Developer, or a Developer Affiliate, could or should directly administer the Army Base WAPA Contract for the Lease Property. The City retains the right, in its sole discretion, to determine whether, to what extent and to what legal capacity the Army Base WAPA Contract could or would be transferred or assigned to Developer. In any event, any such arrangement is subject to the terms and conditions of: Army Base WAPA Contract, Utilities Program Management Agreement and Resource Management Agreement and must be cost neutral or cost beneficial for the City.

ARTICLE III

DEVELOPMENT OF THE PUBLIC IMPROVEMENTS

3.1 Scope of the City's Construction Obligation.

The Public Improvements include (a) the deconstruction/demolition of the existing improvements on the Lease Property and (b) the surcharging, fill, grading, utility, on- and off-

site street/circulation, lighting, landscaping, rail crossing, wharf and other improvements listed in Attachment 6 and more particularly described in the Master Plan. Developer's ability to develop the Private Improvements on each Phase requires the prior completion of a particular subset of the Public Improvements. Attachment 6 allocates the Public Improvements into six (6) categories: (i) those Public Improvements that are required for all three (3) Phases; (ii) those Public Improvements that are required by the East Gateway; (iii) those Public Improvements that are required by the Central Gateway; (iv) those Public Improvements that are required by the West Gateway; (v) those Public Improvements that are designated as and required for the North Gateway or the AMS Site, and (vi) those Public Improvements that are off-site traffic/circulation improvements that, pursuant to the provisions of the EIR Addendum, are only required to be constructed in the event that the Project analyzed under the EIR Addendum and other defined projects are actually constructed. The Public Improvements described in clause (v) of this Section are referred to herein as the "**North Gateway/AMS Public Improvements.**" The Parties agree that in no event shall the Completion of the North Gateway/AMS Public Improvements be a condition precedent to Developer's obligation to Close Escrow on any Phase of the Lease Property to the extent such improvements are unique to the North Gateway and/or AMS Site. The Public Improvements described in clause (vi) of the preceding sentence are referred to herein as the "**Delayed Public Improvements.**"

3.2 Design Build Delivery Method.

The Parties intend that the design and construction of the Public Improvements will be delivered pursuant to the terms of the Property Management Agreement and a design build contract ("**Design-Build Contract**") entered into between California Capital & Investment Group, Inc., acting as the City's construction project manager ("**City's Property Manager**"), and a third-party design build contractor (the "**Design-Build Contractor**") in accordance with the terms of the Property Management Agreement.

3.2.1 Bridging Documents. Upon execution of the Property Management Agreement and pursuant to its terms, the City shall coordinate for the Parties' review, comment and approval pursuant to Sections 3.2.4 and 3.2.5 below, the development of documents that set forth the mandatory construction criteria for the Construction Drawings (defined below), consistent with the approved Master Plan and as necessary to deliver the Public Improvements (the "**Bridging Documents**"). It is intended that the Bridging Documents will be developed in two (2) phases, a preliminary set equivalent to thirty-five percent (35%) complete construction drawings (the "**35% Bridging Documents**") and a final set equivalent to sixty five percent (65%) (or such other percentage agreed upon by the Parties) complete construction drawings (the "**65% Bridging Documents**").

3.2.2 Design-Build Contract. The Design-Build Contract shall require the Design-Build Contractor to, as more particularly set forth in the Property Management Agreement, (a) complete the Construction Drawings based on the Approved 65% Bridging Documents; (b) be "at risk" with respect to the delivery of the included scope of work for a guaranteed maximum price (excluding Hazardous Materials remediation costs) based on the Approved 65% Bridging Documents (the "**G-Max Price**"); (c) perform the included scope "at risk" with respect to the Completion of the Public Improvements pursuant to such G-Max Price; and (d) (along with any consultants and subcontractors) to (i) name the City, the City's Property Manager and Developer

and its Affiliates as additional insureds under any required commercial general liability insurance, and (ii) name the City, Developer and its Affiliates as express third party beneficiaries of any warranties related to the Public Improvements; and (e) require consultants to include the City, Developer and its Affiliates within the scope of parties that may rely on their reports prepared in conjunction with the Design-Build Contract. The form of the Design Bid Contract shall be subject to the City's and the Developer's review, comment and approval pursuant to Sections 3.2.4 and 3.2.5 below. The Parties shall agree upon (a) the form of the Design-Build Contract to be initially proposed to the Design-Build Contractor pursuant to the Property Management Agreement within thirty (30) to ninety (90) days after the Effective Date and (b) the procedures regarding the review and approval of the Design-Build Contractor's self performance of any construction work under the Design-Build Contract within sixty (60) days after the Effective Date (which procedures shall be consistent with applicable local, state and federal law and included in the Design-Build Contract pursuant to the Property Management Agreement). The Developer shall cause the City's Property Manager to execute the Design-Build Contract within ten (10) days after the Parties approval of the final G-Max Price pursuant to Section 3.3.1.2.

3.2.3 Construction Drawings. After the Design-Build Contract and the G-Max Price has been approved under the Amended Baseline Agreement and the Design-Build Contract has been executed by the City's Property Manager, all in accordance with this Agreement and the Property Management Agreement, the City shall require the Design-Build Contractor to develop the Approved Bridging Documents into complete construction drawings for the Public Improvements (the "**Construction Drawings**") in accordance with the terms of the Design-Build Contract and the timeline set forth on the Public Improvements Schedule of Performance. The Construction Drawings shall be subject to the City's and Developer's review, comment and approval pursuant to Sections 3.2.4 and 3.2.5 below. Upon approval of the proposed Construction Drawings by both City and Developer, they shall thereafter be referred to as the "**Approved Construction Drawings.**"

3.2.4 Developer's Review, Comment and Approval. The Parties intend that they will coordinate closely regarding the development of the Bridging Documents, the negotiation of the form of the Design-Build Contract, the development of the Construction Drawings, and the Preliminary Budget. To that end, the City shall require the City's Property Manager under the Property Management Agreement to provide the Developer with access to all documentation prepared by the City's Property Manager and Design-Build Contractor, including interim drafts of such documents as the same are produced by City's Property Manager or the Design-Build Contractor. Such notices shall be labeled with the following: "Time Sensitive Review Materials Pursuant to Section 3.2.4 of the LDDA – Failure to Review Within Applicable Time Period Shall Result in the Deemed Approval of Included Materials." The Developer shall have five (5) business days within which to review any draft document provided to Developer pursuant to this Section 3.2.4 and provide the City with written notice of Developer's approval of or comments on such documents. If a draft document is consistent with the approved Master Plan or prior drafts reviewed and approved by Developer, Developer shall not unreasonably withhold, condition or delay its approval of such proposed document. If the Developer fails to provide the City written comments to the subject documents within the five (5) business-day period, Developer shall conclusively be deemed to have approved the same. If Developer submits comments to any draft document, the City shall incorporate any reasonable comments into the

subject document. If the City rejects any Developer comment, the City shall notify Developer thereof in writing within five (5) business days after receipt of such comment, which notice shall include a reasonably detailed explanation of the City's basis for rejection. The Parties shall meet and confer regarding all rejected comments and, if agreement is not reached within five (5) business days after the Parties commence the meet and confer process, Developer shall have an additional five (5) business days to deliver its final approval or disapproval of the proposed documents to City. If the Parties fail to agree upon the final form of any document pursuant to this Section 3.2.4, the Parties shall meet and confer pursuant to Section 2.3.1 or 2.3.2, as applicable, above for the purpose of resolving disputes related to the final form of the documents that are subject to this Section 3.2.4.

3.2.5 City's Review, Comments and Approvals. The City shall use commercially reasonable efforts to meet the time periods set forth in this Section 3.2.5 and otherwise cause the applicable matters/items to be approved prior to the dates necessary to meet the deadline applicable to the Completion of the Public Improvements the as set forth in the Amended Baseline Agreement. The Parties agree that such efforts shall include, but not be limited to, the City causing the necessary Project management, administrative and legal staff or consultants to be assigned to the Project to meet the timelines set forth in this Section 3.2.5. The City shall have ten (10) business days within which to review any draft document provided to City pursuant to the applicable provisions of the Property Management Agreement and provide Developer with written notice, through its Property Manager in accordance with the requirements of Section 3.2.4, of City's approval of or comments on such documents. If a draft document is consistent with the approved Master Plan or prior drafts reviewed and approved by the City, the City shall not unreasonably withhold, condition or delay its approval of such proposed document. If the City submits comments to any draft document, Developer shall accept any reasonable comments and provide the City and the City's Property Manager with written notice of the same within five (5) business days after receipt of such comment. If Developer rejects any of the City's comments, Developer shall notify the City thereof in writing within five (5) business days after receipt of such comment, which notice shall include a reasonably detailed explanation of Developer's basis for rejection. The Parties shall meet and confer regarding all rejected comments and, if agreement is not reached within five (5) business days after the Parties commence the meet and confer process, the City shall have an additional five (5) business days to deliver its final approval or disapproval of the proposed documents to Developer. If the Parties fail to agree upon the final form of any document pursuant to this Section 3.2.5, the Parties shall meet and confer pursuant to Section 2.3.1 or 2.3.2, as applicable, for the purpose of resolving disputes related to the final form of the documents that are subject to this Section 3.2.5. Developer shall have the right to specifically enforce the City's obligations under this Section 3.2.5 to use commercially reasonable efforts to meet and confer pursuant to this Section 3.2.5.

3.3 Funding of Public Improvements.

3.3.1 Budgets.

3.3.1.1 Preliminary Budget. The Parties have agreed upon a TWO HUNDRED AND FORTY SEVEN MILLION TWO HUNDRED THOUSAND DOLLARS ($247,200,000) preliminary budget for the design and construction of the Public Improvements (the "**Preliminary Budget**"). The Parties acknowledge that the Preliminary Budget is subject to

modification, as major cost variables (such as the cost of necessary soil import) become more certain and is based on the Scope of Development for the Public Improvements attached hereto as Attachment 6, and the Master Plan. The Preliminary Budget is based on the following available or proposed sources:

3.3.1.1.1 City Contribution. The City shall contribute a maximum of FORTY FIVE MILLION DOLLARS ($45,000,000) towards the planning, design and construction of the Public Improvements (the "**City Contribution**"). Further, the City is obligated under the Amended and Restated CSA to contribute THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS ($3,800,000) to the design and construction of the Port Rail Terminal and the City is obligated to pay additional amounts toward the Remediation of Hazardous Materials under Article V of this Agreement. To date, the City has expended approximately SIX MILLION DOLLARS ($6,000,000) toward the design of the Public Improvements pursuant to the Second Amendment to the ENA and has expended the additional amounts of approximately ONE MILLION SEVEN HUNDRED THOUSAND ($1,700,000) on third party environmental review and legal costs; resulting in a current account of approximately THIRTY SEVEN MILLION THREE HUNDRED THOUSAND DOLLARS ($37,300,000) for the remaining City Contribution. If the City is required to disgorge any funds currently earmarked for the Project pursuant to the provisions of AB 26, the total amount required to be expended by the City pursuant to this Section 3.3.1.1.1 shall be automatically reduced on a dollar-for-dollar basis by an amount equal to the funds disgorged.

3.3.1.1.2 Developer Funded Wharf Improvements. Subject to the provisions of Section 3.5.1 below, Developer shall contribute a maximum of TWENTY FIVE MILLION NINE HUNDRED THOUSAND DOLLARS ($25,900,000) to the construction of a portion of the wharf improvements to the West Gateway premises (the "**Developer Funded Wharf Improvements**"). The Design-Build Contractor shall be directed to develop a scope of work for the Developer Funded Wharf Improvements as part of the Approved Construction Drawings, which plans shall be a component of the G-Max Price under the Design-Build Contract, which shall include a dedicated line item for the Developer Funded Wharf Improvements. The Public Improvements Schedule of Performance shall include dates for the commencement of construction and the Completion of the Developer Funded Wharf Improvements. Developer shall be required to fund the TWENTY FIVE MILLION NINE HUNDRED THOUSAND DOLLARS ($25,900,000) required under this Section 3.3.1.1.2 concurrently with the City's construction of the Developer Funded Wharf Improvements as the City receives invoices for the same. Notwithstanding any term or provision set forth in this Agreement to the contrary, the City's obligation to deliver the Developer Funded Wharf Improvements as a part of the Public Improvements is expressly conditioned upon (i) the vacation of the Caltrans WGW Easement pursuant to Section 2.2.6.1 and (ii) the City's timely receipt of Developer's funds hereunder. In the event that Developer defaults on its obligation to fund any or all of the TWENTY FIVE MILLION NINE HUNDRED THOUSAND DOLLARS ($25,900,000) for the Developer Funded Wharf Improvements, (a) the City shall not be obligated to construct the Developer Funded Wharf Improvements as part of the Public Improvements and (b) the City's remedy for such default shall be as set forth in Section 9.10.1.

3.3.1.1.3 TCIF Grant Funds. The Parties expect that the City will have the right to expend ONE HUNDRED AND SEVENTY SIX MILLION THREE

HUNDRED THOUSAND DOLLARS ($176,300,000) in TCIF grant funds towards the completion of the design and construction of the Public Improvements pursuant to the terms of the Amended Baseline Agreement.

3.3.1.1.4 Additional Funds. The Parties shall cooperate in the identification and pursuit of additional public funds that may be available to pay a portion of the cost to construct the Public Improvements or the Private Improvements. Such cooperation shall include the completion, submittal and support of grant applications. The Parties shall meet and confer regarding the allocation of any available funds to the respective budgets for the Public Improvements or the Private Improvements, with priority given to the budget for the Public Improvements if necessary to avoid a meet and confer or subsequent termination of this Agreement. The third party costs associated with the pursuit of such funds shall be paid by the Party to be benefitted by such funds. Further, in the event that such funds are allocated to the Developer Funded Wharf Improvements and such funds are subsequently obtained by the City, Developer's obligation under Section 3.3.1.1.2 shall be reduced on a dollar-for-dollar basis for the funds actually received by the City.

