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City of Alameda
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**DEVELOPMENT AGREEMENT
(ENCINAL TERMINALS PROJECT)**

This DEVELOPMENT AGREEMENT (ENCINAL TERMINALS PROJECT) ("**Development Agreement**" or "**Agreement**"), dated as of March 3, 2022 (the "**Effective Date**"), is entered into by and between the City of Alameda, a municipal corporation ("**City**"), and North Waterfront Cove LLC, a Delaware limited liability company ("**Developer**") regarding the Encinal Terminals project. City and Developer are each a "**Party**" and collectively are the "**Parties**". Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meaning given them in the Tidelands Exchange Master Plan (defined in Recital G).

RECITALS

This Development Agreement is based on the following facts, understandings and intentions of City and Developer:

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (the "**Development Agreement Legislation**") which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. Pursuant to Government Code Section 65864, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Alameda Municipal Code ("**AMC**") Sections 30-91 through 30-95 (the "**City Development Agreement Regulations**"). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

C. The Developer owns approximately 26 acres of real property, consisting of approximately 17.33 acres of land and 8.58 acres of submerged lands, located along the Oakland Estuary, north of Entrance Road, commonly known as Encinal Terminals, with an address of 1521 Buena Vista Avenue, City of Alameda, County of Alameda (APNs 72-0382-001, 72-0382-002 and 72-0383-003), as more specifically described in Exhibit A, attached hereto and incorporated herein ("**Encinal Terminals Parcel**").

D. City holds in trust approximately 6.4 acres of property located adjacent to the Encinal Terminals Parcel, identified as APN 072-0382-009, as more specifically described in Exhibit B, attached hereto and incorporated herein ("**City Parcel**"). The City Parcel and the Encinal Terminals Parcel are referred to collectively herein as the "**Property**".

E. The current configuration of the Encinal Terminals Parcel and the City Parcel renders the Encinal Terminals Parcel infeasible to develop for housing at this time. The Encinal Terminals Parcel is irregularly shaped and bisected by the City Parcel, necessitating an inefficient building pattern. The configuration of the parcels also limits the ability of the City to make productive use of the City Parcel for the purposes for which it is held. The City Parcel consists of filled former tidelands that are subject to the public trust for commerce, navigation and fisheries ("**Public Trust**") but are largely situated away from the waterfront. The Encinal Terminals Parcel consists in part of dredged former uplands that are now submerged, and uplands that are on the waterfront or are otherwise useful to the Public Trust, but that are not (or may not be) subject to the Public Trust.

F. In order to permit the development of housing on the site within the next 10 years, and to obtain City ownership of the site's waterfront and adjacent waters for the benefit of the public, the Parties wish to enter into an agreement with the State of California ("**State**"), acting by and through the State Lands Commission ("**SLC**") to exchange lands and settle boundary disputes in a manner that improves the configuration of Public Trust lands at the site and terminates the Public Trust in lands not needed for trust purposes ("**State Exchange Agreement**"). The State Exchange Agreement will permit City, via conveyances through the SLC, to convey a portion of the City Parcel to Developer, and for Developer to convey a portion of the Encinal Terminals Parcel to City as shown in Exhibit C, attached hereto and incorporated herein (the "**Public Trust Exchange**"). The State Exchange Agreement will permit the exchange to occur in phases, which will proceed in accordance with the phasing plan set forth in the Tidelands Exchange Master Plan as implemented by the Disposition and Development Agreement ("**Disposition and Development Agreement**" or "**DDA**") between City and Developer.

G. Developer proposes to develop the Property into a transit-oriented residential mixed-use development, consistent with the Tidelands Exchange Master Plan and Density Bonus application approved on February 1, 2022 by City of Alameda Ordinance No. 3312, which allow for development of 589 housing units (including eighty (80) deed restricted affordable units), up to 50,000 square feet of retail/commercial space, and approximately 4.5 acres of public open space that will be publicly accessible from dawn to dusk ("**Project**").

H. On July 17, 2007, City adopted Resolution Nos. 14134 and 14135 certifying the Final Environmental Impact Report for the Northern Waterfront General Plan Amendment ("**Northern Waterfront EIR**") pursuant to the California Environmental Quality Act ("**CEQA**"), and on December 19, 2017, City adopted Resolution No. 15337 certifying a Focused Supplemental Environmental Impact Report for the Project ("**Focused Supplemental EIR**", and with the Northern Waterfront EIR, "**Previous CEQA Documents**"). City wishes to make the site available for housing development in order to maximize opportunities for City to meet its Housing Element obligations for the period 2023-2031. City is also desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth,

thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits described in Section 5, some of which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

I. This Development Agreement will eliminate uncertainty regarding Project Approvals (defined in Section 4 below), thereby encouraging planning for, investment in, and commitment to use and develop the Property. Continued use and development of the Property in accordance with this Agreement is anticipated to, in turn, provide substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the State enacted the Development Agreement Legislation.

J. This Agreement will help ensure (1) the productive use of underdeveloped property and foster orderly growth and quality development in City; (2) that development will provide market rate and affordable residential housing units during an unprecedented housing crisis; (3) that City will receive substantially increased property tax and sales tax revenues; (4) that development will proceed in accordance with the goals and policies set forth in the City of Alameda General Plan ("**General Plan**") and will implement City's stated General Plan policies and transition former vacant industrial lands to mixed use, waterfront development; (5) that development will remove blight, inaccessible waterfront, inaccessible shoreline, inaccessible submerged lands, and pollution; (6) that City will benefit from increased public open space with an improved and accessible public shoreline which will be maintained in perpetuity at no cost to City, and commercial recreational opportunities, and employment opportunities for Alameda residents created by businesses in the commercial space within the Project; (7) that the waterfront and adjacent submerged lands will be placed under public ownership for the use and enjoyment of the people of California; and (8) that City will receive the Public Benefits provided by the Project for Alameda residents.

K. The terms and conditions of this Agreement have undergone extensive review by City, Developer and their respective legal counsel. The Planning Board, at a duly noticed public hearing on May 24, 2021, determined that the Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and is compatible with applicable regulations pertaining to the use of land. In adopting its Resolution, the Planning Board reviewed and heard the report of City staff on Developer's application for this Development Agreement and considered all other evidence heard and submitted the public hearing, including the matters to be considered pursuant to the Development Agreement Legislation and the City Development Agreement Regulations, in recommending adoption of the Development Agreement to the City Council.

L. On January 18, 2022, the City Council, at a duly noticed public hearing, and after consideration of all matters in the record, including without limitation City staff's report on Developer's application for this Agreement, the Planning Board's recommendations thereon, all other evidence heard and submitted at such public hearing found that approval of the Development Agreement is in compliance with CEQA and consistent with the General Plan and other regulations prescribed for the use of land, and that the economic interests of Alameda residents and the public health, safety and welfare will be best served by entering into this Agreement, and introduced the ordinance approving this Development Agreement ("**Ordinance**"). On February 1, 2022, the City Council adopted Ordinance No. 3313 enacting this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation and the City Development Agreement Regulations, and in consideration of the foregoing Recitals and the mutual covenants and promises of the Parties herein contained, the amount and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **The Property.** The Property which is the subject of this Agreement is defined in Recitals C and D and more particularly described in Exhibit A and Exhibit B.

2. **The Project.** Developer shall develop and use the Property for a 589-unit residential housing development, including eighty (80) deed restricted affordable units, up to 50,000 square feet of retail/commercial space, and approximately 4.5 acres of public open space, in conformance with the Project Approvals, as defined in Section 4.

3. **Effective Date; Term.** The Effective Date of this Development Agreement shall be the later of: (a) thirty (30) days after the date the Ordinance approving this Development Agreement is adopted by the City Council; or (b) if a referendum petition is timely and duly circulated and filed to challenge the Ordinance, the date the election results on the ballot measure by City voters approving this Development Agreement are certified by the City Council in the manner provided by the Elections Code. Not later than five (5) days after the Effective Date, Developer shall execute and acknowledge this Development Agreement and return the Development Agreement to City; not later than ten (10) days after the Effective Date, City shall execute and acknowledge this Development Agreement; and upon receipt of such executed and acknowledged Development Agreement, Developer shall cause this Development Agreement to be recorded in the Official Records of the County of Alameda ("**Official Records**") as provided in Government Code Section 65868.5 and Section 30-94.4 of the City Development Agreement Regulations.

a. **Term.** The term of this Development Agreement ("**Term**") is fifteen (15) years, beginning on the Effective Date, and shall expire on March 3 of the calendar year in which the 15th anniversary of the Effective Date falls (March 3, 2037), unless sooner terminated pursuant to the applicable provisions of this Development Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project. Notwithstanding the foregoing, it is Parties' intent to use best efforts to accelerate the buildout in a ten (10) year time period.

b. **Termination.** This Development Agreement shall terminate and be of no further force and effect (subject to Section 3.e) on the earliest of (1) the expiration of the Term; (2) the completion of the Project and all of Developer's obligations in connection therewith; (3) an action to terminate by the City Council pursuant to Annual Review (see Section 10); (4) termination or cancellation pursuant to AMC Sections 30-94.3, 30-95.2; (5) failure to execute a State Exchange Agreement within 24 months of the Effective Date that provides for a Public Trust Exchange in substantial conformance with the property boundaries described in Exhibit C; or (6) failure to adopt an assessment district or equivalent funding source acceptable to both parties within 24 months of the Effective Date for the maintenance of the Public Trust Lands in perpetuity.

c. **Termination for Default.** In the event of a Default by a breaching Party, the non-breaching Party may terminate this Development Agreement as provided for in Section 15.

d. **Subsequent Amendments or Termination.** If the Parties amend, modify or terminate this Development Agreement as herein provided, or as otherwise provided in the City Development Agreement Regulations (AMC §§ 94.3, 95.2), or this Development Agreement is modified or terminated pursuant to any provision hereof, then Developer shall, within ten (10) days after such action takes effect, cause an appropriate notice of such action to be recorded in the Official Records.

e. **Effect of Expiration of Term or Termination.** Upon expiration of the Term or earlier termination of this Development Agreement, this Development Agreement and all of the rights, duties and obligations of the Parties hereunder shall terminate and be of no further force or effect, except for obligations under this Development Agreement that expressly survive expiration or termination, accrued obligations of a Party, and obligations to comply with Project Approvals and other laws. The expiration or termination of the Development Agreement shall not affect the effectiveness of the Project Approvals except as may be expressly provided therein.

4. **The Project Approvals.** Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, “**Project Approvals**” shall mean the Initial Project Approvals and the Subsequent Approvals (each as defined herein). The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes shall be those set forth in the Project Approvals, including this Development Agreement. The Applicable Law (as defined below), including the requirements of this Development Agreement, shall control the overall design, development, and construction of the Project, and all on- and off-site improvements and appurtenances in connection therewith, in the manner specified in this Development Agreement.

a. The term “**Initial Project Approvals**” shall mean all of the following approvals, plans and agreements.

i. **CEQA.** The Previous CEQA documents including the Northern Waterfront EIR (State Clearinghouse No. 2002102118), which was recommended for certification by the Planning Board on March 26, 2007, and certified with findings by the City Council on July 17, 2007, by Resolution No. 14134 (certifying Northern Waterfront EIR) and Resolution No. 14135 (adopting findings), and the Focused Supplemental EIR, which was recommended for certification by the Planning Board on July 17, 2017, and certified with findings by the City Council on December 19, 2017, by Resolution No. 15337 (adopting the Focused Supplemental EIR and adopting a mitigation monitoring and reporting program and findings).

ii. **Tidelands Exchange Master Plan.** On February 1, 2022, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 3312, approved the Encinal Terminals Project Tidelands Exchange Master Plan.

iii. **Density Bonus Application.** On February 1, 2022, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 3312, approved the density bonus application for the Project (the “**Density Bonus Application**”).

iv. **Disposition and Development Agreement.** On February 1, 2022, after a duly noticed public hearing, the City Council, by Ordinance No. 3311, approved the Encinal Terminals Project Disposition and Development Agreement.

v. **Development Agreement.** On February 1, 2022, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 3313, approved this Development Agreement and authorized its execution.

b. **Subsequent Approvals.** The term “**Subsequent Approvals**” shall mean any additional permit or authorization that is required to develop the Project consistent with the Initial Approvals and is finally approved by City in accordance with Applicable Law (defined below). Subsequent Approvals may include, without limitation: development plans, conditional use permits, variances, subdivision approvals, subdivision improvement agreements, architectural design review approvals, demolition permits, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, parcel maps, landscaping plans, master sign programs, affordable housing agreement, and encroachment permits. Subsequent Approvals shall not include any substantial amendment or other change to the Initial Approvals, unless expressly authorized by amendment to this Agreement approved by the City. At such time as any Subsequent Approval applicable to the Project is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to the Initial Project Approvals and shall be treated as a “**Project Approval**” under this Development Agreement.

5. **The Public Benefits.** In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer shall construct the public improvements identified in the Tidelands Exchange Master Plan, which includes without limitation the following public benefits, some of which improvements are over and above those dedications, conditions and exactions required by laws or regulations:

- a. Removal of blighted and dangerous structures, wharfs, and waterfront improvements and the orderly development of the property consistent with the General Plan objectives to transition former underutilized and vacant industrial land in the Northern Waterfront to residential, maritime serving, and public waterfront access.
- b. Conveyance to City in trust for public use of approximately 4.5 acres of privately owned shoreline property, and improvement of the property for public use, including construction and maintenance of a public Bay Trail and public promenade along approximately a half mile of currently inaccessible waterfront shoreline; and conveyance of approximately 13 acres of privately owned submerged lands to City in trust for public use.
- c. Construction of up to 589 housing units including 80 units of deed restricted affordable housing and 10 units of middle-income housing during a local and regional housing crisis. Provision of employment opportunities and well-paying jobs.
- d. Increased property tax revenue for city, county, school district and other public taxing entities and county.
- e. New economic development and tideland lease opportunities to develop a marina and water based recreational uses and facilities on new submerged Public Trust lands.
- f. New transportation infrastructure, including the Bay Trail, Clement Avenue Extension and a water shuttle landing and annual funding for improved transportation service.

6. **Developer Obligations.** Developer shall timely comply with all requirements of the Project Approvals and Applicable Law, including without limitation, compliance with all conditions of approval and implementation of all required mitigation measures for the Project, and shall timely pay to City all fees that City is authorized to charge. In addition, Developer agrees to the following terms:

a. **Property Conveyances.** Developer shall work in good faith with City to seek approval and execution of a State Exchange Agreement in substantial conformance with the property boundaries described in Exhibit C within 24 months of the Effective Date and shall thereafter implement the phased conveyances contemplated in the State Exchange Agreement consistent with the Disposition and Development Agreement.

b. **Permits and Approvals.** Developer shall complete all required local, regional, state and federal permitting requirements necessary to begin site clearing and grading (i.e., demolition of existing improvements, mass grading, and construction of temporary Bay Trail) and begin site preparation and construction activities ("**Site Preparatory Work**") consistent with the Tidelands Exchange Master Plan phasing schedule within 36 months of the Effective Date.

c. **Construction and Maintenance of Public Improvements.** Developer shall construct and maintain public improvements on all lands to be exchanged into or confirmed in the Public Trust as part of the Public Trust Exchange ("**Public Trust Lands**"), consistent with the Tidelands Exchange Master Plan, at no cost to City, in accordance with the Tidelands Exchange Master Plan phasing schedule, including establishment of capital improvement reserves for maintenance of the Public Trust Lands in perpetuity. The maintenance obligation may be assumed by a municipal services district ("**MSD**"), community facilities district ("**CFD**") and/or a geologic hazard abatement district ("**GHAD**") or similar financing mechanism formed pursuant to Section 7.b below. Developer shall not be responsible for maintenance of a future marina developed by a future third party pursuant to a tideland lease with City. Developer's maintenance obligation shall survive termination of this Agreement as to all improvements that have been completed at the time of termination.

d. **Development Timing.** Developer shall commence and complete development of the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement, the Project Approvals, the Tidelands Exchange Master Plan construction phasing plan and schedule.

e. **"Day One" Public Access.** Prior to the issuance of the first building permit for a residential building or vertical improvement, Developer shall provide a temporary Bay Trail around perimeter of the site for public use, consistent with the Tidelands Exchange Master Plan. The temporary Bay Trail shall be a 16' wide asphalt pathway. Fences shall be installed where necessary to protect the public from construction activities and/or unsafe wharf or shoreline conditions. The design of the fences shall be subject to the approval of the Planning Director.

f. **Affordable Housing.** Developer shall be responsible for constructing a total of eighty (80) affordable housing units as further described in the Tidelands Exchange Master Plan, in accordance with State Density Bonus Law and AMC Sections 30-16 and 30-17. Developer shall submit for City Manager review and approval in his/her reasonable discretion, an Affordable Housing Agreement for the provision of eighty (80) affordable housing units, consistent with the requirements of the Tidelands Exchange Master Plan and in a form in substantial conformance with Exhibit D, attached hereto and incorporated herein, and acceptable to the City Attorney. Prior to approval of the first final Map for the Project, Developer shall have received City Manager approval, in its reasonable discretion, of an Affordable Housing Agreement which is consistent with the requirements of this Master Plan and in a form acceptable to the City Attorney.

g. **Missing Middle Housing.** In addition to the affordable housing units required by Section 6.f, Developer shall provide a total of ten (10) “missing middle” affordable by design units (five 1-Bedroom and five 2-bedroom units) that will be provided to middle-income purchasers making between 120% and 180% of areawide median income. Buyers who purchase these homes will be restricted by deed restrictions from selling their home for 5 years after purchase, or they will forfeit any accumulated equity. Forfeited accumulated equity shall be transferred to the City of Alameda Affordable Housing Fund for the purpose of funding new affordable housing in Alameda. Prior to issuance of the first building permit or the first Final Map, whichever occurs sooner, Developer shall have received City Manager approval, in its reasonable discretion, of an Affordable Housing Agreement which is consistent with the requirements of this Master Plan and in a form acceptable to the City Attorney. The Affordable Housing Agreement shall establish procedures for implementing the sales process and 5-year sale restriction for the “missing middle” units.

h. **Universal Design.** Developer shall ensure that at least 50% of the units constructed meet the visitability and universal design requirements contained in the City’s Universal Design ordinance, AMC Section 30-18.

i. **Labor Peace Agreement.** The City of Alameda has adopted a project stabilization agreement (“PSA”) requirement for certain construction projects to ensure labor peace for critical projects. See City of Alameda Resolution No. 15740. To fulfill the Developer’s obligations as set forth in Resolution No. 15740, Developer shall execute an agreement to provide for labor peace, which will apply to all or a portion of the property as mutually agreed to by Developer and Building Trades Council of Alameda County, generally consistent with the standards set forth in Resolution No. 15740 or as otherwise exempted from this PSA requirement by the City, through a subsequent act of the Alameda City Council. No construction work may commence until such a labor peace agreement has been executed or an exemption has been granted by the City.

j. **Reimbursement for City Expenses.** Developer shall reimburse City for all of its costs related to the pursuit of the Tidelands Exchange and all permits and activities necessary to support the development of the Property by the Developer, including, without limitation, all costs owed under that certain reimbursement agreement between Developer and City dated October 8, 2020 (“**Reimbursement Agreement**”).

k. **Environmental Mitigation Measures.** Developer shall be responsible for implementing all environmental mitigations required by the Encinal Terminals Master Plan Mitigation Monitoring and Reporting Program attached as Exhibit E.

7. **City Obligations**

a. **Public Trust Exchange.** City agrees to work in good faith to execute the State Exchange Agreement with the State of California within 24 months of the Effective Date.

b. **Assessment District(s).** Subject to Developer’s compliance with all applicable laws, including, but not limited to, any required vote of affected property owners, and further subject to reimbursement by Developer of all costs borne by City to establish a CFD, GHAD, and/or similar financing district (“**Assessment District**”), City shall cooperate with Developer in the establishment of an Assessment District and/or a similar financing mechanism for the construction and maintenance of future improvements on Public Trust Lands. Nothing in this paragraph shall be construed as relieving Developer from (1) its

obligation to construct and maintain improvements on Public Trust Lands in the event that an Assessment District or other financing mechanism is insufficient to fully fund the cost of constructing and maintaining the improvements, or (2) in the event this Agreement terminates for failure to successfully establish such Assessment District or other financing mechanism, or as otherwise provided in this Agreement, its obligation to maintain any improvements constructed prior to termination.

- c. **Universal Design.** City agrees to approve the necessary waivers to allow a 50% reduction in the 100% visitability requirement of the Universal Design ordinance, AMC Section 30-18.
- d. **Grants.** City agrees to support grants for the funding of public facilities that may be required by the Project Approvals or apply for grants as otherwise required by agreement between the Parties, unless those grants would compete against other grant applications that the City deems to be of higher importance.
- e. **Timely Review.** City shall reasonably cooperate with Developer to facilitate prompt and timely review and processing of applications for Subsequent Approvals, including the timely provision of notice and scheduling of all required public hearings, and processing and checking of all maps, plans, permits, building plans and specifications and other plans relating to development of the Project filed by Developer, subject in all events to Developer's satisfaction of the conditions for obtaining such approvals as set forth in the Project Approvals, including without limitation the completion of the required public improvements in accordance with the Tidelands Exchange Master Plan phasing plan and schedule.
- f. **Processing During Third Party Litigation.** Subject to Developer's rights to tolling under applicable laws, the filing of any third party lawsuit(s) against City or Developer relating to this Development Agreement, the Project Approvals, Subsequent Approvals, or any other action taken in furtherance of the Project, including actions related to the Property outside the control of City or Developer, shall not delay or stop the development, processing, or construction of the Project or the issuance of Subsequent Approvals, unless the third party obtains a court order preventing the activity. To the extent such third-party litigation results in a court order that delays or stops the development, processing, or construction of the Project, the Term of this Development Agreement and any Project Approvals affected by such litigation shall be extended by the period of such delay.

8. **Development of the Property.**

- a. **Vested Development Rights.** The Property is hereby made subject to the provisions of this Development Agreement. All development of or on the Property, or any portion thereof, shall be undertaken only in compliance with the Project Approvals, Applicable Law and the provisions of this Development Agreement. For the Term of this Development Agreement, Developer shall have a vested right to develop the Property in accordance with the Project Approvals, Applicable Law and this Development Agreement. The Project shall be subject to all Subsequent Approvals (which, upon final approval, shall be deemed part of the Project Approvals hereunder).
- b. **Public Trust Lands.** With respect to property to be held by City subject to the Public Trust, no provision of this Agreement is intended to limit or restrict City with respect to its use, management or lease of such lands or to restrict its authority with respect to such lands as necessary to comply with the City's Public Trust obligations. Nothing in this Agreement shall be construed as vesting any rights in Developer to develop or use any portion of the City

Parcel to be conveyed to Developer until such portion has been conveyed to Developer free of the Public Trust in accordance with the State Exchange Agreement and the DDA.

- c. **Future Marina on Public Trust Lands.** If City considers any proposals to construct, operate and maintain a marina on submerged lands within Alaska Basin and adjacent to the project site, City will reasonably coordinate with Developer for the purpose of reducing potential conflicts with the Project and Project development.
- d. **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property ("**Applicable Law**") shall be those set forth in (1) the Project Approvals, including this Development Agreement, and (2) those laws, rules, regulations, official policies, standards and specifications adopted by the City, governing development, permitted uses, building locations, timing of construction, densities, design, heights, fees and exactions ("**City Laws**") that are in force and effect on the Effective Date to the extent not inconsistent with Project Approvals, including without limitation the General Plan and Planning and Zoning Code requirements in effect on the Effective Date. Changes to City Laws after the Effective Date that are Conflicting City Enactments as defined in Section 8.k shall not apply to the Project.
 - i. Notwithstanding the foregoing, Applicable Law shall include the following City Laws as they exist at the time they are applied to the Project and not as they existed on the Effective Date:
 - (1) City Laws applicable citywide that are necessary to protect persons from a condition dangerous to their health or safety;
 - (2) If any subsequent environmental review is required for the Project, any mitigation measures required as part of that review;
 - (3) City Laws that are:
 - A. Specifically mandated by or necessary to comply with state or federal law, or mandated by any regional governmental agency that has legal authority over City under state law or a joint powers agreement; or
 - B. A result of or in response to state or federal law, or regional agency action, and necessary for City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to City only if it enacts the new or changed City Law; or
 - C. Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization for the Project issued by any federal, state or regional agency.
 - (4) Any requirements contained in the California Building Standards Code, as amended by City in accordance with the Health and Safety Code, including requirements of the City of Alameda Building and Housing Code, Fire Code, Sewer and Water Code, Energy Code, Green Building Code, or other uniform construction codes.

ii. Nothing in this Development Agreement shall limit the application of any of the following laws or other requirements, regardless of whether the law or other requirement is in effect on the Effective Date: (A) any state or federal law; (B) any requirement of any public agency other than City; or (C) any laws, rules, regulations, official policies, standards and specifications adopted by the City that do not govern development, permitted uses, building locations, timing of construction, densities, design, heights, fees or exactions.

b. **Outside Agency Fees.** The term “**Outside Agency Fees**” shall mean monetary fees or impact fee requirements imposed on the Project by the Alameda Unified School District, the State of California, or any political subdivision of the State except City. Notwithstanding anything to the contrary in this Development Agreement, the Outside Agency Fees for the Project shall be calculated based on the fee schedules and other fee requirements in effect at the time the fees are due, whether or not the fees are collected by City on behalf of the outside agency.

c. **Impact Fees.** The term “**Impact Fees**” shall mean monetary fees, development impact fees, exactions, impositions, special taxes or assessments, established for or imposed upon the Project individually or as a class of projects, that are imposed by City on the Project in connection with any Project Approval (including Subsequent Approvals) for covering the Project’s fair share cost of constructing public facilities; and/or improvement, operation, and maintenance attributable to the burden created by the Project. The Project and any Subsequent Project Approval shall be subject to the specific Impact Fees (including the applicable inflator, if any) that are in effect as of the Effective Date, and the City shall not impose any new Impact Fees on the Project or any Subsequent Project Approval (excepting any Assessment District established pursuant to Section 7.b) for the Term of this Agreement. The base year for any Impact Fee inflator shall be 2021. Developer shall not receive any protection from rate escalators or rate increases established by ordinance as of the Effective Date. Notwithstanding the foregoing, applications for Project Approvals shall be subject to processing fees then in effect charged for the purpose of allowing the City to recover its actual and reasonable costs for processing such approvals.

i. In consideration of Developer’s agreement to construct and maintain in perpetuity 4.5 acres of public parks on public land and all associated public access and public roads to those public waterfront parks; and whereas those public parks will be available to the public during the same hours of the day as all other City park lands; and whereas the public’s right of access is assured because the parks will be on land dedicated to the City in trust for the people of the State of California, and whereas Developer has agreed to maintain the entirety of the Project open spaces, streets, and other public facilities in perpetuity such that there will be no cost to the City to provide these municipal services generated by the development of the property, which is a cost of development not otherwise required by the subdivision regulations, City agrees that the Project shall be exempt from the obligation to pay the Improvement Tax in accordance with Alameda Municipal Code Section 3-62.

ii. The rules and regulations for application of Development Impact Fees per AMC Section 27-3 (adopted July 16, 2019) shall apply, as follows:

a. Each market rate residential unit will be assessed Development Impact Fees at a rate of \$1,735 per unit for Transportation, \$5,921 per unit for Parks, \$1,092 for General

Public Facilities and \$1,688 per unit for Public Safety. Deed restricted affordable housing units shall not be assessed Development Impact Fees.

