

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

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CROSBY, HEAFEY, ROACH & MAY
Professional Corporation
1999 Harrison Street
Oakland, CA 94612
Attn: Roy Ikeda

30/27

EASEMENT AGREEMENT
(OB IV Supports)

1. PARTIES

This Easement Agreement is made among The Redevelopment Agency of the City of Oakland ("Grantor") and a co-tenancy comprised of Bramalea Inc., a Delaware corporation, OB IV Investors, a California limited partnership, OB IV Tenant Investors, a California limited partnership and OB IV Community Investors, a California limited partnership, (collectively "OB IV Co-tenancy") and a co-tenancy comprised of Bramalea Limited, an Ontario corporation ("Bramalea"), and City Square One, a California limited partnership (collectively "City Square Co-tenancy"). The OB IV Co-tenancy and the City Square Co-tenancy shall be collectively referred to herein as "Grantees".

2. FACTS

2.1 Servient Tenement. Grantor owns that certain parcel of real property described in attached Exhibit A (the "Servient Tenement").

2.2 OB IV Dominant Tenement. OB IV Co-tenancy owns that certain parcel of real property shown as Parcel EE, Parcel Map 4976, Official Records, Alameda County, California (the "OB IV Dominant Tenement").

2.3 City Square Dominant Tenement. City Square Co-tenancy owns that certain parcel of real property shown as Parcel AA, Parcel Map 4976, Official Records, Alameda County, California (the "City Square Dominant Tenement").

2.4 Support Easements. The Servient Tenements are each currently burdened by that certain exclusive appurtenant support easement (the "Existing Easement") for the benefit of the OB IV Dominant Tenement pursuant to Paragraph 3.2 of that certain First Amended Grant of Easement, recorded November 10, 1983, as Series Number 83-213149, Official Records, Alameda County, California, and the terms and conditions contained therein.

2.5 Purpose. The parties desire to terminate and extinguish the Existing Easement and to create new appurtenant support easements burdening the Servient Tenement for the benefit of both the OB IV Dominant Tenement and the City Square

Dominant Tenement in accordance with the terms and conditions of this Easement Agreement.

3. GRANT OF EASEMENTS

Grantor hereby grants and conveys to OB IV Co-tenancy and City Square Co-tenancy exclusive, perpetual, appurtenant easements (the "Support Easements") to construct, use, maintain, repair, alter, inspect, test, reconstruct and replace all existing and additional columns, bracings, reinforcements, footings and foundations on such portions of the Servient Tenement as are described and shown on attached Exhibit B which are required to support any improvements constructed on the OB IV Dominant Tenement and/or the City Square Dominant Tenement and nonexclusive easements for reasonable access thereto. The Support Easements shall burden the Servient Tenement and benefit the OB IV Dominant Tenement and the City Square Dominant Tenement. The use of the Support Easements shall extend to the employees, agents, contractors and suppliers of Grantees. Grantor shall not grant or convey any similar easement burdening the Servient Tenement without the prior written approval of Grantees.

4. EXTINGUISHMENT OF EXISTING EASEMENT

The parties hereby terminate and extinguish the Existing Easement.

5. TITLE TO IMPROVEMENTS

City Square Co-tenancy shall be the owner of all improvements constructed, used or maintained pursuant to the Support Easements (the "Improvements"). Grantor and OB IV Co-tenancy hereby grant and convey to City Square Co-tenancy all right, title and interest in and to such Improvements.

6. MAINTENANCE AND REPAIR

6.1 Obligation To Maintain. All Improvements shall be maintained and repaired in a clean, orderly and safe working condition by City Square Co-tenancy with the cost of such maintenance and repair to be allocated equally between OB IV Co-tenancy and City Square Co-tenancy.

6.2 Failure to Maintain

(a) Failure. If City Square Co-tenancy fails to fulfill its obligations of maintenance and repair in accordance with the terms of Paragraph 6.1, then any other party to this Easement Agreement shall have the right to advance the costs required and to perform or cause to be performed such acts as are required to bring the maintenance up to the required standards.

(b) Notice. Before undertaking such repairs, the party electing to take such action (the "Electing Party") shall deliver a written notice to City Square Co-tenancy stating in detail the acts necessary to maintain the property.

(c) Time to Act. If, within ten (10) days after the date of delivery of the notice, City Square Co-tenancy has not commenced all such required acts or thereafter does not diligently and continuously prosecute such acts to completion at the earliest possible date, then the Electing Party shall have the right to do or cause to have done such acts set forth in its notice, paying for the cost of such acts when due.

(d) Payment of Costs. City Square Co-tenancy and/or OB IV Co-tenancy shall pay the Electing Party, promptly after delivery of written demand therefor, that reasonable portion of the costs and expenses of repair and maintenance incurred and/or paid by the Electing Party pursuant to this Paragraph 6.2 which is the obligation of City Square Co-tenancy and/or OB IV Co-tenancy pursuant to Paragraph 6.1. If the City Square Co-tenancy and/or OB IV Co-tenancy fails to make such payment in full within ten (10) days from the date of delivery of such demand, then (i) the amount owing shall commence to bear interest at the maximum rate permitted by California law until paid and (ii) the Electing Party shall have the right to commence legal proceedings in the appropriate court to recover the amount due.