3.3.1.2 Design-Build Contract - G-Max Price. The City shall cause the City's Property Manager to deliver the 35% Bridging Documents and obtain a preliminary G-Max Price from the Design-Build Contractor (the "**Preliminary G-Max Price**") within 90 to 180 days after the Effective Date. The Parties shall review the Preliminary G-Max Price pursuant to Sections 3.2.4 and 3.2.5; however, if the Preliminary G-Max Price is (i) based on Attachment 6, the Scope of Development for the Public Improvements, (ii) based on quantities and pricing equal or less than the cost assumptions in the Preliminary Budget and (iii) (excluding those amounts applicable to the Delayed Public Improvements) equal to or less than the aggregate amount of funds available to the City pursuant to Section 3.3.1.1, the City and Developer shall not unreasonably condition, withhold or delay their approval of the Preliminary G-Max Price. Thereafter, the Parties shall review the proposed G-Max Price identified in the proposed Design-Build Contract pursuant to Sections 3.2.4 and 3.2.5; however, if the proposed G-Max Price is equal to or less than (a) the Preliminary G-Max Price and (b) (excluding those amounts applicable to the Delayed Public Improvements) the aggregate amount of funds available to the City pursuant to Section 3.3.1.1, the City and Developer shall not unreasonably condition, withhold or delay their approval of the G-Max Price. In the event that the Parties (i) do not approve the Preliminary G-Max Price or the G-Max Price, (ii) the costs exceed the G-Max Price, or (iii) the sources of funds as identified in Section 3.3.1.1.1 are reduced or lost, the Parties shall meet and confer pursuant to Sections 2.3.1 or 2.3.2, as applicable, for the purpose of adjusting the scope of work or securing additional or replacement funds for the Public Improvements in order to reduce the costs of Completing the same to an amount that does not exceed the aggregate amount of the available funds.

The Parties agree that in no event shall Developer be required to contribute funds for the Completion of the Public Improvements in excess of those expressly set forth in Section 3.1.1.2, whether or not the actual costs of Completing the Public Improvements exceeds the G-Max Price.

3.4 Public Improvements Schedule of Performance.

The Parties shall coordinate with City's Property Manager and the Design-Build Contractor to develop a schedule of performance for the preparation of the Construction Drawings and the Completion of the Public Improvements in a manner that is consistent, to the maximum extent practicable, with the schedules included in the Amended Baseline Agreement and the Amended and Restated CSA ("**Public Improvements Schedule of Performance**"). The Parties shall not unreasonably withhold, condition or delay their approval of the Public Improvements Schedule of Performance. If the Parties fail to agree upon the Public Improvements Schedule of Performance pursuant to this Section, the Parties shall meet and confer pursuant to Sections 2.3.1 or 2.3.2, as applicable, in good faith for the purpose of resolving any disputes related to the proposed schedule. The Parties mutually approved Public Improvements Schedule of Performance, such schedule shall be included in the Schedule of Performance pursuant to an amendment to this Agreement. Such amendment shall be deemed minor pursuant to Section 10.12.

3.5 Construction.

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

3.5.1 Developer's Election to Construct the Developer Funded Wharf Improvements. In lieu of funding the Developer Funded Wharf Improvements pursuant to Section 3.3.1.1.2 above, the Developer shall have the right to elect, at its sole discretion, to assume the obligation to construct the Developer Funded Wharf Improvements at its sole expense. Developer may exercise this election to assume the obligation to construct only by (a) delivering written notice of such election to the City prior to the date that the City commences construction on the Developer Funded Wharf Improvements and (b) closing Escrow on the Ground Lease for the West Gateway Phase. If Developer elects to assume the obligation to construct the Developer Funded Wharf Improvements directly (in lieu of funding them pursuant to Section 3.3.1.1.2) pursuant to this Section 3.5.1: (i) the definition of the term Public Improvements under this Agreement shall thereafter expressly exclude the Developer Funded Wharf Improvements; (ii) the City shall have no obligation to construct the Developer Funded Improvements under this Agreement; (iii) the City shall cause City's Property Manager to assign its rights and obligations under the Design-Build Contract with respect to the Developer Funded Wharf Improvements to the Developer or its designee; (iv) the City shall assign all of its right, title and interest under the

Design-Build Contract, Bridging Documents and Construction Documents, as the same relate to the Developer Funded Wharf Improvements, to the Developer or its designee; (v) Developer shall be obligated to construct the Developer Funded Wharf Improvements as part of the "**Initial Improvements**" as that term is defined in the West Gateway Ground Lease; and (vi) Developer shall have no obligation to contribute any funds to the Public Improvements under this Agreement under Section 3.3. Developer further agrees that, if Developer elects to contract directly for the construction of the Developer Funded Wharf Improvements pursuant to this Section 3.5.1, Developer shall construct the Developer Funded Wharf Improvements subject to the Community Benefits that apply to Public Improvements pursuant to Article IV.

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

3.6 Formation of Special District.

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

ARTICLE IV

COMMUNITY BENEFITS

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

ARTICLE V

REMEDITATION

5.1 City's Disclosure.

The City hereby makes the following disclosures to the Developer:

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

5.1.2 HSC 25359.7 Notice of Release. This Agreement, which is a public ordinance, was properly circulated in accordance with applicable Laws and City procedures and does not become effective until at least thirty (30) days after the first reading at a properly noticed meeting of the City Council. This Agreement provides the thirty (30) day written notice that there has been a release of hazardous materials on or beneath the Project Site pursuant to Health and Safety Code section 25359.7, as required in the Covenant, defined in Section 5.1.3.2, below.

5.1.3 Environmental Remediation Requirements. As noted in Recital A, the EDC Property was transferred to the City through the City's predecessor in interest, OBRA, from the Army in 2003 pursuant to the EDC MOA. The EDC MOA required the City to complete environmental services (including investigation, remediation and related document preparation activities) for the EDC Property as set forth in the Environmental Services Cooperative Agreement dated May 16, 2003 ("**ESCA**"). Pursuant to the ESCA, the City, through its predecessor in interest, OBRA, contractually assumed the Army's remediation responsibilities (except in limited circumstances specifically identified in the ESCA) and agreed to remediate the EDC Property so that the Army could obtain its CERCLA covenant certifying completion of remediation, as required by federal law. In the ESCA, the City committed to complete the environmental response activities set forth in the DTSC Consent Agreement described in Recital I, and the associated Remedial Action Plan ("**RAP**") and Risk Management Plan ("**RMP**"), each dated September 27, 2002, with the RAP amended on July 29, 2004 and December 2006 (collectively, the "**RAP/RMP**"), in order to achieve regulatory closure. The agreement by the City to assume remediation obligations was endorsed by Governor Gray Davis in the Governor's August 6, 2003 approval of the Army's Finding of Suitability for Early Transfer ("**FOSET**").

To approve the FOSET and meet the terms of the Consent Agreement, the City provided financial assurances that the remediation identified and required by the ESCA would be completed. Those assurances consisted of (a) purchasing an environment insurance policy, the Remediation Cost Cap Environmental Site Liability Policy issued by Chubb Custom Insurance Company, Policy No. 3730-58-78 ("**Environmental Insurance Policy**"), which jointly names the City and the Port as insureds for the EDC Property and covers the period from August 7, 2003 to August 7, 2013, and (b) establishing a separate account (the "**Remediation Fund**"), which was jointly established with the Port and set aside eleven million and four hundred thousand ($11,400,000) for the sole purpose of paying for remediation costs on the EDC Property. To date, the City and the Port have expended approximately $3,300,000 from the Remediation Fund. Finally, the EDC Property is also subject to the Regional Water Quality Control Board Order No. R2-2004-0086 dated November 5, 2004 ("**RWQCB Order**").

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

5.1.3.2 The Consent Agreement, RAP/RMP, RWQCB Order, Covenant and Army EDC Deed. The Consent Agreement, RAP/RMP and RWQCB Order contain controlling environmental requirements and standards for Remediation of Hazardous Materials at the EDC Property and are included as Attachments 11A, 11B and 11C, respectively. The Consent Agreement specifically sets forth the scope and schedule of work to be completed to remediate environmental hazards on the EDC Property. The RAP identifies the priority remediation sites ("**RAP Sites**") at the former Oakland Army Base and establishes the cleanup goals for the entire EDC Property. The RMP sets forth the risk management protocols and the procedures for addressing environmental conditions at the EDC Property, including the presence and potential presence of Hazardous Materials, as they are identified. The RWQCB Order specifies the cleanup requirements for petroleum impacted soil and groundwater on the EDC Property. The Consent Agreement includes a Covenant to Restrict Use of the Property ("**Covenant**"), which prohibits certain sensitive land uses, requires notice of a release of Hazardous Materials to future owners or lessees of the land, requires an annual certification be submitted to DTSC attesting to compliance with the Covenant and reserves DTSC's right of access to the EDC Property. The Army EDC Deed, described in Recital A, also incorporates the Covenant, requires that the City provide written notice to the Army of any noncompliance with the Covenant and requires that the Army be provided with a right of access to the EDC Property for purposes of environmental investigation, remediation or other corrective action, if and to the extent required. For purposes of this Agreement, DTSC, the RWQCB and the Army are collectively referred to as the "**Resource Agencies**" and the documents identified in this section, together with any other requirements of the applicable Hazardous Materials Laws, are collectively referred to as the "**Environmental Remediation Requirements**."

5.1.4 Notice of Restrictions in the Covenant and EDC Deed. The Covenant required by DTSC as part of the Consent Agreement provides that all of the environmental restrictions set

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

5.2 Pre-Close of Escrow City Responsibility for Environmental Remediation.

With respect to each Phase or portion of the Project Site, the City shall be responsible (except to the extent Developer or its contractors or employees cause or contribute to such a condition) for Remediation obligations at the Project Site as set forth below; except that the City shall not be responsible for Remediation obligations retained by the Army pursuant to the EDC MOA and the ESCA (collectively, "**Army Retained Conditions**").

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

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

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

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

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

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

5.2.4 Pre-Close of Escrow Inspection Items. Developer may, at its discretion, conduct environmental testing anywhere on the Lease Property to confirm the presence or absence of additional conditions that may require Remediation pursuant to the RAP/RMP. Developer shall perform such work at its own cost and expense pursuant to the Right of Entry attached to this Agreement as Attachment 13. The City shall be responsible for any required Remediation related to such conditions, including at previously sites previously closed by the City, except to the extent Developer or its contractors or employees cause or contribute to such a condition, in accordance with the Environmental Remediation Requirements and the procedure set forth in this section as follows:

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

5.2.4.2 Within thirty (30) days following the Parties' adoption of the initial Surcharging Schedule, the Parties shall meet and confer in good faith to agree upon a written schedule for Developer's pre-Close of Escrow environmental inspections of the Lease Property (each a "**Developer's Pre-Close of Escrow Environmental Inspection**"). The schedule developed pursuant to this section shall be modified as consistent with the modifications to the Surcharging Schedule. It is the intent of the Parties that Developer's Pre-Close of Escrow Environmental Inspections relate to the then-current Surcharging Schedule, as follows.

5.2.4.2.1 With respect to each phase identified in the Surcharging Schedule, no less than ninety (90) days prior to the date identified in the then-current Surcharging Schedule for commencement of the surcharging for that phase, Developer shall provide the City with written notice of its intent to perform a Developer's Pre-Close of Escrow Environmental Inspection along with a work plan that includes the planned scope and schedule for the inspection for the City's approval. The City shall promptly (within 3 business days) send copies of the plan to the Port and shall within five (5) business days after receiving comments from the Port pursuant to the City/Port ARMOA, review and comment on the proposed inspection work plan, which approval shall not be unreasonably conditioned, withheld or delayed. If the City does not approve or provide comments to the Developer within the foregoing five day period, the City shall be deemed to have waived its right to object to the planned inspection. Such work plan shall then be subject to DTSC and/or RWQCB approval, as appropriate.

5.2.4.2.2 In the event that Developer elects to perform an inspection, Developer shall use its best efforts to complete the inspection for each phase, including all sampling activities, within thirty (30) days following the later of (i) the date of the City's approval of the Developer's proposed inspection notice for that phase or (ii) expiration of the above five-day period. The City shall have the right to attend and observe Developer's inspection and to take independent samples or obtain split samples, at the City's discretion, with respect to all sampling performed by Developer. In event that Developer fails to commence the

inspection within sixty (60) days following of the City's written approval of the inspection work plan, Developer shall be deemed to have waived its right to conduct such inspection. Once a Phase or portion of the Lease Property has been inspected, Developer shall not have the right to conduct further subsurface inspections on that Phase or portion of the Lease Property.

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

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

5.3 Pre-Close of Escrow; City and Developer Coordination.

The following requirements shall apply to each of the City's pre-Close of Escrow obligations set forth in Section 5.2 above:

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

5.3.2 Communications.

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

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

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

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

ARTICLE VI

DISPOSITION OF THE LEASE PROPERTY THROUGH ESCROW

6.1 Agreement to Ground Lease the Lease Property.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to lease the Lease Property to the Developer for the development of the Private Improvements, all in accordance with the terms and conditions set forth in this Agreement. The Close of Escrow shall occur in three Phases, one each for East Gateway, Central Gateway, and West Gateway, each after the satisfaction (or written waiver, where applicable) of the applicable conditions precedent, within the time periods specified in Section 6.6, and pursuant to the provisions of this Agreement.