- b. Nonresidential Development Impact Fees for Retail shall be assessed at the following rates: \$4,186 per 1,000 sf for Transportation, \$303 per 1,000 sf for General Public Facilities and \$469 per 1,000 sf for Public Safety.
- c. Nonresidential Development Impact Fees for Office/Commercial shall be assessed at the following rates: \$4,119 per 1,000 sf for Transportation, \$554 per 1,000 sf for General Public Facilities and \$861 per 1,000 sf for Public Safety.
- d. These fees listed above are in effect in Base Year 2021 and shall be adjusted annually by the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-Hayward area.
- e. Should the fee(s) in place at the time of the application for building permit(s) be less than the fees on this schedule, or should any of the fees on this schedule no longer exist at the time of the application for building permit(s), the developer may elect to pay the lesser.
- f. Pursuant to Alameda Municipal Code Section 27-3.12, all deed restricted affordable housing units shall be exempt from Development Impact Fees, and pursuant to Sections 27-3.7 and 27-3.8, the Project may be eligible for fee credits and/or waivers.

d. **Life of Project Approvals.** The term of Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals, provided however, that the terms of use permits, design review, building permits and variances shall be the time period permitted by Applicable Law.

e. **Subsequent Project Approvals.** Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Approvals, as defined herein. In connection with any Subsequent Approval, City shall conduct its review and exercise its discretion in accordance with Applicable Law, the Project Approvals (including the Tidelands Exchange Master Plan), and as provided by this Development Agreement.

f. **Vesting Tentative Maps.** If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting tentative map under the Subdivision Map Act, and if this Agreement is determined by a final judgment to be invalid or unenforceable that insofar as it grants a vested right to Developer for development of the Project, such judgment shall not terminate the rights and protections afforded Developer under the laws and ordinances applicable to vesting tentative maps.

g. **Developer's Right to Rebuild.** City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term of this Development Agreement should it become necessary due to natural disaster or other casualty, or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Development Agreement, and shall comply with the Project Approvals and/or Applicable Law.

h. **Conflicting City Enactments.** For purposes of this Development Agreement, the term “Conflicting City Enactment” means a new or amended City Law that is enacted or amended after the Effective Date and conflicts with the Project Approvals or reduces the development rights or assurances provided by this Development Agreement. For the Term of this Agreement, and except as provided in Section 8.d.ii, the City shall not apply a Conflicting City Enactment to the Project or the Subsequent Approvals. Without limiting the generality of the foregoing, a City Law enacted or amended after the Effective Date of this Agreement shall be deemed to conflict with this Agreement or reduce the development rights or assurances provided hereby if it would cause any of the following to occur if applied to the Project:

- i. Limit or reduce the number of residential units or other building types permitted to be developed on the Property;
- ii. Limit or reduce the square footage of residential, commercial, or other development permitted to be developed on the Property;
- iii. Limit or reduce the height, bulk, massing, or other intensity of the Project or of any building within the Project;
- iv. Change any land use designation or permitted use of the Property unless otherwise authorized by the Project Approvals;
- v. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- vi. Materially change, limit, or control the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals, Applicable Law or this Agreement;
- vii. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Development Agreement, Applicable Law or the Project Approvals; or
- viii. Impose on the Project or Developer any fees or exactions other than those permitted by this Agreement, Applicable Law or the Project Approvals.

i. **Developer Right to Apply Future Changes.** Developer shall have the right to elect, with the consent of the City in its sole and absolute discretion, to have future changes to Applicable Law that conflict with this Development Agreement apply to the Project, in which case, such future change to Applicable Law shall be deemed an Applicable Law.

j. **Compliance with Applicable Federal and State Laws.** Developer shall comply, at no cost to City, with all applicable federal and state laws relating to the Project or the use, occupancy or development of the Property under this Development Agreement. Pursuant to Section 65869.5 of the Development Agreement Legislation, in the event that state or federal laws or regulations enacted after the Effective Date preclude or prevent compliance with one or more provisions of this Development Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

k. **Other Government Permits, Fees and Approvals.** City shall reasonably cooperate with Developer in Developer's efforts to obtain permits and approvals from other governmental or quasi-governmental entities for work performed on lands owned (or to be owned) by City, to the extent City's participation is necessary and is permitted by law; provided that Developer shall reimburse City for its costs and expenses incurred in connection with such efforts, including without limitation City staff time and outside consultant and legal fees.

9. **Initiatives and Referenda.** To the extent authorized by law, if any City Law enacted or imposed by a citizen-sponsored initiative is a Conflicting City Enactment, such City Law shall not apply to the Property or Project during the Term.

10. **Annual Review.** Developer shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date requesting an annual review of the Agreement ("**Annual Review**"). The periodic review of the Development Agreement shall be made at least every twelve (12) months, consistent with Government Code section 65865.1 and Alameda Municipal Code Section 30-95. At least thirty (30) days prior to each anniversary of the Effective Date during the Term of this Agreement, Developer shall submit a written report to City outlining its efforts toward good faith compliance with the terms of this Agreement. Notwithstanding any other provision of this Agreement, if the Planning Board finds and determines on the basis of substantial evidence that Developer has not complied in good faith with the terms and conditions of the Agreement during the period under review, the Planning Board shall forward its recommendations to the City Council and the Council may modify or terminate this Agreement in accordance with AMC Section 30-95.2.

11. **Extensions of Time.** Without further action by the City Council, the City Manager shall have the authority, but not the obligation, in his or her sole and absolute discretion, to extend or adjust the deadline for Developer to complete any obligation under this Development Agreement (except extending the Term of the Development Agreement) for up to one (1) year, upon any terms or conditions he or she deems appropriate, if she or he believes the Developer has made a good faith effort to meet the deadline and the additional time is necessary to accommodate delays that were not the result of actions by the Developer.

12. **Transfer and Assignment.** "**Transfer**" shall be defined as the sale, conveyance, transfer, ground lease or assignment of Developer's interest in the Property or any portion thereof ("**Transferred Property**") to another party (including a joint venture or partnership) ("**Transferee**"), but excepting any conveyances made pursuant to the State Exchange Agreement. No Transfer shall require the amendment of this Development Agreement, provided that such Transfer is completed in conformance with the following requirements:

a. **Right to Transfer Property.** A Transfer shall be permitted, provided (1) Developer concurrently assigns to the Transferee, and Transferee assumes, all of Developer's rights and obligations under this Agreement and the Project Approvals (including, without limitation, the Affordable Housing Agreement) with respect to the Transferred Property, (2) the Transfer is permitted under the DDA, (3) either the Public Trust Exchange has been completed for all of the Transferred Property, the Transferred Property includes no portion of the Public Trust Lands, or the Transferred Property is conveyed to a single Transferee and includes all of Developer's remaining interest in the Property; and (4) the City has given its prior written consent in accordance with Section 12.c. At least 30 days prior to a Transfer, Developer shall (i) notify City in writing of such Transfer; and (ii) provide the City a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

b. **Permitted Transfers.** Notwithstanding the foregoing, the following Transfers of interests in the Property shall be permitted without the City's consent, but otherwise subject to the requirements of Section 12.a:

- (1) Any Transfer creating a security financing.
- (2) Any Transfer resulting from the foreclosure of a security financing interest or the granting of a deed in lieu of foreclosure of a security financing interest.
- (3) Any Transfers between or among existing members of Developer.
- (4) Any Transfer to a corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with the Developer. For purposes of this paragraph, "control" means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("Affiliated Party").

c. **City Consent.** City's consent to a Transfer shall not be unreasonably withheld, delayed or conditioned. City's decision to withhold consent shall be based upon its determination, in its reasonable discretion, that the Transferee is not qualified to develop the Project or is unable to perform the obligations of Developer under this Development Agreement. Any such consent shall be in a writing signed by the City Manager and approved as to form by the City Attorney.

d. **Assignment and Assumption.** Developer shall not assign its rights or obligations under this Development Agreement except in connection with a Transfer, or as the City may otherwise approve in its sole and absolute discretion. Following an assignment, Developer shall continue to be obligated under this Agreement with respect to (1) all portions of the Property retained by Developer, (2) the construction and maintenance of all infrastructure and other public improvements to be provided by Developer and all other Developer obligations not expressly assigned to and accepted by the Transferee, and (3) any obligation for which a release is not obtained under Section 12.f.

e. **Certificate of Compliance.** Subject to City's written consent as provided in this Section 12, City, upon request of Developer or Transferee, and following compliance with the notification provisions above, shall provide Transferee with a certificate of compliance, stating that, based on the City's actual and present knowledge, this Development Agreement remains valid and in full force and effect and is binding upon City, Developer and Transferee as of the last Annual Review pursuant to the provisions of Section 10, except that if City knows of any non-compliance, City shall not be required to issue a certificate of compliance.

f. **Release of Transferring Developer.** Except with respect to a permitted transfer and assignment under Section 12.b to an Affiliated Party, notwithstanding any Transfer, Developer shall continue to be obligated under this Development Agreement as to all or the portion of the Property so transferred unless City is satisfied the Transferee is fully able to comply with Developer's obligations under this Development Agreement (both financially and otherwise) and City gives Developer a release in writing.

g. **Responsibility for Performance.** Transferee shall be deemed to be "Developer" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. The City is entitled to enforce each and every obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer.

h. **Constructive Notice.** Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property, and to be bound by this Agreement insofar as it pertains to the Transferred Property.

i. **Transfers of Finished Units.** Notwithstanding any other provision hereof to the contrary, Developer may transfer, convey or lease a parcel for which all construction has been completed and received a certificate of occupancy, and this Development Agreement shall terminate as to that parcel only upon transfer, conveyance or lease; provided that such transfer shall not affect Developer's obligations under this Development Agreement.

13. **Mortgagee Protection.** This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Development Agreement, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

a. **Mortgagee Not Obligated.** Notwithstanding the foregoing, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the Project, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property or any portion thereof to any use except in full compliance with Developer's obligations under this Agreement and the Project Approvals, nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Property from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself.

b. **Notice of Default to Mortgagee.** If City receives a notice from a Mortgagee requesting a copy of any notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of Default, and if City makes a determination of noncompliance hereunder, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each

Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any Default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

14. **Estoppel Certificate.** Within thirty (30) days of a written request, either Party shall execute an estoppel certificate in writing that, to the actual, present knowledge of the responding Party as of the last Annual Review: (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (c) the requesting Party is not in material Default in the performance of its obligations under this Agreement, or if in material Default, describe the nature and amount of any such material Default.

15. **Remedies for Default.** If a Party is in Default under this Development Agreement, it may pursue one or more of the following courses of action after thirty (30) days' prior written notice to the other Party:

a. **Breach.** The failure by a Party to timely perform any obligation under this Development Agreement shall constitute a breach of this Agreement. In the event of alleged breach of any terms, or obligations under this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("**Cure Period**") to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days (or ten (10) days in the case of an obligation to make a payment), the breaching Party shall, within a thirty (30) day period (or ten (10) day period in the case of an obligation to make a payment) following notice from the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances ("**Extended Cure Period**"); commence to cure such breach; and proceed diligently to cure such breach. The Extended Cure Period shall in no event exceed one hundred twenty (120) days unless otherwise agreed by the Parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in Default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 15.c shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege that breach or any other breach at any other time.

b. **Default.** If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default ("**Default**"), and the non-breaching Party, at its option, may institute legal proceedings or otherwise avail itself of the remedies set forth in Sections 15. d below.

c. **Withholding of Permits.** In the event that the City issues a notice of breach to a Developer, City Manager shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Development Agreement until such time as the breach is determined to be cured by the City or by a final, non-appealable court order. This remedy is in addition to and shall not limit any actions that City may take to

enforce the conditions of the Project Approvals. This remedy shall be enforceable against a Transferee, regardless of whether the Transferee is responsible for the breach.

d. **Additional Remedies.**

i. **Additional Developer Remedies.** City and Developer agree that in the event of Default by City, the Parties intend that the primary remedy for Developer shall be specific performance of this Agreement. If City is in Default, Developer may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (excluding monetary damages) consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. The Parties further acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages (including but not limited to actual, consequential, punitive or special damages) or attorney's fees against the City for breach of this Agreement.

ii. **Termination by Developer.** In the event of a Default by City, the Developer shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to City of its intent to terminate.

iii. **Termination by City.** In the event of a Default by Developer, the City, through its City Manager, shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to Developer. The Developer may appeal a decision by the City Manager to terminate the Development Agreement to the City Council by providing written notice of the appeal to the City Manager, with a copy to the City Clerk and City Attorney, within ten (10) days of receipt of the Notice of Termination. The City Clerk shall schedule the appeal at the next available regularly scheduled City Council meeting, but not less than three regularly scheduled meetings from the date of the Appeal.

iv. **Additional City Remedies.** Developer acknowledges and agrees that the Property is unique, that City's remedy at law for Developer's Default is inadequate, that Developer's obligations under this Agreement are sufficiently clear and specifically enforceable, that there is adequate consideration for specific performance, and that the terms of this Agreement are just and reasonable. Accordingly, Developer agrees that in the event of Default by Developer, the City, without the necessity to prove the foregoing, may bring an action for specific performance of this Agreement. If Developer is in Default, City, in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any Default, to compel specific performance of the Developers' obligations, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (subject to the limitation on monetary damages described below) consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. If City issues an Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

v. **Limited City Damages Remedy.** The City agrees that Developer shall not be liable to the City for damages under this Agreement and expressly waives its right to recover damages from Developer under this Agreement, except as follows: (1) City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for Developer's failure to pay sums to the City as and when due under this Agreement, and (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement.

16. **Indemnification.** To the maximum extent permitted by law, Developer shall defend, indemnify, release and hold harmless City and its elected and appointed officials and employees (the "**Indemnified Parties**") from and against any Indemnified Claim. "**Indemnified Claim**" means any litigation, claim, action, court proceeding, loss, damage, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines brought against any of the Indemnified Parties, arising directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Project Approval (iii) the failure of any improvements constructed pursuant to the Project Approvals to comply with any Applicable Laws (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Property in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Project Approvals or this Agreement, (v) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, (vi) any claim relating to the Public Trust Exchange Agreement, including any claim by the State against the City relating to the condition of the property transferred to the State, (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Property relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee, and (viii) any action to attack, set aside, void or annul this Agreement, any Project Approvals, or any portions thereof on any grounds, or which arises out of or in connection with this Development Agreement, including the approval of or enforcement of this Agreement, the development of the Project, or any actions undertaken to implement any of the Project Approvals. City shall retain the right to approve legal counsel selected by Developer to defend City against an Indemnified Claim, which approval shall not be unreasonably withheld. Developer will reimburse the Indemnified Parties, within thirty (30) days of receiving copies of invoices evidencing that such costs have been incurred, for the reasonable attorney's fees, expert witness fees, and related costs as the Indemnified Parties may incur in connection with their retention of outside counsel. City shall retain the final right to approve any and all settlements proposed by Developer. Developer's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

17. **Attorney's Fees.** If one of the Parties brings legal action against the other to enforce or defend a provision of this Development Agreement, the parties shall bear their own costs and fees, including attorney's fees, regardless of who prevails.

18. **Third Party Legal Action; Attorney's Fees.** If City chooses to defend any third party claim or suit challenging any action taken by City with regard to any procedure or aspect of City's approval of the development of the Project, including the environmental review process, Developer agrees to reimburse City for attorney's fees, expert witness fees, and related costs as City may incur in connection with its retention of outside counsel, and for any award of damages, court costs or fees against City. City has the right to choose and retain such legal counsel as City deems appropriate.

19. **Provisions that Survive Termination of this Development Agreement.** It is expressly agreed by the Parties that the following provisions survive the termination or expiration of this Development

Agreement, together with any definitions or other general provisions necessary to effectuate the rights and obligations set forth therein:

Section 6.c – Construction and Maintenance of Public Lands

Section 15 – Remedies for Default

Section 16 – Indemnification

Section 17 – Attorney's Fees, and

Section 18 – Third Party Legal Action; Attorney's Fees.

20. **Waiver of Claims.** Developer consents to, and waives any rights it may have now or in the future, to challenge the legal validity of the application of Applicable Law to the Project or the Property, or of any conditions or requirements imposed on Developer by the Project Approvals, including, without limitation, any claim that such terms and conditions constitute an abuse of discretion, are not within the police power, violate substantive or procedural due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

21. **Severability.** If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

22. **Recordation; Binding Effect.** This Agreement shall be recorded in the Official Records and shall be binding upon and inure to the benefit of successors in interest to the Parties. Where there is more than one Developer, the obligations are joint and several.

23. **Binding Effect; Covenants to Run with the Land.** This Development Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no transfer of rights or obligations under this Development Agreement except as permitted in Section 12, and in no event shall any property transferred to the State or the City pursuant to the State Exchange Agreement transfer to or impose on the State or the City any obligations of Developer under this Agreement, or release Developer from any such obligations. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any heir, administrator, executor, successor in interest, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law. Where there is more than one Developer, the obligations of Developer are joint and several.

24. **Successors and Assigns.** Subject to the provisions of Section 12 relating to Transfer, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of City, Developer and their respective successors and assigns; provided, however, that the City shall have no obligation under this Agreement to, nor shall any benefit of this Agreement accrue to, any unapproved successor or assign of Developer where City approval of a successor or assign is required by this Agreement.

25. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel of their own choosing. No Party shall be considered the drafter of this Development Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Development Agreement.

26. **Integration.** This Agreement constitutes in full the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by Developer and the City Manager and shall be approved as to form by the City Attorney.
27. **No Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
28. **Non-Liability of Officials, Employees and Agents.** No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Developer, or any successor or interest, in the event of a City Default.
29. **Parties Not Co-Venturers.** Nothing in this Development Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.
30. **Time of the Essence.** Time is of the essence in this Development Agreement. All reference to days shall mean calendar days unless otherwise noted. All references to year shall mean calendar year unless otherwise noted.
31. **Force Majeure.** Each milestone or deadline in the applicable Milestone Schedule shall be extended by one day for each day that the accomplishment of the milestone or deadline is delayed by Force Majeure. Force Majeure shall mean any of the following events that cause delay beyond the reasonable control of the Party claiming Force Majeure: strikes, lockouts or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions and any government orders connected thereto; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; a development moratorium, as defined in section 66452.6(f) of the California Government Code; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement. The Party claiming Force Majeure shall use good faith efforts to notify the other Party in writing of the Force Majeure event and the claimed extension right within 15 days after the first occurrence of the Force Majeure event.
32. **Applicable Law and Venue.** This Development Agreement shall be interpreted, construed and enforced with the laws of the State of California. All rights and obligations of the Parties under this Development Agreement are to be performed in the City of Alameda in the County of Alameda and such county shall be the venue for any legal action or proceeding that may arise out of or be brought in connection with or by reason of this Development Agreement.
33. **Signature in Counterparts.** This Development Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.
34. **Prevailing Wages.** If required by State law and Alameda Municipal Code Section 2-67, Developer agrees to comply with California Labor Code Section 1770 et seq. regarding the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements for any work on the Project.
35. **Notices.** The address of each Party for the purpose of all notices permitted or required by this Development Agreement is as follows:

To City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Developer: North Waterfront Cove LLC
3500 Douglas Boulevard
Roseville, CA 95661
Attn: Tim Lewis

With a copy to: Tim Lewis Communities
12667 Alcosta Boulevard, Suite 170
San Ramon, CA 94583
Attn: Michael S. O'Hara

With a copy to: Buchalter, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra

The written address of either party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

36. **Amendments.** The Agreement may be amended by the Parties, upon mutual agreement, consistent with the procedures set forth in Government Code section 65868 and Alameda Municipal Code Section 30-94.3. Except as may otherwise be required by law or court order, all amendments to this Agreement shall be approved by the City Council, and shall be: (i) in writing; (ii) approved by the City Council in its sole discretion, by ordinance, at a public meeting; (iii) signed by both Parties; and (iv) entitled "Development Agreement – Encinal Terminals Project, Amendment N" where "N" is the next number in order.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

NORTH WATERFRONT COVE LLC, a Delaware limited liability company

By: MARINA VIEW L.P., a California limited partnership
Its: Managing Member

By: TL MANAGEMENT, INC., a California Corporation
Its: General Partner

By: SIGNED IN COUNTERPART
JAY TIMOTHY LEWIS
Its: President

(Notary Acknowledgment Required)

Date: 4.11.2022

CITY

CITY OF ALAMEDA, a municipal corporation and California charter city

By: [Signature]
Gerry Beaudin, Assistant City Manager

Date: 4.21.2022

Attest:

[Signature]
Lara Weisiger, City Clerk

Recommended for Approval:

[Signature]
Andrew Thomas, Planning, Building and Transportation Director

Approved as to Form:

[Signature]
Celena H. Chen, Assistant City Attorney

Authorized by City of Alameda Ordinance No. 3313 N.S.