(e) Emergency. In the event that repairs or maintenance must be undertaken immediately because of a clear and immediate danger of damage or injury to property or persons, or in order to reduce further injury or damage that has occurred, then (i) the provisions of Subparagraphs 6.2(a)-(c) shall not apply, (ii) any party shall have the right to perform or have performed the necessary acts of repair and maintenance, and (iii) the party so repairing and maintaining

may recover the costs of such repairs pursuant to Subparagraph 6.2(d) as if such party were an Electing Party.

7. CONDEMNATION

7.1 Taking. In the event that all or a portion of the Servient Tenement is taken pursuant to the exercise of the power of eminent domain or pursuant to an agreement entered into under the threat of the exercise of the power of eminent domain (a "Taking"), so that the Support Easements granted herein cannot reasonably be used as specified herein, as determined in the sole reasonable discretion of Grantees, then such easement shall cease and terminate as of the date of transfer of title to the condemning authority or the date that the condemning authority takes possession of the property whichever first occurs. Otherwise, such easement shall continue in full force and effect.

7.2 Award. All amounts paid by the condemning authority for a taking of the easements shall be paid as follows: the amount which represents the value of the underlying fee interest shall be paid to Grantor; the amount which represents the value of the easements granted in this Easement Agreement and the Improvements shall be paid to and divided equally between the Grantees; and the amount which represents the diminution in value of the OB IV Dominant Tenement and the City Square Dominant Tenement shall be paid to their respective owners.

8. INDEMNIFICATION

8.1 By City Square Co-tenancy. City Square Co-tenancy shall hold harmless, indemnify, protect and defend Grantor and OB IV Co-tenancy against any claim, demand, action, cause of action, damage, loss, liability, cost and expense (including reasonable attorneys' fees) which arise out of or result from the negligent use of the Support Easements by City Square Co-tenancy or the employees, agents, operators, or contractors of City Square Co-tenancy except that a party shall not be indemnified for any such claim, demand, action, cause of action, damage, loss, liability, cost and expense which arise out of or result from the negligent or willful act or omission of the party being indemnified or the employees, agents, operators or contractors of the party being indemnified.

8.2 By OB IV Co-tenancy. OB IV Co-tenancy shall hold harmless, indemnify, protect and defend City Square Co-tenancy and Grantor against any claim, demand, action, cause of action, damage, loss, liability, cost and expense (including reasonable attorneys' fees) which arise out of or result from the negligent use of the Support Easements by OB IV Co-tenancy or the employees, agents, operators, or contractors of OB IV Co-tenancy except that a party shall not be indemnified for any such claim, demand, action, cause of action, damage, loss, liability, cost and expense which arise out of or result from the negligent or willful act or omission of the party being indemnified or the employees, agents, operators or contractors of the party being indemnified.

8.3 By Grantor. Grantor shall hold harmless, indemnify, protect and defend City Square Co-tenancy and OB IV Co-tenancy against any claim, demand, action, cause of action, damage, loss, liability, cost and expense (including reasonable attorneys' fees) which arise out of or result from the negligent act or omission on or about such portions of the Servient Tenement burdened by the Support Easements by Grantor or the employees, agents, operators, or contractors of Grantor except that a party shall not be indemnified for any such claim, demand, action, cause of action, damage, loss, liability, cost and expense which arise out of or result from the negligent or willful act or omission of the party being indemnified or the employees, agents, operators or contractors of the party being indemnified.

9. TRANSFER OF INTEREST

If Grantor or Grantees convey all or any portion of their respective interest in the OB IV Dominant Tenement, the City Square Dominant Tenement or Servient Tenement, the terms and conditions of this Easement Agreement shall run with the land and shall be binding upon and inure to the benefit of any such grantee. This Easement Agreement and the rights, obligations, terms and conditions hereof shall be further binding and inure to the benefit of the successors, legal representatives, transferees and assigns of Grantor and Grantees.

10. MISCELLANEOUS

10.1 Entire Agreement. This Easement Agreement and the exhibits attached hereto which are incorporated herein by this reference constitute the entire understanding between the parties regarding the Support Easements and amend and supersede the terms and conditions of the Existing Easement.

10.2 Compliance With Laws. The use of the Support Easements by Grantees shall comply with all applicable laws, ordinances, orders and regulations.

10.3 Attorneys' Fees. If Grantor, OB IV Co-tenancy or City Square Co-tenancy commence an action or proceeding to enforce, protect or establish any right or remedy arising out of this Easement Agreement, or to interpret any of its terms or to collect damages as a result of a breach thereof, the prevailing party shall be entitled to recover from the party not prevailing all of its costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in such action or proceeding and in any appeals taken therefrom.

10.4 Term. This Easement Agreement and the easements granted herein shall be for a perpetual term commencing as of the date hereof unless terminated in accordance with the terms of this Easement Agreement.

10.5 Amendment. This Easement Agreement may only be amended by a writing signed by the Grantor and the Grantees.

DATED: FEBRUARY 27, 1987.

GRANTOR

The Redevelopment Agency
of the City of Oakland

By

John A. Stone
Its Deputy Administrator