6.1.1 West Gateway Sub-Phasing. The Parties agree that, at the request of, and solely as an accommodation to, Developer, City hereby grants to Developer the right, exercisable by Developer, at its sole election, to ground lease the West Gateway in either one (1) or two (2) phases (each, a "**WGW Sub-Phase**"), which election may be exercised by Developer by its delivering of written notice of such election to the City (the "**WGW Sub-Phase Notice**") on or before the date that is thirty (30) calendar days after Developer receives the six (6) month Notice of Completion of Public Improvements for the West Gateway pursuant to Section 3.5.2. Developer's exercise of its election under this Section and the Parties' execution of the Phase 1 WGW Lease shall in no way delay or extend the Close of Escrow for the West Gateway. If Developer delivers its WGW Sub-Phase Notice within such time period, then the following shall apply:

6.1.1.1 Phase I WGW Lease. The ground lease for first WGW Sub-Phase shall include only the Railroad R/O/W Property (as defined in the West Gateway Ground Lease and depicted as such on the Site Plan) (the "**Phase 1 WGW Lease**") and the ground lease for the second WGW Sub-Phase shall include the Railroad R/O/W Property and the balance of the West Gateway (the "**Final WGW Lease**").

6.1.1.2 Timing of Close of Escrow. The Parties shall Close Escrow on the ground lease of the Phase I WGW Lease on or before the date that is thirty (30) calendar days after the City's receipt of the WGW Sub-Phase Notice.

6.1.1.3 Procedure for Close of Escrow. The procedure for the Close of Escrow for the Phase 1 WGW Lease shall be as set forth in Section 6.8.2 with respect to the West Gateway, provided, however:

(a) Any waiver of a condition precedent set forth in Section 6.4 shall be solely with respect to the Railroad R/O/W Property as the applicable WGW Sub-Phase.

(b) The Phase 1 WGW Lease shall be substantially in the form of the West Gateway Ground Lease, but shall be modified to (i) exclude the reference therein to the "**West Gateway Property**" (as that term is defined in the West Gateway Ground Lease) and the provisions therein unique to the West Gateway Property and (ii) include the substance of the provisions set forth in Sections 6.1.1.4, 6.1.1.5 and 6.1.1.6 below.

(c) The balance of the Closing deliverables (including documents and funds) shall be modified to exclude the West Gateway Property.

(d) THIRTY NINE THOUSAND THREE HUNDRED AND NINE DOLLARS AND TWENTY CENTS ($39,309.20) of the WGW Security Deposit Allocation shall be credited to the security deposit due under the Phase 1 WGW Lease.

6.1.1.4 Phase 1 WGW Lease Minimum Project; City Remedies for Default. The Minimum Project under the Phase 1 WGW Lease shall: (I) be limited to the construction of the Rail Improvements to be located on the Railroad R/O/W Property pursuant to Exhibit 3.1 of the West Gateway Ground Lease (collectively, the "**Railroad Improvements**"), (II) require the tenant to Commence Construction of the WGW Rail Improvements within one (1) year after the Commencement Date of the Phase 1 WGW Lease, and (III) require the tenant to Complete Construction of all Railroad Improvements within two (2) years after the Commencement Date of the Phase 1 WGW Lease. Further, the City's remedy under the Phase 1 WGW Lease for tenant's breach of the Minimum Project under (and only under) the Phase 1 WGW Lease shall be limited to the termination of the Phase 1 WGW Lease and the City's retention on the Phase I WGW Lease security deposit; provided, however, that any such termination shall not terminate any obligations or liabilities of tenant under the Phase 1 WGW Lease that are expressly stated to survive any termination thereof. Notwithstanding any provision herein or in the Phase 1 WGW Lease to the contrary, such remedy of City under the Phase 1 WGW Lease shall in no way limit of modify any rights or remedies of the City under this Agreement with respect to the West Gateway, including, but not limited to, the payment of the WGW Liquidated Damages by Developer for the failure of Developer to timely satisfy all Close of Escrow obligations under this Agreement with respect to the Final WGW Lease.

6.1.1.5 West Gateway Cross-Default. Notwithstanding any term or provision set forth in the Phase 1 WGW Lease or in this Agreement to the contrary, Developer's right to Close Escrow on the Final WGW Lease shall be cross defaulted with the Phase 1 WGW Lease such that if the City terminates the Phase 1 WGW Lease as a result of the tenant's uncured default thereunder, such event shall automatically be deemed a non-curable default under this Agreement with respect to the Close of Escrow on the Final WGW Lease and, without limiting any other rights or remedies of the City under this Agreement, shall automatically terminate any and all Developer's right to Close Escrow at any time on the Final WGW Lease, and (b) any uncured breach of Developer's obligation under this Agreement to pay the Developer Funded Wharf Improvements required under Section 3.3.1.1.2 or to Close Escrow on the Final WGW Lease shall be automatically be deemed a non-curable breach under the Phase 1 WGW Lease.

6.1.1.6 Procedure for Final WGW Lease. On condition that the tenant is not in default under the Phase 1 WGW Lease or this Agreement, then upon the Close of Escrow on the Final WGW Lease: (a) the Railroad R/O/W Property shall be included within the Final WGW Lease premises and the Phase 1 WGW Lease and any guarantees delivered pursuant thereto shall automatically terminate (excepting any indemnity or other provisions of the Phase 1 WGW Lease that are expressly stated therein to survive any termination thereof) and be replaced by guarantees required pursuant to the Final WGW Lease, (b) the security deposit held by the City pursuant to the Phase 1 WGW Lease shall be applied to the security deposit required under the Final WGW Lease and, thereafter, (c) the Final WGW Lease shall thereupon and thereafter

apply to the entirety of the West Gateway. For avoidance of doubt, the actual Commencement Date of the Final WGW Lease shall control all time periods under the Final WGW Lease and the time periods under the Final WGW Lease shall not be accelerated or otherwise affected by the time periods that occurred under the Phase 1 WGW Lease.

6.2 Conditions to the City's Obligation to Close of Escrow.

The following shall be conditions precedent to the City's obligation to lease the Lease Property and Close the Escrow for each of the Ground Leases, and to deliver each of Phases of the Lease Property to the Developer. City's obligations under this Agreement and any Close of Escrow with respect to any particular Phase are subject to the satisfaction (or timely written waiver, where applicable) of the following conditions precedent prior to the expiration of the applicable time period (if none stated, the Outside Closing Date (defined below)):

6.2.1 No Developer Defaults. Except as expressly permitted pursuant to Section 9.10 (Limitation on Cross Defaults), Developer shall have performed in all material respects all obligations under this Agreement required to be performed on its part before the Close of Escrow, and there shall not exist any Event of Default or Unmatured Event of Default on the Developer's part under this Agreement, and all of the Developer's representations and warranties made in Article VIII of this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing Date. At Closing, the Developer shall deliver to the City a certificate to confirm the accuracy of such representations and warranties in all material respects.

6.2.2 Property Management Agreement. The Developer shall have caused the City's Property Manager to execute the Property Management Agreement with the City pursuant to Section 1.3.2 prior to the expiration of the time period set forth in the Schedule of Performance and, as to the West Gateway Ground Lease only, there shall be no material defaults by the City's Property Manager under such Property Management Agreement.

6.2.3 Cooperation Agreement and PLAs. The City shall have entered into a Cooperation Agreement and Project Labor Agreement related to the Public Improvements as contemplated in Items 2 and 12 of Attachment 15. Developer shall have entered into a Project Labor Agreement as contemplated in Item 13 of Attachment 15.

6.2.4 Master Plan. The Port shall have approved the Master Plan pursuant to the Amended and Restated CSA prior to the expiration of the applicable time period set forth in the Schedule of Performance.

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

6.2.5.1 Amended Baseline Agreement. The Parties acknowledge the prior satisfaction of this condition precedent.

6.2.5.2 TCIF Funding. All of the conditions precedent under the Amended Baseline Agreement for the payment of the applicable TCIF grant funds to the City shall have

been satisfied or waived by Caltrans and the CTC in writing and such funds shall have actually been paid to the City.

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

6.2.7 Port Rail Terminal. The following events shall have occurred prior to the expiration of the applicable time periods set forth in the Schedule of Performance (or the Developer shall have waived its condition precedent regarding the Port Rail Terminal pursuant to Section 6.4.8, below):

6.2.7.1 Union Pacific ROW/Improvements. The Port shall have entered into a written agreement with respect to the acquisition of the right of way and the construction of the Port Rail Terminal.

6.2.7.2 Port Rail Terminal Operator. The Port shall have issued a request for proposals regarding the selection of the Port Rail Terminal Operator, and the Port shall have selected the Port Rail Terminal Operator pursuant to the Request for Proposals.

6.2.7.3 Rail Access Agreement. The Port and the City shall have executed the Rail Access Agreement and Developer shall have approved of such agreement pursuant to the terms of Section 2.2.5.

6.2.7.4 Port Rail Terminal Design-Build Contract. The Port shall have issued a request for proposals related to the design and construction of the Port Rail Terminal and the Port shall have entered into a contract for the design and construction of the Port Rail Terminal pursuant to the Request for Proposals.

6.2.7.5 Commencement of Construction for the Port Rail Terminal. The Port shall have commenced construction of the Port Rail Terminal.

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

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

6.2.8.1 The Parties shall have approved of the 35% Bridging Documents pursuant to Sections 3.2.1;

6.2.8.2 The Parties shall have approved the Preliminary G-Max Price and G-Max Price pursuant to Section 3.3.1.2;

6.2.8.3 The Parties shall have approved the form of the Design-Build Contract pursuant to Section 3.2.2;

6.2.8.4 The Parties shall have approved of the Approved Construction Drawings pursuant to Section 3.2.3;

6.2.8.5 The Parties shall have approved of the Schedule of Performance for the Public Improvements pursuant to Section 3.4; and

6.2.8.6 With respect to each Phase, the City shall have Completed the Public Improvements applicable to such Phase pursuant to Section 3.5 as outlined in Attachment 6 and the Schedule of Performance for the Public Improvements (or the Developer shall have waived its condition precedent regarding the Completion of the Public Improvements pursuant to Section 6.4.9, and Developer and City shall have entered into a right of entry to permit the City the appropriate access and rights to complete the Public Improvements with respect to such Phase).

6.2.9 Developer Authority. The Developer shall have submitted into Escrow all documents required by Section 6.8.2.3 as the City and the Title Company may reasonably require.

6.2.10 No Litigation; Challenges. At the time for the Close of Escrow there shall not be any litigation or administrative challenges pending concerning (A) this Agreement, (B) the City's approval of this Agreement, (C) the Ground Lease for the applicable Phase, or (D) any Regulatory Approval required for development, construction, use or occupancy of the Project (including the EIR Addendum or any environmental review for such Regulatory Approval) as it relates to the applicable Phase.

6.2.11 Special District. The Developer shall have performed all obligations related to the formation of the Special District pursuant to Section 3.6 prior to the time period set forth in the Schedule of Performance.

6.2.12 Remediation of Hazardous Materials. With respect to each Phase, (i) the City shall have completed all Pre-Closing Remediation (Section 5.2 matters) with respect to such Phase, as evidenced by the City's receipt of a No Further Action Letter (or its equivalent) from DTSC or the RWQCB, as applicable, or (ii) the Developer shall have waived its condition precedent regarding the Pre-Closing Remediation (Section 5.2 matters) pursuant to Section 6.4.13 below, and Developer and City shall have entered into a right of entry to permit the City the appropriate access and rights to complete the Public Improvements with respect to such Phase.

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

6.2.14 Central Gateway Ground Lease. With respect to the East Gateway only, if Developer has previously Closed Escrow on the Central Gateway Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Lease) with respect to Developer's

obligations under the Central Gateway Ground lease as of the Closing Date for the East Gateway.

6.2.15 East Gateway Ground Lease. With respect to the Central Gateway only, if Developer has previously Closed Escrow on the East Gateway Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Lease) with respect to Developer's obligations under the East Gateway Ground lease as of the Closing Date for the Central Gateway.

6.3 Satisfaction of the City's Conditions.

The conditions precedent set forth in Section 6.2 above are intended solely for the benefit of the City. Subject to Force Majeure, if any such condition precedent is not satisfied on or before the required date specified therefor in this Agreement or in the Schedule of Performance:

6.3.1 If the failure is with respect to a condition set forth in that relates to any of the Section 2.3.2 Matters, the Parties shall have met and conferred, as applicable, pursuant to Section 2.3.2.

6.3.2 In all other events, the City shall have the right in its sole discretion either to waive in writing the condition precedent in question (except with respect to the condition set forth related to Subdivision) and proceed with the Close of Escrow with respect to the applicable Phase of the Lease Property or, in the alternative, to terminate this Agreement with respect to the applicable Phase of the Lease Property by written notice to the Developer. In addition, the date for the Close of Escrow may be extended, at the City's option for a reasonable period of time, not to exceed thirty (30) days, specified by the City in a written notice to the Developer to allow such conditions precedent to be satisfied, subject to the City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied within such extended period. If the failure of a condition precedent is caused by Developer's default, the provisions of Article IX shall apply. In all other events, the Security Deposit shall be returned to Developer and, except as expressly set forth herein, neither Party shall have any further rights or obligations under this Agreement.

6.3.3 If the City elects to waive the satisfaction of any particular matter set forth in Section 6.2 as a condition precedent to its obligation to Close Escrow on a particular Phase, such waiver shall not be a complete waiver of the matter except as it relates to the City's consent to the Close of Escrow for the applicable Phase, and, (I) where the matter involves the performance by the Developer of a particular covenant set forth in this Agreement, the Developer shall continue to perform such obligation pursuant to the terms of this Agreement, (II) where the matter involves the performance by a third party, where applicable, the provisions of Section 2.1 and 2.2 shall continue to apply with respect to such matter and (III) such obligations shall be included as landlord obligations under the applicable Ground Lease pursuant to the provisions of Section 6.8.2.1.

6.3.4 Notwithstanding any provision of this Section 6.3 to the contrary, if Developer elects (pursuant to Section 6.5.2) to extend the time period for the satisfaction of a condition precedent for Developer's benefit included in Section 6.4 that parallels a condition precedent for

the City's benefit set forth in Section 6.2.4, 6.2.5, 6.2.7 or 6.2.8, then (a) the time period for the satisfaction of such condition precedent for the City's benefit shall be automatically extended and (b) the City's right to terminate this Agreement as a result for the failure of such condition shall be automatically deferred, each for the extension of time required under Section 6.5.2.

