

# EXHIBIT C

## CONDITIONS OF APPROVAL

**PROJECT: OAK TO NINTH MIXED USE DEVELOPMENT**

**PROJECT SPONSORS: OAKLAND HARBOR PARTNERS**

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### General Conditions and Compliance with Approved Plans

1. The project shall comply with the following plans and exhibits entitled “Brooklyn Basin - Oak to Ninth Development Project” (“the Project Plans”) dated February 2006 and the following other instruments:

- I. **Preliminary Development Plan including: Overview – Master Development Plan; Shoreline; Parks and Open Space; Streets; Buildings; Civil Engineering**
- II. **Planned Waterfront Zoning District -4 Zoning Regulations**
- III. **Vesting Tentative Map No. 7621**
- IV. **Design Guidelines for the Oak to Ninth Avenue Project**
- V. **Development Agreement**

2. The Project Applicant and its agents, heirs, successors and assigns (collectively, the “Project Applicant”) shall be bound by these Conditions of Approval. The Project Applicant shall be responsible for assuring that the terms and conditions of this Approval are disclosed to any such successive owner or any of the Project Applicant’s agents, heirs, successors and assigns.

3. This action by the Planning Commission (“this Approval”) includes the approvals set forth in this Condition of Approval No. 3. Each of these individual approvals shall become effective upon the effective date of the City Council’s final approval of the PWD-4 Zoning District for the site and the Development Agreement for the Project, consistent with the Project Plans (the “Effective Date”). This Approval includes:

- a. Approval of a Planned Unit Development (“PUD”) including a preliminary development plan under the PWD-4 Zoning District for phased construction of up to 3,100 residential units, 220,000 square feet of retail and commercial space, and 29.9 acres

of adjacent parks open space and segments of the Bay Trail illustrated in the Project Plans, as modified by these Conditions of Approval.

- b. Approval of the Planned Waterfront District – 4 Zoning Regulations
- c. Approval of Vesting Tentative Map No. 7621
- d. Approval of the Design Guidelines for the Oak to Ninth Development Project
- e. Approval of the Development Agreement Between the City of Oakland and Oakland Harbor Partners, LLC

4. The plans approved as part of the PUD shall be amended to be consistent with the Conditions of Approval, the Planning Commission action on March 15, 2006 and the City Council action on \_\_\_\_\_, 2006. These revised plans shall be submitted to the City Planning Department in the form of a “PUD Design and Specification Document for the Brooklyn Basin – Oak to Ninth Development Project” within one hundred twenty (120) days of this Approval or as soon thereafter of all other responsible and trustee agency actions concerning the project. This Design and Specification Document shall include but not be limited to:

- a. All detailed plans and specifications pertaining to Condition of Approval No. 40.
- b. The Revised Vesting Tentative Map No. 7621, containing all requirements set forth in Conditions of Approval 28-34.
- c. The approved Design Guidelines for the Brooklyn Basin – Oak to Ninth Development Project.
- d. A compendium of all current, vested City regulations, ordinances and policies in effect as of the effective date of the Development Agreement for the project.
- e. Other information and details deemed necessary by the Development Director or the Development Director’s designee.
- f. Adjustments, as required, to conform to the final approvals by the Bay Conservation and Development Commission (BCDC), U.S. Army Corps of Engineers (USACE), and State Lands Commission (SLC) concerning the project.

5. Final inspection and a certificate of occupancy for any unit or other structure within a phase shall not be issued (a) until all landscaping and on and off-site improvements for that Development Parcel are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form of security (collectively “security”), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a deferred improvement agreement approved by the City. The traffic improvements set forth in Condition of Approval 18 and the off-site sewer mitigation measure set forth in Condition of Approval No. 36 must be completed within the required time period (occupancy permit for the 550<sup>th</sup> unit) and shall not be permitted to be secured or bonded for unfinished work. For purposes of these Conditions of Approval, a

certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.

6. Except as otherwise provided with respect to City's issuance of a certificate of occupancy, each of the Conditions of Approval shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Development Parcels that are subject to this Approval, as appropriate, runs with the Development Parcels and is binding upon the owner of all or a portion of the Development Parcels and each successive owner. Within ninety (90) days of the Effective Date, the Project Applicant shall cause these Conditions of Approval to be recorded in the Official Records of the County of Alameda, California against all of the Development Parcels. Notice of these Conditions of Approval also shall be attached to each grading permit and each building permit for infrastructure work issued for each phase of construction on all Development Parcels. Upon City's issuance of a certificate of occupancy for any Development Parcel, these Conditions of Approval shall be released from the exceptions to title of the Development Parcel upon which the improvements are located, except the obligations specified in Conditions of Approval No. 11, 12 and 13 (Indemnification Requirements), which obligations shall survive completion of the Project. Upon completion of the Project, as determined by the City, these Conditions of Approval shall be released from the all the Development Parcels, except Conditions of Approval No. 11, 12 and 13 (Indemnification Requirements), which obligations shall survive completion of the Project.

7. For the duration of the project, the City Development Director or his/her designee shall have the authority to determine whether the Project Applicant and the project comply with terms and conditions of this approval, including, without limitation, these Conditions of Approval, shall have the authority to suspend further Project approvals, including without limitation final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the City Development Director make a determination of non-compliance, and shall provide the Project Applicant a copy of all documents associated with such requests and a reasonable amount of time to respond and to cure any such alleged non-compliance. The City shall further take reasonable steps to promptly notify, in writing, the Project Applicant of any noncompliance determination by the City Development Director, and, as applicable, shall provide the project applicant a copy of all documents used or relied upon in making such determination. On or before June 30 of each year, the Project Applicant shall submit to the City Planning Director a report demonstrating the Project Applicant's and the Project's compliance with the terms and conditions of the Approval, including, without limitation, these Conditions of Approval. This report may be used by the City Development Director to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of this Approval. Project Applicant's obligation to submit this annual report shall terminate upon the City's written determination that the Project is complete. To the extent practicable, this review shall be conducted concurrently with the Annual Review conducted pursuant to the Development Agreement.