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

NORTH WATERFRONT COVE LLC, a Delaware limited liability company

By: MARINA VIEW L.P., a California limited partnership
Its: Managing Member

By: TL MANAGEMENT, INC., a California Corporation
Its: General Partner

By: 
JAY TIMOTHY LEWIS
Its: President

(Notary Acknowledgment Required)

Date: April 11, 2022

CITY

CITY OF ALAMEDA, a municipal corporation and California charter city

By: _____
Gerry Beaudin, Assistant City Manager

Date: _____

Attest:

Lara Weisiger, City Clerk

Recommended for Approval:

Andrew Thomas, Planning, Building and Transportation Director

Approved as to Form:

Celena H. Chen, Assistant City Attorney

Authorized by City of Alameda Ordinance No. 3313 N.S.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda)

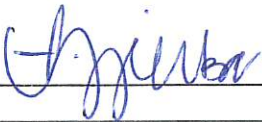
On Apr. 21, 2022 before me, Ashley Zieba, Notary Public
(insert name and title of the officer)

personally appeared Gerry Beaudin,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

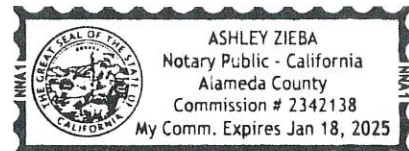
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGEMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Placer)

On April 11, 2022, before me, Lisa L. Shearon, a Notary Public, personally appeared Jay Timothy Lewis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Lisa L. Shearon



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Acknowledgement

Exhibits:

- A. Encinal Terminals Parcel – Legal Description**
- B. City Parcel – Legal Description**
- C. Pre- and Post-Exchange Property Lines**
- D. Affordable Housing Agreement Form**
- E. Mitigation Monitoring and Reporting Program**

EXHIBIT A

Encinal Terminals Parcel – Legal Description

PARCEL A:

A PORTION OF PARCEL 2 AS DESIGNATED ON PARCEL MAP NO. 2938, FILED JULY 19, 1983, BOOK 138 OF PARCEL MAPS, PAGES 76 TO 80 INCLUSIVE, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL 2 (138 PM 76); THENCE ALONG BOUNDARY OF SAID PARCEL 2 SOUTH 53° 51' 53" EAST, 127.66 FEET AND NORTH 68° 31' 35" EAST, 118.76 FEET TO THE POINT OF BEGINNING TO THE PARCEL TO BE DESCRIBED:

THENCE FROM SAID POINT OF BEGINNING ALONG THE BOUNDARY OF SAID PARCEL 2 (138 PM 76) THE FOLLOWING EIGHTEEN (18) COURSES: NORTH 68° 31' 35" EAST, 160.65 FEET, NORTH 88° 01' 35" EAST, 387.89 FEET; SOUTH 45° 23' 25" EAST, 366.65 FEET; SOUTH 30° 40' 44" WEST, 282.22 FEET; SOUTH 59° 19' 16" EAST, 143.14 FEET; SOUTH 30° 40' 44" WEST, 275.79 FEET; SOUTH 69° 09' 35" WEST, 489.88 FEET; NORTH 64° 20' 25" WEST, 283.80 FEET; SOUTH 7° 35' 25" EAST, 264.00 FEET; SOUTH 21° 09' 35" WEST, 323.40 FEET; SOUTH 77° 20' 25" EAST, 389.66 FEET; SOUTH 30° 40' 44" WEST, 34.71 FEET; SOUTH 7° 15' WEST, 60.00 FEET; NORTH 82° 45' WEST, 15.00 FEET; SOUTH 7° 15' WEST, 210.26 FEET; NORTH 67° 08' WEST, 34.01 FEET; SOUTH 26° 15' WEST, 14.85 FEET AND NORTH 76° 59' WEST, 49.27 FEET; THENCE NORTH 8° 53' EAST, 14.40 FEET, NORTH 41° 37' WEST, 19.24 FEET, NORTH 57° 38' WEST, 19.00 FEET, NORTH 62° 49' WEST, 19.34 FEET, NORTH 40° 12' WEST 38.12 FEET, NORTH 35° 33' WEST, 59.86 FEET, NORTH 4° 56' WEST, 19.65 FEET, NORTH 7° 09' EAST, 51.73 FEET, NORTH 82° 51' WEST, 119.72 FEET, SOUTH 7° 09' WEST, 82.60 FEET, SOUTH 32° 43' EAST, 12.50 FEET, NORTH 88° 39' WEST, 39.90 FEET, NORTH 80° 35' WEST, 11.59 FEET, NORTH 7° 14' 18" EAST, 1614.67 FEET TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING ALL OF THAT PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136981, AND THE EASTERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136980, ALL DOCUMENTS BEING OFFICIAL RECORDS AT THE OFFICE OF THE RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF THE PARCEL DESCRIBED IN SAID GRANT DEED RECORDED AS DOCUMENT NUMBER 96-136980, SAID CORNER ALSO BEING THE MOST SOUTHEASTERLY CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA; THENCE ALONG SAID WESTERLY LINE NORTH 4° 16' 11" EAST, A DISTANCE OF 1721.74 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL THE FOLLOWING FOUR COURSES:

1. SOUTH 41° 13' 49" EAST, A DISTANCE OF 295.87 FEET;
2. SOUTH 53° 15' 31" EAST, A DISTANCE OF 310.00 FEET TO THE TRUE POINT OF BEGINNING;
3. SOUTH 53° 15' 31" EAST, A DISTANCE OF 127.66 FEET TO AN ANGLE POINT;
4. NORTH 68° 31' 35" EAST, A DISTANCE OF 118.76 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL SOUTH 7° 14' 18" WEST, A DISTANCE OF 1592.93 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 82° 45' 42" WEST, A DISTANCE OF 26.06 FEET; THENCE NORTH 9° 27' 09" EAST, A DISTANCE OF 3.12 FEET; THENCE NORTH 80° 32' 51" WEST, A DISTANCE OF 108.02 FEET; THENCE NORTH 80° 53' 01" WEST, A DISTANCE OF 24.97 FEET; THENCE NORTH 5° 12' 24" EAST, A DISTANCE OF 1591.64 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C:

BEING A SINGLE PARCEL OF LAND, COMPRISED OF THE FOLLOWING:

BEING ALL OF PARCEL C AND PARCEL C-1, AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JANUARY 24, 2013, IN DOCUMENT NO. 2013-032813 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

TOGETHER THEREWITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEING A PORTION OF NEW PARCEL C, AS SAID NEW PARCEL C IS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JULY 21, 2017, IN DOCUMENT NO. 2017-159868 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY NORTHEASTERN CORNER OF SAID NEW PARCEL C;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE EASTERN LINE OF SAID NEW PARCEL C, SOUTH 07°14'18" WEST 45.80 FEET TO THE SOUTHEASTERN CORNER OF SAID NEW PARCEL C;

THENCE, FROM SAID SOUTHEASTERN CORNER OF NEW PARCEL C, ALONG THE SOUTHERN LINE OF SAID NEW PARCEL C, THE FOLLOWING SIX (6) COURSES:

- 1) NORTH 80°48'36" WEST 47.84 FEET,
- 2) NORTH 80°43'03" WEST 119.82 FEET,
- 3) NORTH 80°34'01" WEST 100.75 FEET,
- 4) ALONG THE ARC OF A TANGENT 490.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 15°14'33" AND AN ARC DISTANCE OF 130.49 FEET,
- 5) NORTH 65°19'28" WEST 162.94 FEET AND
- 6) ALONG THE ARC OF A TANGENT 420.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 11°47'13" AND AN ARC DISTANCE OF 86.50 FEET;

THENCE, LEAVING SAID SOUTHERN LINE, NORTH 04°16'11" EAST 4.52 FEET TO A POINT ON THE NORTHERN LINE OF SAID NEW PARCEL C;

THENCE, ALONG SAID NORTHERN LINE OF NEW PARCEL C, THE FOLLOWING TEN (10) COURSES:

1) ALONG THE ARC OF A NON-TANGENT 485.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 40°39'43" EAST, THROUGH A CENTRAL ANGLE OF 04°31'18" AND AN ARC DISTANCE OF 38.28 FEET,

2) ALONG THE ARC OF A NON-TANGENT 419.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 31°33'35" EAST, THROUGH A CENTRAL ANGLE OF 06°53'03" AND AN ARC DISTANCE OF 50.40 FEET,

3) SOUTH 65°19'28" EAST 126.17 FEET,

4) ALONG THE ARC OF A NON-TANGENT 485.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 15°10'29" EAST, THROUGH A CENTRAL ANGLE OF 05°04'45" AND AN ARC DISTANCE OF 43.00 FEET,

5) SOUTH 79°54'16" EAST 127.80 FEET,

6) NORTH 09°17'14" EAST 23.74 FEET,

7) SOUTH 80°53'01" EAST 126.13 FEET,

8) SOUTH 80°32'51" EAST 108.02 FEET,

9) SOUTH 09°27'09" WEST 3.12 FEET AND

10) SOUTH 82°45'42" EAST 26.06 FEET TO SAID POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 26, 2018 AS INSTRUMENT NO. 2018207425 OF OFFICIAL RECORDS.

PARCEL D:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR UTILITIES AS DESCRIBED ON THAT CERTAIN "DECLARATION OF EASEMENTS" RECORDED ON JUNE 6, 1996 AS DOCUMENT NO. 96136983, AS AMENDED BY THE "AMENDMENT AND SUPPLEMENT TO DECLARATION OF EASEMENTS" RECORDED DECEMBER 28, 2012 AS DOCUMENT NO. 2012432243, OVER THE PORTION OF THE SERVIENT TENEMENT AND THE SUPPLEMENTAL SERVIENT TENEMENT DESCRIBED IN SAID DOCUMENTS LYING WITHIN PARCEL C OF TRACT 7170 FILED FOR RECORD MARCH 2, 2002 IN BOOK 263 OF MAPS, PAGES 52-62, ALAMEDA COUNTY OFFICIAL RECORDS.

APN: 072-0382-002 (Affects Parcel A)

072-0382-001 (Affects Parcel B)

072-0383-003 (Affects a portion of Parcel C)

072-0383-007-01 (Affects a portion of Parcel C and other property)

ORIGINAL MAY BE
VIEWED AT ALAMEDA
COUNTY ASSESSOR'S
OFFICE

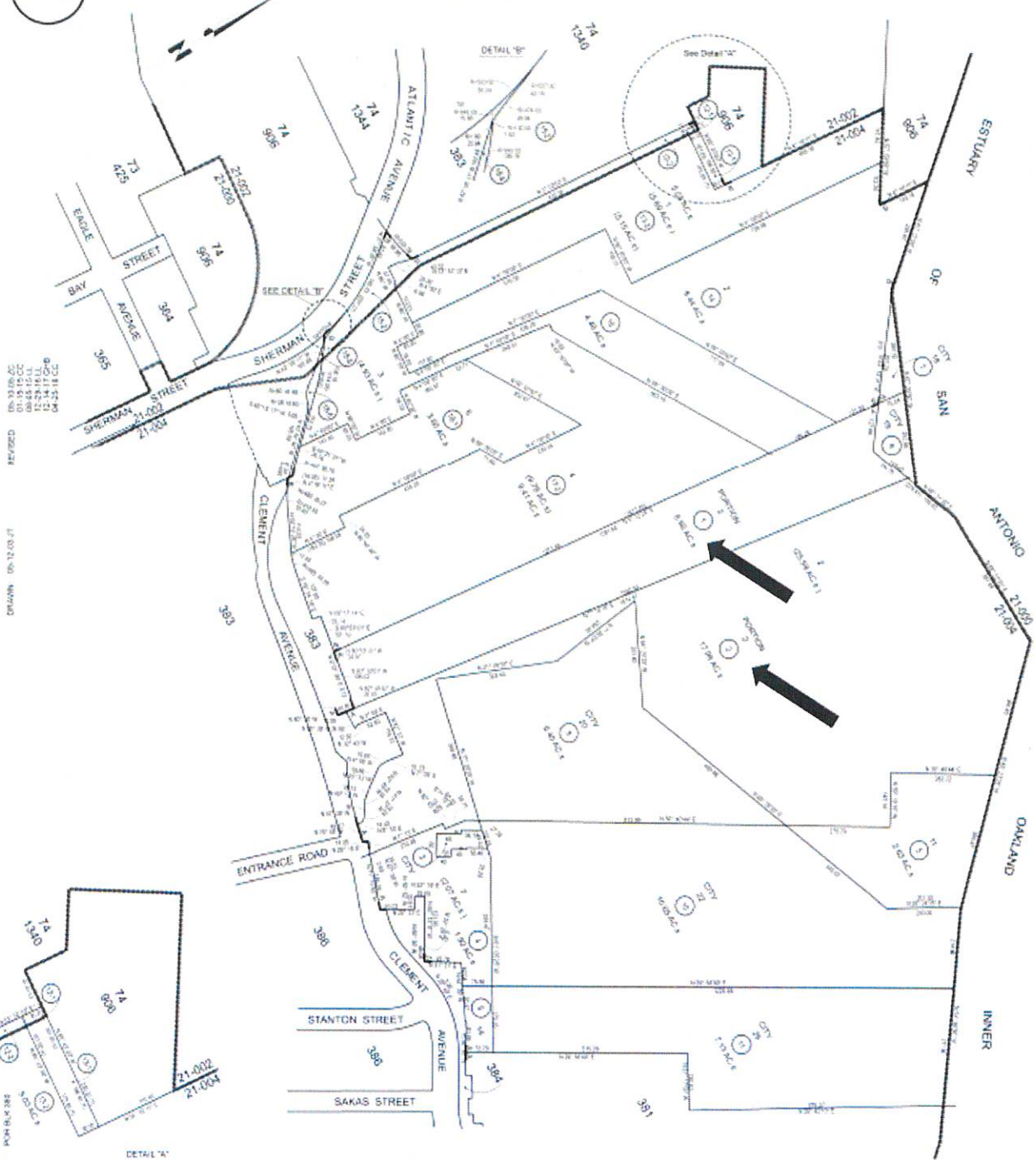
ASSESSOR'S MAP 72

382

SCALE 1" = 200'

Code Area Nos. 21-002 21-004

(A) P.M.2938 1/28/79-80
(B) P.M.7374 2/4/79-21



ASSESSOR'S MAP 72

383

2024年 1月 6日

Code Area Nos.	21-002	21-004
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60 MAP OF 144 LOTS IN PAGE TRACT 60

TAYLOR AND PAGE TRACT 817

(C) P.M.2938 128/00-20 (E) TR. 8254 34371-17

(2) TR.7170 26330-62

07-08-11 2C
02-16-11 2C
08-05-13 1L
12-27-09 1L
04-21-12 G448
04-30-08 2C
04-20-06 2C
04-03-16 0454

NOTES

DUE TO THE FACT THAT THE...

PCRM2PLV: PCRM2PLV2000.2001.2002

ACU

33 35

456

4077 75

InD-PQ.

EXHIBIT B

State Tidelands Parcel – Legal Description

Real property in the City of Alameda , County of Alameda, State of California, described as follows:

PARCEL 20, PARCEL MAP 2938, FILED JULY 19, 1983, MAP BOOK 138, PAGE 76, ALAMEDA COUNTY RECORDS.

APN: 072-0382-009

2024 2023 2022

Exhibit C. Pre- and Post-Exchange Property Lines

Figure 1. Pre-exchange Property Lines

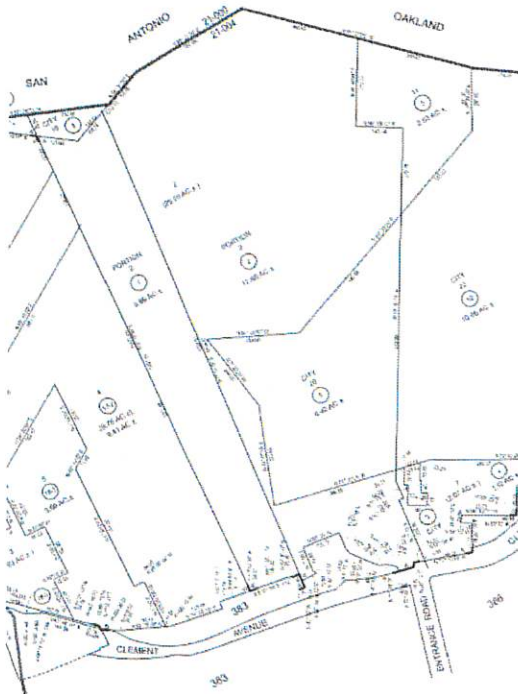
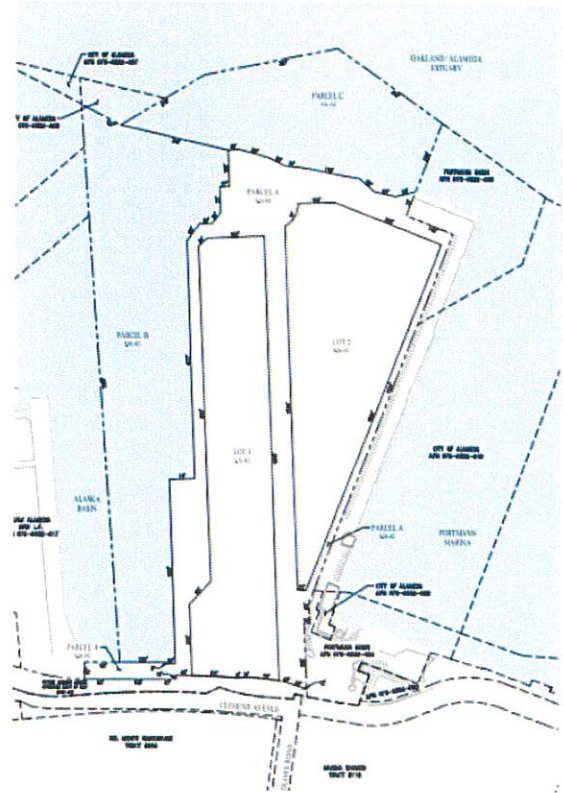


Figure 2. Post-Exchange Property Lines



ORIGINAL MAY BE VIEWED AT ALAMEDA COUNTY
ASSESSORS OFFICE

Exhibit D. Affordable Housing Agreement Form

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, California 94501-7558
Attention: Community Development Director

(Space above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

AFFORDABLE HOUSING AGREEMENT

**Alameda Landing Waterfront Residential Project
2800 Fifth Street
PHASE I**

(For Sale Units Required Pursuant to City Inclusionary Housing Requirements
Set Forth in Section 30-16 of the City Municipal Code)

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2020 ("Effective Date"), by and among the CITY OF ALAMEDA, a municipal corporation ("City") and _____ ("Developer").

RECITALS

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto ("Property"), and wishes to construct residential units on the Property.

B. City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City ("City Inclusionary Policy"). The Project is located in the City of Alameda and is, therefore, subject to the City Inclusionary Policy.

C. The Property is the site of a 589 unit residential project ("Project") to be developed by Developer in accordance with City of Alameda Planning Board Resolutions _____, allowing for development residential project on the Property of up to 589 housing units (including 80 affordable units and 10 middle income workforce units), on file with the Planning and Building Department, as depicted on the approved site plans for the Project attached as Exhibit B, and (b) City of Alameda Planning Board Resolution _____ Approving the Development Plan and Density Bonus Application includes certain conditions of approval, including conditions of approval which requires that the Developer reserve at least _____ units in the Project for sale to moderate-, low-

and very low-income households in accordance with the City Inclusionary Policy (the "Project Inclusionary Requirement"). The Developer is acquiring the Project in three phases and will be subject to provide the Affordable Units within each phase of the Project as it is acquired. Phase 1 will provide ____ of the ____ total Affordable Units for the Project.

D. Developer and City desire to set forth Developer's obligations to provide affordable housing in a recorded document.

NOW, THEREFORE, Developer and City agree as follows:

ARTICLE 1 DEFINITIONS

The following terms shall have the meanings set forth in this Article 1:

A. "Agreement" means this Affordable Housing Agreement between the Developer and City.

B. "Affordable Sales Price" means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the Owner-Occupied Monthly Housing cost is equal to or less than the "affordable housing cost" for such household as defined in Health and Safety Code Section 50052.5(b), or any successor statute thereto.

C. "Affordable Unit" means each of the thirty-nine (39) affordable units that are to be sold to and occupied by Eligible Households only pursuant to Article 2.

D. "Applicable Law" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Alameda, the City, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Developer or the Property.

E. "Authority" means the Housing Authority of the City of Alameda, a public body corporate and politic, or its affiliate.

F. "City" means the City of Alameda, a municipal corporation.

G. "City Inclusionary Policy" is defined in Recital B.

H. "Developer" means Pulte Home Company LLC or its successors and assigns.

I. "Effective Date" means the effective date of this Agreement, as first set forth above.

J. "Eligible Household" means a person or household (i) meeting the definition of "Moderate Income Household," "Low Income Household," or "Very Low Income Household," as applicable, under this Article 1; and (ii) meeting Developer's standard criteria for determining eligibility for occupancy, which may include an evaluation of the applicant's ability to pay the mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.

K. "Inclusionary Ownership Guidelines" is defined in Section 2.1.E.2

L. "Low Income Household" means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code, or any successor statute thereto.

M. "Market Rate Units" means units in the Project, the sale and occupancy of which are not regulated by this Agreement.

N. "Moderate Income Households" means a household whose annual income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093 of the California Health and Safety Code, or any successor statute thereto.

O. "Owner-Occupied Monthly Housing Payment" means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities not including telephone, homeowner's insurance and homeowner's association dues, and any other applicable elements of "housing cost" as defined in Section 6290 of Title 25 of the California Code of Regulations, paid on an annual basis divided by twelve (12).

P. "Phasing Schedule" is defined in Section 2.1.D.

Q. "Property" is defined in Recital A.

R. "Project Inclusionary Requirement" is defined in Recital C.

S. "Project" is defined in Recital C.

T. "Project Units" means the Market Rate Units and the Affordable Units.

U. "Resale Restriction" is defined in Section 2.1.E.4.

V. "Term" is defined in Section 4.3.

W. "Very Low Income Household" means a household whose annual income does not exceed the qualifying limits set for "very low income households" in Section 50105 of the California Health and Safety Code, or any successor statute thereto.

ARTICLE 2

PROJECT INCLUSIONARY REQUIREMENT

2.1 Affordability Requirements and Restrictions.

A. Developer shall construct, or cause to be constructed, ___ Affordable Units in Phase 1 of the Project, which will be sold to and occupied by Eligible Households, as follows: ___ of the Affordable Units shall be sold to and occupied by Moderate Income Households, ___ of the Affordable Units shall be sold to and occupied by Low Income Households, and ___ of the Affordable Units shall be sold to and occupied by Very Low Income Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Household. "Annual Household Income" means the combined "gross income" for a person or family living in a dwelling unit as calculated pursuant to Section 6914 of Title 25 of the California Code of Regulations.

C. The Affordable Units shall be consistent with the architectural character, size, floor plans and location shown for the housing type identified in the Density Bonus Application. Affordable Units shall be comparable in exterior appearance and overall quality of construction to Market Rate Units in the Project.

D. Developer shall construct the Market Rate Units and Affordable Units according to the schedule attached as Exhibit C and incorporated herein ("Project Schedule").

E. The units designated as the Affordable Units are depicted in Exhibit B. The total number of Affordable Units being offered for sale in accordance with this Article 2 shall be as required by Section 2.1.A. above. During the Term of this Agreement, the Affordable Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:

1. Except for the units that may be purchased by the Authority per section 2.3, the Affordable Units shall only be sold to and be occupied by Eligible Households, as specified in subsection 2.1.A. Each Affordable Unit shall only be sold to and be occupied by an Eligible Household at a cost that does not exceed the Affordable Sales Price for such a household, subject to prior approval of the City as further described below.

2. For units to be sold, each Affordable Unit shall only be sold to an Eligible Household approved by City in accordance with this Agreement, the City Inclusionary Policy, and the City's "Inclusionary Housing Program Buyer Selection Guidelines," attached hereto as Exhibit D ("Inclusionary Ownership Guidelines"), and each such sale shall comply with the following:

(a) Developer shall procure experienced Program Administrator or staff to conduct the activities described in Exhibit D.

(b) At least thirty (30) calendar days prior to entering any agreement with a prospective buyer related to any proposed sale or other transfer of any Affordable Unit during the Term, Developer shall submit to the City: (a) a copy of the proposed written agreement of purchase and sale; (b) an application for City approval of the prospective purchaser/transferee in a form to be provided by the City, along with such supporting documentation as City may require to document the proposed purchaser's/transferee's status as an Eligible Household, including the prospective purchaser's/transferee's payroll stubs and most recent income tax return, and to otherwise determine compliance with the terms of this Agreement, including the requirement that the sale price for each Affordable Unit not exceed the Affordable Sales Price for the Eligible Household; and (c) the income certification to be provided to any lender making a loan on the Affordable Unit. Developer shall bear all costs and expenses associated with such certification and eligibility determination process.

(c) Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or noneligibility. Provided the prospective purchaser/transferee qualifies as an Eligible Household, the purchase price of the Affordable Unit meets the definition of Affordable Sales Price, and the sale or transfer complies with the City Inclusionary Policy and the Inclusionary Ownership Guidelines, the City shall within such thirty (30) calendar days issue a letter of approval confirming that the proposed transaction complies with the requirements of this Article 2. If the prospective purchaser/transferee does not qualify as an Eligible Household, the purchase price of the Affordable Unit does not meet the definition of Affordable Sales Price, or the sale or transfer does not comply with the City Inclusionary Policy or the Inclusionary Ownership Guidelines, the City shall so notify the Developer in writing, within such thirty (30) calendar days, stating the basis for its determination in reasonable detail and the Developer shall not sell the Affordable Unit to such non-Eligible Household.

(d) THERE SHALL BE NO SALE OR OTHER TRANSFER OF AN AFFORDABLE UNIT WITHOUT ISSUANCE OF A LETTER OF APPROVAL BY CITY THAT THE PURCHASER/TRANSFEREE IS AN ELIGIBLE HOUSEHOLD, THE PURCHASE PRICE OF THE AFFORDABLE UNIT MEETS THE DEFINITION OF AFFORDABLE SALES

PRICE FOR SUCH PURCHASER/TRANSFeree AND THE CATEGORY OF SUCH AFFORDABLE UNIT, AND THE SALE OR TRANSFER COMPLIES WITH CITY'S INCLUSIONARY POLICY AND THE INCLUSIONARY OWNERSHIP GUIDELINES. ANY SALE OR OTHER TRANSFER OF THE AFFORDABLE UNIT IN VIOLATION OF THIS AGREEMENT SHALL BE VOID.

(e) EACH PURCHASER OF AN AFFORDABLE UNIT SHALL ENTER INTO AND RECORD AT THE CLOSE OF ESCROW AN AFFORDABILITY COVENANT, RESALE RESTRICTION AND OPTION TO PURCHASE ("RESALE RESTRICTION"), IN A FORM SUBSTANTIALLY SIMILAR TO EXHIBIT E, ATTACHED HERETO, SUPPLIED BY AND APPROVED BY CITY, AND FOR THE BENEFIT OF CITY, AS ELECTED BY THE CITY. UPON RECORDATION OF THE RESALE RESTRICTION: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION, INCLUDING WITHOUT LIMITATION ANY RESPONSIBILITY FOR COMPLIANCE BY THE BUYER OR ITS SUCCESSORS WITH THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION SIGNED BY PURCHASER, PROVIDED THAT DEVELOPER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT.

(f) Upon the request of the Developer, the City shall provide a letter or written verification certifying that a Market Rate Unit within the Project is not subject to the requirements of this Agreement.

2.2 Maintenance and Management.

A. During the Term, the exterior areas and common areas of the Property and the Project shall be maintained by a Homeowners' Association and/or a licensed management company to manage, operate and maintain the Project. The maintenance obligations will include maintenance of the improvements and landscaping. Developer agrees to maintain the Affordable Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Affordable Units free from accumulation of debris and waste materials, until the close of escrow of the Affordable Units.