6.4 Conditions to the Developer's Obligation to Close Escrow.

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

6.4.1 Third Party Approvals. The City shall have obtained the third party approvals set forth in Section 2.2.1 prior to the expiration of the applicable time periods set forth therein.

6.4.2 Development Agreement; Planned Unit Development. The City shall have granted Final Approval (defined below) of a Development Agreement and a Planned Unit Development zoning ordinance ("**PUD**") for the Lease Property, each (A) in a form acceptable to Developer in its sole and absolute discretion and (B) prior to the expiration of the applicable time periods set forth in the Schedule of Performance. As used in this Section 6.4.2, the term "**Final Approval**" shall mean that the City's Planning Commission or City Council, as applicable, shall have made a final determination in favor of the proposed action and all applicable administrative appeal or legal challenge periods shall have expired without the filing of a timely appeal or challenge, or in the event of a timely filing, the appeal or challenge shall have been finally resolved to Developer's sole satisfaction.

6.4.3 Master Plan. The Port shall have approved the Master Plan pursuant to the Amended and Restated CSA prior to the expiration of the applicable time period set forth in the Schedule of Performance.

6.4.4 Property Management Agreement. The City shall have entered into the Property Management Agreement with the City's Property Manager pursuant to Section 1.3.2.

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

6.4.5.1 Amended Baseline Agreement. The Parties acknowledge the prior satisfaction of this condition precedent.

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

6.4.5.3 TCIF Funding. All of the conditions precedent under the Amended Baseline Agreement to the payment of the applicable TCIF grant funds to the City shall have

been satisfied or waived by Caltrans and the CTC in writing and such funds shall have actually been paid to the City.

6.4.6 Existing Leases. The City shall have terminated all leases, license agreements or other agreements permitting a third party to occupy the Lease Property and the tenants thereunder shall have vacated the applicable Phase of the Lease Property.

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

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

6.4.8.1 Union Pacific ROW/Improvements. The Port shall have entered into a written agreement with respect to the acquisition of the right of way and the construction of the Port Rail Terminal.

6.4.8.2 Port Rail Terminal Operator. The Port shall have issued a request for proposals regarding the selection of the Port Rail Terminal Operator, and the Port shall have selected the Port Rail Terminal Operator pursuant to the Request for Proposals.

6.4.8.3 Rail Access Agreement. The Port and the City shall have executed the Rail Access Agreement and Developer shall have approved of such agreement pursuant to the terms of Section 2.2.5.

6.4.8.4 Port Rail Terminal Design-Build Contract. The Port shall have issued a request for proposals related to the design and construction of the Port Rail Terminal and the Port shall have entered into a contract for the design and construction of the Port Rail Terminal pursuant to the Request for Proposals.

6.4.8.5 Commencement of Construction for the Port Rail Terminal. The Port shall have commenced construction of the Port Rail Terminal.

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

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

6.4.9.1 The Parties shall have approved of the 35% Bridging Documents pursuant to Sections 3.2.1;

6.4.9.2 The Parties shall have approved the Preliminary G-Max Price and G-Max Price pursuant to Section 3.3.1.2;

6.4.9.3 The Parties shall have approved the form of the Design-Build Contract pursuant to Section 3.2.2 and 3.2.4;

6.4.9.4 The Parties shall have approved of the Approved Construction Drawings pursuant to Section 3.2.3;

6.4.9.5 The Parties shall have approved of the Schedule of Performance for the Public Improvements pursuant to Section 3.4; and

6.4.9.6 With respect to the applicable Phase, the City shall have Completed the Public Improvements applicable to such Phase as outlined in Attachment 6 pursuant to the Schedule of Performance for the Public Improvements. Notwithstanding the foregoing to the contrary, if an event set in the EIR Addendum requiring the construction of one or more of the Delayed Public Improvements has not occurred prior to the applicable Closing Date, the Completion of the Delayed Public Improvements shall not be a condition precedent to Developer's obligation to Close Escrow; however, Landlord's obligation to Complete such Delayed Public Improvements shall be included in the applicable Ground Lease pursuant to Section 6.2.8.1.

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

6.4.10.1 Vacation of West Gateway. With respect to the West Gateway only, pursuant to Section 2.2.6.1, Caltrans shall have vacated the portions of the West Gateway occupied pursuant to Caltrans WGW Easement, and its right to occupy portions of the West Gateway thereunder shall have terminated.

6.4.10.2 Underfreeway Easement. The City and Caltrans shall have entered into an amendment to the Underfreeway Easement pursuant to Section 2.2.6.3.

6.4.11 Special District. The City shall have formed the Special District prior to the time period set forth in the Schedule of Performance; provided that the Developer has performed all of its obligations under Section 3.6.

6.4.12 Title Insurance. With respect to each Phase, the Title Company shall be irrevocably committed (upon payment of the applicable premium) to issue the Title Policy for such Phase pursuant to the provisions of Section 6.10.

6.4.13 Remediation of Hazardous Materials. With respect to each Phase, the City shall have completed all Pre-Closing Remediation (Section 5.2 matters) with respect to such Phase, as evidenced by the City's receipt of a No Further Action Letter (or its equivalent) from DTSC or the RWQCB, as applicable.

6.4.14 No Litigation; Challenges. At the time for the Close of Escrow there shall not be any litigation or administrative challenges pending concerning (A) this Agreement, (B) the

City's approval of this Agreement, (C) the Ground Lease for the applicable Phase, or (D) any Regulatory Approval required for development, construction, use or occupancy of the Project (including the EIR Addendum or any environmental review for such Regulatory Approval) as it relates to the applicable Phase.

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

6.4.16 Subdivision. The applicable Phase shall have been created as a separate legal parcel and Developer shall have approved of the applicable subdivision map and related conditions of approval pursuant to Section 2.4. Pursuant to the provisions of the Subdivision Map Act, this condition may not be waived.

6.4.17 Cooperation Agreement and Project Labor Agreements. The City shall have entered into a Cooperation Agreement and Project Labor Agreement related to the Public Improvements as contemplated in Items 2 and 12 of Attachment 15. Developer shall have entered into a Project Labor Agreement as contemplated in Item 13 of Attachment 15.

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

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

6.4.20 City Authority. The City shall have submitted into Escrow all documents required by Section 6.8.2.3 as the Developer and the Title Company may reasonably require

6.5 Satisfaction of Developer's Conditions; Central Gateway Concurrent Closing Obligation.

The conditions precedent set forth in Section 6.4 above are intended solely for the benefit of Developer. Subject to Force Majeure, if any such condition precedent is not satisfied on or before the required completion date specified therefor in this Section or in the Schedule of Performance:

6.5.1 If the failure is with respect to a condition that relates to any one of the Section 2.3.2 Matters, the Parties shall have met and conferred, as applicable, pursuant to Section 2.3.2.

6.5.2 In all other events, Developer shall have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow with respect to the applicable Phase of the Lease Property (except with respect to the condition set forth in Section 6.4.1.16 (Subdivision)) or, in the alternative, to terminate this Agreement with

respect to the applicable Phase of the Lease Property by written notice to the City. In addition, the date for the Close of Escrow may be extended, at Developer's option for a reasonable period of time, not to exceed the Outside Closing Date, as specified by Developer. If the failure of a condition precedent is caused by the City's default, the provisions of Article IX shall apply. In all other events, if Developer elects to terminate this Agreement under this Section, the Security Deposit shall be returned to Developer and except as expressly set forth herein, neither Party shall have any further rights or obligations under this Agreement

6.5.3 If the Developer elects to waive the satisfaction of any particular matter set forth in Section 6.4 as a condition precedent to its obligation to Close Escrow on a particular Phase, such waiver shall not be a complete waiver of the matter except as it relates to the Developer's consent to the Close of Escrow for the applicable Phase, and, (I) where the matter involves the performance by the City of a particular covenant set forth in this Agreement, the City shall continue to perform such obligation pursuant to the terms of this Agreement, (II) where the matter involves the performance by a third party, where applicable, the provisions of Section 2.1 and 2.2 shall continue to apply with respect to such matter, and (III) such obligations shall be included as landlord obligations under the applicable Ground Lease pursuant to the provisions of Section 6.8.2.1.

6.5.4 Notwithstanding any term or provision set forth in this Agreement to the contrary, in the event that the conditions precedent to Developer's obligation to Close Escrow on the Central Gateway Ground Lease have been satisfied or, where applicable, waived by Developer in writing prior to the Close of Escrow on the West Gateway Ground Lease, Developer shall Close Escrow on either (at Developer's sole and absolute discretion) the West Gateway Ground Lease or the Phase 1 WGW Lease before or concurrently with (but in no event after) the Close of Escrow on the East Gateway Ground Lease. Developer's failure to satisfy the obligations set forth in the immediately preceding sentence shall be deemed (after the expiration of any applicable cure periods) a default of this Agreement for which the City's sole remedy shall be as set forth in Section 9.10.1. No such default shall affect the Developer's rights to Close Escrow on either the Central Gateway or East Gateway.

6.6 Closing Dates.

6.6.1 Closing Date. The Close of Escrow for each Phase shall occur within three (3) months after the later to occur of (a) the date the conditions precedent to the Developer's obligations to Close Escrow on such Phase have been satisfied or, where applicable, waived in writing by Developer and (b) the date that Developer receives both (i) written notice from the City that all of the applicable conditions precedent to such Closing shall have been satisfied (or, when applicable, waived in writing by the applicable Party) and (ii) any of the documentation related to the satisfaction of such condition required pursuant to Section 6.3 (the "**Closing Date**"). Notwithstanding the foregoing to the contrary, Developer shall have the right to extend such Closing Date and, if applicable, the Outside Closing Date, for up to three (3) periods of one (1) month each if Developer proves, to the City Administrator's reasonable satisfaction, that Developer is using commercially reasonable efforts to effectuate the Close Escrow. During such period, the Parties shall jointly retain a civil engineer to survey the square footage of the applicable Phase. The civil engineer shall certify such survey to each of the parties. Each Party shall pay fifty percent (50%) of the cost of the survey.

6.6.2 Outside Closing Date. The Parties desire to establish an outside date by which all of the conditions precedent to the Parties' obligations to effectuate the Close Escrow shall have been satisfied or (where applicable) waived and the Close of Escrow shall have occurred with respect to all three (3) Phases (the "**Outside Closing Date**"). The Parties agree that the initial Outside Closing Date is June 30, 2014; provided, however, that the Parties shall amend such Outside Closing Date concurrent with the approval of the Schedule of Performance for the Public Improvements pursuant to Section 3.4 such that it occurs on the date for the Completion of the Public Improvements (excluding the Delayed Public Improvements) plus some reasonable amount of time to allow for unexpected delays, not to exceed six (6) months. The Parties shall memorialize the agreed upon the amended Outside Closing Date pursuant to a written amendment to this Agreement, which amendment shall be deemed minor pursuant to Section 10.11. In the event that all applicable conditions precedent to a particular Close of Escrow have not been satisfied (or, when applicable, waived in writing) prior to the Outside Closing Date (as may be amended), this Agreement shall terminate, and thereafter, except as expressly set forth herein, neither Party shall have any further obligations under this Agreement. Further, provided that Developer is not in default as of the date of such termination, the Security Deposit shall be returned to the Developer.

6.7 Escrow.

6.7.1 Opening of Escrow; Confirmation of Guarantor for West Gateway Ground Lease. Within five (5) Business Days after Developer's receipt of the applicable ninety (90) day Notice of Completion of the Public Improvements for such Phase pursuant to Section 3.5.2 Developer shall:

6.7.1.1 Escrow. Open an escrow for the conveyance of the applicable Phase through the Ground Lease ("**Escrow**") with the local office of such title company as the Developer may select and the City may find reasonably satisfactory ("**Title Company**").

6.7.1.2 West Gateway Ground Lease Guarantor. If the Closing involves either the West Gateway Ground Lease or the Phase 1 WGW Lease, Developer shall provide to the City, at least sixty (60) days prior to the Closing Date, a written request ("**WGW Guarantor Request**") for approval of one or more entity(ies) identified therein, that may include but are not necessarily limited to California Capital & Investment Group, Inc., that Developer proposes to provide the Minimum Project Liquidated Damages Guaranty and Completion Guaranty(ies) under such Ground Lease (the "**WGW Proposed Guarantor**"). The WGW Guarantor Request also shall (a) identify the WGW Proposed Guarantor , (b) shall confirm such entity is registered and qualified to transact business in California, and (c) include reasonable and customary written evidence from one or more bona fide financial institutions, substantiating that the WGW Proposed Guarantor has on hand at least NINE MILLION DOLLARS ($9,000,000) in cash or cash equivalent assets (the "**WGW Guarantor Approved Cash Level**"). If the WGW Proposed Guarantor is California Capital & Investment Group, Inc., the City's approval shall be limited to confirming that California Capital & Investment Group, Inc. meets the WGW Guarantor Approved Cash Level, and the City shall not unreasonably withhold, delay or condition its approval of the WGW Guarantor Approved Cash Level. In all other cases, the City shall not unreasonably withhold, delay or condition its approval of any WGW Proposed Guarantor that (x) is registered and qualified to transact business in California and (y) meets the WGW Guarantor

Approved Cash Level. The City shall provide Developer with written notice of the City's approval or disapproval of the WGW Proposed Guarantor(s) within fifteen (15) calendar days after receipt of the WGW Guarantor Request. Any disapproval by the City shall state with specificity the basis for such disapproval. In the event of a disapproval, Developer shall have the right to submit a supplement to the WGW Guarantor Request, or a new WGW Guarantor Request, responding to the City's basis for disapproval.

6.7.2 Joint Escrow Instructions. No later than ten (10) days prior to the Close of Escrow, the Parties shall prepare joint escrow instructions as necessary and consistent with this Agreement, and deliver such escrow instructions to the Title Company for the applicable Phase.