8. Any failure by the City to perform any action specified herein, or failure of any party timely to execute any agreement specified herein, shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval. Any failure by City to insist upon the strict or timely performance of any of the provisions of these Conditions of Approval, irrespective of the length of time for which such failure continues, shall not constitute a waiver of City's right to demand strict compliance with such provisions in the future. No waiver by City of any failure of performance of these Conditions of Approval shall be effective or binding upon City unless made in writing by City and no such waiver shall be implied from any omission by City to take any action with respect to such failure.

9. As used in these Conditions of Approval, references to "City" shall include the City of Oakland, its respective officials, officers, employees, agents, departments, subdivisions, agencies (including City's Redevelopment Agency), Boards and Commissions (and individual members of each of the foregoing) and all of respective heirs, legal representatives, successors and assigns of each of the foregoing.

### **Payment of Fees for Independent Technical Reviews and Project Coordination and Management**

10. Within one year following the Effective Date, the Project Applicant shall enter into an agreement to specify how fees and deposits will be managed to implement the project. The City and the Project Applicant acknowledge that the Mitigation Monitoring and Reporting Program (MMRP) requires the Project Applicant to directly contract with a number of independent experts monitoring construction activities, including but not limited to traffic, landscape, cultural resource experts, geotechnical engineers, air quality and noise monitors, etc. In addition, the Project Applicant shall fund the full costs of all independent technical and other consultants the City reasonably deems necessary to comply with the Conditions of Approval and the mitigation monitoring requirements as set forth in the MMRP, as the final design and building permit plans for each Development Parcel are submitted. All work performed pursuant to this Condition of Approval shall be under the direct supervision of the City. Accordingly, the applicant shall establish an "evergreen" deposit fund with the City in order to cover the full costs of independent technical and other types of review, monitoring and inspection, including, without limitation, third party plan check fees. The payment of standard plan check fees, building permit fees, special inspection deposits and other required fees shall, to an extent determined by the City, be credited as part of this evergreen fund. The City shall provide the Project Applicant with quarterly detailed statements, including staff names, time entries and description of work performed, as to the amount of funds used and the amount of deposit required to sustain the fund. City retains the right to halt work on the project if Project Applicant fails to make requested payments to the fund within the time period specified. The Project Applicant may conduct an annual audit of the funds used. Any failure of any party to timely execute such Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval.

### **Indemnification Requirements**

11. To the maximum extent permitted by law, the Project Applicant shall defend, hold harmless, and indemnify the City, its respective officials, officers, employees, agents, departments, subdivisions, agencies (including City's Redevelopment Agency), Boards and

Commissions (and individual members of each of the foregoing) and all of respective heirs, legal representatives, successors and assigns of each of the foregoing (the “Indemnified Parties”) against any and all losses, damages, liabilities, claims, liens, obligations, interest, penalties, fines, lawsuits and other proceedings, judgments and awards, challenges, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including, without limitation, attorneys fees, expert witness and consultant fees and other litigation expenses), reasonable City Attorney time and overhead costs, and other normal, reasonable day-to-day business expenses incurred by City, all of whatever kind or nature, known or unknown, contingent or otherwise arising out of or related to (i) any City action or approval associated with the Project (including, without limitation, any legal or administrative challenge seeking to overturn, set-aside, stay or otherwise rescind or vacate the EIR for the Project or any other action or approval); (ii) the process for City approval of and development of the Project; (iii) any approval of another governmental agency for the project or any aspect thereof (including any legal or administrative challenge seeking to overturn, set-aside, stay or otherwise rescind such approval); (iv) bodily injury, or death, or property damage on any Development Parcel or common area within the Project site; or (v) any act or omission of the Project Applicant or any contractor, subcontractor, architect, engineer or supplier with respect to the development or use of the project or the Project site (“Indemnified Claims”). This indemnity shall not apply to the Indemnified Parties to the extent the liability, damages, claims, demands, judgments or other losses are caused by the negligence or willful misconduct of any Indemnified Party.

12. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs as used herein shall include, without limitation, any attorneys’ fees, expert witness and consultant fee, court costs and other litigation fees, City Attorney time and overhead costs, and other City Staff overhead costs and normal day-to-day business expenses incurred by the City (“Litigation Expenses”). The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant’s expense, in the defense of any action specified in this Condition of Approval No. 12, to the extent that the Indemnified Claims under this Condition of Approval are covered by insurance carried by the Project Applicant, then counsel designated by the insurance carrier shall defend the Indemnified Parties. Upon the advice of the City Attorney, the City shall retain the right to reject such insurance company designated counsel (on the basis of a conflict, incompetence or similar grounds) and to require the Project Applicant to retain counsel reasonably acceptable to the City for the Indemnified Parties’ defense. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

13. Notwithstanding any provision to the contrary in these Conditions of Approval, Project Applicant’s obligations in Conditions No. 11, 12, and 13 shall survive completion of the Project. A Project Applicant may be released from this indemnity obligation, including the Indemnification Agreement referred to in Condition of Approval No. 14, only in the event (a) it is assigned to and assumed by and binding upon a subsequent owner of the Property, and (b) such Project Applicant gives 30 days’ written notice of such proposed assignment to the City Administrator, and the City Administrator approves such assignment in writing, which approval may be withheld if the City determines, in its discretion, that the proposed assignee’s net worth or other financial resources are not sufficient to fulfill the foregoing indemnity obligation. Provided, however, that with respect to public improvements, this indemnity shall apply only to Indemnified Claims that arise prior to the City’s acceptance of the public improvement and the expiration of any maintenance obligations of the Project Applicant, unless the Indemnified Claim

(i) arose as a result of a latent defect in the public improvement; or (ii) arose as a result of direct or indirect action or inaction by Project Applicant, including, without limitation, construction, maintenance or operational activities, prior to the City's acceptance of the public improvement. In the case of the foregoing (i) or (ii), this indemnification shall apply regardless of whether the public improvement has been accepted by the City. "Public improvements" include all infrastructure improvements and property customarily accepted and maintained by the City that are offered for dedication to the City and actually accepted by the City, such as streets, sanitary sewer lines and the like. This indemnity shall include, without limitation, payment of all Litigation Expenses associated with any action herein.