B. Upon the sale and close of escrow of each for-sale Affordable Unit, the Eligible Household which purchased the Affordable Unit will be a member of the Homeowners' Association and will be responsible for the payment of Homeowners' Association assessments as provided in the Covenants, Conditions and Restrictions ("CC&R's") for the Project. Developer represents and warrants that such Homeowners' Association assessments will be determined by the California Department of Real Estate, and subject to increases as provided for in the CC&R's.

2.3 Authority Option. The City and the Developer hereby agree that the Authority shall have the right to purchase any one or more of the 18 Low and Very Low Income Affordable Units at a purchase price equal to the Affordable Sales Price, as calculated pursuant to this Agreement, and rent it to an income qualified household. The Authority has the right to assign the Authority's Purchase Option to its nonprofit affiliates. Effective upon the date that the Authority purchases any such Affordable Unit, the Developer shall be deemed to have completed its obligations as to such Affordable Unit, and such Affordable Unit shall be released from this Agreement in accordance with Section 2.1.E. The Authority is a third-party beneficiary of this Section 2.3. For

each Affordable Unit that the Authority is exercising this option, if for any reason, the Authority does not close escrow on the Affordable Unit within 30 days of notice of the issuance of a Certificate of Occupancy, the Developer shall be released from all obligations under Section 2.3 and may sell the Affordable Unit to any other Eligible Buyer.

ARTICLE 3 MARKETING

3.1 Marketing and Sales Program and Marketing Reports.

A. At least six months prior to issuance of the temporary Certificate of Occupancy for the first home to be developed as part of the Project, Developer shall design and deliver to the City Community Development Director a marketing and/or sales plan for the Affordable Units. Such plan shall conform to the terms of this Agreement, the City Inclusionary Policy, and the Inclusionary Ownership Guidelines, and shall be subject to the City Community Development Director's review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing program for the Affordable Units referenced above shall give preference in the sale of the Affordable Units according to a point system that allots one preference point to a household where a person in the household lives or works in the City of Alameda and one preference point to a household where a person in the household is a qualified Alameda Unified School District employee who is competing for a moderate income unit. Where a household satisfies both criteria, the preference points shall be aggregated. No more than seven (7) of the twenty-one (21) moderate income units shall be sold to households based solely on such households' having two preference points

3.2 Restrictions on Sales of Affordable Units. Developer shall not sell the Affordable Units to any of the following: (a) any partner, officer, shareholder or employee of Developer or any Family Member (defined below) of any partner, officer, shareholder or employee of Developer; (b) any member of the Authority, or any member of any City board or commission; and (c) any City employee who exercises any function or responsibility in connection with the Property or who has, or whose Family Member (defined below) has, an economic interest in the Property pursuant to the provisions of the Political Reform Act, Government Code section 87100 *et seq.* "Family Member" shall mean the spouse or child of the individual at issue or the individual's or his or her spouse's parent, grandparent, brother, sister, aunt, uncle, niece or nephew.

3.3 Effect of Article 3. This Article 3 shall terminate and be of no further force and effect as to Developer upon the first to occur of: (a) the last day of the Term; or (b) with respect to each Affordable Unit, the closing of the sale by Developer of, and the transfer of title to, the Affordable Unit pursuant to Article 2 above.

ARTICLE 4 GENERAL PROVISIONS

4.1 Conditions of Approval. This Agreement is intended to give effect to the City Inclusionary Policy and Project Inclusionary Requirement. In the event of any conflict between this Agreement and the City Inclusionary Policy, the City Inclusionary Policy in effect as of the date of this Agreement shall prevail.

4.2 Notices. Notices required to be given to the City or Developer shall be given by hand delivery, recognized overnight courier (such as UPS, DHL or FedEx) or certified mail, return

receipt requested, to the following addresses, or to such other address(es) as a party may designate from time to time by written notice to the other:

City: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Community Development Director

With a copy to:

Alameda City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attention: City Attorney

Developer: _____

4.3 Duration. The covenants set forth herein on the Affordable Units shall be covenants running with the land and shall inure to the benefit of City and its successors and assigns, and shall be enforceable by City and its successors and assigns, for a period of fifty-nine (59) years from the later of (a) initial occupancy of the Project, or (b) issuance of a certificate of occupancy for the Affordable Units ("Term"); provided, however, in the event an Affordable Unit is sold during the Term, the new owner shall be responsible for the resale and refinance restrictions as set forth in a new Resale Restriction agreement executed in the form attached as Exhibit E that will reset the time limit for the affordability restrictions on the Affordable Unit. Developer and City shall confirm the commencement and expiration dates of the Term in a written, recordable instrument. The parties agree that for the Term, all future deeds for or transfers of interest in the Affordable Units shall show or reference the applicable restrictions of this Agreement. Upon recordation of the Resale Restriction as to each Affordable Unit, this Agreement shall have no further force or effect as an encumbrance against each Affordable Unit to which such Resale Restriction pertains, and Developer shall have no further obligations or liabilities with respect to the Affordable Unit, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the Resale Restriction, provided that Developer has complied with the terms of this Agreement.

4.4 No Discrimination. Developer covenants, by and for itself and any successors in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy

of tenants, lessees, subtenants, subleases or vendees in the Property. This covenant shall run with the land in perpetuity.

4.5 Amendment. This Agreement may be amended only in writing by City and Developer.

4.6 No Impairment of Lien. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Property shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4.7 Successors and Assigns;

A. Binding Effect; Covenants Run with Land. The covenants contained in this Agreement shall inure to the benefit of City and its successors and assigns and shall be binding upon Developer and any successor in interest. Upon the transfer by Developer of all or any portion of its interest in the Property, all references in this Agreement to Developer thereafter shall mean and refer to such successor in interest of Developer as may then be the owner of the Property or such portion thereof, or interest therein. In the event that Developer transfers the Property or any portion thereof or interest therein to more than one successor in interest, all successors in interest shall be collectively required to comply with the provisions of this Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants in this Agreement shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City and its successors and assigns, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach.

B. Transfer by Developer of Property. In the event that Developer intends to sell, transfer, convey, assign or ground lease the Property or any part thereof or interest therein ("Transfer") during the period between the Effective Date and the closing date for the sale of the last Affordable Unit pursuant to Article 2 above, (a) Developer shall provide advance written notice to City describing the Transfer and the proposed transferee, and (b) Developer and the transferee shall execute an assignment and assumption agreement, which provides for the Transferee to be responsible for all of the obligations of the Developer under the Agreement occurring after the date of the Transfer and provide a copy of the executed agreement to the City.

4.8 Priority of this Agreement. Upon recording, this Agreement shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Affordable Units, or any portion thereof, and Developer shall be required to furnish to City subordination agreements in form and substance approved by the City subordinating the liens of any deeds of trust or mortgages existing as of such recording to this Agreement.

4.9 No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, there are no third party beneficiaries of this Agreement.

4.10 Effect of Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall have any force or effect on any buyer or buyer's right, title or interest in or to any unit other than the Affordable Units, except that the buyer of an Affordable Unit shall

execute and be subject to the Resale Restriction. The foregoing exemption and release shall be self-executing and require no further instruments or assurances to be effective.

4.11 Default and Remedies.

A. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of Default" (1) if Developer does not cure such failure within thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

B. Any notice of default given hereunder shall specify in detail the nature of the failure in performance alleged by City and the manner in which such failure of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, Developer shall not be considered to be in default of this Agreement for any purposes.

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive City 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.

D. In the event of an Event of Default under this Agreement, City shall have the right to exercise all of the rights and remedies, and to maintain any actions under this Agreement, the City Inclusionary Policy, at law, in equity, or other remedy proceedings.

4.12 California Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

4.13 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

4.14 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court or other body of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force and effect pursuant to the limitations and duration agreed to herein.

4.15 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto. The exhibits attached to this Agreement are incorporated by reference.

4.16 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation." The parties acknowledge that each party and its respective counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection herewith. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

4.17 Attorney Fees. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

4.18 Authorized Signatories. Each of the undersigned hereby warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for whom he/she signs.

4.19 Authority as Agent for the City. The parties hereby acknowledge that the Authority may act as agent for the City for the purposes of this Agreement until such time as Developer receives written notice from the City or the Authority terminating such agency.

[Signature page follows]

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

RECOMMENDED FOR APPROVAL:

CITY:

CITY OF ALAMEDA, a municipal corporation

Debbie Potter
Community Development Director

[Signature must be notarized]
Eric J. Levitt
City Manager

APPROVED AS TO FORM:

Michael Roush
Chief Assistant City Attorney

DEVELOPER:

LLC, A Michigan Limited
Liability Company

By: _____

Vice President Entitlement and Planning

STATE OF CALIFORNIA)
COUNTY OF _____) ss:

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature _____

[illegible]

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature _____

EXHIBIT D

Inclusionary Housing Program Buyer Selection Guidelines

On the following page are the buyer selection guidelines that are currently in effect. City staff anticipates that updated guidelines will be presented to Council in September 2020. The Developer shall comply with the Council-approved guidelines that are in effect at the time that the City approves the marketing and/or sales plan for the Affordable Units described in Article 3 of the Agreement.



INCLUSIONARY HOUSING GUIDELINES

PROGRAM BUYER SELECTION

The City of Alameda Inclusionary Housing Program provides below market rate (BMR) homes for sale or rent at affordable cost to qualified purchasers. Developers of new residential projects are required to provide BMR homes concurrently with market rate homes in order to fulfill the developer's inclusionary housing obligation. BMR units will be made available to very low-, low- and moderate-income households. For for-sale BMR units, it is the developer's responsibility to select buyers who meet the qualification parameters of the Inclusionary Housing Program and to submit an application for each buyer to the City of Alameda, showing both that the buyer's income falls within the allowable range for the program, that the buyer's total monthly housing costs meet program requirements and that the applicant may not have owned a home within the past three years from the date of application. The City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. The Inclusionary Housing Program may be subject to administrative review and revision periodically in response to updated information.

ELIGIBILITY DETERMINATION

Applicants are determined to be qualified purchasers when their total household income falls within the applicable percentage of area median income, adjusted for household size, as defined by the current income limits for Oakland PMSA published

% of Median Income	<30%	≤ 50%	≤80%	≤100%	≤120%
HUD Terminology	Extremely Low Income	Very Low Income	Low Income	Median Income	N/A
CRL Terminology	Extremely Low Income	Very Low Income	Lower Income	Median Income	Moderate or Middle Income
CRL Citation	Section 50106	Section 50105(a)	Section 50079.5(a)	Section 50093(c)	Section 50093(b)
CRL Definition	Extremely low income households means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development as defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.	Very low income households means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.	Lower income households means persons and families whose incomes do not exceed the qualifying limits for low(er) income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.	Persons and families of median income means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.	Persons and families of moderate income or middle income families means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

by California HCD and the US Department of Housing and Urban Development (HUD). Income limits are subject to change. The following table identifies the HUD income categories with the corresponding Community Redevelopment Law (CRL) income

categories and definitions. Information on current income limits is available from the City of Alameda.

HOUSEHOLD INCOME VERIFICATION

Developers must determine a household's gross income based on the anticipated annual income for the next twelve-month period. Developers should refer to California Code of Regulations, Title 25, Section 6914 for a definition of gross income. Income will include, but is not limited to:

- Gross earnings from all household members over the age of eighteen, including overtime and bonuses;
- Net income from operation of a business or profession;
- Interest and dividends;
- Periodic payments from social security, annuities, retirement funds, etc.;
- Payments in lieu of earnings;
- Public assistance;
- Periodic and determinable allowances such as alimony and child support;
- Pay of a member of the Armed Forces;
- For net assets in excess of \$5,000, actual asset income or 10% of the value, whichever is greater.

HOUSEHOLD SIZE VERIFICATION

BMR units are to be sold to households of appropriate size for the unit. Households must have at least as many members as number of bedrooms; a preference point will be applied for bedroom count plus one. The household may include:

- All people over the age of 18 who will reside in the home as their primary residence. (Income from these people will be counted in determining gross family income, as stated above.)
- All children for whom an adult household member has full or partial custody, as long as the child in a partial custody situation lives at least part-time in the home.
- Any child or adult claimed as a dependent who lives in the home.

AFFORDABLE MONTHLY HOUSING COST VERIFICATION

Developers must determine that buyers will pay an "affordable monthly housing cost" for the unit. The definition of affordable monthly housing cost varies by income level and by whether the unit is in a redevelopment area. In general, the affordable monthly housing cost is defined as a percentage of area median income adjusted for family size appropriate for the unit. The "family size appropriate for the unit" is a benchmark standard used only for affordable housing cost calculation purposes. The benchmark is defined as number of bedrooms plus one (e.g., a three person household for a two-bedroom unit). The following table summarizes the various affordable monthly housing cost definitions:

Category	Citywide	Extremely Low	Very Low	Lower	Moderate
CRL Citation	Section 30-16-3 of the Alameda Municipal Code	Section 50052.5(b)(1)	Section 50052.5(b)(2)	Section 50052.5(b)(3)	Section 50052.5(b)(4)
Affordable Housing Cost Definition	Monthly housing cost (including mortgage, insurance, utilities,	For extremely low households the product of 30 percent times 30	For very low income households the product of 30 percent times 50	For lower income households whose gross incomes exceed the	For moderate-income households, affordable housing cost shall not be

	taxes, assessments and home owner association costs, if any) that does not exceed one-twelfth of 30 percent of the maximum annual income for a Household of the applicable income (Very Low-, Low- or Moderate-Income).	percent of the area median income adjusted for family size appropriate for the unit.	percent of the area median income adjusted for family size appropriate for the unit.	maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.	less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.
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HOUSING COST DEFINITION

Developers should refer to California Code of Regulations, Title 25, Section 6920 for the definition of housing costs of a purchaser. Housing costs include, but are not limited to:

- Principal and interest on all loans (see attached Affordable Housing Program Loan Guidelines);
- Property taxes, including special assessments;
- Insurance;
- Utilities, not including telephone (City will provide utility allowance information);
- Maintenance & repairs;
- Home owner association and special fees;
- Space rent, if any.

SELECTION PROCESS

The City of Alameda encourages developers to use a lottery to select buyers for the BMR units. Developers are responsible for responding to all inquiries regarding BMR units and must adequately train staff to respond to questions that arise. The buyer selection process, including preference points, and all marketing and outreach materials must be approved by the City of Alameda prior to implementation. Adequate time should be allowed for City review and approval. If the Developer determines that an applicant does not meet the qualification criteria to purchase a BMR unit, the Developer should notify the applicant of this determination in writing, explaining why the applicant does not qualify. Developers should have a written appeals process for applicants who are disqualified from the program.

CITY DETERMINATION

For each BMR unit, the City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. Developers should not enter into a purchase agreement with an applicant until the following criteria are satisfied:

- The City has approved the applicant as income qualified to purchase the unit.
- The applicant has received full underwriting approval for all financing needed to complete purchase. Financing must conform to the attached City's Affordable Housing Program Loan Guidelines.
- The Developer has determined that the applicant's monthly housing costs fit within the parameters of the program (taking into account the loan obtained and downpayment required).

- The applicant has demonstrated sufficient funds to close.

If the City determines that the applicant is not a qualified purchaser, the applicant may file an appeal to the City in writing with the City Clerk not later than ten days from the date of this decision. The appeal should state completely and in detail the factual and legal grounds for the appeal. The City will consider the appeal at a public hearing within sixty days after the filing of the appeal. The decision of the City is final.



EXHIBIT E

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
Community Development Department
701 Atlantic Avenue
Alameda, California 94501
Attention: Executive Director

RECORDED FOR THE BENEFIT OF THE CITY OF ALAMEDA
PURSUANT TO GOVERNMENT CODE SECTION 6103; NO FEE
PURSUANT TO GOVERNMENT CODE SECTION 27383

**AFFORDABILITY, RESTRICTIONS ON RESALE,
AND
OPTION TO PURCHASE AGREEMENT
()**

Owner: _____

Address of Property: _____

Income Category of Owner: _____

Purchase Price of Property ("Affordable Price"):

Median Income on Effective Date: _____

THIS AFFORDABILITY, RESTRICTIONS ON RESALE, AND OPTION TO PURCHASE AGREEMENT ("Agreement") is made as of _____, 20__, ("Effective Date") by and between the City of Alameda ("City"), a California municipal corporation and charter city, and _____ ("Owner") with reference to the following facts:

RECITALS

A. Owner is acquiring fee title to that certain real property in the City of Alameda, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto, together with all improvements now or hereafter located thereon and all appurtenances thereto ("Property"), subject to the terms and conditions of that certain Affordable Housing Agreement entered into by and between the City of Alameda ("City"), a California municipal corporation, and _____ ("Developer"), dated _____, 20__ ("Developer Affordable Housing Agreement").

B. In furtherance of (a) implementing the goals and objectives of the City's Housing Element, (b) mitigating the impacts on housing affordability caused by new residential development and (c) meeting the need for housing affordable to persons of very low-, low- and moderate-income, the City has adopted an Inclusionary Housing Policy, embodied in Ordinance No. 2926 N.S, Section 30-16.1, et seq., Alameda Municipal Code ("City Inclusionary Policy").

C. The Developer Affordable Housing Agreement requires Developer to sell the Property to Owner at an "Affordable Ownership Cost," as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein.

D. The purpose of this Agreement is to establish the use, occupancy, and resale restrictions in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement, and the Grant Deed (as defined below), and grant to the City certain remedies, including the right to purchase the Property, as covenants running with the land and equitable servitudes that benefit the City and permitted successors and assigns and burden the Property, the Owner and all of its successors and assigns. The Property is being purchased by Owner as a Moderate-Income household at the "Affordable Price," in accordance with the goals and purposes of the City Inclusionary Policy, and the Developer Affordable Housing Agreement.

E. In order to ensure the Property remains affordable to a Moderate-Income household for at least fifty-nine (59) years following the date of this Agreement, and as a condition of purchasing the Property at the Affordable Price, the Owner is required to execute this Agreement, the City Note and the City Deed of Trust, as such terms are defined below.

NOW, THEREFORE, in consideration for the ability to purchase the Property at a below fair market price, as described herein, which shall be deemed good and valuable consideration, the Owner and all of its heirs, successors, and assigns hereby agrees that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, and option to purchase, all of which shall run with the Property and be binding on all parties having any rights, title, or interest in the Property.

ARTICLE 1 DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meanings (other defined terms in this Agreement not referenced below shall have the meanings where first used herein).

1.1. "Affordable Ownership Cost" shall be as defined as a sales price that results in a monthly housing cost (including mortgage payment, mortgage insurance (if any), homeowner's insurance, property taxes, home owner's association costs (if any), assessments (if any), and utilities) that does not exceed one twelfth of thirty percent (30%) of the maximum annual income for a household of the applicable income.

1.2. "Affordable Price" shall mean the below market rate purchase price paid by the Owner for the Property.

1.3. "Affordable Rent" shall have the meaning provided in Section 2.1(c).

1.4. "Appraisal" shall mean an appraisal setting forth the Market Value of the Property assuming no affordability requirements or other similar restrictions on income, occupancy, or resale of the Property, and prepared by an appraiser approved by the City and who holds an MAI membership designation from the Appraisal Institute or who holds a CREA membership designation from the National Association of Real Estate Appraisers (or, in the case such professional designations are modified or discontinued, the most nearly equivalent successor designations).

1.5. "Appreciation Amount: shall have the meaning provided in Section 6.3(a).

1.6. "Area Median Income" shall mean the median household income (adjusted for household size) of the Metropolitan Statistical Area in which the County of Alameda is located, as established in accordance with California Health and Safety Code section 50093(c).

1.7. "City" shall mean the City of Alameda.

1.8. "City Deed of Trust" shall mean the deed of trust executed by the Owner in favor of the City securing the Owner's obligations under the City Note and this Agreement, substantially in the form of Exhibit F.

1.9. "City Note" shall mean a promissory note executed by the Owner in favor of the City in the principal amount equal to the difference between the Market Value of the Property calculated at the time Owner acquired the Property and either (a) the Affordable Price, in the case of the first Owner, or (b) the Eligible Buyer Purchase Price, in the case of subsequent Owners, plus a contingent deferred amount equal to the City's Shared Appreciation, substantially in the form of Exhibit E.

1.10. "City Purchase Option Price" shall mean an amount equal to the Eligible Buyer Purchase Price minus Repair Costs.

1.11. "City Purchase Option" shall have the meaning provided in Section 5.1.

1.12. "City Resale Costs" means any and all costs and fees incurred by the City, whether directly by City or City staff, or indirectly under City or City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5, or an Extraordinary Sale under Article 6, including, without limitation, real estate brokerage fees or commissions, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) and shall not be less than one percent (1%) of the Affordable Price.

1.13. "City Response Notice" shall have the meaning provided in Section 4.1.

1.14. "City's Shared Appreciation" shall have the meaning provided in Section 6.3.

1.15. "Eligible Capital Improvements" shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in

writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Eligible Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value. A form for use in requesting City approval of an Eligible Capital Improvement is attached hereto as Exhibit H.

1.16. "This section intentionally left blank.

1.17. "CC&Rs" shall mean that certain Declaration of Covenants, Conditions, and Restrictions recorded on _____, 20__, as Document No. _____ in the Official Records of Alameda County, as amended from time to time.

1.18. "Commission" shall mean the former Community Improvement Commission of the City, which was dissolved effective February 1, 2012.

1.19. "Eligible Buyer" shall mean any person or family of moderate income whose combined gross income for all adult persons does not exceed one hundred twenty percent (120%) of Area Median Income, whose family size is appropriate for the Property, and who meet the First-Time Homebuyer requirements provided in Section 1.25. For the purposes herein, "appropriate family size for the Property" shall be: a minimum of one person for a one-bedroom unit; a minimum of two persons for a two-bedroom unit; a minimum of three persons for a three-bedroom unit; and a minimum of four persons for a four-bedroom unit.

1.20. "Eligible Buyer Purchase Price" shall mean the allowable purchase price to be paid by an Eligible Buyer for the Property as provided in Section 4.4.

1.21. "Event of Default" shall have the meaning provided in Section 8.10.

1.22. "Excess Rental Proceeds" shall have the meaning provided in Section 2.1(c).

1.23. "Extraordinary Sale" shall mean a Sale conducted as provided in Article 6.

1.24. "Extraordinary Sale Price" shall have the meaning provided in Section 6.3(c).

1.25. "First Time-Homebuyer" shall mean an individual or individuals, or an individual and his or her spouse, who meets either of the following criteria:

(a) The individual or individuals, or an individual and his or her spouse, has not owned a principle residence during the 3-year period ending on the date of purchase of the Property; or

(b) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody, joint custody, or is pregnant.

1.26. "Grant Deed" shall mean the grant deed executed by the Developer conveying the Property to the Owner for the initial Owner, or the grant deed executed by the initial Owner or subsequent Owners conveying the Property to subsequent Owners.

1.27. "HUD Increase" shall mean the percentage increase in Area Median Income from the date of sale of the Property to an Owner (or Subsequent Owner, as the case may be) to the date of receipt by the City of the Owner's Notice of Intent to Transfer or Notice of Intent to Sell. In no event shall the HUD Increase be less than zero.

1.28. "Initial Financing" shall have the meaning provided in Section 7.1(a).

1.29. "Market Value" shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time. The cost of the Appraisal shall be paid by the Owner, and the Owner shall promptly provide the Appraisal to the City.

1.30. "Notice of Intent to Transfer" shall have the meaning provided in Section 3.1 and Exhibit B.

1.31. "Notice of Intent to Sell" shall have the meaning provided in Section 4.1 and Exhibit C.

1.32. "Notice of Extraordinary Sale" shall have the meaning provided in Section 6.2 and Exhibit D.

1.33. "Owner" shall mean the purchaser of the Property as identified in the Preamble and Recital A, and includes all of Owner's heirs, successors, and assigns, as allowed under this Agreement.

1.34. "Owner's Gross Proceeds" is equal to the Eligible Buyer Purchase Price paid for the Property, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement.

1.35. "Permitted Transfer" shall mean a Transfer as provided in Section 2.2.

1.36. "Permitted Sale" shall mean a Sale as provided in Section 2.3.

1.37. "Prohibited Transfer" shall mean any Transfer that is not a Permitted Transfer as provided in Section 2.4.

1.38. "Prohibited Sale" shall mean any Sale that is not a Permitted Sale or Extraordinary Sale as prohibited in Section 2.4.

1.39. "Property" shall have the meaning provided in Recital A.

1.40. "Purchase Subsidy" shall have the meaning provided in Section 6.3(d).

1.41. "Refinancing" shall have the meaning provided in Section 7.1(b).

- 1.42. "Repair Costs" shall have the meaning provided in Section 4.3.
- 1.43. "Sale," "Sell" or "Sold" shall mean a Transfer of the Property for monetary consideration.
- 1.44. "Senior Lien" shall have the meaning provided in Section 7.1.
- 1.45. "Senior Lender" shall have the meaning provided in Section 7.1(a).
- 1.46. "Senior Lender Deed of Trust" shall have the meaning provided in Section 7.3(c).
- 1.47. "Term" shall have the meaning provided in Section 8.15.
- 1.48. "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate or use, rental, or tenancy therein.
- 1.49. "Transferee" shall mean the person or persons to whom the Property is Transferred or Sold.