6.8 Close of Escrow for Each Phase.

6.8.1 Close of Escrow. As used herein, the terms "**Close of Escrow**" or "**Close Escrow**" mean the date on which all of the following shall have occurred: (a) the execution and delivery of the applicable Ground Lease by both Parties, (b) the City's delivery of possession of the applicable Phase to Developer, (c) the issuance of the applicable Title Policy and (d) the recordation of the Memorandum of Ground Lease in the Official Records. With respect to each Phase, provided that the applicable conditions precedent set forth in Section 6.2 and Section 6.4 have been satisfied or expressly waived (as permitted) by the benefitted Party in accordance with this Agreement, the City and the Developer shall instruct the Title Company to complete the Close of Escrow, as set forth below.

6.8.2 Steps to Close Escrow. The Close of Escrow for the applicable Phase shall be completed as follows:

6.8.2.1 If (a) either Party has waived a condition precedent to such Party's obligation to close Escrow or (b) an event set forth in the EIR Addendum requiring the construction of one or more of the Delayed Public Improvements has not occurred, on or before the Close of Escrow, the Parties shall amend the applicable Ground Lease to incorporate (y) any of the Parties' obligations that, pursuant to the terms of this Agreement, continue to be effective notwithstanding the waiver of the applicable condition precedent or (z) the City's obligation to Complete the applicable Delayed Public Improvements.

6.8.2.2 On or before the Close of Escrow, the City shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) two counterpart originals of the applicable Ground Lease; (2) one original counterpart Memorandum of Ground Lease in recordable form, (3) a copy of any resolution(s) of the City authorizing the execution and delivery of the Ground Lease and any other evidence of authority as the Developer or the Title Company may reasonably require; (4) a certificate, duly executed by the City, confirming that all of the City's representations and warranties set forth in Section 8.2 are true and correct in all material respects as of the Closing Date; (5) the City's executed and acknowledged counterpart of such instrument necessary to remove the Memorandum of LDDA from title to the applicable Phase; and (6) all costs of escrow to be paid by the City per Section 6.8.3.

6.8.2.3 On or before the Close of Escrow, the Developer shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) two counterpart originals of the applicable Ground Lease and one original counterpart Memorandum of Ground Lease in recordable form; (2) a certificate, duly executed by Developer, confirming that all of Developer's representations and warranties set forth in Section 8.1 are true and correct in all material respects as of the Closing Date; (3) such resolutions of the Developer and its constituent members authorizing the execution and delivery of the Ground Lease and any other evidence of authority as the City or the Title Company may reasonably require; (4) the insurance certificates required under the applicable Ground Lease; (5) the Security Deposit required under the applicable Ground Lease, subject to any credit provided in Section 1.4; (6) the West Oakland Community Fund payment required under item 1 of Attachment 15; (7) Developer's executed and acknowledged counterpart of such instrument necessary to remove the Memorandum of LDDA from title to the applicable Phase; (8) any corporate guarantee as required under the applicable Ground Lease; and (9) all costs of Escrow to be paid by Developer per Section 6.8.3.

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

6.8.2.5 The Title Company shall issue Title Policy to the Developer and the City as required under Section 6.10.

6.8.2.6 The Title Company shall deliver to each Party the counterpart copies of each agreement referred to in this Section 6.8.2 signed by the other Party, and any other documents held for the account of such Party.

6.8.3 Costs of Escrow. The Parties shall pay all costs related to the Close of Escrow per the custom and practice in the County of Alameda, with the exception that any City-imposed transfer tax imposed as a result of the execution and the applicable Ground Lease will be waived or paid for by the City.

6.9 Condition of Title to the Lease Property.

6.9.1 Permitted Title Exceptions. Each Phase shall be delivered to Developer through the Close of Escrow subject only to the following matters (the "**Permitted Title Exceptions**"):

6.9.1.1 Non delinquent taxes and assessments, a lien not yet due and payable;

6.9.1.2 The applicable exceptions identified on Attachment 14 as "**Approved Exceptions**;"

6.9.1.3 Any new exceptions (A) required by the express terms of this Agreement or (B) caused by the actions of Developer or any of its agents, employees, affiliates, representatives, contractors, subcontractors or consultants (excluding the City's Property Manager); and

6.9.1.4 The standard printed exceptions set forth on a CLTA standard owner's policy of title insurance (or on an ALTA extended owner's policy of title insurance, if obtained by Developer); provided, however, if such standard printed exceptions are different than those included in the Title Policy obtained pursuant to Section 1.1.1, any changes shall be subject to Developer's right to review and reasonably approve such changes.

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

6.9.3 The Developer's Remedies with Respect to Uncured Title Defects. If at the date specified as the Extended Closing Date, unless the Parties mutually agree to extend such date, a Title Defect still exists, the Developer may by written notice to the City either (i) terminate this Agreement or (ii) Close Escrow on the applicable Phase; provided, however, that if the Title Defect is the result of a breach of City's covenant under the last sentence of Section 6.9.2 hereof, Developer may seek specific performance. If the Developer elects to Close Escrow, the Title Defect will be deemed waived unless it is the result of a breach of City's covenant under the last sentence of Section 6.9.2 hereof, in which case Owner's obligation to remove such Title Defect shall be added as a landlord obligation under the applicable Ground Lease pursuant to the provisions of Section 6.8.2.1. If the Developer does not elect to Close Escrow and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Close of Escrow, or any extension provided above, the City may terminate this Agreement upon three (3) Business Days written notice to the Developer. If the Agreement is terminated under this Section, the Security Deposit shall be returned to Developer and the Parties shall thereafter have not further rights or obligations under this Agreement.

6.10 Title Policy.

6.10.1 Title Policy to be Issued at the Close of Escrow. The joint escrow instructions will provide that concurrently with Close of Escrow for each Phase, the Title Company will issue and deliver to the Developer, an A.L.T.A. extended coverage leasehold owner's title insurance policy for such Phase, with such coinsurance or reinsurance as the Developer may reasonably request, in an amount designated by the Developer, insuring that the leasehold estate in the Lease Property is vested in the Developer subject only to the Permitted Title Exceptions, and with such endorsements as may be reasonably requested by the Developer, all at the sole cost and expense of the Developer ("**Title Policy**"); and

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

6.11 Taxes and Assessments.

With the exception of the initial transfer tax provided in Section 6.8.3, Developer understands that any Ground Lease may constitute a possessory interest and that interest may be subject to property taxation. If for any reason imposed, ad valorem taxes and assessments levied, assessed or imposed as a result of the execution of any Ground Lease, including but not limited to, possessory interest taxes, shall be the sole responsibility of the Developer.

6.12 Lease Property As Is Risk of Loss.

6.12.1 Acceptance of Lease Property in "As Is With All Faults" Condition; Risk of Loss. With the exception of the City's obligation to construct the Public Improvements pursuant to this Agreement, form and operate the Special District, Regulatory Reopeners and the Permitted Title Exceptions, the Developer agrees to accept the Lease Property in its "As-Is With All Faults" condition existing on the date of Close of Escrow ("**As-Is With All Faults Condition**"); provided that there is no material change in the physical condition of the Lease Property caused by an event outside the control of the Developer or its agents between the Effective Date of this Agreement and the date of Close of Escrow that would materially adversely interfere with the development, construction, use or occupancy of the Project for its intended uses ("**Material Change**"), in which event the Developer shall be entitled to terminate this Agreement, by written notice to City (which right may be exercised, at the Developer's sole discretion, with respect to one or more Phases or the entire Lease Property, but such right to terminate shall only apply to the extent such Phase (or the entire Lease Property, if applicable) is affected by such Material Change); and provided further that the City will not under any circumstances be liable to the Developer for any monetary damages related to a Material Change. The Developer's sole remedy shall be limited to termination as set forth in this Section 6.12.1 and the return of the Security Deposit (or applicable portion thereof) pursuant to Section 1.4.4. The Developer acknowledges that it has been afforded a full opportunity to inspect all of the public records of the City and the Lease Property relating to the Developer's proposed use of the Lease Property. The City makes no representations or warranties as to the accuracy or completeness of any matters in such records. The Developer shall perform a diligent and thorough inspection and investigation of the Lease Property, either independently or through its experts, including, but not limited to the quality and nature, adequacy and physical condition of the Lease Property, geotechnical and environmental condition of the Lease Property including, without limitation, presence of lead, asbestos, other Hazardous Materials, any groundwater contamination, soils, the suitability of the Private Improvements for the Project, zoning, land use regulations, historic preservation laws, and other Laws governing the use of or construction on the Lease Property, and all other matters of material significance affecting the Lease Property and its development, use, operation, and enjoyment under this Agreement or the Ground Lease.

6.12.2 **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** EXCEPT FOR THE CITY'S EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS SET FORTH IN THE APPLICABLE GROUND LEASE, THE DEVELOPER AGREES THAT THE LEASE PROPERTY IS BEING DELIVERED BY THE CITY AND ACCEPTED BY THE DEVELOPER IN ITS AS-IS WITH ALL FAULTS CONDITION AS DEFINED IN SECTION 6.12.1. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, NOR ANY EMPLOYEE, OFFICER, COMMISSIONER, REPRESENTATIVE, OR OTHER AGENT OF THE CITY HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE LEASE PROPERTY, THE SUITABILITY OR FITNESS OF THE LEASE PROPERTY OR APPURTENANCES TO THE LEASE PROPERTY FOR THE DEVELOPMENT, USE, OR OPERATION OF THE PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE LEASE PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE LEASE PROPERTY OR THE PROJECT.

Developer Initials: _____

6.13 Release Concerning the Physical Condition of the Lease Property.

Except for the City's express representations, warranties and covenants set forth in the applicable Ground Lease with respect to the physical condition of the applicable Phase (including, without limitation, Regulatory Reopeners), as part of its agreement to accept the each Phase of the Lease Property in its As-Is With All Faults Condition as defined in Section 6.12.1, the Developer on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge the City, and its employees, officers, commissioners, representatives, or other agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Developer may now have or that may arise of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Lease Property or Project, including, without limitation, any Hazardous Materials in, on, under, the Project (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable to such conditions (including, without limitation, Hazardous Materials Laws), but excluding any claims, demands, or causes of action Developer may now or hereafter have against third party claims related to the condition of the Lease Property or any Laws applicable thereto that arose during or relate to the period prior to the Close of Escrow.

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

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

Developer Initials: _____

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

ARTICLE VII

ASSIGNMENT AND TRANSFER

7.1 Developer as Party is Material Consideration.

Developer and City acknowledge and agree that identity of Developer, and of any transferee of any right or interest in this Agreement, and the grant of the rights under this Agreement involves the exercise of broad proprietary discretion by City in promoting the development, leasing, occupancy and operation of the Property and other purposes of this Agreement. Developer agrees that its particular business capabilities, financial capacity, reputation, and business philosophy were a material inducement to City for entering into this Agreement.

7.2 Consent of City.

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

7.3 Permitted Transfers.

The Parties acknowledge and agree that this Agreement authorizes the following as "**Permitted Transfers**": (a) CCIG, or a CCIG Affiliate Controlled by CCIG, may be the Tenant under the Ground Lease for the West Gateway; (b) a Developer Affiliate Controlled by the Prologis member may be the Tenant under the Ground Leases for the East Gateway and the Central Gateway.

7.4 Conditions Precedent to Transfer.

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

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

7.4.2 Except for a Permitted Transfer pursuant to Section 7.3, the City determines, in its reasonable judgment, that the proposed transferee (i) has the financial capacity implement the Project as contemplated hereunder and otherwise to perform all of Developer's obligations under this Agreement that are applicable to the interest subject of the Transfer; and has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project.

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

7.4.4 Except as expressly permitted pursuant to Section 9.10 (Limitation on Cross Default), there shall be no uncured Event of Default or Unmatured Event of Default on the part of Developer under this Agreement.

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

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

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

7.5 Delivery of Executed Assignment.

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

7.6 No Release of Developer's Liability or Waiver by Virtue of Consent.

Unless otherwise expressly agreed to the City in the form of instrument of assignment, the consent by the City to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (a) relieve or release Developer from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Developer at any time hereunder, or (b) relieve any

transferee of Developer from its obligation to obtain the express consent in writing of the City to any further Transfer.

7.7 Effect of Prohibited Transfer.

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

8.1 Developer Representations and Warranties.

The Developer represents and warrants as follows, as of the Effective Date and as of the Close of Escrow of any Phase of the Lease Property, and, upon the Close of Escrow for each Phase, such representations and warranties shall not survive termination of this Agreement as to such Phase, except as such representations and warranties are expressly provided for in the applicable Ground Lease:

8.1.1 Valid Existence; Good Standing. The Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware and registered to do business in the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the State of California.

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

8.1.3 No Limitation on Ability to Perform. Neither the Developer's organizational documents, nor the organizational documents of any of its members, nor any other agreement or Law in any way prohibit, limits or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. Neither the Developer nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer or any of its members before any court, governmental City, or arbitrator which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of the Developer.

8.1.4 Valid Execution. The Developer's execution and delivery of this Agreement and the agreements contemplated hereby have been duly and validly authorized by all necessary

action and in full compliance with all applicable laws. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to the application of bankruptcy and insolvency laws, and for the possible unavailability of specific performance which is dependent on the exercise of judicial discretion. The Developer has provided to the City a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

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

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

8.1.7 No Undisclosed Disputes with City. The Developer, including its members and officers are not in, and are not aware of, any pending disputes that they many have with the City, except any disputes which have been disclosed in writing to the City pursuant to Section 10.22.

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

8.2 City Representations and Warranties.

The City hereby represents and warrants as follows, as of the Effective Date and at all times to each Close of Escrow for the Lease Property, and, upon the Close of Escrow for each Phase, such representations and warranties shall not survive Close of Escrow or termination of this Agreement as to such Phase, except as such representations and warranties are expressly provided for in the applicable Ground Lease:

8.2.1 Authority. Except for the approvals disclosed in Section 2.2.1 above, the City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the Ground Leases, the Property Management Agreement and the Billboard Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 8.2.1 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

8.2.2 Leases and Contracts. To the best of the City's knowledge, except as set forth in Attachment 19, the Permitted Exceptions, or otherwise disclosed in writing on or before the Closing Date, as of the Close of Escrow only, there are no unrecorded sale, lease, management, maintenance, service, supply, insurance or other contracts (or any amendments thereto) that affect any portion of the Lease Property or its operation and that will be binding upon the Developer or the Lease Property after the Close of Escrow.