14. Within 90 days following the Effective Date, the Project Applicant shall enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail the terms and conditions of the Project Applicant's indemnification obligations set forth in this Condition of Approval. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval or any other project approval, except that it shall not limit the authority of the Development Director as set forth in Condition of Approval No. 8.

15. Developer's Indemnity obligations in Conditions of Approval No. 12, 13 and 14 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may have to City including the obligations specified in the Development Agreement.

### **Development Agreement Authority**

16. Except as otherwise specified in these Conditions of Approval, to the extent any of these Conditions of Approval conflict with the Development Agreement, as adopted by the Oakland City Council in Ordinance \_\_\_\_, these Conditions of Approval shall be construed to be amended to conform to the Development Agreement, provided the Development Agreement remains in effect.

### **Mitigation Measures Part of Conditions of Approval**

17. All Mitigation Measures in the EIR as deemed to be required in the Environmental Findings shall be considered Conditions of Approval for the project, as may be further refined and/or clarified by this Approval, including the refinements and clarifications set forth in these Conditions of Approval. Implementation of the Mitigation Measures shall be adhered to in accordance with the MMRP. The MMRP identifies the time frame and responsible party for implementation and monitoring of each measure, as modified by this Approval. Overall monitoring compliance with the mitigation measures will be the responsibility of the Development Director or his or her designee. Each of the improvements identified in the MMRP shall be implemented at the Project Applicant's sole cost and expense (except where only a fair share contribution is required as set forth in the MMRP or these Conditions of Approval) or secured with an improvement agreement, or similar financial assurance, acceptable to the City.

### **Transportation and Circulation**

18. The Project Applicant shall implement all of the mitigation measures described in "Section B. Transportation, Circulation and Parking" of the MMRP. The project Applicant shall

have prepared, by a licensed traffic engineer, and shall submit to the City for its approval, a Schematic Master Traffic Improvement Plan for all traffic improvements that are to be funded by the Project Applicant pursuant to Mitigation Measures **B.1.a., B.1.c., B.1.d., B.1.e., B.2.a., B.2.b., B.2.d., B.2.f., B.2.g., B.2.i., B.2.j., B.2.l., B.2.m., B.2.n., B.2.o., B.2.p., B.2.q.**, as set forth in the MMRP. This plan shall be submitted prior to the issuance of the first building permit for a development parcel.

As set forth in the MMRP and refined below, the Schematic Master Traffic Improvement Plan shall include the following improvements, analysis:

- a. The schematic design of traffic signals at the unsignalized intersections of:
  - Embarcadero and Oak Street (**MM B.1.a.**)
  - Embarcadero and 5<sup>th</sup> Avenue (**MM B.1.d.**)
  - Embarcadero and I-880 Northbound Off-ramp – 6<sup>th</sup> Avenue (**MM B.1.e.**)
  - Embarcadero and Broadway (**MM B.2.b.**)
  - Embarcadero – I-880 Southbound On –ramp – 10<sup>th</sup> Avenue (**MM B.2.l.**)
- b. These schematic plans shall include fixed time controls with permitted left-turn phasing, traffic signal equipment, optimization of signal phasing and timing with the relative traffic volumes on those approaches and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall meet City of Oakland and Caltrans standards. The schematic design and general specifications for the traffic signals shall also include installation of optimization components such as interconnection hardware (modems, microwave antennas, video etc.) for each intersection roadway approach and coordination with signal phasing and timing of adjacent intersections. In addition, each intersection and roadway approach shall include striping improvements, determination of locations for signal arms and other signal components and any work required to install them such as curb and sidewalk modifications, utility line relocation, etc.
- c. The schematic plans, equipment and specifications for optimization of the traffic signal timing at:
  - The signalized intersection of 6<sup>th</sup> and Jackson Streets at the I-880 Northbound On-ramp. (**MM B.1.c.**)
  - The signalized intersection of 5<sup>th</sup> and Oak Streets during the PM peak period at the I-880 Southbound On-ramp. (**MM B.2.d.**)
  - The signalized intersection of West Grand Avenue and Harrison Street during the AM peak period. (**MM B.2.f.**)
  - The signalized intersection of Lakeshore Avenue and Foothill Boulevard during the AM peak period. (**MM B.2.g.**)

- The signalized intersection of Lakeshore Avenue and Lake Park Avenue during the PM peak period. **(MM B.2.i)**
- The signalized intersection of 14<sup>th</sup> Avenue and 7<sup>th</sup>/12<sup>th</sup> Streets (Southbound - during the PM peak period). **(MM B.2.n)**
- The signalized intersection of Foothill Boulevard and 14<sup>th</sup> Avenue (Westbound - during the AM peak period.) **(MM B.2.o)**
- The signalized intersection of Foothill Boulevard and 14<sup>th</sup> Avenue (Eastbound - during the AM peak period.) **(MM B.2.p)**
- The signalized intersection of 16<sup>th</sup> Street and 23<sup>rd</sup> Avenue during the PM peak period. **(MM B.2.q)**

d. The optimization plan shall include the determination of allocation of green time for each intersection approach in tune with the relative projected traffic volumes on those approaches and coordination with signal phasing and timing of adjacent intersections. In addition, a determination of interconnection hardware (modems, microwave antennas, video, etc.) shall be incorporated along with any other physical improvements or modifications required to optimize the signal.

e. Each traffic improvement detailed in the plan shall include cost estimates and an estimated length of time for completion of each improvement.

19. An implementation and phasing plan shall be developed for the traffic improvements established in Condition of Approval 18 and the MMRP, based on the following schedule for completion of the residential units:

Group 1 Traffic Improvements – to be completed no later than the issuance of an occupancy permit for the 550<sup>th</sup> unit: Installation of signals at Embarcadero and Oak; Embarcadero and 5<sup>th</sup>, Embarcadero – I-880 Northbound On-ramp and 6<sup>th</sup> Street and Embarcadero and Broadway. In addition, optimization of existing signals at 6<sup>th</sup> – Jackson-I-880 Northbound ramp and the 5<sup>th</sup> and Oak @ I-880 Southbound ramp.