ARTICLE 2 RESTRICTIONS

2.1. Owner Acknowledgments and Agreements. Owner hereby acknowledges and agrees that taking title to the Property shall constitute Owner's acknowledgment and agreement of the following:

(a) THE PROPERTY IS BEING ACQUIRED BY OWNER AT A COST THAT IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND THE CITY'S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE CITY AN IRREVOCABLE POWER OF ATTORNEY COUPLED WITH AN INTEREST TO ACT ON THE OWNER'S BEHALF TO EXECUTE, ACKNOWLEDGE, AND DELIVER ANY AND ALL DOCUMENTS RELATING TO THE CITY'S PURCHASE OPTION. THERE SHALL BE NO SALE OR TRANSFER OF THE PROPERTY EXCEPT IN ACCORDANCE WITH THIS AGREEMENT. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A DEFAULT AND SHALL BE VOIDABLE BY THE CITY.

(b) OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF CLOSE OF ESCROW ON THE PURCHASE OF THE PROPERTY BY OWNER. The Owner shall be considered to occupy the Property if the Owner is living in the Property for at least ten (10) months out of each calendar year. Upon request by the City, each Owner shall submit a declaration to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide the City with a copy of valid driver's license of the Owner showing the Property address, recent copy of a utility bill in the name of the Owner, or other evidence of residency as deemed satisfactory to the City. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal

residence, City may declare an Event of Default pursuant to Section 8.10 and exercise any or all of its rights and remedies hereunder, including without limitation the City's Purchase Option pursuant to Article 5.

(c) The Owner shall not rent or lease the Property to another party. Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust. The Owner agrees that, in the event the Owner rents or leases the Property to a third party in violation of this Section, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against Owner, including by foreclosure under the City Deed of Trust.

(d) The Owner's right to resell the Property at Market Value is limited and, in certain instances, the City will have the option to purchase the Property from the Owner. In order to ensure the Property shall remain available at an Affordable Ownership Cost over the Term of this Agreement, the Owner's right to resell the Property is limited and is not as favorable as the rights of other property owners whose properties are not affected by this Agreement and are not encumbered by similar agreements.

(e) The Property will not necessarily appreciate in value during the duration of the Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Affordable Price the Owner originally paid for the Property. Thus, when the Owner Sells the Property it may receive less than it originally paid for the Property.

2.2. Permitted Transfers. Subject to compliance with the procedures described in Article 3, including but not limited to providing required notices to the City, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

(a) Transfer to an existing spouse or registered domestic partner who is also an obligor under the City Note;

(b) Transfer to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;

(c) Transfer by the Owner to a spouse or registered domestic partner where the spouse or registered domestic partner becomes the co-owner of the Property;

(d) Transfer between spouses as part of a marriage dissolution proceeding;

(e) Transfer to an existing spouse or registered domestic partner of Owner by devise or inheritance following the death of Owner; and

(f) Transfer by Owner into an inter vivos trust in which Owner is the beneficiary.

For the purposes of this Section 2.2, "Domestic Partners" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year

and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of a declaration or other acceptable evidence by Owner to the City.

2.3. Permitted Sales. Subject to compliance with the procedures described in Article 4 and Article 5, including but not limited to providing required notices to the City, an Owner may Sell the Property to an Eligible Buyer ("Permitted Sale"). The City shall have the option to purchase the Property pursuant to the City's Purchase Option described in Article 5. If the City or the Owner are unable to identify an Eligible Buyer or the City has not exercised the City's Purchase Option, the Owner shall have the right to Sell the Property to a non-Eligible Buyer in accordance with the provisions of Article 6.

2.4. Prohibited Transfers; Prohibited Sales. Any Transfer other than a Permitted Transfer is a Prohibited Transfer. A Prohibited Transfer specifically includes any Transfer of a use, rental, or leasehold interest in the Property. Any Sale of the Property other than a Permitted Sale, the City's Purchase Option, or an Extraordinary Sale, is a Prohibited Sale. If an Owner attempts or makes a Prohibited Transfer or Prohibited Sale, then in addition to all other rights or remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option described in Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer or Prohibited Sale.

ARTICLE 3 TRANSFER PROCEDURES

3.1. Permitted Transfers. If an Owner desires to Transfer by a Permitted Transfer under Sections 2.2(d) or (e), the Owner shall provide the City with a Notice of Intent to Transfer in the form of Exhibit B, together with any other documentation City may reasonably request in order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, City shall have forty-five (45) days after receipt by the City of such Notice of Intent to Transfer and other documentation to deliver written notice to the Owner of its approval or disapproval of the Transfer as a Permitted Transfer. In the event the City approves the Transfer as a Permitted Transfer, the Transferee shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust and new documents shall be executed between the Transferee and the City and recorded against the Property.

3.2. Inheritance. In the event a Permitted Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate or the person inheriting the Property shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(a) If the person inheriting the Property (the "Inheriting Owner") desires to occupy the Property, he or she shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust, and new documents shall be executed between the Inheriting Owner and the City and recorded against the Property.

(b) If the Inheriting Owner does not desire to occupy the Property, he or she shall be required to Transfer the Property to an Eligible Buyer at the Eligible Buyer Purchase Price, pursuant to Article 4, or the City may exercise the City's Purchase Option, pursuant to Article 5; provided, however, that the Inheriting Owner may own and occupy the Property for up to twelve (12) months prior to providing a Notice of Intent to Sell to the City pursuant to Section 4.1 below, and provided further that the Inheriting Owner remains in compliance with the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Property during this twelve (12) month time period.

(c) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 3.1 shall constitute an Event of Default under this Agreement and the City may then exercise any of the remedies set forth in Section 8.10 below, including, without limitation, exercise of the City's Purchase Option.

3.3. Transfer of the Property without City's Approval. If the City determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without City's approval shall be voidable and, in such event, in addition to all other rights and remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

ARTICLE 4

PERMITTED SALE PROCEDURES

4.1. Notice of Intent to Sell; City Response Notice. If an Owner desires to Sell the Property, the Owner shall provide the City with a Notice of Intent to Sell in the form of Exhibit C and comply with the requirements set forth in the Notice of Intent to Sell. Within sixty (60) days after receipt of the Notice of Intent to Sell, the City shall notify the Owner whether (a) City elects to exercise the City's Purchase Option pursuant to Section 5.1(a) or (b) that City will not exercise the City's Purchase Option and Owner may proceed to Sell the Property to an Eligible Buyer at the Eligible Buyer Purchase Price pursuant to Section 4.4 (the "City Response Notice"). The City Response Notice shall include: (a) any certifications required of an Eligible Purchaser; (b) the Repair Costs pursuant to Section 4.3; and (c) the Eligible Buyer Purchase Price pursuant to Section 4.4.

4.2. Permitted Sale to Eligible Purchaser. In the event the City permits the Owner to sell the Property to an Eligible Buyer, the City shall use its reasonable efforts to identify an Eligible Buyer, taking into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Subject to the City's prior written approval, the Owner may have the option to identify an Eligible Buyer, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price within sixty (60) days after identification of the Eligible Buyer, unless otherwise agreed to in writing by the City.

4.3. Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the City shall have the right to enter the Property at reasonable times with twenty-four (24) hours advance notice

to the Owner to inspect the dwelling unit on the Property to determine whether any damage or violations of applicable laws or ordinances exist. In the event any damage or violations are discovered, the City shall determine the cost necessary to repair or correct any violations of applicable building, plumbing, electric, fire, or housing codes, or any other provisions of the City Building Code, as well as any other repairs the City deems necessary to put the Property into a "sellable condition" ("Repair Costs"). Items necessary to put the Property into sellable condition may include cleaning, painting, and making structural, mechanical, electrical, plumbing, fixed appliance repairs, pest control repairs, and other deferred maintenance repairs. Within thirty (30) days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (a) repair or replace the items on such report at the Owner's cost prior to closing (without extending the closing date), or (b) at closing cause the escrow holder to pay the Repair Costs to the City. If an Owner elects to repair or replace the items on such report, the City shall have the right to re-inspect the Property under the terms of this Section 4.3 after the repairs and/or replacements are complete. If the City determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the City the Repair Costs from Owner's Gross Proceeds or the Extraordinary Sales Price.

4.4. Eligible Buyer Purchase Price. The Purchase Price to be paid by an Eligible Buyer for the Property shall be the total sum of (a) the Affordable Price paid by the Owner for the Property, plus (b) the HUD Increase as defined in Section 1.27, plus (c) the depreciated value of any Eligible Capital Improvements approved by the City as described in Section 1.15. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Affordable Ownership Cost allowable for a Moderate-Income household at the time of resale.

Example of how the Eligible Buyer Purchase Price is calculated:

Assume the following facts:

- Affordable Price of the Property when Owner purchased the Property was \$450,000.
- Percentage increase in the Area Median Income ("AMI") from the date of sale of the Property to the Owner to the date of receipt by the City of the Owner's Notice of Intent to transfer or Notice of Intent to Sell ("the HUD Increase") is 7%.
- The Owner made Eligible Capital Improvements on the Property and the depreciated value of the Eligible Capital Improvements is \$10,000.

First, determine the Appreciation Amount by multiplying the Affordable Price times the HUD Increase.

$$\text{Appreciation Amount} = \text{Affordable Price} \times \text{HUD Increase} = [\$450,000 \times .07 = \$31,500]$$

Second, determine the Eligible Buyer Purchase Price by adding the Affordable Price plus the Appreciation Amount and any Eligible Capital Improvements.

Eligible Buyer Purchase Price

$$= \text{Affordable Price} + \text{Appreciation Amount} + \text{Eligible Capital Improvements}$$

$$= \$450,000 + 31,500 + 10,000 = \$491,500$$

4.5. Appraisal; City Resale Costs; City Documents. Upon receipt of a Notice of Intent to Sell, the City shall cause an Appraisal to be completed prior to close of escrow to determine the Market Value of the Property as of the date of such Notice. The cost of such Appraisal shall be paid by the Owner at close of escrow. In addition, the Owner shall pay the City Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the City Resale Costs from any sources, including, but not limited to, the Owner's Gross Proceeds, to the extent there are any available, as provided in Section 4.6.

At close of escrow, the Eligible Buyer shall deliver or cause to be delivered into escrow:

(a) the City Note, fully executed by the Eligible Buyer in favor of the City in substantially the form of Exhibit E hereto. The City Note shall be in the principal amount equal to the Purchase Subsidy;

(b) the City Deed of Trust securing the City Note fully executed by the Eligible Buyer in recordable form, in substantially the form of Exhibit F hereto;

(c) a new Affordability, Restrictions on Resale, and Option to Purchase Agreement, in a form provided by the City to the Eligible Buyer and fully executed in recordable form by all appropriate parties; and

(d) the required down payment and all documents required by the Eligible Buyer's Senior Lender.

4.6. Proceeds from Permitted Sale. Owner's Gross Proceeds from a Permitted Sale shall be distributed in the following priority to the extent funds from Owner's Gross Proceeds are available:

(a) first, to pay any amounts owed under the Owner's Senior Lien; and

(b) second, to pay all customary closing costs that a seller would pay in the County of Alameda, a basic one-year home warranty as provided in Section 4.9, and, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 4.5; and

(c) third, to pay to the City all Repair Costs (if any, and to the extent not already paid) that are owed to the City under Section 4.3; and

(d) fourth, any remaining amounts shall be paid to the Owner.

4.7. Personal Property. Any sums paid to an Owner by an Eligible Buyer for personal property shall not be part of the Eligible Buyer Purchase Price. No other consideration of any nature whatsoever shall be paid by an Eligible Buyer to the Owner unless first fully disclosed to and approved by the City in writing.

4.8. Real Estate Broker Commission. If the City identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by

the City. If the Eligible Buyer is identified by the Owner, as between the Owner and the Eligible Buyer, the Owner shall have the sole and exclusive obligation to pay any real estate broker's commission regardless of whether the broker was engaged by the Owner or Eligible Buyer.

4.9. Closing. At closing, the Owner shall convey fee title to the Eligible Buyer by standard title company form Grant Deed. The Owner shall cause the title company to issue to the Eligible Buyer a CLTA standard coverage owner's form of title insurance policy in the amount of the Eligible Buyer Purchase Price ensuring title to the Property is vested in the Eligible Buyer, subject to exclusions from coverage, exceptions for current taxes and assessments not yet due, this Agreement, and all documents recorded pursuant to this Agreement and such other matters (other than encumbrances created or suffered by the Owner) that were exceptions to title on the date of this Agreement. The Owner shall pay for a basic one-year home warranty contract issued by a reputable and established company to the Eligible Buyer. The Eligible Buyer shall pay the costs of any longer or more extensive warranty. All other closing costs shall be paid by the Owner or the Eligible Buyer pursuant to the custom in the County of Alameda.

ARTICLE 5 CITY'S PURCHASE OPTION

5.1. Purchase Option. By taking title to the Property, the Owner irrevocably grants, to the City, an option to purchase the Property (the "City Purchase Option") at the City Purchase Option Price upon the occurrence of any of the following:

- (a) in the event the Owner provides a Notice of Intent to Sell to the City pursuant to Section 4.1;
- (b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;
- (c) in the event the Owner is in default of the occupancy requirement set forth in Section 2.1;
- (d) as reserved to the City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.1 hereof to the date of written acceptance by the Owner of an offer to purchase the Property from an Eligible Buyer;
- (e) in the event that escrow fails to close within the times set forth in Section 6.6; or
- (f) upon occurrence of an Event of Default (as defined in Section 8.10);

provided that, in the case of (b), (c), (d) or (e), above, the City Purchase Option shall be in addition to any other remedy provided in this Agreement for an Event of Default. By taking title to the Property, the Owner agrees that the City's facilitation of the Transfers contemplated hereby, and its acts, commitments, and expenditures in furtherance thereof constitute adequate consideration for the grant of the City Purchase Option.

5.2. Exercise of Option.

(a) Procedure Upon Exercise of Option. The City may exercise the City Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option pursuant to Section 5.1, including, but not limited to the delivery of the City Response Notice to the Owner pursuant to Section 4.1.

(b) Assignment of City Purchase Option. After the City has exercised the City Purchase Option, the City may, without the Owner's or Transferee's consent, assign the City Purchase Option to an Eligible Buyer or to a governmental agency or non-profit organization that agrees to be subject to this Agreement; provided, however, that any such assignment shall not extend any time limits contained in this Agreement.

5.3. Close of Escrow.

(a) If the City Purchase Option is available to the City pursuant to Section 5.1(a), the City or its assignee shall purchase the Property within ninety (90) days of the date of the City Response Notice and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

(b) If the City Purchase Option is available to the City Pursuant to Sections 5.1 (b), (c), (d), (e), or (f), the City or its assignee shall purchase the Property within thirty (30) days after delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

5.4. Power of Attorney. By taking title to the Property, the Owner grants to the City an irrevocable power of attorney coupled with an interest to act on the Owner's behalf to execute, acknowledge, and deliver any and all documents relating to the City Purchase Option.

ARTICLE 6
EXTRAORDINARY SALE; SHARED APPRECIATION

6.1. When Extraordinary Sale Permitted. The Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6 if:

(a) The City or the Owner fail to identify an Eligible Buyer within one hundred and eighty (180) days of the date of the City Response Notice notifying the Owner that the City will not exercise the City Purchase Option pursuant to Section 4.1; or

(b) The City fails to close escrow pursuant to Section 5.3(a) after exercising the City Purchase Option.

Notwithstanding anything to the contrary herein, the City shall retain the City Purchase Option for the period of time from the Owner's Notice of Extraordinary Sale pursuant to Section 6.1 to the date of written acceptance by the Owner of an offer to purchase the Property from a buyer. In no event shall the Owner have the right to make an Extraordinary Sale if there has been any attempted or actual Prohibited Transfer or Prohibited Sale by the Owner or if there is any other Event of Default by the Owner under this Agreement.

6.2. Notice of Extraordinary Sale; Appraisal; City Resale Costs. The Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale in the form of Exhibit D. The Notice of Extraordinary Sale shall contain a request that the City calculate the current Market Value of the Property based upon an Appraisal, the cost of which shall be paid by the Owner through escrow. The City shall use reasonable efforts to obtain the Appraisal within thirty (30) days after receipt of the Notice of Extraordinary Sale. The City shall provide the Owner with a copy of the Appraisal within ten (10) days after receipt by the City. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval, consistent with the terms of this Agreement. In addition, the Owner shall pay the City Resale Costs at close of escrow.

6.3. City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner shall pay to the City the principal amount outstanding on the City Note and the City's Shared Appreciation, as defined herein. The City Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Article 6, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Owner at acquisition of the Property, minus Eligible Capital Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "City Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(c) "Extraordinary Sale Price" means the amount received by the Owner as the sales price of the Property under an Extraordinary Sale pursuant to Article 6, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved by the City in writing.

(d) "Purchase Subsidy" shall mean the City's initial equity contribution, equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Affordable Price. The Purchase Subsidy shall be provided to the Owner as a deferred contingent interest loan, as evidenced by the City Note.

Example of calculating the amount of the City's Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Owner purchased the Property was \$1,000,000.

- Affordable Price of the Property at the time the Owner purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [$\$1,000,000 - \$450,000 = \$550,000$]
- Owner paid closing costs of \$5,000 at time of purchase.
- Owner made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lender sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

Extraordinary Sale Price	\$ 625,000
– Affordable Price at purchase	– 450,000
– Closing Costs	– 5,000
– Capital Improvements	– 10,000
– City Resale Costs	– 20,000
= Appreciation Amount	\$ 140,000

In this example, the Appreciation Amount is \$140,000.

Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

$$\text{City's Shared Appreciation Amount} = .55 \times \$140,000 = \$77,000$$

The Owner's share of the Appreciation Amount is \$63,000. [$\$140,000 - \$77,000 = \$63,000$]

(e) The City's Shared Appreciation collected by the City shall be used by the City to assist in the provision of housing that is affordable to persons and families of low or moderate income in accordance with Civil Code section 1917.006(a)(1).

6.4. Distribution of Proceeds. At escrow, the Extraordinary Sale Price shall be distributed in the following priority, to the extent funds are available:

- (a) first, to pay any amounts owed under the selling Owner's Senior Lien;
- (b) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, except the City Shared Appreciation;

(c) third, subject to the provisions of Section 6.7 below, to pay all customary closing costs and escrow fees that are the responsibility of the selling Owner;

(d) fourth, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 6.2;

(e) fifth, to pay to City all Repair Costs (if any, and to the extent not already paid) which are owed to the City under Section 4.3;

(f) sixth, to pay the City Shared Appreciation;

(g) seventh, any remaining amounts to the Owner.

6.5. Time Requirements for Extraordinary Sale. The Owner shall complete an Extraordinary Sale within sixty (60) days after receipt of the Appraisal under Section 6.2. If the Extraordinary Sale is not completed within such time, and the Owner is not bound by written contract with a buyer to Sell the Property, the City may either (i) designate an Eligible Buyer for the Property pursuant to Section 4.1, in which case the provisions of Article 4 shall apply in lieu of the provisions of this Article 6, or (ii) exercise the City Purchase Option under Section 5.1, in which case the provisions of Article 5 shall apply in lieu of the provisions of this Article 6.

6.6. Effect of Extraordinary Sale. Upon the close of escrow for an Extraordinary Sale in compliance with the provisions of this Article 6, the purchaser at the Extraordinary Sale shall acquire title to the Property free and clear of the provisions of this Agreement, including the City Purchase Option. The City agrees to execute, acknowledge, and record a release or other documentation sufficient to release the Property sold at an Extraordinary Sale from the provisions of this Agreement, including the City Purchase Option.

6.7. Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Within thirty (30) days of the first scheduled date for the close of escrow of an Extraordinary Sale, the Owner shall submit evidence to the reasonable satisfaction of the City of the closing costs to be paid at resale of the Property as set forth in Section 6.4(c). To the extent such evidence is not submitted by the Owner to the reasonable satisfaction of City at least thirty (30) days prior to the first scheduled date for the close of escrow, such costs shall be deemed waived by the Owner and the Owner shall not be entitled to have such costs, as applicable. The City acknowledges that such evidence may include, by way of example and not limitation, the Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors. In the event of a foreclosure sale, this Section 6.7 shall operate to require the same obligations of the Owner as in an Extraordinary Sale and all references to the "close of escrow" shall be replaced by "foreclosure sale."

ARTICLE 7

LENDER PROVISIONS

7.1. Senior Liens. Mortgages, deeds of trust, sales and leases-back, or any other form of conveyance required for any reasonable method of financing (subject to Section 7.2, the "Senior Lien") are permitted, but only as follows:

(a) for the sole purpose of securing a purchase money loan of funds to be used by an Owner for financing the acquisition of the Property by the Owner ("Initial Financing"), provided such Initial Financing shall be obtained through a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making residential real estate loans ("Senior Lender"); or

(b) for the sole purpose of refinancing an Owner's Initial Financing ("Refinancing"), provided such Refinancing shall be limited solely to the outstanding principal balance owed under the Owner's Initial Financing, and shall not include any additional amounts, such as fees or costs associated with such Refinancing or additional funds disbursed to the Owner, and Refinancing shall not include secondary financing such as subordinate deeds of trust or home equity loans; and provided the Owner has paid the City all administrative and document preparation costs and fees incurred by the City in connection with the processing of any documents required to effectuate such Refinancing.

7.2. Subordination. Pursuant to California Health & Safety Code section 33334.14, the City may enter into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien if the City is able to make a finding, based on substantial evidence, that an economically feasible alternative method of financing or refinancing on substantially comparable terms but without subordination is not reasonably available. There shall be no subordination of this Agreement unless the City enters into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien. The subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, or other alternative provisions acceptable to the City in its sole discretion.

7.3. Default and Foreclosure.

(a) The City shall record a request for notice of default and any notice of sale under any deed of trust or mortgage with a power of sale encumbering the Property pursuant to California Civil Code section 2924. Whether or not a request for a notice of default is recorded, the Owner shall provide a true and correct copy of any notice of default to the City within three (3) business days of the Owner's receipt thereof.

(b) In the event of default and foreclosure, the City shall have the same right as the Owner to cure any defaults, reinstate the loan (not less than a specified number of times to be set forth in the subordination agreement between the City and the Senior Lender), or redeem the Property prior to foreclosure sale or the acceptance of a deed in lieu of foreclosure by the Senior Lender. Such redemption shall be subject to the same fees, charges, and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(c) If the trustee set forth in Senior Lender's deed of trust (the "Senior Lender Deed of Trust") Sells the Property at a foreclosure sale, the proceeds shall be delivered in the following priority to the extent funds are available:

(i) first, to pay all sums due and owing under the Senior Lien, including without limitation the principal amount, interest, fees and costs of sale;

(ii) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, including, but not limited to the City's Shared Appreciation;

(iii) third, to pay any amounts due to person or persons legally entitled thereto, as required by law; and

(iv) fourth, to pay any remaining amounts, if any, to the Owner.

(d) Upon written request by the City, the Senior Lender is hereby authorized by the Owner to furnish a report of the payment status of the Owner and all other financial information concerning the Owner to the City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, the Senior Lender grants to the City the option to purchase the Senior Lien from the Senior Lender at any time after the filing of a notice of default under the Senior Lien but prior to consummation of the foreclosure or the giving of a deed-in-lieu of foreclosure. Pursuant to this subsection, the City may purchase the Senior Lien from the Senior Lender for an amount equal to the entire indebtedness secured by the Senior Lender's deed of trust. The City may exercise this option by giving the Senior Lender written notice of its intent to do so (i) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (ii) with respect to a deed-in-lieu of foreclosure, within fifteen (15) days after receiving written notice from the Senior Lender of its intent to accept a deed-in-lieu of foreclosure with respect to the Property. Upon receipt of such written notice from the City, the Senior Lender shall promptly give the City a written statement setting forth the amount of the total indebtedness secured by the Senior Lender Deed of Trust, which shall be the purchase price for the Senior Lien, and a copy of the policy of title insurance insuring the priority and validity of the Senior Lender Deed of Trust. Within ten (10) days after the City gives such written notice, the City shall establish an escrow at such title company and concurrently therewith give the Senior Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after the Senior Lender's receipt of notice of the opening of the escrow, the Senior Lender shall deposit in the escrow the promissory note evidencing the Senior Lien endorsed in favor of the City, the original Senior Lender Deed of Trust, an assignment of the Senior Lender Deed of Trust duly executed by the Senior Lender and in recordable form, and all other documents, instruments, agreements, certificates, and other items that evidence, secure, or otherwise relate to the Senior Lien. The escrow holder shall be instructed to close the escrow within two (2) business days after receipt of all such items and upon such close of escrow to issue to the City a CLTA Form No. 104.1 endorsement to the title policy, showing the City as the Senior Lender's assignee with respect to the Senior Lender Deed of Trust. The Senior Lender and the City shall execute and deliver escrow instructions and such other documents as may be necessary or appropriate in

connection with such escrow and to implement the intent hereof. The City shall pay the escrow fees, recording fees, and the premium for the CLTA Form No. 104.1 endorsement.

ARTICLE 8 MISCELLANEOUS

8.1. No Option Assignment Liability. In no event shall the City in any way become liable to the Owner or become obligated in any manner to any other party by reason of the assignment of the City Purchase Option, nor shall City in any way be obligated or liable to any Owner for any failure of City to purchase the Property or to comply with the terms of the City Purchase Option.

8.2. Distribution of Insurance and Condemnation Proceeds. If the Property is condemned or the improvements damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with the CC&Rs or, if not covered by the CC&R's, to Owner or its successors or assigns, for purposes of restoring or replacing the Property, unless the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust provides otherwise, in which case the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust shall control.