8.2.3 Litigation; Condemnation: To the best of the City's knowledge, except for Case No. 12642082 filed the Alameda County Superior Court on August 3, 2012 and those matters first arising after the Parties execution of this Agreement and disclosed in writing by the City to the Developer promptly upon obtaining knowledge of same, the City has received no written notice regarding any, and to the best of the City's knowledge there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions either pending or threatened against the Lease Property.

8.2.4 Violation of Laws. To the best of the City's knowledge, except for those matters first arising after the Effective Date and disclosed in writing by the City to the Developer promptly upon obtaining knowledge of same, and except as set forth in (i) that certain letter to the City from the state controller dated April 20, 2012, which ordered the City to reverse any redevelopment asset transfer that occurred after January 2, 2011 per AB 26 and (ii) that certain letter to the City from the California Department of Finance dated October 5, 2012 related to the Recognized Obligations Payment Schedule, the City has received no written notice from any government authority regarding any, and, to the best of the City's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Lease Property, which violations remain uncured as of the date hereof or on the Closing Date.

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

8.2.6 No Bulk Sale. The transaction set forth in this Agreement does not constitute a "bulk sale" as that term is defined in California Commercial Code Section 6102.

As used in this Section 8.2, "to the best of the City's knowledge" means the actual knowledge (and not imputed or constructive knowledge) of the City Administrator and the City's project manager (as designated by the City pursuant to Section 5.2 of the Property Management Agreement), without any requirement of inquiry or investigation on their part.

Notwithstanding any provision of the Section 8.2 to the contrary, the City shall have no liability for a breach of the representations or warranties set forth in this Section 8.2 caused by or resulting from any act or omission of Developer.

8.3 Remedy for Breach of Representation or Warranty.

In the event that, prior to Close of Escrow, the Developer has current actual knowledge that any one of the City's representations and warranties is materially inaccurate, the Developer (as its sole and exclusive remedy for same) shall have the right to terminate this Agreement by written notice to the City of such election prior to the Closing. If, notwithstanding the Developer's current actual knowledge of a materially inaccurate representation or warranty, the Developer closes Escrow on the Ground Lease of the Lease Property, the Developer shall be deemed to have waived any claim arising out of such material inaccuracy as to such Ground Lease. If the Developer elects to terminate this Agreement pursuant to this Section, the provisions of Article IX shall apply. As used in this Section 8.3, the current actual knowledge of Developer means the current actual (and not imputed or constructive knowledge) of Phil Tagami and/or Mark Hansen and/or the successors to their respective positions or capacities in Developer or in any constituent party to Developer.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Remedies In General.

The City and Developer agree that in no event shall any Party be entitled to any consequential, punitive or special damages as a result of a breach of this Agreement.

9.2 Cure Period.

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

9.3 Liquidated Damages in the Event of Developer Default.

DEVELOPER ACKNOWLEDGES AND AGREES THAT DEVELOPER'S OBLIGATION TO CLOSE ESCROW UNDER THIS AGREEMENT IS A MATERIAL

CONSIDERATION FOR THE CITY'S AGREEMENT TO ENTER INTO THIS AGREEMENT. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN SECTION 9.2, THE PARTIES AGREE THAT IF DEVELOPER FAILS TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER FUNDED WHARF IMPROVEMENTS PURSUANT TO SECTION 3.3.1.2 OR DEVELOPER FAILS TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, THE CITY WILL SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, THE PARTIES AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF AGREEMENT, IN THE EVENT DEVELOPER FAILS TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER FUNDED WHARF IMPROVEMENTS PURSUANT TO SECTION 3.3.1.2 OR CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, DEVELOPER SHALL PAY THE FOLLOWING AMOUNTS ("**LIQUIDATED DAMAGES**") TO CITY, AS LIQUIDATD DAMAGES, WITHIN THIRTY (30) DAYS FOLLOWING CITY'S WRITTEN DEMAND THEREFOR, IN CASH OR OTHER IMMEDIATELY AVAILABLE FUNDS:

X. IF THE DEFAULT IS WITH RESPECT TO (1) THE FAILURE TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER FUNDED WHARF IMPROVEMENTS PURSUANT TO SECTION 3.3.1.2 OR (2) THE FAILURE TO CLOSE ESCROW FOR THE WEST GATEWAY, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION SIX HUNDRED AND EIGHT THOUSAND THREE HUNRED AND FIVE DOLLARS AND ELEVEN CENTS ($1,608,305.11) ("**WGW LIQUIDATED DAMAGES**"), WHICH AMOUNT INCLUDES THREE HUNDRED NINETY THREE THOUSAND AND NINETY TWO DOLLARS ($393,092) FOR THE RAILROAD R/O/W PROPERTY, AS THAT TERM IS DEFINED IN THE GROUND LEASE;

Y. IF THE DEFAULT IS WITH RESPECT TO FAILURE TO CLOSE ESCROW FOR THE CENTRAL GATEWAY, (1) IF THE DEVELOPER HAS PREVIOUSLY CLOSED ESCROW FOR THE EAST GATEWAY THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION NINE HUNDRED SEVENTY NINE THOUSAND TWO HUNDRED AND EIGHTY SIX DOLLARS AND FIFTY THREE CENTS ($1,979,286.53) ("**CGW ONLY LIQUIDATED DAMAGES**"), AND (2) IF DEVELOPER HAS NOT PREVIOUSLY CLOSED ESCROW ON THE EAST GATEWAY THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE THREE MILLION THREE HUNDRED THOUSAND NINETY ONE SIX HUNDRED NINETY FOUR DOLLARS AND EIGHTY CENTS ($3,391,694.80) ("**CGW/EGW LIQUIDATED DAMAGES**"); AND

Z. IF THE DEFAULT IS WITH RESPECT TO FAILURE TO CLOSE ESCROW FOR THE EAST GATEWAY, (1) IF THE DEVELOPER HAS PREVIOUSLY CLOSED ESCROW FOR THE CENTRAL GATEWAY THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION FOUR HUNDRED AND TWELVE THOUSAND FOUR HUNDRED AND EIGHT DOLLARS AND THIRTY0SIX CENTS ($1,412,408.36) ("**EGW ONLY LIQUIDATED DAMAGES**"), AND (2) IF DEVELOPER HAS NOT PREVIOUSLY CLOSED ESCROW ON THE CENTRAL GATEWAY THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE THE AMOUNT OF THE CGW/EGW LIQUIDATED DAMAGES, SET FORTH ABOVE IN SUBSECTION Y.

THE PARTIES AGREE THAT THE APPLICABLE AMOUNT OF THE LIQUIDATED DAMAGES IS A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR IN THE EVENT OF DEVELOPER'S DEFAULT ON ITS OBLIGATION TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER FUNDED WHARF IMPROVEMENTS PURSUANT TO SECTION 3.3.1.2 OR CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI. THE PAYMENT OF THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO SECTION 1671 OF THE CALIFORNIA CIVIL CODE. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: _____ _____
CITY DEVELOPER

The Parties agree that any portion of the Security Deposit that is retained by the City shall be credited to the Liquidated Damages payable pursuant to this Section 9.3, as applicable to each Phase. Further, in the event that the Phase 1 WGW Lease is terminated concurrently with a breach under this Agreement resulting in Developer's obligation to pay the WGW Liquidated Damages, Developer shall be entitled to an additional credit of THIRTY NINE THOUSAND THREE HUNDRED AND NINE DOLLARS AND TWENTY CENTS ($39,309.20) (representing the portion of the WGW Security Deposit Allocation allocated to the Railroad R/O/W and retained by the City under the Phase 1 WGW Ground Lease) against the WGW Liquidated Damages.

9.3.1 Guaranty of Liquidated Damages. Concurrent with the execution of this Agreement, Developer shall cause (a) Prologis, L.P. (or such other guarantor reasonably approved by the City) to execute and deliver to the City the Guaranty of Liquidated Damages applicable to the CGW/EGW Liquidated Damages in the form attached hereto as Attachment 18-1 ("**CGW/EGW Guarantee**") and (b) CCIG, Inc. (or such other guarantor reasonably approved by the City) to execute and deliver to the City the Guaranty of Liquidated Damages applicable to the WGW Liquidated Damages in the form attached hereto as Attachment 18-2 ("**WGW Guarantee**").

9.4 Defaults and Remedies.

9.4.1 Developer Defaults; City Remedies. Subject to the provisions of Section 2.3 and Section 9.2, as set forth on Attachment 8, Schedule of Performance, the failure of the Developer to meet a requirement set forth in each referenced section of this Agreement within the time set forth on the Schedule of Performance shall be an Event of Default by the Developer, and upon the occurrence of such Event(s) of Default, the City shall have the remedy or remedies set forth opposite the description of each such Event of Default as set forth on the Schedule of Performance.

9.4.2 City Defaults; Developer Remedies. Subject to the provisions of Section 2.3 and Section 9.2, as set forth on Attachment 8, Schedule of Performance, the failure of the City to meet a requirement set forth in each referenced section of this Agreement within the time set forth on the Schedule of Performance shall be an Event of Default by the City, and upon the occurrence of such Event(s) of Default, the Developer shall have the remedy or remedies set forth opposite the description of each such Event of Default as set forth on the Schedule of Performance.

9.5 Effect of Termination.

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

9.6 Action for Specific Performance.

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

9.7 Rights and Remedies Are Cumulative.

The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party, except as otherwise expressly provided in Section 9.4.1, 9.4.2, or 9.10.

9.8 Inaction Not a Waiver of Default.

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

9.9 Acceptance of Service of Process.

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Administrator, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer at the address provided for notices or such other addresses and shall have been given to the City by the Developer under Section 10.3, or in such other manner as may be provided by law.

9.10 Limitation of Cross Defaults.

Notwithstanding any term or provision set forth in this Agreement (except Section 10.15) to the contrary:

9.10.1 West Gateway. In the event the Developer defaults with respect to (a) pay any portion of the funds required for the Developer Funded Wharf Improvements pursuant to Section 3.3.1.2 or (b) the obligation to Close Escrow on Ground Lease for the West Gateway under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2, the City's sole remedies for such default shall be as follows: (x) the WGW Liquidated Damages and (y) if applicable, the enforcement of the City's rights under the WGW Guarantee, and (z) termination of this Agreement only with respect to any City obligation to deliver the West Gateway such that the City may lease or otherwise freely dispose of the West Gateway. In the event of a termination with respect to the West Gateway, the Developer retains all rights and obligations under this Agreement with respect to the East Gateway and Central Gateway.

9.10.2 East Gateway. In the event the Developer defaults with respect to the obligation to Close Escrow on Ground Lease for the East Gateway under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2: (a) if the Developer has previously Closed Escrow on the Central Gateway, then the City's sole remedies for such default shall be as follows: (i) the EGW Only Liquidated Damages, and (ii) as applicable, the enforcement of the City's rights under the CGW/EGW Guarantee up to the amount of the EGW Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the East Gateway such that the City may lease or otherwise freely dispose of the East Gateway; or (b) if the Developer has not previously Closed Escrow on the Central Gateway, then the City's sole remedies for such default shall be as follows: (i) the CGW/EGW Liquidated Damages, and (ii) as applicable, the enforcement of the City's rights under the CGW/EGW Guarantee up to the amount of the CGW/EGW Liquidated Damages, and (iii) termination of this Agreement with respect to any City obligation to deliver the East Gateway and Central Gateway such that the City may lease or otherwise freely dispose of the East Gateway and Central Gateway. In the event of a termination with respect to the East Gateway and/or Central Gateway, the Developer retains all rights and obligations under this Agreement with respect to the West Gateway.

9.10.3 Central Gateway. In the event the Developer defaults with respect to the obligation to Close Escrow on Ground Lease for the Central Gateway under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2: (a) if the Developer has previously Closed Escrow on the East Gateway, then the City's sole remedies for such default shall be as follows: (i) the CGW Only Liquidated Damages, and (ii) as applicable, the enforcement of the City's rights under the CGW/EGW Guarantee up to the amount of the CGW Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the Central Gateway such that the City may lease or otherwise freely dispose of the Central Gateway; or (b) if the Developer has not previously Closed Escrow on the East Gateway, then the City's sole remedies for such default shall be as follows: (i) the CGW/EGW Liquidated Damages, and (ii) as applicable, the enforcement of the City's rights under the CGW/EGW Guarantee up to the amount of the CGW/EGW Liquidated Damages, and (iii) termination of this Agreement with respect to any City obligation to deliver the East

Gateway and Central Gateway such that the City may lease or otherwise freely dispose of the East Gateway and Central Gateway. In the event of a termination with respect to the East Gateway and/or Central Gateway, the Developer retains all rights and obligations under this Agreement with respect to the West Gateway.

9.10.4 Existing Ground Leases. Consistent with Section 1.3.3, the Parties acknowledge and agree that the termination as to any portion of this Agreement with respect to any Phase pursuant to this Section 9.10 shall not affect the rights and obligations of any Party to a previously-executed Ground Lease for any other Phase.

ARTICLE X

GENERAL PROVISIONS

10.1 Force Majeure – Extension of Time of Performance.

10.1.1 Effect of Force Majeure. Subject to Sections 10.1.2, 10.1.3, and 10.1.4, below, neither the City, the Developer, nor any successor-in-interest to either (the "**Delayed Party**", as applicable) will be considered in breach or in default of any obligation or satisfaction of a condition to an obligation of another Party which is provided for in this Agreement, including, without limitation, the Schedule of Performance, but excluding any provision for the payment of money, if an event of Force Majeure has occurred and such event of Force Majeure actually causes a delay by the Delayed Party in meeting an obligation or satisfaction of a condition to an obligation of another Party under this Agreement. Subject to the provisions of Sections 10.1.2, 10.1.3, and 10.1.4 below, the time fixed for performance of any obligation under this Agreement shall be extended for the duration of the event of Force Majeure that causes or results in a delay or inability by the Delayed Party to meet an obligation or satisfy a condition to an obligation of another Party under this Agreement.