Group 2 Traffic Improvements – to be completed no later than the issuance of an occupancy permit for the 1,125<sup>th</sup> unit: Installation of signals at Embarcadero – I-880 Southbound On-ramp and 10<sup>th</sup> Avenue. In addition, optimization of existing signals at 5<sup>th</sup> Avenue and 7<sup>th</sup>/8<sup>th</sup> Streets; 14<sup>th</sup> Avenue – 7<sup>th</sup> – 12<sup>th</sup> Streets; Foothill-14<sup>th</sup> Avenue (Eastbound and Westbound); and 16<sup>th</sup> Street – 23<sup>rd</sup> Avenue.

Group 3 Traffic Improvements – to be completed no later than the issuance of an occupancy permit for the 2,075 unit: Optimization of the signalized intersections at West Grand and Harrison; Lakeshore and Foothill Boulevard and Lakeshore and Park.

As set forth in Condition of Approval 5, these traffic improvements must be completed by the issuance of a certificate of occupancy for the unit specified; no security, bonding or other financial assurances shall be used to defer completion.

20. At the City’s discretion, an independent traffic engineer shall be hired at the Project Applicant’s expense to assist the City in their review and approval process for both the Schematic Master Traffic Improvement Plan and subsequent final design plans for the improvements.

21. Prior to implementation of these improvements, the Project Applicant shall submit final design plans and other specifications to the City and any other responsible agency, for their review and approval, including a traffic management and detour plan to be implemented during construction of the improvements. The final design shall be based on the approved Schematic Master Traffic Improvement Plan.

### **Transportation Demand Management**

22. The Project Applicant shall prepare a transportation demand management plan, following the recommendations included in the report entitled “Oak to Ninth Transportation Demand Management Plan” by Nelson/Nygaard, dated January, 2005 as well as the applicable mitigation measures set forth in the EIR (**MM B.4.a, B.4.b, C.7.a, C.7.b, C.7.c, C.7.d, C.7.e., C.7.f, C.7.g, C.7.h, C.7.i**). The plan shall include a written commitment from AC Transit concerning bus service to the site and a shuttle operations plan serving the project area. An implementation schedule shall be included in the plan, including a specific commitment of financial participation for peak hour service, routing, schedule and phased implementation according to the threshold established for the issuance of occupancy permits for the transportation improvements phasing plan set forth in Condition of Approval 18. This plan shall be reviewed and approved by the Development Director. The shuttle service shall become operative within six months of the occupancy of the 550<sup>th</sup> unit. Thereafter, the implementation and service increase required for the shuttle shall be in accordance with the approved schedule. At the Project Applicant’s discretion and with the approval of the City, the shuttle program may be implemented through a provider such as AC Transit and may be coordinated with the service commitment required for the Jack London Square Development Project. In these events, the Project Applicant shall execute agreements with such providers or partners as part of the transportation demand management plan.

### **Hydrology and Drainage**

23. The Project Applicant shall implement all of the mitigation measures described in “Section F. Hydrology and Water Quality” of the MMRP. Final grading and improvement plans for the Project shall include all information, analysis and requirements as set forth in the MMRP. (**MM # D.1., D.2., D.5., D.6.**) Prior to the issuance of a grading permit for any phase of the project, the Project Applicant shall submit a drainage, erosion control and Storm Water Pollution Prevention Plan (SWPPP) incorporating all City and other requirements, including the State General Permit for Construction. The applicant shall also submit the detailed design of the storm water control plan that complies with provision C.3 of the Alameda Countywide NPDES Municipal Stormwater Permit, NPDES Permit No. CAS0029831, Order R2-2003-0021, or any subsequent tentative order, revision, or new permit.

### **Geology, Soils and Seismicity**

24. The Project Applicant shall implement all of the mitigation measures described in “Section F Geology, Soils and Seismicity” of the MMRP. All geotechnical reports and recommendations submitted in accordance with final grading and construction specifications

shall incorporate the information, standards, and requirements required in that section. Prior to the issuance of a grading permit for the site, the plans, information and analysis required by this Condition of Approval shall be independently reviewed by a qualified geotechnical engineer hired by the City at the Project Applicant's expense and approved by the City Engineer. (MM # F.1., F.2., F.3., F.4., F.5.).

## Cultural Resources

25. The Project Applicant shall implement all of the mitigation measures described in "Section E. Cultural Resources" of the MMRP (MM # E.1.a, E.1.b, E.1.c, E.1.d., E.2, E.3.a., E.3.b, E.8). The project shall also include the following additional measures and standards:

a. Within three months of the effective date, the Project Applicant shall take measures to protect the Ninth Avenue Terminal Building, pending demolition of the approved portion of the facility. The building shall continue to be actively used, if feasible, with access for trucks to the site through any development or construction activities, to the greatest practical extent. Within 45 days of the effective date, the Project Applicant shall submit to the Development Director a description of the proposed measures. The Development Director shall review, and may approve, disapprove, or modify the measures intended to eliminate deterioration, minimize vandalism and assure protection of the building. These measures shall remain in place for the duration of the demolition, grading and other construction activities until building permits are issued for the restoration of the preserved portion of the building.

b. Within one year from the effective date and prior to the issuance of a demolition permit for the approved portion of the Ninth Avenue Terminal Building, the Project Applicant shall submit a restoration and reuse plan for the Ninth Avenue Terminal Building including but not limited to the following materials and information:

- 1) a finance and business plan that establishes a framework for restoring, preserving, and reusing the preserved portion of the building, including a commitment by the project applicant to seek additional public funding, private financing, and/or private philanthropic grants and the funding mechanisms and budget for the work;
- 2) a management plan demonstrating exemplary and continued stewardship of the preserved portion of the building, with recognition of its cultural and historical importance to the City of Oakland and which is accountable to the goals and policies of the *City of Oakland General Plan and the Estuary Policy Plan*;
- 3) a community participation plan providing for input by Oakland community members in decisions concerning the portion of the Ninth Avenue Terminal Building's preservation and reuse;
- 4) a development plan demonstrating that the proposed renovation and reuse of the portion of the Ninth Avenue Terminal Building is consistent with the design standards, policies, and goals of the PWD-4 Zoning District, the Design Guidelines for the Oak to Ninth District, and with any other design criteria that the City determines is appropriate to meet said goals and policies up to and including the proposed design for Shoreline Park; and

- 5) a business plan that establishes a framework for the funding of rehabilitation efforts and identifies the grant source(s), the funding mechanisms and the budget for the work
- 6) a schedule for completing the work. In no case shall the time allotted for project completion exceed the time allotted in Exhibit C of the Development Agreement (issuance of a certificate of occupancy for the 550<sup>th</sup> unit or 5 years from the issuance of the first building permit for Phase I.)
- 7) an application to nominate the remaining portion of the building and the site as a City of Oakland Landmark.

The City Landmarks Preservation Advisory Board shall review this information and the plans and make recommendations to the City Council and the Planning Commission. The Planning Commission shall review and consider the information, plans and recommendations from the Landmarks Preservation Advisory Board and forward its recommendations to the City Council. The City Council shall review and approve the plans and schedule for work.

26. Prior to the issuance of a demolition permit for the approved portion of the Ninth Avenue Terminal Building, the Project Applicant shall submit \$500,000 to the City for compensation for the loss of a significant historic resource. These funds shall be used in other historic preservation efforts including but not limited to funding Mills Act projects to offset the loss of property taxes, restoration projects for other landmarks or preservation districts as recommended by the Landmarks Preservation Advisory Board and as finally determined by the City Council.

### **Vested Tentative Map Conditions**

27. The maximum number of residential units for the approved project is 3,100. Any minor revision of the internal circulation plan or lot layout shall be subject to the review and approval of the Development Director at least 45 days prior to filing each final map.

28. Multiple final maps may be filed subject to the Phasing Schedule set forth in Exhibit C of the Development Agreement. Modifications to the Phasing Schedule are subject to the review and approval of the Development Director, and at his/her sole discretion; any modifications may be subject to review of the Planning Commission.

29. Prior to the approval of each Final Map, a site plan and other information as may be required shall be submitted for the review and approval of the Development Director or his/her designee demonstrating substantial compliance with the approved VTM and the "Project Plans" as set forth in Condition of Approval 1, as well as any subsequent permit received from a responsible or other agency with authority over the project site.

30. Prior the submittal of the first Final Map for the project, the covenants, conditions and restrictions ("CC&Rs") for the VTM shall be submitted for review by the City. The CC&R's shall provide for the establishment of a homeowners association for the maintenance and operation of all landscaping, common open space areas, all common area improvements and common structure improvements that are not within the purview of the Community Facilities District/Community Services District (CFD/CSD) or similar entity.

31. At least 45 days prior to recording each Final Map, plans shall be submitted for review by the City Building Services Department to obtain addresses and for street name approval. Alternate street names should be submitted in the event of duplication and to avoid similarity with existing street names. Final Maps shall not be certified as ready for approval without the approved street names.

32. The Project Applicant shall revise the Vesting Tentative Map prior to approval becoming effective, as follows:

a. Revisions required to the General Note Section of the Map:

General Note 2: Multiple Parcel Maps may be filed on the lands shown on this map subject to all the Conditions of Approval, the PWD-4 Zoning District and Mitigation Monitoring and Reporting Program as set forth in the Preliminary Development Plan and Development Agreement approved by the Oakland City Council on \_\_\_\_\_2006.

General Note 6: Phasing: This project is proposed to be constructed in Phases as set forth in the Development Agreement, Conditions of Approval and the Mitigation Monitoring and Reporting Program as approved by the Oakland City Council on \_\_\_\_\_2006.

General Note 7: Street Names: Final street names shall be approved as set forth in the Conditions of Approval as approved by the Oakland City Council on \_\_\_\_\_2006.

General Note 8: Dedications, Easements and Right of Entry: Additional and specified dedication of property rights and rights of entry as necessary to accommodate all drainage facilities, sewer facilities, public utility easements and other easements as may be necessary to properly serve the lots created shall be dedicated as part of the filing of future final maps.

General Note 9: All utilities shall be installed underground according to the standards and requirements of the City of Oakland and the applicable utility.

b. Other revisions to the Vesting Tentative Map plan set, absent alternative technical authority from a broadly recognized standard, are as follows:

1) At the intersection of Embarcadero and 5th Avenue, some mitigation needs to be proposed as the intersection skew does not meet City standards. Main Street needs to be designed to provide the necessary radius (100 feet).

2) Main Street shall be widened to provide the required depth perpendicular to the face of curb and travel lane, or the diagonal degree needs to be changed to 30 degrees.

3) 7<sup>th</sup> Avenue needs to be redesigned to have the necessary radius of 100 feet.

4) The Embarcadero/8<sup>th</sup> Avenue intersection needs to be redesigned to get the skew angle under 15 degrees.

- 5) The Oakland city standard radius for the curve on the relocated Embarcadero is 500 feet.
- 6) Redesign 9<sup>th</sup> Avenue to achieve the 50 foot tangent for reverse curves.
- 7) Rolled curbs details and specifications shall be replaced with concrete curb and gutter following standard City specifications.
- 8) On 9<sup>th</sup> Avenue, the potential for illegal parking must be reduced by pulling the inside curb and/or providing a “knuckle” to achieve the 100 foot minimum radius.
- 9) A 20 foot minimum travel way is acceptable where there is parking on both sides of the street. Where there is no parking the minimum travel way shall be 24 feet.
- 10) The radius for the 5<sup>th</sup> Avenue cul-de-sac for fire access must be redesigned to replace the rolled curb with another detail as acceptable to the Public Works Director and the Fire Marshall. The reduction of the 52 foot radius may be acceptable with a review of apparatus specifications and with the approval of the Fire Marshall.
- 11) Absent an alternative technical authority, the City requires a 50 foot tangent at the intersection of Main Street and the Embarcadero, and 9<sup>th</sup> Avenue and the Embarcadero.
- 12) Parcel corners at the intersections must be modified to provide rounded curbs to a radius of 15 feet.