8.3. Maintenance and Use. Each Owner shall maintain the Property, including all structures and landscaping, in accordance with the CC&Rs. Each Owner shall maintain the interior of the dwelling unit on the Property in a clean condition and all appliances and fixtures in good working order. The Property shall be used and occupied by the Owner solely for residential purposes, and in addition to the residential purpose may also be used for any accessory uses that comply with the provisions of the City's Zoning Ordinance, as it may be amended from time to time, the provisions of the Grant Deed, the Developer Affordable Housing Agreement, and the CC&R's. No Owner shall grant use of, rent, or lease all or any part of the Property.

8.4. Attorneys' Fees and Costs. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

8.5. Controlling Agreement. The Owner covenants that it has not executed, and will not execute without the City's prior written approval, any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement.

8.6. Severability. If any one or more of the provisions contained in this Agreement for any reason shall be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

8.7. Time of the Essence. Time is of the essence of this entire Agreement. Whenever the time for performance falls on a day which is not a business day, such time for performance shall be extended to the next business day.

8.8. Notices. All notices, demands, requests for approval and other communications provided for in this Agreement shall be in writing and shall be deemed received if sent to the

addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

If to City: City of Alameda
 Community Development Department
 950 West Mall Square, 2nd Floor
 Alameda, CA 94501
 Attention: Community Development Director

If to Owner: _____
 Alameda, CA 94501

8.9. Covenants Running with the Land. Pursuant to the City Inclusionary Policy, all provisions of this Agreement, including the benefits and burdens, are equitable servitudes, run with the land, and are binding upon the heirs, successors, assigns, and personal representatives of the Owner and inure to the benefit of the City and its successors and assigns. The covenants benefit and bind the City, the Property, and all owners and successor owners. Each and every contract, deed, or other instrument covering, conveying, or otherwise transferring the Property or any interest therein shall conclusively be held to have been executed, delivered, and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

8.10. Defaults.

(a) Event of Default. Any one of the following events shall constitute a "Event of Default" by the Owner under this Agreement:

(i) The City determines that the Owner has made a material misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement.

(ii) The Owner actually Transfers, or attempts to Transfer, the Property in violation of this Agreement.

(iii) The Owner fails to owner-occupy the Property in violation of Section 2.1 of this Agreement.

(iv) The Owner rents or leases the Property in violation of Section 2.1 of this Agreement.

(v) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement.

(vi) A notice of default is issued under any other financing secured by the Property, or the City receives any notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any financing secured by the Property.

(vii) A lien is recorded against the Property other than the lien of the Senior Lender or a loan approved by the City.

(viii) Judicial foreclosure proceedings are commenced regarding the Property.

(ix) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.

(x) The Owner fails to comply with any other requirements of this Agreement.

(b) Remedies. Upon a declaration of Event of Default by the City under this Agreement, the City may:

(i) Declare Excess Rental Proceeds immediately due and payable without further demand, if applicable;

(ii) Accelerate payments due under the City Note;

(iii) Invoke the power of sale under the City Deed of Trust;

(iv) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(v) Take such enforcement actions as are authorized under the City Municipal Code;

(vi) Declare an Event of Default under the City Note and the City Deed of Trust and pursue all City remedies under the City Note and the City Deed of Trust; or

(vii) Exercise the City Purchase Option pursuant to Article 5 of this Agreement.

(c) Notice and Cure. Upon an Event of Default, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, which period of time shall not be longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation or as set forth in this Agreement, the City may declare an Event of Default under this Agreement. However, if the Owner is in default under any financing secured by the Property, the City may declare an Event of Default upon receipt of any notice given to the City pursuant to Civil Code section 2924 or through any other means and may exercise its rights as provided in Section 7.3 and this Section.

8.11. Nonliability and Indemnification of the City.

(a) The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the City Purchase Option under Article 5 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

(b) The Owner acknowledges, understands, and agrees that the relationship between the Owner and the City is solely that of an owner and an administrator of an inclusionary housing program, and that the City does not undertake or assume any responsibility for or duty to the Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The City owes no duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Owner agrees that neither the Owner, nor the Owner's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold the City harmless from any liability, loss, or damage for these things.

(c) The Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective commissioners, officers, directors, employees, and agents from and against all liabilities, losses, claims, actions, damages, judgments, costs, and expenses (including, without limitation, reasonable attorney's fees) the City may incur as a direct or indirect consequence of any action by the Owner, including, but not limited to: (i) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; (ii) the failure at any time of any of the Owner's representations to the City to be true and correct; or (iii) the Owner's purchase or ownership of the Property. The Owner agrees that if any claims, demands, suits, or other legal proceedings are made or instituted by any person against the City that arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with City in the defense or other disposition.

8.12. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction to create a valid and enforceable City Purchase Option and to prevent any Prohibited Transfer or Prohibited Sale or any use of the Property in violation of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neutral, and vice versa.

8.13. Termination of Agreement. This Agreement shall terminate as to the Property as a result of an Extraordinary Sale pursuant to Section 6.6. In addition, if the City has subordinated this Agreement pursuant to Section 7.2, this Agreement shall terminate as a result of foreclosure through a trustee's sale, a judicial foreclosure sale, or deed in lieu of foreclosure. Upon such termination of this Agreement, on request of the then record Owner of the Property, the City shall execute, acknowledge, and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement but this Agreement shall no longer affect title to the Property.

8.14. Entire Agreement and Modifications. This Agreement, together with the exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter set forth herein and replaces and supersedes any and all prior or contemporaneous oral or written agreements, subject to Section 8.16. This Agreement may be modified only in a writing duly signed by the affected Owner or Owners and an authorized agent of the City. The modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.15. Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall remain in full force and effect for fifty-nine (59) years from the date of recordation of this Agreement.

8.16. Compliance Monitoring.

(a) The City (or its designee) may enter the Property for inspection following two (2) business days advance written notice to the Owner.

(b) The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the City or its designee for inspection and copying upon five (5) business days advance written notice.

(c) The City shall monitor the Owner's compliance with the requirements of this Agreement and the City Inclusionary Policy on an annual basis. The Owner shall cooperate with City monitoring and provide required certifications and other information required by the City to determine compliance within ten (10) days of receipt of a written request by the City.

8.17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

8.18. Payment of City Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay City a portion of its administrative costs for preparing and processing this Agreement in the amount of Three Hundred Dollars (\$300), which amount may be part of the closing costs and shall be paid to City at Owner's close of escrow for purchase of the Property.

8.19. Recordation of Agreement. Immediately following the Effective Date, this Agreement and, pursuant to Health and Safety Code section 33334.3(f)(3), the Notice of Affordability Restrictions on Transfer of Property, in the form attached hereto as Exhibit G, shall be recorded against the Property in the Official Records of Alameda County.

8.20. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A: Property Description
Exhibit B: Notice of Intent to Transfer
Exhibit C: Notice of Intent to Sell
Exhibit D: Notice of Extraordinary Sale
Exhibit E: City Note
Exhibit F: City Deed of Trust
Exhibit G: Notice of Affordability Restrictions on Transfer of Property
Exhibit H: Eligible Capital Improvements

IN WITNESS THEREOF, the parties have executed this Agreement as of the year and date first written above.

CITY:
CITY OF ALAMEDA, a California municipal
corporation and charter city

OWNER(S):

By: _____
Eric J. Levitt
City Manager
[Signature must be notarized]

Owner
[Signature must be notarized]

APPROVED AS TO FORM:

Owner
[Signature must be notarized]

Michael Roush
Chief Assistant City Attorney

RECOMMENDED FOR APPROVAL:

Lisa Fitts
Management Analyst, Housing
Authority of the City of Alameda

EXHIBIT B

NOTICE OF INTENT TO TRANSFER

Date _____

To: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Executive Director

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the "Property") hereby notifies you of its intent to Transfer in compliance with Section 3.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the "Agreement"). The reason or circumstances relating to such transfer are as follows: _____

_____. Any additional information regarding the proposed transferee will be provided to you immediately upon request.

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda's receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

Owner

Owner

EXHIBIT C

NOTICE OF INTENT TO SELL

To: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Community Development Director

Date _____

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the "Property") hereby notifies you of its intent to Sell the Property in compliance with Section 4.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the "Agreement").

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda's receipt of this Notice and that terms not defined in this Notice shall have the meaning given in the Agreement.

A. The following information is provided to the City pursuant to Section 4.1 of the Agreement:

1. Address of Property: _____
2. Date Owner purchased Property: _____
3. Purchase Price paid by Owner when Property was purchased: _____
4. Date Owner intends to vacate Property: _____
5. Date Property will be placed on market: _____
6. Name and phone number of person for City to contact to schedule inspection:

(name) and _____
(phone number)

B. The following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Property
2. If the Owner believes the Property is in good condition with no deferred maintenance and no deduction for repairs will be necessary, check box below:

☐ Yes, I believe the Property is in good condition and that no deduction for repairs will be necessary pursuant to Section 4.3 of the Agreement. I hereby authorize the City or its designee to enter and inspect the Property to verify its condition.

EXHIBIT C – AFFORDABILITY AGREEMENT

3. If the Owner has made Eligible Capital Improvements and wants such improvements included in the calculation of the Eligible Buyer Purchase Price for the Property pursuant to Section 4.4, check the box below.

☐ Yes, include my Eligible Capital Improvements in the price calculation. I am attaching a copy of the City letter approving these improvements and documentation of costs incurred.

C. I have not yet listed the Property for sale with a multiple listing service or contacted a real estate broker or financial institution. I agree to prepare the Property for sale by:

1. obtaining a pest control report within thirty (30) days of the date of this Notice,
2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this Notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property,
3. allowing the City or its designee to inspect the Property within thirty (30) days of this Notice,
4. if requested by the City following the City's inspection, I will obtain a home inspection report from a licensed home inspector,
5. maintaining utility connections until the Property is transferred, and
6. permitting a walk through by the City prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ [insert date] under penalty of perjury.

By: _____
Owner

By: _____
Owner

EXHIBIT D

NOTICE OF EXTRAORDINARY SALE

Date: _____

To: City of Alameda
c/o Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

The undersigned _____, ("Owner") is the owner of that certain real property located in Alameda, California, commonly known as _____ [insert address], (the "Property"). On _____, 20____, the Owner provided the City with written notice of its intent to sell the Property. The City and the Owner have failed to identify an Eligible Buyer in accordance with Section 6.1(a) of the Affordability, Restrictions on Resale, and Option to Purchase Agreement ("Agreement") or the City has failed to exercise the City Purchase Option in accordance with Section 6.1(b) of the Agreement. Accordingly, the Owner hereby notifies the City of its intent to make an Extraordinary Sale of the Property in accordance with Article 6 of the Agreement.

The Owner hereby requests that the City calculate the Market Value of the Property based on an Appraisal in accordance with Article 6 of the Agreement. The Owner hereby acknowledges that the City shall retain the City Purchase Option until the time that the Owner has accepted in writing an offer to purchase the Property from a buyer, and that all applicable time periods for an Extraordinary Sale under the Agreement commence only upon the City's receipt of this Notice.

Terms not defined in this Notice shall have the meaning given in the Agreement.

Owner

Owner

EXHIBIT E

CITY NOTE

(Shared Appreciation Loan)

\$ _____

Alameda, California _____

FOR VALUE RECEIVED, _____, ("Borrower") promise to pay the CITY OF ALAMEDA ("City") or order at Housing Authority of the City of Alameda, 701 Atlantic Avenue, Alameda, California 94501, Attention: Executive Director, or such other place as the City may designate in writing, the principal sum of _____ (\$ _____), plus Shared Appreciation and Excess Rental Proceeds, as applicable (collectively, the "Loan").

1. PROPERTY. The "Property" is that certain real property commonly known as _____, Alameda, California, and more particularly described on Exhibit A, attached hereto and incorporated herein, which together with all improvements located thereon is referred to in this promissory note ("Note") as the "Property." The Property is part of a residential development known as " _____ " ("Project").

2. AFFORDABILITY COVENANTS, RESALE RESTRICTIONS. The Property, along with certain other residential lots in the Project, is part of an affordable housing program designed to create, preserve, maintain, and protect housing for persons of low- and moderate-income as described in and pursuant to an Affordable Housing Agreement between the City of Alameda ("City"), and _____ ("Developer") dated _____ ("Developer Affordable Housing Agreement"). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to the Borrower at an Affordable Housing Price, as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein. Borrower assumes title to the Property subject to that certain Affordability, Restrictions on Resale, and Option to Purchase Agreement ("Resale Restrictions"), between the Borrower and City, recorded on _____, 2020, as Document No. _____, in the Official Records of Alameda County, California. Capitalized terms used herein and not defined in this Note shall have the meanings set forth in the Resale Restrictions.

3. BASIS OF PRINCIPAL AMOUNT OF NOTE. In the event that this Note is due and payable pursuant to Section 5 below, the Borrower shall pay the City the principal sum of _____ (\$ _____) (the "Principal" or the "Purchase Subsidy"). The Purchase Subsidy is an amount equal to the difference between the Affordable Price and the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property is acquired by the Borrower. The Borrower acknowledges and agrees that the Purchase Subsidy represents the amount by which the purchase price of the Property has been reduced as a result of the City's covenants, conditions, and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement.

4. DEED OF TRUST. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement, and fixture filing (the "Deed of Trust") from the Borrower in favor

of the City, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE.

(a) Term. The term of this Note shall be the same as the Term of the Resale Restrictions, as set forth in Section 8.16 of the Resale Restrictions.

(b) Deferral. Repayment of the Loan shall be deferred for the Term, except as provided in subsection (c) below.

(c) Repayment in Full. The total amount of the Principal and any City Shared Appreciation owed under this Note (together with any Excess Rent Proceeds due the City pursuant to the Resale Restriction Agreement) shall immediately become due and payable (i) in the Event of a Default by the Borrower under this Note, the Resale Restrictions, the Deed of Trust, or the Senior Loan; (ii) in the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions; (iii) on the date of a Prohibited Sale or Prohibited Transfer, or (iv) at the end of the Term of this Note. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Transfer.

(d) Prepayment. Borrower may prepay all or part of the balance due under this Note. If the Borrower prepays all of the balance due under this Note, such prepayment shall include the City's Shared Appreciation as calculated at the time the prepayment is made. The City's Shared Appreciation shall be based on the Market Value of the Property at the time of the prepayment. If the Borrower makes a partial prepayment, such partial prepayment shall be applied only to the principal. If the principal and Shared Appreciation of this Note is entirely prepaid, the Deed of Trust shall remain on the Property to secure payment of the Excess Rental Proceeds, if any, and the Resale Restrictions. In addition, prepayment of this Note shall not affect the Resale Restrictions, which shall remain in full force and effect for the Term, regardless of any prepayment.

6. CITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions or an event of default by Borrower under this Note, the Deed of Trust, the Resale Restrictions, or Senior Lien, the Borrower shall pay to the City the outstanding Principal owed under this Note and the City's Shared Appreciation, as defined herein. The City's Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Section 6.2 of the Resale Restrictions, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Borrower at acquisition of the Property, minus Eligible Capital

Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party

acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "Affordable Price" shall mean the below market rate purchase price in the amount of _____ Dollars (\$_____) paid by the Borrower for the acquisition of the Property.

(c) "City Resale Costs" means any and all costs and fees incurred by the City, whether directly by the City or indirectly under City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5 or an Extraordinary Sale under Article 6 of the Resale Restrictions, including, without limitation, real estate brokerage fees or commissions, recording fees, escrow charges, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) of the Affordable Price.

(d) "City's Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(e) "Eligible Capital Improvements" shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value.

(f) "Extraordinary Sale Price" means the amount received by Borrower as the sales price of the Property under an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions, as evidenced by an executed purchase and sale agreement and estimated settlement statement and as certified by the Borrower under the penalty of perjury. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved in advance by the City in writing.

(g) "Market Value" shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time.

Example of calculating the amount of the City's Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Borrower purchased the Property was \$1,000,000.

- Affordable Price of the Property at the time the Borrower purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [$\$1,000,000 - \$450,000 = \$550,000$]
- Borrower paid closing costs of \$5,000 at time of purchase.
- Borrower made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lenders sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

Extraordinary Sale Price	\$ 625,000
– Affordable Price at purchase	– 450,000
– Closing Costs	– 5,000
– Capital Improvements	– 10,000
– City Resale Costs	– 20,000
= Appreciation Amount	\$ 140,000

In this example, the Appreciation Amount is \$140,000.

Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

$$\text{City's Shared Appreciation Amount} = .55 \times \$140,000 = \$77,000.$$

The Borrower's share of the Appreciation Amount is \$63,000. [$\$140,000 - \$77,000 = \$63,000$]

7. DEFAULT. The Borrower shall be in default under this Note if the Borrower (i) is in default under the this Note, the Resale Restrictions, the Deed of Trust, or a Senior Lien, (ii) fails

to pay any money when due under this Note; or (iii) breaches any representation or covenant made in this Note or the Resale Restrictions.

8. NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE. Borrower acknowledges, understands, and agrees that the relationship between Borrower and City is solely that of borrower and lender, and that the City and its designated agents neither undertake nor assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform the Borrower of the quality, adequacy, or suitability of the Property or any other matter. The City and its designated agents owe no duty of care to protect the Borrower

against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Borrower agrees that neither the Borrower, nor the Borrower's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City or its agents for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold City and its agents harmless from any liability, loss, or damage for these things.

9. INDEMNITY. Borrower agrees to defend, indemnify, and hold the City and its respective officials, officers, directors, employees, and agents, harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney's fees that the City and its designated agents may incur as a direct or indirect consequence of:

- (a) the making of the loan to the Borrower;
- (b) the Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Resale Restrictions; or
- (c) the failure at any time of any of the Borrower's representations or warranties to be true and correct.

10. ACCELERATION. Upon the occurrence of a default as defined in Section 7 of this Note, the City shall have the right to declare the full amount of the principal along with any Shared Appreciation, Excess Rental Proceeds, or other amounts due under this Note immediately due and payable. Any failure by the City to pursue its legal and equitable remedies upon default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this Note, the Resale Restrictions, and the Deed of Trust. Nor shall acceptance by the City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed.

11. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against the City, its successors, and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

12. WAIVER. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors, and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor, and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration, or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. SEVERABILITY. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. NOTICES. All notices required in this Note shall be in writing and shall be deemed received if sent to the addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service

with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

If to City: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Community Development Director

If to Owner: _____,
_____, Alameda, CA 94501

15. CONTROLLING LAW. This Note shall be construed in accordance with and be governed by the laws of the State of California.

16. ASSIGNMENT BY CITY. The City may assign its right to receive the proceeds under this Note to any person and, upon notice to the Borrower by the City, all payments shall be made to the assignee. The City may not transfer or assign the Note to a profit-making entity without first obtaining approval of the Senior Lender. The City may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the Senior Lender.

17. ENTIRE AGREEMENT. This Note (along with the Resale Restrictions and Deed of Trust) sets forth the entire understanding and agreement of the City and the Borrower and any amendment, alteration, or interpretation of this Note must be in writing signed by both the City and the Borrower.

18. ATTORNEYS FEES AND COSTS. The Borrower agrees to pay all costs and expenses of collection and reasonable attorney fees paid or incurred by the City or its designated agents in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. JOINT AND SEVERAL OBLIGATIONS. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

20. NO WAIVER BY CITY. No waiver of any breach, default, or failure of condition under the terms of this Note shall be implied from any failure of the City to take, or any delay by the City in taking, action with respect to such breach, default, or failure or from any previous waiver of any similar or unrelated breach, default, or failure. A waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

BORROWER:

Owner

Owner

Address: _____, Alameda, CA 94501

EXHIBIT F
CITY DEED OF TRUST

After Recording Return To:
City of Alameda
c/o Housing Authority of
the City of Alameda
701 Atlantic Avenue
Alameda, California 94501
Attention: Executive Director

THIS DOCUMENT IS RECORDED ON BEHALF
OF THE HOUSING AUTHORITY OF THE CITY
OF ALAMEDA AND IS EXEMPT FROM RECORDING
FEES PURSUANT TO GOVERNMENT SECTION CODE
6103, NO FEE 27383

_____ [Space Above This Line For Recording Data] _____

CITY DEED OF TRUST

This DEED OF TRUST made this ____ day of _____, 20__, among the trustor _____, ("Trustor"), whose address is _____, Alameda, California 94501 and _____ Title Company ("Trustee") and the City of Alameda as Beneficiary.

(A) "Security Instrument" means this document, which is dated _____, 20__ together with all Riders to this document.

(B) "Note" means the promissory note signed by Trustor and dated _____, 20__. The Note states that the Trustor owes the Beneficiary Purchase Subsidy. The Trustor has promised to pay this debt in the event of Extraordinary Sale. There shall be no payments due under this Note unless payments are otherwise due pursuant to provision of Sections at 5(c) and (d) of Exhibit E FORM OF CITY NOTE.

(C) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(D) "Riders" mean all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☒ Condominium Rider | ☐ Second Property Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | |
| ☐ 1-4 Family Rider | ☐ Biweekly Payment Rider | ☒ Rider to City Deed of Trust |

TRANSFER OF RIGHTS IN THE PROPERTY

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

This Security Instrument secures to Beneficiary: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Trustor's covenants and agreements under this Security Instrument and the Note. For this purpose, Trustor irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ALAMEDA:

which currently has the address of _____, Alameda, CA 94501 ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

TRUSTOR COVENANTS that Trustor is lawfully seised of the estate hereby conveyed and that the Property is unencumbered, except for encumbrances of record. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Trustor and recorded with it

Witnesses:

Owner _____ (Seal)

Owner _____ (Seal)

[Space Below This Line For Acknowledgment]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

RIDER TO CITY DEED OF TRUST

This Rider to Deed of Trust is executed by _____, ("Trustor") for the benefit of the CITY OF ALAMEDA ("Beneficiary").

1. This Deed of Trust also secures the obligations of the Trustor under that certain Affordability, Restrictions on Resale and Option to Purchase Agreement dated _____, 20__ and recorded on _____ as Document No. _____ in the Official Records of Alameda County, California ("Agreement"), against the property encumbered by this Deed of Trust. A default under the Agreement shall be considered a default under this Deed of Trust.

2. This Deed of Trust secures a Shared Appreciation Loan and Note.

Owner

Owner

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this ____ day of _____, 20__, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to **CITY OF ALAMEDA** (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

_____, Alameda, CA 94501
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for

application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

Owner

Owner

EXHIBIT G

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
c/o Housing Authority of the
City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

THIS DOCUMENT IS RECORDED ON BEHALF OF THE CITY
OF ALAMEDA AND IS EXEMPT FROM RECORDING FEES
PURSUANT TO GOVERNMENT SECTION CODE 6103, NO FEE
27383

Space Above This Line For Recorder's Use Only

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

(Note: Above Title and text below must remain in 14-point type or larger)

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Restrictions have been recorded with respect to the Property described below (referred to in this Notice as the "Property") that restrict the price and terms at which the Property may be sold or rented.

Title of Document Containing Affordable Housing Restrictions: Affordability,

Restrictions on Resale, and Option to Purchase Agreement, dated _____, 20__

(referred to in this Notice as the "Affordable Housing Restrictions").

Parties to Affordable Housing Restrictions:

City of Alameda ("City") and _____ ("Owner").

The Affordable Housing Restrictions are recorded: (*mark one box*)

- ☐ on _____, as Document No. _____, in the Official Records of Alameda County, on _____; or
- ☒ concurrently with this Notice, as Document No. _____, in the Official Records of Alameda County.

Legal Description of Property: See Exhibit A (Attached hereto)

Street Address of Property:

Alameda, CA 94501

Assessor's Parcel Number of Property: _____

Summary of Affordable Housing Restrictions (*mark box as applicable*):

- ☒ The Property is restricted for resale to a low- or moderate-income household at a purchase price affordable to a low- or moderate-income household, as applicable.
- ☒ The Owner must occupy the Property as the Owner's principal residence, unless approved in writing by the City.
- ☒ The Owner must give notice to the City before resale of the Property.
- ☒ The Owner has granted the City an option to purchase the Property upon resale or default.
- ☒ The Owner's rights to pledge the Property as security for a debt are limited.

☒ Term of Restrictions: 59 years, commencing on _____,
20__ and terminating on _____, 20__.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements that apply to the Property. In the event of any conflict between the terms of this Notice and the terms of the Affordable Housing Restrictions, the terms of the Affordable Housing Restrictions shall control.

This Notice is being recorded and filed by the City in compliance with Health and Safety Code section 33334.3(f)(3) and (4), and shall be indexed against the City and the current Owner of the Property.

IN WITNESS WHEREOF, the parties have executed this Notice of Affordability Restrictions on Transfer of Property on or as of the date first written above.