10.1.2 Definition of Force Majeure. "**Force Majeure**" means events that cause or result in enforced delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to another Party's performance under this Agreement (other than the obligations or conditions relating to the payment of money), due primarily to causes beyond the Delayed Party's control, including, but not restricted to acts of God or of a public enemy; fires, floods, tidal waves, epidemics, quarantine restrictions, freight embargoes, earthquakes, unusually severe weather, acts of local civil disorder, delays of contractors or subcontractors due to any of these causes; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Lease Property; archeological finds on the Lease Property; discovery of the presence or habitat of a threatened, candidate or endangered species protected by the Federal Endangered Species Act or the California Endangered Species Act; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that the Developer has ordered such materials on a timely basis and the acts or omissions of the Developer are not otherwise at fault for such inability to obtain materials); unlawful detainer actions or other administrative appeals, litigation or arbitration relating to the relocation of tenants or elimination of the rights or interests of third parties, if any, from the Lease Property; delay in the issuance of any City or other governmental permits or approvals beyond customary

processing times for a project of similar magnitude and complexity, provided that: the Developer timely sought such permits or approvals and diligently responds to any requests for further information or submittals; any voluntary or involuntary proceeding in bankruptcy or any debtor-relief laws ("**Bankruptcy**") by the City, or any Litigation Force Majeure. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Developer or the City will be extended for the period of the delay; provided, however, within thirty (30) days after the beginning of any such delay, the Delayed Party shall have first notified the other Parties in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay. Notwithstanding anything to the contrary in this Section 10.1.2, the condition of the market, lack of credit or financing (unless such lack is itself a result of some other event of Force Majeure) shall not be considered to be a matter beyond the Developer's control and therefore no event caused by a lack of such financing or credit in and of itself shall be considered to be an event of Force Majeure for purposes of this Agreement.

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

10.1.4 Limitation. Provided the Parties are proceeding diligently and prosecuting all matters within their respective control with diligence:

10.1.4.1 If one or more Force Majeure events cause(s) an aggregate delay of the Delayed Party's performance hereunder, a total of thirty-six (36) months, at any time thereafter, the other Party may terminate the Agreement by giving thirty (30) days' notice to the Delayed Party.

10.1.4.2 In the event of a Bankruptcy by the City, the Parties agree that such Bankruptcy shall be deemed a Force Majeure event and, if this Agreement has not been confirmed as enforceable by the bankruptcy trustee (or other applicable official of the court) within six (6) months of such Bankruptcy, Developer shall have the right, at its election, to terminate this Agreement upon written notice pursuant to Section 10.3.3 delivered any time within sixty (60) calendar days after the expiration of such (6) month period.

10.1.4.3 The Parties agree that the Case No. 12642082 filed the Alameda County Superior Court on August 3, 2012 shall be deemed a Force Majeure event and if such matter is not finally resolved in favor of the defendants (with a judgment or other disposition entered and all applicable appeal periods having expired without the filing of an appeal) prior to the date that is thirty six (36) months after the Effective Date, Developer shall have the right, at its election, to terminate this Agreement upon written notice pursuant to Section 10.3.3 delivered

within sixty (60) calendar days after the expiration of six (36) month period. The Parties acknowledge and agree that consistent with Section 10.1.1, the pendency of Case No. 126428032 shall not relieve any Party from its obligations under this Agreement unless and until such matter causes or results in a delay or inability by the Delayed Party to meet an obligation or satisfy a condition to an obligation of another Party under this Agreement.

10.1.4.4 If Force Majeure event(s) delays the City's execution of one of the agreements or obtaining any matter set forth in Sections 2.2.3, 2.2.5, 2.2.6.1, 2.2.6.3, or 2.2.8, for a period or periods of eighteen (18) months in the aggregate, the Developer may at any time thereafter terminate the Agreement by giving thirty (30) days' notice to City.

In the event of a termination pursuant to this Section 10.1.4, the Security Deposit shall be returned to Developer and, except as expressly set forth herein, neither Party shall have any further rights or obligations under this Agreement.

10.2 Condemnation.

If all or any portion of the Lease Property is subject to a Condemnation proceeding or threatened Condemnation proceeding during the Term, the provisions of this Section 10.2 shall apply:

10.2.1 Definitions. As used in this Section 10.2, the following capitalized terms shall have the meaning set forth below:

10.2.1.1 "**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to the Condemning Authority (or to a designee of the Condemning Authority), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

10.2.1.2 "**Condemning Authority**" means the governmental authority effectuating a Condemnation.

10.2.1.3 "**Substantial Condemnation**" means a Condemnation of less than the entire Phase, where such Condemnation results in any of the following:

10.2.1.3.1 the part of the Phase that is taken is at least (A) seventy percent (70%) of the total square footage of the Phase and/or (B) seventy percent (70%) of the Gross Building Area (as defined in the applicable Ground Lease) within the Phase;

10.2.1.3.2 substantially and materially impairs access to the entire Phase and no alternative access can be constructed or made available through the application of available Condemnation proceeds; or

10.2.1.3.3 in the Parties' reasonable mutual determination (or, in the event the Parties cannot reach such mutual determination, in the good faith opinion of a third

party expert reasonably satisfactory to Parties), renders a material portion of a Phase untenantable, unsuitable, or economically infeasible for the applicable uses identified for such Phase pursuant to Attachment 6, Scope of Development for the Private Improvements.

10.2.1.4 "**Partial Condemnation**" means any Condemnation other than a Total Condemnation or a Substantial Condemnation.

10.2.1.5 "**Total Condemnation**" means a Condemnation of an entire Phase.

10.2.2 Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Lease Property during the Term, the City shall promptly give written notice of such proceedings or negotiations to Developer. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be, and shall include a copy of any notice received from the Condemning Authority.

10.2.3 Total Condemnation. In the event of a Total Condemnation, (a) the applicable portion of the Security Deposit shall be returned to Developer; (b) this Agreement shall terminate with respect to the affected Phase(s); and (c) neither Party shall have any further rights or obligations hereunder with respect to the affected Phase(s) except such obligations as expressly survive the termination of this Agreement.

10.2.4 Substantial Condemnation. In the event of an actual or threatened Substantial Condemnation, Developer shall have the right to elect to terminate this Agreement with respect to the affected Phase(s) by delivery to the City of written notice of such election ("**Developer's Termination Notice**") within ninety (90) says after Developer's receipt of the notice pursuant to Section 10.2.2. Upon such election by Developer, (a) the applicable portion of the Security Deposit shall be returned to Developer; (b) this Agreement shall terminate with respect to the affected Phase(s); and (c) neither Party shall have any further rights or obligations hereunder with respect to the affected Phase(s) except such obligations as expressly survive the termination of this Agreement. If Developer shall not provide Developer's Termination Notice within such ninety (90) day period, Developer shall be deemed to have elected not to terminate this Agreement with respect to the affected Phase(s), in which event (y) the applicable Ground Lease forms shall be amended to reflect (i) the exclusion of the Condemned property; (ii) the applicable pro rata reduction in the Base Rent (as defined in the applicable Ground Lease), (iii) the pro rata reduction in any Minimum Project required by the Substantial Condemnation and (iv) such other amendments to the Ground Lease that are reasonably related to the exclusion of the Condemned property; and (z) this Agreement shall continue in full force and effect as to the portion of the Lease Property remaining immediately after such Substantial Condemnation.

10.2.5 Partial Condemnation. In the event of a Partial Condemnation:

10.2.5.1 this Agreement shall terminate only with respect to the portion of the Lease Property so taken; provided, however, that such termination shall not terminate any of

Developer's obligations or liabilities under this Agreement that are expressly stated herein to survive the termination of this Agreement;

10.2.5.2 this Agreement shall remain in full force and effect as to the portion of the Lease Property remaining immediately after such Partial Condemnation; and

10.2.5.3 the applicable Ground Lease form(s) shall be amended to reflect (i) the exclusion of the Condemned property; (ii) the applicable pro rata reduction in the Base Rent (based on square footage included in the Phase prior to and after the Condemnation); (iii) the pro rata reduction in any Minimum Project required by the Substantial Condemnation; and (iv) such other amendments to the Ground Lease that are reasonably related to the exclusion of the Condemned property.

10.2.6 Allocation of Condemnation Award. If Developer elects to proceed with the Close of Escrow for the affected Phase or fails to give the City any notice required to affect a termination of this Agreement pursuant to this Section 10.2, then upon the applicable Closing, the applicable condemnation provisions of the Ground Lease for such Phase shall be applied to allocate the condemnation award among the City and Developer

10.3 Notices and Approvals.

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

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

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

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

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

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

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

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

To the City:	City of Oakland 1 Frank H. Ogawa Plaza Oakland, CA 94612 Attn: City Administrator Facsimile: (510) 238-2223
And with a copy to:	Office of the City Attorney 1 Frank H. Ogawa Plaza Oakland, CA 94612 Attn: City Attorney Facsimile: (510) 238-6500
To the Developer:	Prologis CCIG Oakland Global, LLC Pier 1, Bay 1 San Francisco, CA 94111 Attn: Mr. Mark Hansen email: mhansen@prologis.com
With a copy to:	Prologis CCIG Oakland Global, LLC c/o California Capital & Investments, Inc. The Rotunda Building 300 Frank Ogawa Plaza, Suite 340 Oakland, CA 94612 Attn: Mr. Phil Tagami Facsimile: (510) 834-5380
With a copy to:	Law Office of Jeffrey A. Trant 60815 Falcon Pointe Lane Bend, OR 97702 Attn: Jeffrey A. Trant, Esq. Facsimile: (541) 639-8201
With a copy to:	Prologis, Inc. 4545 Airport Way Denver, CO 80239

Attn: General Counsel
Facsimile: (303) 567-5761

And to: Law Office of Marc Stice
2201 Broadway, Suite 604
Oakland, CA 94612
Attn: Marc Stice, Esq.
Facsimile: (510) 832-2638

10.4 Conflict of Interest.

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

10.5 Covenant of Non-Discrimination.

The Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Lease Property and any Private Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, sexual orientation, gender, disability, marital status, domestic partner status, Acquired Immune Deficiency Syndrome or HIV status, religion, age, national origin or ancestry by the Developer or any occupant or user of the Lease Property in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Lease Property, or any part thereof, and the Developer itself (and any Person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Lease Property or any part thereof nor shall Developer or any occupant or user of the Lease Property or any part thereof or any transferee, successor, assign or holder of any interest in the Lease Property or any part thereof or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with respect to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Lease Property or any part thereof. The Developer shall ensure that language substantially similar to the above is incorporated into all leases, rental agreements and grant deeds for the Project.

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

10.6 Time of Performance.

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

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

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

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

10.6.5 Interpretation of Agreement.

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

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

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

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

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

10.6.5.6 Agreement References. Wherever references made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import,

the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or Paragraph of this Agreement or any subdivision of this Agreement.

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

10.7 Successors and Assigns.

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

10.8 No Third Party Beneficiaries.

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

10.9 Real Estate Commissions.

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

10.10 Counterparts.

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

10.11 Entire Agreement.

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

10.12 Amendment.

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

10.13 Applicable Law; Jurisdiction; Venue.

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

10.14 Further Assurances.

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

10.15 Attorneys' Fees.

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

10.16 Relationship of Parties.

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

10.17 Severability.

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

10.18 Inspection of Books and Records.

The City and its agents have the right within three (3) Business Days after prior written notice to the Developer at all reasonable times and from time to time to inspect the books and records of the Developer in a location in Oakland during regular business hours pertaining to the Developer's compliance with its obligations under this Agreement. Nothing in this Section 10.18 shall affect the City's or the City's rights under other provisions of this Agreement or the Ground Lease.

10.19 Uses.

The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to all or any portion of the Lease Property, that the Developer, such successors and assignees shall devote the Lease Property to the uses specified in the Scope of Development and the Ground Lease. In the event of any conflict, prior to the Close of Escrow, the Scope of Development shall control the uses permitted on the Lease Property and after Close of Escrow, the Ground Lease shall control the uses permitted on the Lease Property.

10.20 Estoppel Certificate by City.

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

certificate a copy of this Agreement and any amendments thereto, and include in such certificate a statement by City that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Agreement, including all modifications thereto. Any such certificate may be relied upon by Developer, any successor, and any prospective mortgagee or transferee of Developer's interest in this Agreement.

10.21 Right of First Refusal.

In the event (i) the City is compelled by AB 26 to sell or transfer to a third party the City's title to all or any portion of the Lease Property ("**Offered Interest**"), (ii) the City receives and intends to accept a bona fide offer from such a third party to purchase or acquire the Offered Interest ("**Offer**"), and (iii) applicable law does not prohibit or prevent the implementation of this Section 10.21, then Developer shall have a one-time right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Section 10.21. The City shall promptly provide written notice of the Offer to the Developer ("**City's ROFR Notice**"), which shall include a true and complete copy of the Offer. Developer shall have forty-five (45) days after receipt of City's ROFR Notice in which to provide written notice to City of Developer's election to purchase the Offered Interest ("**Developer's ROFR Notice**"). If Developer provides Developer's ROFR Notice within such forty-five (45)-day period, City and Developer shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of City and Developer. Notwithstanding any provision to the contrary in the Offer, the closing date for Developer's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Developer's ROFR Notice. Unless otherwise agreed in writing by the Parties, the purchase by Developer of an Offered Interest hereunder, and the ownership, use and occupancy of the Lease Property thereafter, shall be and remain subject to the provisions of this Agreement. If Developer does not provide Developer's ROFR Notice within the forty-five (45)-day period as provided above, City may sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Developer's right of first refusal hereunder. If the Offered Interest sold at any time during the Term by City to Developer or to a third party includes less than the entire Lease Property, Developer's one-time right of first refusal hereunder shall remain effective as to the remaining unsold portion of in the Lease Property. Developer's right of first refusal hereunder shall expire on the expiration or termination of the Term.