33. Prior to the issuance of a grading permit for the site preparation (not including grading and excavation for soil remediation) of the first development area as set forth in Exhibit C of the Development Agreement, the applicant shall submit a detailed master improvement plan for the entire site prepared by a licensed Civil Engineer, with all conditions and requirements as set forth in these Conditions of Approval, the approved Preliminary Development Plan for the private property and the public rights of way, including but not limited to curbs, gutters, pedestrian ways, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design, specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements required to comply with all applicable City standards, and the street tree locations and planting specifications. This information shall include the detailed plans and specifications for the off-site sewer project as set forth in Condition of Approval 36 to meet Public Works Department requirements.

34. This Master Improvement Plan shall be reviewed and approved by the City Engineer and used as the confirmation of compliance with subsequent phased improvement plans. Except with respect to Conditions of Approval 18, 19 and 36, final maps may be recorded upon the City’s approval of a Subdivision Improvement Agreement and receipt of adequate security in accordance with the Subdivision Map Act and the City’s Subdivision Ordinance.

## Fire and Life Safety Requirements

35. Prior to the issuance of an occupancy permit for each Development Parcel, a Site Security and Management Plan shall be developed in conjunction with the Oakland Police Department, including parking garage security and lighting, building security features, security personnel staffing organization and management and emergency protocol procedures.

The following standards and requirements shall apply to the project and to each Development Parcel:

- a. Fire hydrants shall be incorporated, as required to attain a standard that achieves coverage so that a hydrant is accessible around a building perimeter with a hose reach of not less than 150 feet as per Oakland Fire Department or within 30 feet of any fire sprinkler or standpipe connection.
- b. All new fire hydrants shall meet East Bay Municipal Utility District (EBMUD) standards, 4.5 inch steamer by 2.5 inch outlet.
- c. A sprinkler system for each building including the capacity to annunciate by zone and tamper switches, as required by the Oakland Fire Department on a building-by-building basis, taking into account building square footage, occupancy limits, height and emergency access. Final building specific annunciation requirements shall be reviewed and approved by the Oakland Fire Department as part of the fire plan check.
- d. All entry gates with either key or push button Knox Box access shall include a minimum 8 inch by 10 inch Knox Box to store required maps, plans and up to five (5) sets of keys for building maintenance areas.
- e. Standpipes shall meet the following requirements:
  - 1) They shall be combined with the building sprinkler system with 2.5 inch NST outlets.
  - 2) Fire Department connections to sprinklers shall be shown as one 30 degree, 5 inch Stortz and two each 2.5 inch NST gated inlets.
  - 3) Final locations of standpipes for each Development Parcel shall be reviewed and approved by the Oakland Fire Department prior to the issuance of a building permit.
- f. Smoke detectors and related initiating and signaling devices shall be shown to be installed to annunciate fire by zone, mechanical (by location), electrical (by location) and other areas as may be required by the Oakland Fire Chief.
- g. A comprehensive fire alarm system for all Development Parcels meeting the following minimum specifications:
  - 1) Activation by water flow or other signaling device to annunciate at the alarm panels.

- 2) Initiation of an audible and visual alarm in the building.
  - 3) Identification for zone locations on alarm panels for smoke or water flow alarms, as approved by the Oakland Fire Department.
  - 4) Ability for a private alarm company to relay an activated zone to the Oakland Fire Department.
  - 5) Button board or digital alarm panels shall show all smoke detectors by zone, individual or miscellaneous rooms and water flow zones.
  - 6) The communications system for all building sites shall include electrical shut-off, and a general alarm switch to shut off and activate the fire alarm manually for each designated area within the building. For all buildings higher than 86 feet, this requirement shall include a shut-off and reverse HVAC switch.
- h. For the residential towers (125 to 240 feet) an Emergency Response Protocol Plan shall be submitted to the Oakland Fire Department prior to the issuance of a building permit. This plan shall include but not be limited to:
- 1) The provision of a Command Center at a minimum size of 8 feet by 10 feet, including alarm panels and large Knox Boxes at entry points as required by the Oakland Fire Department.
  - 2) Delineation of emergency evacuation routes, posting locations of emergency information, and the identification of safe zones in the building to accommodate non-ambulatory occupants and to provide staging areas for Fire Department operations.
  - 3) As required by the Oakland Fire Department, the buildings shall be designed so that areas can be shut down using magnetic or other acceptable closures with indicator signals on the enunciator panels or at the Command Center that doors have closed.

### **Off-Site Sewer Project Requirement**

36. The Project Applicant proposed to hook up the sewer lines to serve the sewer directly to the main outfall running along Embarcadero. Although there is overall wastewater treatment capacity, wet weather treatment facilities must be improved. Under the requirements of the Public Works Department and EBMUD, the Project Applicant must increase the wet weather sewer capacity through the completion of an off-site project. This project is presently being scoped out and will be specified at the March 15, 2006 Planning Commission meeting. The project must be designed and constructed prior to the issuance of a certificate of occupancy for the 550<sup>th</sup> unit.