THE CITY OF ALAMEDA:

Dated: _____, 20__

By: _____

Eric J. Levitt

City Manager

[Signature must be notarized]

Approved as to form:

By: _____

Michael Roush

Chief Assistant City Attorney

OWNER:

Dated: _____, 20__

[Signature must be notarized]

Dated: _____, 20__

[Signature must be notarized]

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

EXHIBIT H

ELIGIBLE CAPITAL IMPROVEMENTS

EXHIBIT E
ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
Air Quality and Climate Change					
SFEIR Impact 4.A-1: The proposed project would not result in localized construction dust-related air quality impacts; generate construction emissions that would result in a substantial increase of criteria pollutants and precursors for which the air basin is in nonattainment under an applicable federal or state ambient air quality standard; or expose sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter (PM _{2.5}). (Less than Significant with Mitigation)	GPA EIR Mitigation Measure AIR-1a (revised): <i>Implementation of Dust Abatement Programs.</i> Proponents of development projects within the Northern Waterfront GPA area shall be required to demonstrate compliance with all applicable City regulations and operating procedures prior to issuance of building or grading permits, including standard dust control measures. The effective implementation of dust abatement programs, incorporating all of the following dust control measures, would reduce the temporary air quality impact associated with construction dust. • All active construction areas shall be watered <u>two times daily</u> using equipment and staff provided by the project applicant or prime contractor, as needed, to avoid visible dust plumes. Appropriate non-toxic dust palliative or suppressant, added to water before application, may be used. • All trucks hauling soil, sand and other loose materials shall be covered or <u>shall maintain at least two feet of freeboard.</u> • All unpaved access roads, parking areas and construction staging areas shall be either paved, watered as necessary to avoid visible dust plumes, or subject to the application of (non-toxic) soil stabilizers. • All paved access roads, parking areas and staging areas at the construction site shall be swept daily with water sweepers. <u>The use of dry power sweeping is prohibited.</u> • If visible soil material is carried onto adjacent public streets, these streets shall be swept daily with water sweepers. <u>The use of dry power sweeping is prohibited.</u> • All stockpiles of debris, soil, sand or other materials that can be blown by the wind shall either be covered or watered as necessary to avoid visible dust plumes. • An off-pavement speed limit of 15 miles per hour for all construction vehicles shall be incorporated into the construction contract and enforced by the prime contractor. • All inactive portions of the project site (those areas which have been	Provide Dust Abatement Plan that meets the requirements of the mitigation measure to the City Building Division for review and approval.	Project applicant or designee	Prior to issuance of demolition and/or building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	previously graded, but inactive for a period of ten days or more) shall be watered with an appropriate dust suppressant, covered or seeded. - All earth-moving or other dust-producing activities shall be suspended when the above dust control measures prove ineffective in avoiding visible dust plumes during periods of high winds. The wind speed at which this suspension of activity will be required may vary, depending on the moisture conditions at the project site, but suspension of such activities shall be required in any case when the wind speed exceeds 25 miles per hour. - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. - Post a publicly visible sign with the telephone number and person to contact at the City of Alameda regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.				
SFEIR Impact 4.A-2: The proposed project would not generate operational emissions that would result in a considerable net increase of criteria pollutants or precursors for which the air basin is in nonattainment under an applicable federal or state ambient air quality standard or expose sensitive receptors to substantial	SFEIR Mitigation Measure 4.A-2: All wood-burning devices, such as woodstoves and open hearth fire places shall be prohibited in residential units associated with the proposed project. Only natural gas fireplaces shall be permitted.	Provide building plans to City Building Division for review and approval showing compliance with the measure.	Project applicant or designee	Prior to issuance of building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
concentrations of toxic air contaminants or respirable particulate matter (PM2.5). (Less than Significant with Mitigation)					

Air Quality and Climate Change (cont.)

SFEIR Impact 4.A-3: The proposed project would not expose sensitive receptors to substantial pollutant concentrations (Less than Significant with Mitigation)	GPA EIR Mitigation Measure AIR-3: The project sponsors shall ensure that construction contract specifications include a requirement that all off-road diesel-powered construction equipment used for project improvements be equipped with a Level 3 Verified Diesel Emissions Control (VDEC), which would reduce diesel particulate emissions by at least 85 percent.	Provide construction specifications to City Building Division for review and approval.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid materials.	City of Alameda
SFEIR Impact 4.A-5: The proposed project would not conflict with or obstruct the implementation of the applicable air quality plan. (Less than Significant with Mitigation)	SFEIR Mitigation Measure 4.A-4: The City shall require that the following measures be implemented, either by the City or subsequent development sponsors or in combination, to encourage the use of low- and zero-emission vehicles in travel to and from the project site: - Promote use of clean fuel-efficient vehicles through preferential parking and/or installation of charging stations. - Promote zero-emission vehicles by providing a neighborhood electric vehicle program to reduce the need to have a car or second car vehicles as one potential element of a TDM program that would be required of all new developments.	Pre-construction: Provide parking/construction plans to City Building Division for review and approval showing compliance with measure. Post-construction: Demonstrate compliance with measure to satisfaction of City Building Division and/or City Planning Division.	Project applicant or designee	Pre-construction: Prior to issuance of building permits. Post-construction: Prior to issuance of occupancy permits.	City of Alameda

Biological Resources

SFEIR Impact 4.B-1: The proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service. (Less than Significant with Mitigation)	SFEIR Mitigation Measure 4.B-1a: Prior to the start of pier rehabilitation and marina and ferry terminal facilities construction, the City shall require a NMFS-approved sound attenuation monitoring plan to protect fish and marine mammals, if pile driving is required for project implementation. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities, and describe management practices to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 dB. The sound monitoring results shall be made available to the NMFS. The plan shall incorporate, but not be limited to, the following best management practices (BMPs):	Pre-construction: Provide NMFS-approved sound attenuation and monitoring plan to the City Planning Division. During construction: Provide monitoring reports as specified in agreement with NMFS.	Project applicant or designee	Pre-construction: Prior to issuance of demolition/building permits. During construction: Ongoing per terms of agreement with NMFS.	City of Alameda
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ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	- To the extent feasible, all pilings shall be installed and removed with vibratory pile drivers only. Vibratory pile driving will be conducted following the Corps' "Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California". USFWS and NOAA completed Section 7 consultation on this document, which establishes general procedures for minimizing impacts to natural resources associated with projects in or adjacent to jurisdictional waters. - An impact pile driver may only be used where necessary to complete installation of larger steel pilings in accordance with seismic safety or other engineering criteria. - The hammer shall be cushioned using a 12-inch thick wood cushion block during all impact hammer pile driving operations. - All piling installation using impact hammers shall be conducted between June 1 and November 30, when the likelihood of sensitive fish species being present in the work area is minimal. - If pile installation using impact hammers must occur at times other than the approved work window, the project applicant shall obtain incidental take authorization from NMFS and CDFW, as necessary, to address potential impacts on steelhead trout, chinook salmon, and Pacific herring and implement all requested actions to avoid impacts. - The project applicant shall monitor and verify sound levels during pile driving activities. The sound monitoring results will be made available to NMFS and the City. - In the event that exceedance of noise thresholds established and approved by NMFS occurs, a contingency plan involving the use of bubble curtains or air barrier shall be implemented to attenuate sound levels to below thresholds.				
	SFEIR Mitigation Measure 4.B-1b: During the project permitting phase, the City will ensure that any projects requiring in-water work include consultation with NMFS to determine if the work can be covered under one of the programmatic consultations for federally listed species described above or if a project-level BO would be required and whether an Incidental Harassment Authorization for marine mammals would be needed for dredging or pile driving activities. The	Provide evidence of regulatory compliance to the City Building Division and/or the City Planning Division as specified in the measure.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	project applicant shall also consult with CDFW regarding State special-status fish and the potential need for an incidental take permit (ITP). The project applicant shall submit to the City copies of any IHA and/or ITP received or, alternatively, copies of correspondence confirming that an IHA and/or ITP is not required for the project in question.				

Biological Resources (cont.)

SFEIR Impact 4.B-1 (cont.)	SFEIR Mitigation Measure 4.B-1c: As part of the NMFS-approved sound attenuation monitoring plan required for pile driving in Mitigation Measure 4-2a, the City shall ensure that the project applicant implements these additional actions to reduce the effect of underwater noise transmission on marine mammals. These actions shall include at a minimum: • Establishment of a 1,600-foot (500-meter) safety zone that shall be maintained around the sound source, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • Work activities shall be halted when a marine mammal enters the 1,600-feet (500 meter) safety zone and resume only after the animal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be employed in all pile driving to give marine mammals an opportunity to vacate the area. • Maintain sound levels below 90 dBA when pinnipeds (seals and sea lions) are present. • A NMFS-approved biological monitor will conduct daily surveys before and during impact hammer pile driving to inspect the work zone and adjacent Bay waters for marine mammals. The monitor will be present as specified by NMFS during the impact pile-driving phases of construction.	Pre-construction: Provide NMFS-approved sound attenuation and monitoring plan to the City Planning Division. During construction: Provide monitoring reports as specified in agreement with NMFS.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda
	SFEIR Mitigation Measure 4.B-1d: Prior to occupancy, the City shall ensure that the project applicant installs dock lighting on all floating docks that minimizes artificial lighting of Bay waters by using shielded, low-mounted, and low light-intensity fixtures and bulbs.	Pre-construction: Provide lighting plans to City Building Division for review and approval showing compliance with measure. Post-construction: Demonstrate compliance with measure to satisfaction of the City Building Division.	Project applicant or designee	Pre-construction: Prior to issuance of building permits. Post-construction: Prior to issuance of occupancy permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	SFEIR Mitigation Measure 4.B-1e: To the extent practicable, construction activities including building renovation, demolition, vegetation and tree removal, and new site construction shall be performed between September 1 and January 31 in order to avoid breeding and nesting season for birds. If these activities cannot be performed during this period, preconstruction survey for nesting birds shall be conducted by a qualified biologist. In coordination with the City, surveys shall be performed during breeding bird season (February 1 – August 31) no more than 14 days prior to construction activities listed above in order to locate any active passerine nests within 250 feet of the project site and any active raptor nests within 500 feet of the project site. Building renovation, tree and vegetation removal, and new construction activities performed between September 1 and January 31 avoid the general nesting period for birds and therefore would not require preconstruction surveys. If active nests are found on either the project site or within the 500-foot survey buffer surrounding the project site, no-work buffer zones shall be established around the nests in coordination with CDFW. No demolition, vegetation removal, or ground-disturbing activities shall occur within a buffer zone until young have fledged or the nest is otherwise abandoned as determined by the qualified biologist. If work during the nesting season stops for 14 days or more and then resumes, then nesting bird surveys shall be repeated, to ensure that no new birds have begun nesting in the area.	Conduct pre-construction surveys for nesting birds if construction is proposed during specified times; provide results of surveys to City Building Division and/or City Planning Division; conduct construction activities according to the protocol described in the mitigation measure.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda
	GPA EIR Mitigation Measure BIO-1 (revised): Proponents of each project in the Northern waterfront GPA area shall <u>engage a qualified biologist to prepare and conduct a preconstruction survey of the project area in order to locate potential roosting bat habitat and active colonies of all buildings scheduled for demolition or renovation shall be conducted no more than two weeks in advance of initiation of building demolition or renovation activities onsite or initiation of construction within 100 feet of structures providing potential bat roosting sites. Potential direct and indirect disturbances to bats shall be identified by locating potential habitat and active colonies and instituting protective measures prior to construction. No activities that could disturb active roosts shall proceed prior to the completed surveys. 30 days prior to the initiation of demolition or renovation activities.</u>	Conduct predemolition/preconstruction surveys for bats as specified in the mitigation measure; provide results of surveys to City Building Division and/or City Planning Division; follow monitoring protocols as specified in the mitigation measure.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	Special attention shall be given to buildings where pallid bats were observed during the earlier survey or where measures to discourage roosting were implemented. If no bats or signs of an active roost are found, no additional measures are required. If a bat roost site is found, then measures shall be implemented to discourage roosting at the site. If a maternity colony of bats is found, the building and the bats shall not be disturbed until the young have dispersed, as determined by a qualified biologist.				
Biological Resources (cont.)					
SFEIR Impact 4.B-1 (cont.)	<u>Should potential roosting habitat or active bat roosts be found in structures to be disturbed (i.e. demolished or renovated) under the project, the following measures shall be implemented:</u> • <u>Removal of structures shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15; outside of bat maternity roosting season (approximately April 15 – August 31); and outside of months of winter torpor (approximately October 15 – February 28), to the extent feasible.</u> • <u>If removal of structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project site where structure demolition or renovation is planned, a no-disturbance buffer of 100 feet shall be established around the roost sites until they are determined to be no longer active by a qualified biologist.</u> • <u>The qualified biologist shall be present during structure disturbance if active bat roosts are present. Structures with active roosts shall be removed only when no rain is occurring or is forecast to occur for three days and when daytime temperatures are at least 50°F.</u> • <u>Removal of structures containing or suspected to contain active bat roosts shall be dismantled under the supervision of the qualified biologist in the evening and after bats have emerged from the roost to forage. Structures shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost.</u> • <u>Bat roosts that begin during construction are presumed to be</u>				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	<u>unaffected, and no buffer would be necessary.</u> <u>If significant bat roosting habitat (e.g., maternity roosts or large non-maternity roost sites) is destroyed during structure removal, artificial bat roosts shall be constructed in an undisturbed area in the project site vicinity away from human activity and at least 200 feet from project demolition/construction activities. The design and location of the artificial bat roost(s) shall be determined by a qualified bat biologist.</u>				
SFEIR Impact 4.B-2: Development facilitated by the proposed project would not have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. (Less than Significant with Mitigation)	SFEIR Mitigation Measure 4.B-2a: Prior to in-water work related to pier retrofitting, the City shall ensure that the project applicant conducts a pre-construction survey to determine if native oysters, mussels, and eelgrass are present in Alaska Basin and the Oakland/Alameda Estuary to be affected by the project. - The eelgrass survey shall be conducted according to the methods contained in the California Draft Eelgrass Mitigation Policy (CDEMP) (NMFS 2011), with the exception that the survey shall be conducted within 120 days (rather than 60 days, as recommended in the CDEMP) prior to the desired construction start date, to allow sufficient time for modification of project plans (if feasible) and agency consultation. - If found within or immediately adjacent to the construction footprint, the project applicant shall first determine whether avoidance of the beds is feasible. If feasible, impacts to the oyster or eelgrass bed shall be avoided. If complete avoidance is not feasible, the applicant shall request guidance from the National Marine Fisheries Service (or other applicable agency) as to the need and/or feasibility to move affected beds. Any translocation of eelgrass beds shall be conducted consistent with the methods described in the CDEMP and/or those described in Eelgrass Conservation in San Francisco Bay: Opportunities and Constraints (Boyer and Wyllie-Echeverria, 2010). Translocation of oyster beds shall be consistent with methods and recommendations presented in Shellfish Conservation and Restoration in San Francisco Bay: Opportunities and Constraints (Zabin et al., 2010). - If it is not possible to translocate oyster or eelgrass beds then the City shall ensure that the project applicant	Conduct preconstruction surveys for native oysters, mussels, and eelgrass as specified in the mitigation measure; provide results of surveys to City Building Division and/or City Planning Division; follow avoidance and monitoring protocols as directed by NMFS and as specified in the mitigation measure; provide compensatory mitigation if required.	Project applicant or designee	Prior to issuance of building permits for the affected in-water areas.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	provides compensatory mitigation consistent with the CDEMP for eelgrass (a ratio of 3.01:1 [transplant area to impact area]) and a minimum 1:1 ratio for oyster beds. The relocation or compensatory mitigation site for eelgrass or oyster beds shall be within San Francisco Bay.				
	SFEIR Mitigation Measure 4.B-2b: Prior to occupancy the City shall ensure that the marina project applicant prepares educational information regarding sensitive biological resources in the project vicinity and within Bay waters. This information shall be disseminated to all boaters using the marina and shall include, but not be limited to, information educating boat owner/operators about sensitive habitats and species in the Bay and actions they are required to implement to avoid impacts to marine resources.	Prepare educational materials as specified in the mitigation measure; present materials to the City and cooperating agencies for review and approval.	Project applicant or designee	Prior to issuance of occupancy permits and commencement of marina operations.	City of Alameda
Biological Resources (cont.)					
SFEIR Impact 4.B-2 (cont.)	The educational information will be disseminated to visiting boaters through multiple methods including, but not limited to, brochures or pamphlets; marina and/or City websites; boating, cruising, and newspaper periodicals; and social media. The information shall be prepared soliciting input from, and in cooperation with, the National Marine Fisheries Service (NMFS), U.S. Coast Guard (USCG), California State Lands Commission, National Park Service (NPS), California Department of Parks and Recreation (CDPR), Bay Conservation and Development Commission (BCDC), and local organizations active in protecting Bay marine resources, as appropriate.				
	SFEIR Mitigation Measure 4.B-2c: The City shall require that the project applicant develop and implement a Marine Invasive Species Control Plan prior to commencement of any in-water work including, but not limited to, construction of wharves and seawalls, dredging, pile driving, and construction of new stormwater outfalls. The plan shall be prepared in consultation with the United States Coast Guard (USCG), RWQCB, and other relevant federal and state agencies as may be appropriate. Provisions of the plan shall include but not be limited to the following: - Environmental training of construction personnel involved in in-water work. - Actions to be taken to prevent the release and spread of marine invasive species, especially algal species such as <i>Undaria</i> and <i>Sargasso</i>.	Prepare Marine Invasive Species Control Plan with cooperation and oversight from relevant agencies as specified in the mitigation measure; implement the plan as specified in the mitigation measure; conduct technical assistance activities as specified in the mitigation measure; prepare and submit a post-construction report to the City of Alameda and applicable agencies.	Project applicant or designee	Pre-construction: Prior to issuance of demolition/building permits within the affected in-water areas. Post-construction: Prior to final inspection of completed in-water structures within the affected area(s).	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	- Procedures for the safe removal and disposal of any invasive taxa observed on the removed structures prior to disposal or reuse of pilings, docks, wave attenuators, and other features. - The onsite presence of qualified marine biologists to assist the contractor in the identification and proper handling of any invasive species on removed Port equipment or materials. - A post-construction report identifying which, if any, invasive species were discovered attached to equipment and materials following removal from the water, and describing the treatment/handling of identified invasive species. Reports shall be submitted to the City, as well as the USCG and the RWQCB if requested by the agencies.				
SFEIR Impact 4.B-3: Development facilitated by the proposed project would have a substantial adverse effect on federally protected wetlands, 'other waters', and navigable waters as defined by Sections 404 and 10 of the Clean Water Act and waters of the State through direct removal, filling, hydrological interruption, or other means. (Less than Significant with Mitigation)	GPA EIR Mitigation Measure BIO-2: All dredging and in-water construction activities shall be consistent with the standards and procedures set forth in the Long Term Management Strategy for dredging in the San Francisco Bay waters, a program developed by the Bay Conservation and Development Commission (BCDC), the Regional Water Quality Control Board (RWQCB), the U.S. Environmental Protection Agency, (EPA), and other agencies, to guide the disposal of dredge materials in an environmentally sound manner.	Submit to the City an approved plan and/or required regulatory permits showing compliance with applicable requirements as specified in the mitigation measure.	Project applicant or designee	Prior to issuance of dredging and construction permits within the affected in-water areas.	City of Alameda
SFEIR Impact 4.B-4: Development facilitated by the proposed project would not interfere with the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Less than Significant with Mitigation)	Implement SFEIR Mitigation Measures 4.B-1a, 4.B-1b, and 4.B-1c. SFEIR Mitigation Measure 4.B-3: Prior to the issuance of the first building permit for each new building, or for any exterior renovation that would increase the surface area of glazing by 50 percent or more or that would replace 50 percent or more of existing glazing, the City shall require that the project applicant retain a qualified biologist experienced with bird strike issues to review and approve the design of the building to ensure that it sufficiently minimizes the potential for bird strikes. The City may also consult with resource agencies such as the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, or others, as it determines to be appropriate during this review.	Submittal of building, lighting, and structural plans to the City Building Division that meet the requirements of the bird-strike avoidance specifications as specified in the mitigation measure; preparation of education materials for future building occupants; peer review and approval of all of the above by a qualified biologist with appropriate expertise, with oversight by City	Project applicant or designee	Pre-construction: Prior to issuance of building permits for each project phase. Post-construction documentation: Prior to issuance of building permits for each project phase.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	The project applicant shall provide to the City a written description of the measures and features of the building design that are intended to address potential impacts on birds. The design shall include some of the following measures or measures that are equivalent to, but not necessarily identical to, those listed below, as new, more effective technology for addressing bird strikes may become available in the future: • Employ design techniques that create "visual noise" via cladding or other design features that make it easy for birds to identify buildings as such and not mistake buildings for open sky or trees; • Decrease continuity of reflective surfaces using "visual marker" design techniques, which techniques may include: – Patterned or fritted glass, with patterns at most 28 centimeters apart, – One-way films installed on glass, with any picture or pattern or arrangement that can be seen from the outside by birds but appear transparent from the inside,	staff; documentation of all of the above as specified in the mitigation measure.			
Biological Resources (cont.)					
SFEIR Impact 4.B-4 (cont.)	– Geometric fenestration patterns that effectively divide a window into smaller panes of at most 28 centimeters, and/or – Decals with patterned or abstract designs, with the maximum clear spaces at most 28 centimeters square. • Up to 60 feet high on building facades facing the shoreline, decrease reflectivity of glass, using design techniques such as plastic or metal screens, light-colored blinds or curtains, frosting of glass, angling glass towards the ground, UV-A glass, or awnings and overhangs; • Eliminate the use of clear glass on opposing or immediately adjacent faces of the building without intervening interior obstacles such that a bird could perceive its flight path through the glass to be unobstructed; • Mute reflections in glass using strategies such as angled glass, shades, internal screens, and overhangs; and • Place new vegetation sufficiently away from glazed building facades so that no reflection occurs. Alternatively, if planting of landscapes near a glazed building façade is desirable, situate trees and shrubs immediately adjacent				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	to the exterior glass walls, at a distance of less than three feet from the glass. Such close proximity will obscure habitat reflections and will minimize fatal collisions by reducing birds' flight momentum. Lighting. The project applicant shall ensure that the design and specifications for buildings implement design elements to reduce lighting usage, change light direction, and contain light. These include, but are not limited to, the following general considerations that should be applied wherever feasible throughout the proposed project to reduce night lighting impacts on avian species: • Avoid installation of lighting in areas where not required for public safety • Examine and adopt alternatives to bright, all-night, floor-wide lighting when interior lights would be visible from the exterior or exterior lights must be left on at night, including: – Installing motion-sensitive lighting – Installing task lighting – Installing programmable timers – Installing fixtures that use lower-wattage, sodium, and yellow-red spectrum lighting. • Install strobe or flashing lights in place of continuously burning lights for any obstruction lighting. • Where exterior lights are to be left on at night, install fully shielded lights to contain and direct light away from the sky. Antennae, Monopole Structures, and Rooftop Elements. The City shall ensure, as a condition of approval for every building permit, that buildings minimize the number of and co-locate rooftop-antennas and other rooftop equipment, and that monopole structures or antennas on buildings, in open areas, and at sports and playing fields and facilities do not include guy wires. Educating Residents and Occupants. The City shall ensure, as a condition of approval for every building permit, that the project applicant agrees to provide educational materials to building tenants, occupants, and residents encouraging them to minimize light transmission from windows, especially during peak spring and fall migratory periods, by turning off unnecessary lighting and/or closing window coverings at night. The City shall review and approve the educational materials prior to building occupancy.				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	Documentation. The project applicant and/or City shall document undertaking the activities described in this mitigation measure and maintain records that include, among others, the written descriptions provided by the building developer of the measures and features of the design for each building that are intended to address potential impacts on birds, and the recommendations and memoranda prepared by the qualified biologist experienced with bird strikes who reviews and approves the design of any proposed projects to ensure that they sufficiently minimize the potential for bird strikes.				
Biological Resources (cont.)					
SFEIR Impact 4.B-5: Development facilitated by the proposed project would not conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. (Less than Significant with Mitigation)	Implement GPA EIR Mitigation Measure BIO-1 and SFEIR Mitigation Measures 4.B-1a through 4.B-1e, SFEIR Mitigation Measures 4.B-2a through 4.B-2c, GPA EIR Mitigation Measure BIO-2, and SFEIR Mitigation Measure 4.B-3.	See measures listed above.	See measures listed above.	See measures listed above.	See measures listed above.
SFEIR Impact 4.B-6: Development facilitated by the proposed project would conflict with an adopted local, regional, or State Habitat Conservation Plan. (Less than Significant with Mitigation)	Implement GPA EIR Mitigation Measures BIO-1 and BIO-2, SFEIR Mitigation Measures 4.B-1a through 4.B-1e, 4.B-2a through 4.B-2c, and 4.B-3.	See measures listed above.	See measures listed above.	See measures listed above.	See measures listed above.
SFEIR Impact 4.B-7: The proposed project, in conjunction with other past, current, or foreseeable development in Alameda, could result in cumulative impacts on biological resources. (Less than Significant with Mitigation)	Implement GPA EIR Mitigation Measures BIO-1 and BIO-2, SFEIR Mitigation Measures 4.B-1a through 4.B-1e, SFEIR Mitigation Measures 4.B-2a through 4.B-2c, and SFEIR Mitigation Measure 4.B-3.	See measures listed above.	See measures listed above.	See measures listed above.	See measures listed above.