10.22 Dispute Disclosure.

Developer, including its Affiliates, officers, and its contractors on the Project, shall disclose to the City pending disputes with the City. Developer agrees (and shall require its Affiliates, officers, and contractors on the Project to agree) to disclose any pending disputes to the City. In the event Developer learns of a dispute after the execution of this Agreement, the Developer shall, within five (5) days of such knowledge, notify the City of the nature of the dispute and request a copy of the City's form for such disclosure and shall resubmit such form within five (5) days of receipt from the City. If the Developer fails to timely disclose a dispute under this Section 10.22, the City may terminate this Agreement.

ARTICLE XI

DEFINITIONS

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

35% Bridging Documents as defined in Section 3.2.1.

65% Bridging Documents as defined in Section 3.2.1.

AB 26 as defined in Recital E.

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

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

Agency as defined in Recital A.

Agency-City PSA as defined in Recital D.

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

Amended and Restated CSA as defined in Recital Q.

Amended Baseline Agreement as defined in Recital P.

AMS Site as defined in Section 1.5.1.1.

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

Approved Bridging Documents as defined in Section 3.2.1.

Approved Construction Drawings as defined in Section 3.2.3.

Approved Exceptions as defined in Section 6.9.1.2 and set forth on Attachment 14.

Army as defined in Recital A.

Army Base WAPA Contract as defined in Section 2.5.

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

Army Retained Conditions as defined in Section 5.2.

As-Is With All Faults Condition as defined in Section 6.12.1.

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

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

Bankruptcy as defined in Section 10.1.2.

Baseline Agreement as defined in Recital P.

Billboard Agreement as defined in Section 1.3.1.

BCDC means the Bay Area Development and Conservation Commission.

Bridging Documents as defined in Section 3.2.1.

Bulk Oversize Terminal as defined in Attachment 7.

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

Caltrans as defined in Recital P.

Caltrans WGW Easement as defined in Section 2.2.6.1.

CCIG as defined in Recital L.

Central Gateway as defined in Recital U.

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

CEQA means the California Environmental Quality Act.

CGW Ancillary Uses as defined in Attachment 7.

CGW Conditional Uses as defined in Attachment 7.

CGW Only Liquidated Damages as defined in Section 9.3.

CGW Security Deposit Allocation as defined in Section 1.4.2.

CGW Support Improvements as defined in Attachment 7.

CGW Trade & Logistics Uses as defined in Attachment 7.

CGW/EGW Guarantee as defined in Section 9.3.1.

CGW/EGW Liquidated Damages as defined in Section 9.3.

City as defined in the introductory paragraph.

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

City Contribution as defined in Section 3.3.1.1.1.

City of Oakland as defined in the introductory paragraph.

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

City's Property Manager as defined in Section 3.2.

City's ROFR Notice as defined in Section 10.21.

Close of Escrow or **Close Escrow** as defined in Section 6.8.1.

Closing Date as defined in Section 6.6.1.

Commence Construction or **Commencement of Construction** as defined in the applicable Ground Lease.

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

Completion or **Completed** is defined in Section 3.5.

Complete Construction as used in Section 6.1.1.4, means the completion of construction and installation of the applicable Rail Road Improvements pursuant to the plans and specifications approved by the City under the Phase 1 WGW Lease, which shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Rail Road Improvements.

Condemnation as defined in Section 10.2.1.1.

Condemning Authority as defined in Section 10.2.1.2.

Consent Agreement as defined in Recital I.

Construction Drawings as defined in Section 3.2.3.

Control, Controlled by, Controlling, or **Common Control** means (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits, capital, or equity interest of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract, other governing documents or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

Cooperation Agreement as defined in Section 2.2.4.

Covenant means the land use covenant restricting the use of the EDC Property, as described in Section 5.1.3.2.

CTC as defined in Recital P.

Delayed Party as defined in Section 10.1.1.

Delayed Public Improvements as defined in Section 3.1.

Design-Build Contract as defined in Section 3.2.

Design-Build Contractor as defined in Section 3.2.

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

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

Developer Funded Wharf Improvements as defined in Section 3.3.1.1.2.

Developer's Pre-Close of Escrow Environmental Inspection as defined in Section 5.2.4.2.

Developer's Pre-Close of Escrow Inspection Items as defined in Section 5.2.4.2.4.

Developer's ROFR Notice as defined in Section 10.21.

Developer's Termination Notice as defined in Section 10.2.4.

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

Draft Parcel Map as defined in Section 2.4.

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

East Gateway as defined in Recital U.

EBMUD as defined in Recital Z.

EBMUD MOA as defined in Recital Z.

EDC as defined in Recital A.

EDC MOA as defined in Recital A and set forth in Attachment 16.

EDC Property as defined in Recital A.

EDC Property Agreements as defined in Recital D.

Effective Date as defined in Section 1.1.1.

EGW Ancillary Uses as defined in Attachment 7.

EGW Conditional Uses as defined in Attachment 7.

EGW Only Liquidated Damages as defined in Section 9.3.

EGW Security Deposit Allocation as defined in Section 1.4.2.

EGW Support Improvements as defined in Attachment 7.

EGW Trade & Logistics Uses as defined in Attachment 7.

EIR as defined in Recital AA.

EIR Addendum as defined in Recital AA.

ENA as defined in Recital M.

ENA Deposit as defined in Section 1.4.1.

Environmental Insurance Policy as defined in Section 5.1.3.

Environmental Remediation Requirements as defined in Section 5.1.3.2.

ESCA as defined in Section 5.1.3.

Escrow as defined in Section 6.7.1.

Event of Default as defined in Section 9.2.

Exchange Agreement as defined in Recital B.

Extended Closing Date as defined in Section 6.9.2.

Final Approval as defined in Section 6.4.2.

Final WGW Lease as defined in Section 6.1.1.1.

First Amendment to ENA as defined in Recital M.

Floor Area as defined in the Ground Lease.

Force Majeure as defined in Section 10.1.2.

FOSET as defined in Section 5.1.3.

Gateway Development Area as defined in Recital A.

G-Max Price as defined in Section 3.2.2.

Ground Lease as provided in Attachment 3.

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

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

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

Indemnify means indemnify, protect, defend and hold harmless.

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

Initial Improvements as defined in the applicable Ground Lease for each Phase.

Law as defined in Section 8.2.4.

Leasehold Mortgage as defined in the Ground Lease.

Lease Property as defined in Recital U.

Liquidated Damages as defined in Section 9.3.

Litigation Force Majeure as defined in Section 10.1.3.

Loss or **Losses** means any and all claims, demands, losses, liabilities, damages (excluding foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and out of pocket costs and expenses (including, without limitation, reasonable Attorney's Fees and Costs, and consultants' fees and costs, and consultants' fees and costs, and court costs) of whatever kind or nature, known or unknown, contingent or otherwise.

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

Master Plan as defined in Recital R.

Material Change as defined in Section 6.12.1.

Memorandum of Ground Lease as defined in the Ground Lease.

Memorandum of LDDA as defined in Section 1.6.

Minimum Project as defined in the Ground Lease.

MMRP means the Mitigation Monitoring and Reporting Plan attached as Attachment 15.

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

North Gateway as defined on the Site Map.

North Gateway/AMS Site Public Improvements as defined in Section 3.1.

Notice of Completion of Public Improvements as defined in Section 3.5.2.

Notice of Default as defined in Section 9.2.

OBRA as defined in Recital A.

Offer as defined in Section 10.21.

Offered Interest as defined in Section 10.21.

Official Records as defined in Recital A.

OHIT as defined in Recital O.

Ordinance as defined in Recital BB.

ORSA as defined in the introductory paragraph.

Outside Closing Date as defined in Section 6.6.2.

Outer Claw as defined in Section 1.5.2.

Oversight Board as defined in Recital I.

Parcel E as defined in Recital B.

Partial Condemnation as defined in Section 10.2.1.4.

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

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

Permitted Title Exceptions as defined in Section 6.9.1.

Permitted Transfers as defined in Section 7.3.

Permitted Uses as defined in Section 2.3.

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

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

Phase 1 WGW Lease as defined in Section 6.1.1.1.

Port as defined in Recital A.

Port Development Area as defined in Recital A.

Port Rail Terminal as defined in Section 2.2.

Port Rail Terminal Operator as defined in Section 2.2.5.

Preliminary Budget as defined in Section 3.3.1.1.

Preliminary G-Max Price as defined in Section 3.3.1.2.

Private Improvements is defined in Recital U and as set forth on the Scope of Development for Private Improvements attached as Attachment 7.

Project as defined in Recital V.

Project Labor Agreement as defined in Section 2.2.4.

Project Site as defined in Recital N.

Prologis as defined in Recital L.

Property Management Agreement as defined in Section 1.3.2.

Public Improvements as defined in Recital S.

Public Improvements Remediation as defined in Section 5.2.3.

Public Improvements Schedule of Performance as defined in Section 3.4.

PUD as defined in Section 6.4.2.

Rail Access Agreement as defined in Section 2.2.4.

Railroad Improvements as defined in Section 6.1.1.4.

Railroad R/O/W Property as defined in Section 1.5.2.

RAP as defined in Section 5.1.3.

RAP Sites as defined in Section 5.1.3.2.

RAP/RMP means that certain Remedial Action Plan/Risk Management Plan for the EDC Property described in Section 5.1.3.

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

Regulatory Reopener means any additional Remediation required in writing at a formerly closed site by any Regulatory Agency due to reevaluation by any Regulatory Agency of

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

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

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

Remediation Fund as defined in Section 5.1.3.

Rent as defined in the applicable Ground Lease for each Phase.

Resource Agencies as defined in Section 5.1.3.2.

RMP as defined in Section 5.1.3.

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

RWQCB Order as defined in Section 5.1.3.

Schedule of Performance as attached hereto as Attachment 8.

Second Amendment to ENA as defined in Recital M.

Second Deposit as defined in Section 1.4.1.

Section 2.3.2 Matters as defined in Section 2.3.2.

Security Deposit as defined in Section 1.4.1.

Significant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Developer, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling Developer, or (b) the sale of fifty percent (50%) or more of Developer's assets, capital or profits, or the assets, capital or profits of any Person Controlling Developer other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Developer or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Developer as a result of (i) the sale or transfer of shares of a

publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Developer or the sale of all or substantially all of the assets of a Person Controlling Developer in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with GAAP, following such transaction, that is at least $500,000,000.

Site Map as defined in Recital L and set forth on Attachment 1.

SLC as defined in Recital B.

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

State means the State of California.

Substantial Condemnation as defined in Section 10.2.1.3.

Successor Agency as defined in Recital F.

Surcharging Schedule as defined in Section 5.2.4.1.

TCIF as defined in Recital O.

Term as defined in Section 1.1.2.

Third Amendment to ENA as defined in Recital M.

Title Company as defined in Section 6.7.1.

Title Defect as defined in Section 6.9.2.

Title Policy as defined in Section 6.10.1.

Total Condemnation as defined in Section 10.2.1.5.

Transfer as defined in Section 7.2.

Underfreeway Easement as defined in Section 2.2.6.3.

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

UPRR as defined in Section 6.2.8.1.

WAPA as defined in Section 2.5.

West Gateway as defined in Recital U.

West Gateway Property as defined in the Ground Lease for the West Gateway.

WGW Ancillary Uses as defined in Attachment 7.

WGW Conditional Uses as defined in Attachment 7.

WGW Guarantee as defined in Section 9.3.1.

WGW Guarantor Approved Cash Level as defined in Section 6.7.1.2.

WGW Guarantor Request as defined in Section 6.7.1.2.

WGW Liquidated Damages as defined in Section 9.3.

WGW Proposed Guarantor as defined in Section 6.7.1.2.

WGW Security Deposit Allocation as defined in Section 1.4.2.

WGW Sub-Phase as defined in Section 6.1.1.

WGW Sub-Phase Notice as defined in Section 6.1.1.

WGW Support Improvements as defined in Attachment 7.

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

Signature pages to follow

DEVELOPER:

Prologis CCIG Oakland Global, LLC, a Delaware limited liability company

By: _____

Name: Mark Hansen

Title: Sr. V.P.

Its: Authorized signatory

By: _____

Name: Phil Tagami

Title: President & Manager

Its: Authorized signatory

CITY OF OAKLAND:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

Approved as to Form

By: _____
City Attorney

ORSA:

Oakland Redevelopment Successor Agency

By:
Name: Deanna Santana
Title: City Administrator

Approved as to Form

By:
City Attorney

ATTACHMENTS TO LDDA

Attachment 1	Site Map
Attachment 2	Legal Description of Lease Property
Attachment 3	Ground Lease forms
	-West Gateway
	-Central and East
Attachment 4	Billboard Agreement
Attachment 5	Property Management Agreement
Attachment 6	Scope of Development for Public Improvements
Attachment 7	Scope of Development for Private Improvements
Attachment 8	Schedule of Performance
Attachment 9	Memorandum of LDDA
Attachment 10	City's Environmental Assessment Reports
Attachment 11A	Consent Agreement with DTSC
Attachment 11B	RAP/RMP
Attachment 11C	RWQCB Order
Attachment 12A	Covenant to Restrict Use of Property
Attachment 12B	Army EDC Deed
Attachment 13	Due Diligence Right of Entry
Attachment 14	Approved Title Exceptions
Attachment 15	Community Benefits Matrix, with Operations and Construction Jobs Policies and certified MMRP
Attachment 16	EBMUD MOA
Attachment 17	Amended CSA
Attachment 18-1 Attachment 18-2	Forms of Guarantee
Attachment 19	Permitted Contracts
Attachment 20	Amended Baseline Agreement