### **Construction Management and Phasing**

37. As a requirement of each submittal of demolition, grading or building permit plans for a Development Parcel(s), the Project Applicant shall submit a Construction Phasing and Management Plan, incorporating all applicable mitigation measures in the MMRP including Air

Quality (MM C.1a); Cultural Resources (MM E.1a, E.1.b, E.1.c., E.1.d., E.2, E.3); Hazardous Materials (MM H.1.a, H.1.b., H.1.c., H.1.d., H.1.e, H.2.a., H.2.b., H.2.c., H.2.d., H.3); Noise (MM G.1a, G.1.b., G.1.c., G.1.d., G.2); Traffic, Circulation and Parking (MM B.10) and Biological Resources and Wetlands (MM I.2.a., I.2.b, I.2.c., I.2.d., I.3.a., I.4.a, I.4.b, I.5). The plan shall also include the following additional measures and standards:

- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.
- c. All parcels not under active construction shall be graded to drain to an approved runoff storm water treatment facility. Such facility may be located on the specific parcel not under active construction. Surfaces shall be treated with hydro-seed made up of a mix of native grasses and wildflowers. Slopes that are in excess of 2(h):1(v) shall also have a jute mesh blanket, or similar material, placed on the slope. The parcel shall have perimeter control to prevent either water or wind borne silt and pollutants from leaving the parcel. Access to the parcel shall be controlled by fencing approved by the Development Director.

### **Establishment of Community Facilities District and a Community Services District**

38. Prior to and at the time of approval of the first final map for the project, a Community Facilities District (CFD) or other similar financing mechanism acceptable to the City, shall be fully operational, and all assessments, reserve funding and/or other long-term financing and other requirements necessary to fully fund, in perpetuity, the maintenance of the parks, open space and public right of way. In addition, a Community Services District (CSD) may be formed with the responsibility for operation and maintenance of all parks, open spaces, shoreline trails, piers and public rights of way within the project, following the Minimum Maintenance Standards set forth in Exhibit F of the Development Agreement. If at any time the CSD is dissolved or is otherwise unable to adequately perform specified functions, the Development Director may exercise his or her authority under the Development Agreement and Condition of Approval No. 7. The CFD shall specify, without limitation, those obligations as set forth in Section 4.4.3, 4.4.4. a., b., c. d., e. and f. in the Development Agreement, along with the following other provisions:

- a. A reserve fund shall be established in the CSD budget to provide for restoration, maintenance, repair or other work associated with all improvements and areas within the jurisdiction of the CSD.
- b. The Project Applicant shall provide start-up funds for the CFD/CSD in an amount to be determined by the City Engineer in accordance with the approved capital development and maintenance plan, which shall be provided no later than recordation of the first final map for the Project. The Project Applicant shall also assume financial responsibility for all related work for a warranty period determined by the Public Works Director.
- c. The CFD/CSD shall include both on going maintenance activities as well as a plan for unexpected maintenance and events, including events or damages that could

occur as the result of site improvements associated with geotechnical, drainage or related matters within the CFD/CSD jurisdiction. This work shall be based on the final grading, site soils conditions and specifications for improvements as set forth in Conditions of Approval No.33 and 40.

d. The CFD/CSD budget shall separately identify the projected costs associated with (1) standard annual operation, administration and maintenance work; (2) long-term operation and maintenance including life cycle costs of major features such as the Shoreline Park pier; (3) storm water quality maintenance and monitoring; (4) reserve fund and (5) debt service requirements.

e. The CFD/CSD shall submit an annual report to the City Council detailing (1) compliance with the Minimum Maintenance Standards as set forth in Exhibit F of the Development Agreement and (2) budgetary and other financial information relevant to the CFD/CSD operations.

f. The CFD/CSD shall obtain general liability insurance and directors' insurance for the Board of Directors to the extent that the CFD/CSD Board determines in its sole discretion that such insurance is available at commercially reasonable rates.

g. Regardless of whether or when the CSD is formed, the assessments or taxes necessary to fund the above requirements must be determined following a thorough financial analysis and must include adequate funding for the indemnity and insurance obligations set forth in Section 4.4.4.e. of the Development Agreement. The City's attorney and Risk Manager shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.

h. The taxes or assessments shall be fully authorized and imposed on the project site prior to approval of the first final map.

39. The CSD, if formed, will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the CSD and no City employees shall perform such services for CSD facilities and improvements. Further, the City shall not fund or otherwise administer any of the operations of the CSD.

### **Landscaping, Open Space, Park and Trail Requirements**

40. The Project Applicant shall prepare and implement a Landscape, Open Space, Park and Trail Plan substantially consistent with the plans \_\_\_\_\_ prepared by \_\_\_\_\_, Sheets \_\_\_\_\_, dated \_\_\_\_\_ 2006. A schematic master landscape plan shall be prepared for each Phase of the Project, based on the Phasing Schedule set forth in Exhibit C of the Development Agreement. The plans shall be developed based on detailed surveys of existing site conditions and locations of major features including utility lines and other public improvements. This plan shall include a phasing and staging schedule showing how the landscaping for each phase of the project shall be implemented along with the detailed master improvement plan set forth in Condition of Approval No. 33 that must accompany and correlate with each Development Parcel. This plan must reference and incorporate all applicable conditions and requirements as set forth in these Conditions of Approval. This plan shall be

submitted to the Development Director for review and approval prior to the issuance of the building permit for the first Development Parcel. This plan shall include:

- a. Complete soils information, including soil preparation and amendment specifications, soil particle size for existing site soils and imported soils, representative soils and water table tests confirming the suitability of the site for the plant materials selected.
- b. Plans for Shoreline Park, South Park, the perimeter of Clinton Basin, Gateway Park, Channel Park and Estuary Park including paving materials, tree and plant materials, street furniture, lighting, major recreational and landscaping features, public art installations, play equipment, courts, plazas, sculptural features, etc.
- c. An evaluation of feasible modifications to the grading and overall elevations to improve views of the Estuary from the western portion of the site, particularly from 9<sup>th</sup> Avenue and Shoreline Park.
- d. Preservation of all or a significant portion of the Ninth Avenue Terminal building wharf/apron area on the waterfront side to the recommended 26 foot width and the ramp to the water, as a part of the Shoreline Park and building reuse plan, as practically feasible.
- e. Plans for all street sections including typical paving and materials cross sections, trees and plant materials,
- f. Plans and general specifications for other landscaping features and public art installations.
- g. Plans and general specifications for the segments of the Bay Trail through the site pathways throughout the site, including the boardwalk areas adjacent to the Estuary.
- h. Plans for the historic and interpretive elements in and around the area of the preserved portion of the Ninth Avenue Terminal Building and Shoreline Park, including the reinstallation of existing features honoring the history and use of the area as a breakbulk cargo terminal, with an overall physical theme and other unifying physical elements.
- i. All play surfaces and play structures throughout the development will comply with ADA standards.
- j. Prior to the issuance of the first building permit for each Development Area, a final landscape plan shall be submitted for that phase, based on the results, requirements, information and recommendations contained in the master schematic landscape plan, and including but not limited to the following:
  - Detailed irrigation plans, consistent with water conservation and sustainability practices. Planting details such as location, number and sizes of the plant materials and the specifications for planting.
  - Street trees shown on the site plan.
  - Specifications for driveways, paving, entry and other surface treatments.

- A detailed landscape maintenance plan for each phase, including short and long term plant and tree care, irrigation system maintenance and other information to assure that the landscape plan will be successfully established and maintained consistent with the Minimum Park Maintenance Standards specified in Exhibit \_\_\_\_ of the Development Agreement.
- All applicable mitigation measures in the MMRP.

Both the master schematic plan and each successive final landscape plan shall be independently reviewed and approved by a qualified landscape architect and other professional consultant, as deemed required by the Development Director, at the Project Applicant's expense.

Schematic park plans (Shoreline, South Park, Channel Park, and Estuary Park) shall be reviewed and approved by the Parks and Recreation Advisory Commission and the Planning Commission as set forth in Oakland Municipal Code Section \_\_\_\_\_.

41. Prior to the issuance of the first occupancy permit within each Development Parcel, the Project Applicant shall enter into a two year landscape maintenance agreement with the City, subject to the review and approval of the City Attorney, running from the date the landscaping is deemed complete and in compliance with the approved landscape plan for each phase. The security posted shall be in the form of an acceptably rated bond, cash, an irrevocable letter of credit or a certificate of deposit, and the amount shall be determined based on the contract costs of plants and installation plus 25 percent. At the project applicant's option, a phased plan for securing the two year landscape maintenance agreement may be established, consistent with the Phasing Plan set forth in Exhibit C of the Development Agreement so that the security required is concurrent with the overall phasing as planting becomes established.

42. The Project Applicant shall prepare and implement a Tree Protection Plan based on the Tree Report for the Oak to 9<sup>th</sup> Project prepared by HortScience, Inc., dated February, 2006. The City's Arborist has deemed this report consistent with the City's Tree Protection Ordinance and that a tree permit may be issued for the site, prior to soils remediation activities based on the completed review. Further review required to issue the tree removal permit shall be limited to substantial compliance with prior review and recommendations.

## **Design Requirements**

43. *Lighting Standards and Requirements.*

a. The applicant shall submit a lighting plan for review and approval by the Planning and Zoning Division, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

b. The applicant shall maintain all on-site lighting to meet the State Business and Professions Code Section 25612, providing enough illumination to identify loiterers standing in the immediate vicinity of accessways, parking lots, parking structures, the commercial areas and the

parks and open spaces in the site. Such illumination shall remain on during all hours of darkness when the businesses, parking areas and open spaces and parks are open and shall be shielded to a point below the light bulb and reflector and not cast unnecessary glare onto adjacent residential properties.

c. The exterior lighting fixtures which serve the parking areas shall be equipped with daylight sensors that will automatically turn the lights on at dusk and off at sunrise, shall be adequately shielded to a point below the bulb and reflector, and shall prevent unnecessary glare onto adjacent properties.

44. Final Development Plans for Parcels K, L and M as identified in Vesting Tentative Map No. 7621 shall incorporate the mitigation measures set forth in “Section A –Land Use Plans and Policies” of the MMRP (MM A.1., A.2.a., A.2.b., A.3.a., A.3.b.)

### **Administrative Review Standards for Commercial Uses**

45. The following performance standards and review criteria shall be used to administratively review uses for the commercial and portions of the project, prior to the issuance of the first building permit for construction of a building including commercial and retail space on each Development Parcel, if applicable:

- a. Review and written verification shall be provided to confirm that loading storage and equipment areas have been designed and designated to account for the needs of the proposed use without interfering with parking, access or loading areas of adjacent commercial uses.
- b. For food related uses such as cafes, delicatessens, restaurants, fast food establishments and similar activities, the following standards and conditions shall apply:
  - 1) Adequate provisions have been made for trash disposal and recycling, including provision of standard City of Oakland containers within the public right of way, following the requirements and standards of the California Uniform Retail Food Facilities Law (Health and Safety Code Sections 37500 et. seq.), as reviewed and approved by the Planning Director or his/her designee.
  - 2) Adequate ventilation, filtration and odor control systems shall be installed for any commercial hoods; along with submittal of provisions for maintenance and inspection of such a system should odor complaints be received.
- c. For entertainment uses, live entertainment shall be subject to the cabaret permit review procedures under the Oakland Municipal Code.

### **Required Disclosure Statements Pertaining to Uses and Activities Associated with the Project**

- a. *Live/Work Units:* The owner of the property shall provide a Statement of Disclosure on the lease or title to all new tenants or owners of the live-work units acknowledging the commercial character of the district and acceptance of the potential for uses in the area to result in certain off-site impacts at higher levels than would be

expected in residential areas. The statement of disclosure shall also state that the tenants may only engage in the activities allowed by the PWD-4 Zoning District. The statement of disclosure shall also state that at least one tenant of each unit shall apply for and maintain a City of Oakland Business Tax Certificate for a business at the project address. The statement described in this condition of approval shall also be provided to any new owners of the property or any of the new units before a unit or the property is sold.

b. *Mixed Use Character of Project – Adjacency of High Use Public Area and Rail Lines*: The project applicant shall ensure that future residents sign a notice acknowledging that they are aware of and accept the potential noise levels related to the adjacent railroad lines, commercial activities, live/work activities and large open space and park areas adjacent to the Development Parcels.

**Affordable Housing Condition -- TBD**