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
Cultural Resources					
Initial Study Impact 5b: The proposed project could cause an adverse change in the significance of an archaeological resource pursuant to California Public Resources Code §15084.5. (Less than Significant with Mitigation)	GPA EIR Mitigation Measure CULT-1: In the event that previously unidentified cultural resources are discovered during site preparation or construction, work shall cease in the immediate area until such time as a qualified archaeologist and City of Alameda personnel can assess the significance of the find. The following measures shall be implemented at the time of the find: • Activity in the vicinity of the suspected resources shall be immediately suspended and City of Alameda personnel and a qualified archaeologist shall evaluate the find. Project personnel shall not alter any of the uncovered materials or their context. • If archeological resources are discovered, the City and the cultural resource consultant shall determine whether the resource is unique based on the criteria provided in the CEQA Guidelines and the criteria listed above. The City and developer, in consultation with a cultural resource expert, shall seek to avoid damaging effects on the resource wherever feasible. • If the City determines that avoidance is not feasible, a qualified cultural resource consultant shall prepare an excavation plan for mitigating the impact on the qualities that make the resource unique. The mitigation plan shall be prepared in accordance with CEQA Guidelines and shall be submitted to the City for review and approval.	Placement of specified mitigation requirements within the project plans for each phase of project development; provide construction specifications to City Building Division for review prior to construction bid solicitation and/or contract finalization.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid solicitation.	City of Alameda
Initial Study Impact 5c: The proposed project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature (Less than Significant with Mitigation)	GPA EIR Mitigation Measure CULT-3: If paleontological resources are encountered during site preparation or construction activities, the following mitigation measures shall be implemented: • Activity in the vicinity of the suspected resource(s) shall be immediately suspended, and City of Alameda personnel and a qualified paleontological resource consultant shall be contacted to evaluate the find. Project personnel shall not alter any of the uncovered materials or their context. • If paleontological resources are discovered and the City and the paleontological resource consultant found that the resource is significant based on the criteria provided in the CEQA Guidelines and criteria listed	Placement of specified mitigation requirements within the project plans for each phase of project development; provide construction specifications to City Building Division for review prior to construction bid solicitation and/or contract finalization.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid solicitation.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	above, the City and project developer, in consultation with a paleontological resource expert, shall seek to avoid damaging effects on the resource wherever feasible. If the City determines that avoidance is not feasible, a qualified paleontological resource consultant shall prepare a salvage plan for mitigating the effect of the project on the qualities which make the resource unique. The project developer, in consultation with a qualified paleontologist, shall complete a paleontological resource inventory, declaration, and mitigation plan in accordance with the CEQA Guidelines and submit it to the City for review and approval.				

Cultural Resources (cont.)

Initial Study Impact 5d: The proposed project could disturb human remains, including those interred outside of formal cemeteries (Less than Significant with Mitigation)	GPA EIR Mitigation Measure CULT-2: If human remains are encountered, work shall halt within 50 feet of the find and the County Coroner shall be notified immediately. A qualified archaeologist shall also be contacted to evaluate the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. Pursuant to Section 5097.98 of the Public Resources Code, the Native American Heritage Commission will identify a Native American Most Likely Descendant to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. Section 7050.5 of the California Health and Safety Code states that in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined whether or not the remains are subject to the coroner's authority.	Placement of specified mitigation requirements within the project plans for each phase of project development; provide construction specifications to City Building Division for review prior to construction bid solicitation and/or contract finalization.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid solicitation.	City of Alameda
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Geology, Soils, and Seismicity

Initial Study Impact 6a: The proposed project could expose people or structures to potential substantial adverse effects, including the	GPA EIR Mitigation Measure GEO-1: While the potential impacts of strong seismic ground shaking cannot be eliminated in the Northern Waterfront GPA area, the following steps shall be implemented to reduce the impacts	Submit project plans to the City Building Division for review and approval that meet the requirements of the mitigation measure;	Project applicant or designee	CBC compliance: Prior to issuance of building permits for each project	City of Alameda
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ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
risk of loss, injury, or death involving strong seismic ground shaking, seismic-related ground failure, and liquefaction (Less than Significant with Mitigation)	related to expected strong ground shaking: - Grading, foundation, and structural design should be based on the anticipated strong seismic shaking associated with a future major earthquake on the Hayward fault. The Hayward fault is considered to be a Type A seismic source (with active slip and capable of a magnitude 7.0 or greater earthquake). All structures shall be designed in accordance with the most recent edition of the California Building Code. - The applicant shall prepare an earthquake preparedness and emergency response plan for all public use facilities. The plan should be submitted for review and approval by the Community Development and/or Public Works Department, prior to occupancy of the structures. - Prior to marketing residential or commercial units for sale, the developer shall prepare an earthquake hazards information document. This document should be made available to any potential occupant prior to purchase or rental of the housing units or commercial spaces. The document should describe the potential for strong ground shaking at the site, potential effects of such shaking, and earthquake preparedness procedures.	prepare an earthquake preparedness and emergency response plan and an earthquake hazards information document, with cooperation and approval by applicable City agencies.		phase, and as part of final inspection for all project phases. Earthquake Preparedness and Response Plan: Prior to issuance of occupancy permits for each project phase. Earthquake hazards information documentation: Prior to sale/lease of first occupied unit within each project phase.	
	GPA EIR Mitigation Measure GEO-2: The following mitigation measures shall be implemented to reduce the potential impact of seismic-induced ground failure. - Earthworks and foundation design shall be conducted in accordance with all recommendations contained in the Weyerhaeuser/Chipman Parcels geotechnical report by Lowney Associates (December 1998) for that parcel. Additional liquefaction potential analyses shall be conducted and a liquefaction mitigation program developed for each development within the Northern Waterfront GPA area. All structures proposed for the project area shall be designed and constructed in accordance with the most recently adopted version of the City of Alameda Building Code, and the seismic design considerations of the most recent California Building Code as adopted by the City of Alameda, and in accordance with CGS Special Publication 117A. - Prior to the issuance of any grading or building permits, geotechnical investigations shall be conducted for the Del Monte Warehouse (URS Corporation report, 2002), Encinal	Submit listed studies/investigations that meet the requirements of the mitigation measure to the City Building Division for review and approval; provide evidence of satisfactory implementation of the requirements contained therein, to the satisfaction of the City Building Division.	Project applicant or designee	Prior to issuance of relevant grading/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	Terminals, or Fortman Marina sub-areas of the Northern Waterfront GPA area. Reports for these studies shall evaluate the liquefaction potential for each site in accordance with the Standard of Practice for Geotechnical Engineering and shall provide recommendations for stabilization or resistance of structures from the potential effect of liquefaction of sediments. The potential for lurch cracking and lateral spreading shall also be evaluated. Stability of the bulkhead for projects adjacent to bulkheads shall also be evaluated. Reports shall be submitted to the City of Alameda Public Works Department for review and approval. Prior to commencement of construction of the project the existing wharfs/piers and the bank protection along the northern shoreline, including the shall be evaluated for suitability by a California licensed structural/geotechnical engineering firm. Any recommendations made shall be incorporated into the project design.				
Geology, Soils, and Seismicity (cont.)					
Initial Study Impact 6a (cont.)	Prior to commencement of construction on the Clement Avenue extension, a slope stability evaluation of the offshore areas of the project site and the Alaska Basin bulkhead shall be performed by a California licensed structural/geotechnical engineering firm. Any recommendations made in accordance with the most recent California Building Code requirements shall be incorporated into the project design plans for the Clement Avenue Extension. The project applicant shall pay a fair share contribution with the Del Monte project toward this study and the subsequent recommendations.				
Initial Study Impact 6c: The proposed project could be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or	GPA EIR Mitigation Measure GEO-3: Proponents for all projects within the Northern Waterfront GPA area shall be required to prepare a geotechnical report for review and approval by the City of Alameda that specifies all measures necessary to limit consolidation including minimization of structural fills and use (when necessary) of lightweight and low plasticity fill materials to reduce the potential for excessive loading caused by fill placement. The placement of artificial fill should be limited to reduce the potential for increased loading and associated settlement in areas underlain	Submit listed studies/investigations that meet the requirements of the mitigation measure to the City Building Division for review and approval; provide evidence of satisfactory implementation of the requirements contained therein, to the satisfaction of	Project applicant or designee	Prior to issuance of relevant grading/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
collapse (Less than Significant with Mitigation)	by thick younger Bay Mud. Increased area settlement could have implications for flooding potential as well as foundation design. Reconditioning (compaction) of existing subgrade materials would be preferable to placement of fill. The report shall present recommendations for specific foundation designs, which minimize the potential for damage related to settlement. The design of utilities shall consider differential settlements along utility alignments constructed in filled areas of the Northern Waterfront GPA area.	the City Building Division.			
Initial Study Impact 6d: The proposed project could be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property (Less than Significant with Mitigation)	GPA EIR Mitigation Measure GEO-4: The required geotechnical report shall require that subgrade soils for pavements consist of moisture-conditioned, lime-treated, or non-expansive soil, and that surface (including roof drainage) and subsurface water be directed away from foundation elements and into storm drains to minimize variations in soil moisture.	Submit listed studies/investigations that meet the requirements of the mitigation measure to the City Building Division for review and approval; provide evidence of satisfactory implementation of the requirements contained therein, to the satisfaction of the City Building Division.	Project applicant or designee	Prior to issuance of relevant grading/building permits.	City of Alameda

Hazards and Hazardous Materials

Initial Study Impact 8a: The proposed project could create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials (Less than Significant with Mitigation)	Initial Study Mitigation Measure 8-1a: The project sponsor shall ensure that all proposed areas for demolition shall be assessed by qualified licensed contractors for the potential presence of lead-based paint or coatings, asbestos containing materials, and PCB-containing equipment prior to issuance of a demolition permit.	Submit appropriate disposal plans and/or permits to the City Building Division.	Project applicant or designee	Prior to issuance of demolition permits.	City of Alameda
	Initial Study Mitigation Measure 8-1b: If the assessment required by Mitigation Measure 8-1a finds presence of lead-based paint, asbestos, and/or PCBs, the project applicant shall create and implement a health and safety plan to protect workers from risks associated with hazardous materials during demolition or renovation of affected structures. The health and safety plan shall include emergency notification protocols, appropriate personal protective equipment for workers and visitors, material safety data sheets, and training requirements.	Submit health and safety plan meeting the requirements of the mitigation measure for review and approval by the City Building Division.	Project applicant or designee	Prior to issuance of building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	Initial Study Mitigation Measure 8-1c: If the assessment required by Mitigation Measure 8-1a finds presence of lead-based paint, the project applicant shall develop and implement a lead-based paint removal plan. The plan shall specify, but not be limited to, the following elements for implementation: • Develop a removal specification approved by a Certified Lead Project Designer. • Ensure that all removal workers are properly trained. • Contain all work areas to prohibit off-site migration of paint chip debris. • Remove all peeling and stratified lead-based paint on building and non-building surfaces to the degree necessary to safely and properly complete demolition activities according to recommendations of the survey. The demolition contractor shall be responsible for the proper containment and disposal of intact lead-based paint on all equipment to be cut and/or removed during the demolition. • Provide on-site personnel and area air monitoring during all removal activities to ensure that workers and the environment are adequately protected by the control measures used.	Submit appropriate disposal plans and/or permits to the satisfaction of the City Building Division.	Project applicant or designee	Prior to issuance of demolition permits.	City of Alameda
Hazards and Hazardous Materials (cont.)					
Initial Study Impact 8a (cont.)	• Clean up and/or vacuum paint chips with a high efficiency particulate air (HEPA) filter. • Collect, segregate, and profile waste for disposal determination. • Properly dispose of all waste.				
	Initial Study Mitigation Measure 8-1d: If the assessment required by Mitigation Measure 8-1a finds asbestos, the project applicant shall ensure that asbestos abatement shall be conducted by a licensed contractor prior to building demolition. Abatement of known or suspected ACMs shall occur prior to demolition or construction activities that would disturb those materials. Pursuant to an asbestos abatement plan developed by a state-certified asbestos consultant and approved by the City, all ACMs shall be removed and appropriately disposed of by a state certified asbestos contractor.	Submit remediation verification to the satisfaction of the City Building Division, in compliance with applicable laws and regulations.	Project applicant or designee	Prior to issuance of demolition permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	Initial Study Mitigation Measure 8-1e: If the assessment required by Mitigation Measure 8-1a finds PCBs, the project applicant shall ensure that PCB abatement shall be conducted prior to building demolition or renovation. PCBs shall be removed by a qualified contractor and transported in accordance with Caltrans requirements.	Submit remediation verification to the satisfaction of the City Building Division, in compliance with applicable laws and regulations.	Project applicant or designee	Prior to issuance of demolition permits.	City of Alameda
	GPA EIR Mitigation Measure HAZ-1: Prior to the approval of any specific development projects within the Northern Waterfront GPA area, documentation from a qualified professional shall be provided to the City of Alameda stating that adequate soils and ground water investigations and, where warranted, remediation, have been conducted to ensure that there would be no significant hazard related risks to future site users. If the soil and groundwater investigations indicate that hazardous materials are present and pose a risk to construction workers and future site users, the following additional mitigation measures shall be implemented, and the City of Alameda would refer the site to the appropriate State and County agencies (such as Alameda County Environmental Health, the State Department of Toxic Substances Control and/or the San Francisco Bay Regional Water Quality Control Board) for oversight of the specific development project.	Submit of appropriate Environmental Site Assessment(s) and remediation verification (if required) to the satisfaction of the City Building Division, in compliance with applicable laws and regulations.	Project applicant or designee	Prior to issuance of demolition permits.	City of Alameda
	GPA EIR Mitigation Measure HAZ-1a: If required as a result of the information obtained from Mitigation Measure HAZ-1, the City shall condition the subject development project to record a restrictive covenant prohibiting the installation or use of water wells into the shallow groundwater at the site for drinking water prior to transfer of the property.	Submit proof of recordation of restrictive covenant to the City Building Division, if indicated by site soil investigations.	Project applicant or designee	Prior to transfer of properties.	City of Alameda
	GPA EIR Mitigation Measure HAZ-1b: The City shall condition the subject Project to require preparation by a qualified registered professional of a Site Management Plan (SMP) for the subject Project site as a condition of its approval as a specific development project. The SMP would provide site specific information for contractors (and others) developing the Project site that would improve their management of environmental and health and safety contingencies. Topics covered by the SMP shall include, but not be limited to: Land use history, including known hazardous material use, storage,	Submit appropriate reports and plans and/or permits to the satisfaction of the City Building Division, in compliance with applicable laws and regulations.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	disposal, and spillage, for specific areas within the Project site. - The nature and extent of previous environmental investigation and remediation at the Project site. - The nature and extent of ongoing remedial activities and the nature and extent of unremediated areas of the Project site, including the nature and occurrence of marsh crust and hazardous materials associated with the dredge material used as fill at the Project site. - A listing and description of institutional controls, such as the City's excavation ordinance and other local, State, and federal laws and regulations, that will apply to development of the Project site. - Requirements for site specific Health and Safety Plans (HASPs) to be prepared by all contractors at the Project site. The HASPs should be prepared by a Certified Industrial Hygienist and would protect construction workers and interim site users adjacent to				
Hazards and Hazardous Materials (cont.)					
Initial Study Impact 8a (cont.)	construction activities by including engineering controls, monitoring, and security measures to prevent unauthorized entry to the construction site and to reduce hazards outside the construction site. The HASPs would address the possibility of encountering subsurface hazards and include procedures to protect workers and the public. If prescribed exposure levels were exceeded, personal protective equipment would be required for workers in accordance with DOSH regulations. - A description of protocols for the investigation and evaluation of previously unidentified hazardous materials that may potentially be encountered during Project development, including engineering controls that may be required to reduce exposure to construction workers and future users of the Project site. - Requirements for site specific construction techniques at the site, based on proposed development, such as minimizing the transport of contaminated materials to the surface during construction activities by employing pile driving techniques that				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	consist of driving the piles directly without boring, where practical. The SMP shall be distributed to all contractors at the Project site; implementation of the SMP shall be a condition of approval for excavation, building, and grading permits at the Project site. The contractors will be required to hold a daily safety meeting with all construction workers and subcontractors on lands identified with Hazardous Material risks.				
Initial Study Impact 8d: The proposed project could be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment (Less than Significant with Mitigation)	Implement GPA EIR Mitigation Measures HAZ-1, -1a, -1b, and -1c.	See measures listed above.	See measures listed above.	See measures listed above.	See measures listed above.
Hydrology and Water Quality					
Initial Study Impact 9a: The proposed project could violate water quality standards and/or waste discharge requirements (Less than Significant with Mitigation)	GPA EIR Mitigation Measure HYD 1: All specific development projects approved pursuant to the Northern Waterfront GPA, that involve site clearing, grading or excavation as part of the proposed construction activity and that result in soil disturbances of one or more acres, (and for projects of less than one acre if the construction activity is part of a larger common plan of development), shall be required to prepare a Stormwater Pollution Prevention Plan (SWPPP). To avoid unnecessary duplication of effort, the SWPPP prepared for the first site or development project within the Northern Waterfront GPA area may be used as the basis for a SWPPP required for subsequent projects, provided that each version of the SWPPP is modified as necessary to maintain compliance with the qualitative standards set forth in this EIR and with applicable regulations and standards of the RWQCB. Each SWPPP shall be designed to reduce potential impacts to surface water quality through the construction and life of the Project for which it is prepared. The SWPPP shall conform to the requirements of the Alameda County Clean Water Program which set new standards effective February 2003, and to	Submit Stormwater Pollution Prevention Plan (SWPPP) that meets the requirements of the mitigation measure and is compliant with applicable laws and regulations. The SWPPP shall be subject to review and approval by the City Building Division and/or regulatory agencies, as applicable.	Project applicant or designee	Prior to issuance of demolition/building permits.	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	the standards set forth herein. The SWPPP would act as the overall program document designed to provide measures to mitigate potential water quality impacts associated with implementation of the proposed Project. Preparers of the SWPPP should review the Conditions of Approval (including General Conditions for Construction, Residential Development/Construction Conditions, and Commercial/Industrial Conditions) established by the City. The SWPPP shall include the following three elements to address construction, post-construction and pest management issues: • <i>Specific and Detailed Best Management Practices (BMPs) Designed to Mitigate Construction-related Pollutants.</i> These controls shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with storm water. The SWPPP shall specify properly designed centralized storage areas that keep these materials out of the rain. The contractor(s) shall submit details, design and procedures for compliance with storage area requirements. An important component of the storm water quality protection effort is knowledge on the part of on-site construction and maintenance supervisors and workers. To educate on-site personnel and maintain awareness of the importance of storm water quality protection, site supervisors shall conduct regular				
Hydrology and Water Quality (cont.)					
Initial Study Impact 9a (cont.)	meetings to discuss pollution prevention. The SWPPP shall establish a frequency for meetings and require all personnel to attend. The SWPPP shall specify a monitoring program to be implemented by the construction site supervisor, and must include both dry and wet weather inspections. City of Alameda personnel shall conduct regular inspections to ensure compliance with the SWPPP. BMPs designed to reduce erosion of exposed soil may include, but are not limited to: soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales and sediment basins. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control (i.e., keeping sediment on the site). End of pipe sediment control measures (e.g., basins and traps)				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	shall be used only as secondary measures. If hydroseeding is selected as the primary soil stabilization method, these areas shall be seeded by September 1 and irrigated to ensure that adequate root development has occurred prior to October 1. Entry and egress from the construction site shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional both during dry and wet conditions. • <i>Measures Designed to Mitigate Post-construction-Related Pollutants.</i> The SWPPP shall include measures designed to mitigate potential water quality degradation of runoff from all portions of the completed development. It is important that post construction storm water quality controls are required in the initial design phase of redevelopment projects and not simply added after the site layout and building footprints have been established. The specific BMPs that would be required of a project can be found in SF Bay Regional Water Quality Control Board Staff Recommendations for New and Redevelopment Controls for Storm Water Programs. In addition, the design team should include design principles contained in the Bay Area Stormwater Management Agencies Association's manual, Start at the Source, Design Guidance Manual for Stormwater Quality Protection. The selection of BMPs required for a specific project is based on the size of the development and the sensitivity of the area. The Estuary is considered a sensitive area by the RWQCB. In general, passive, low maintenance BMPs (e.g., grassy swales, porous pavements) are preferred. If the SWPPP includes higher maintenance BMPs (e.g., sedimentation basins, fossil filters), then funding for long term maintenance needs must be specified in the SWPPP as a condition of approval of the grading, excavation, or building permits, as appropriate (the City would not assume maintenance responsibilities for these features). • <i>Integrated Pest Management Plan.</i> An Integrated Pest Management Plan (IPM) shall be prepared and implemented by the Project for all common landscaped areas. Each IPM shall be prepared by a qualified professional. The IPMs shall address and recommend methods of pest prevention and turf grass management that use pesticides as a				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

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	last resort in pest control. Types and rates of fertilizer and pesticide application shall be specified. Special attention in the IPMs shall be directed toward avoiding runoff of pesticides and nitrates into sensitive drainages or leaching into the shallow groundwater table. Pesticides shall be used only in response to a persistent pest problem. Preventative chemical use shall not be employed. Cultural and biological approaches to pest control shall be fully integrated into the IPMs, with an emphasis toward reducing pesticide application. The City of Alameda Department of Public Works shall review and approve the SWPPP prior to the approval of the Development Plan for each Project phase to ensure that the selected BMPs would adequately protect water quality. The City and the RWQCB are empowered to levy considerable fines for non-compliance with the SWPPP.				
	GPA EIR Mitigation Measure HYD-2: All dredging and in-water construction activities shall be consistent with the standards and procedures set forth in the Long-Term Management Strategy, a program developed by the Bay Conservation and Development Commission (BCDC), the Regional Water Quality Control Board (RWQCB), the U.S. Environmental Protection Agency (EPA), and other agencies, to guide dredging and the disposal of dredge materials in an environmentally sound manner.	Submit to the City Building Division an approved plan and/or required regulatory permits showing compliance with applicable requirements as specified in the mitigation measure.	Project applicant or designee	Prior to issuance of dredging and construction permits within the affected in-water areas.	City of Alameda
Initial Study Impact 9G, H, I: The proposed project could place housing within a 100-year flood hazard area; place within a 100-year flood hazard area structures that would impede or redirect flood flows; and expose people or structures to a significant risk of loss, injury or death involving flooding.	Initial Study Mitigation Measure 9-1: The City shall require that any new construction be constructed at a minimum elevation of 4.5 feet above the 100-year flood risk elevation. In addition, the City shall implement the following steps prior to project implementation: Apply for membership in the National Flood Insurance Program (NFIP) Community Rating System (CRS), and as appropriate through revisions to the City Code, obtain reductions in flood insurance rates offered by the NFIP to community residents.	Submit project plans meeting the requirements of the mitigation measure for review and approval by the City Building Division.	Project applicant or designee	Prior to issuance of building permits.	City of Alameda
Hydrology and Water Quality (cont.)					
Initial Study Impact 9G, H, I (cont.)	- Cooperate with FEMA in its efforts to comply with recent congressional mandates to incorporate predictions of sea level rise into its Flood Insurance Studies and FIRM. - Implement climate adaptation strategies such as avoidance/planned				

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	retreat, enhance levees, setback levees to accommodate habitat transition zones, buffer zones and beaches, expanded tidal prisms for enhanced natural scouring of channel sediments, raising and flood-proofing structures, or provisions for additional floodwater pumping stations, and inland detention basins to reduce peak discharges.				
Noise					
SFEIR Impact 4.D-1: Construction of proposed project elements could expose persons to or generate noise levels in excess of the City noise standards or result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project. (Less than Significant with Mitigation)	GPA EIR Mitigation Measure NOISE-1a (revised): Developers and/or contractors <u>The applicant</u> shall create and implement development-specific noise and vibration reduction plans, which shall be enforced via contract specifications. Contractors may elect any combination of legal, non-polluting methods to maintain or reduce noise <u>and Vibration</u> to threshold levels or lower, as long as those methods do not result in other significant environmental impacts or create a substantial public nuisance. <u>In addition, the applicant shall require contractors to limit construction activities to daytime hours between 7:00 am and 7:00 pm Monday through Friday and 8:00 am to 5:00 pm on Saturdays.</u> The plan for attenuating construction-related noises shall be implemented prior to the initiation of any work that triggers the need for such a plan.	Submit construction noise and vibration management plan meeting the requirements of the mitigation measure to the City Building Division for review and approval; incorporate requirements thereof into the project plans, to the satisfaction of the City Building Division.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid solicitation materials.	City of Alameda
	GPA EIR Mitigation Measure NOISE-1b (revised): To reduce pile driving noise, "vibratory" pile driving <u>or drilled and cast-in-place piles</u> should be used wherever feasible. The vibratory pile driving technique, despite its name, does not generate vibration levels higher than the standard pile driving technique. It does, however, generate lower, less-intrusive noise levels.	Indicate specified requirements on project plans and requests for bids of preference for vibratory pile driving techniques, subject to review and approval by the City Building Division.	Project applicant or designee	Prior to issuance of construction contracts and/or construction bid solicitation materials.	City of Alameda
	SFEIR Impact 4.D-3: Transportation-related operations facilitated by the proposed project could result in a substantial permanent increase in ambient noise levels in the vicinity or above levels existing without the project. (Less than Significant with Mitigation)	GPA EIR Mitigation Measure NOISE-2a (revised): Acoustical studies, describing how the exterior and interior noise standards will be met, should <u>shall</u> be required for all new residential or noise sensitive developments exposed to environmental noise greater than CNEL 60 dBA, or one-family dwellings not constructed as part of a subdivision requiring a final map exposed to environmental noise greater than CNEL 65 dBA. The studies should also satisfy the requirements set forth in Title 24, part 2, of the California Administrative Code, Noise Insulation Standards, for multiple-family attached, hotels, motels, etc., regulated by Title 24.	Submit indicated acoustical studies to City Building Division for review and approval, and demonstrated compliance with recommendations therein required to meet the specifications of the mitigation measure.	Project applicant or designee	Prior to issuance of building permits.

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	GPA EIR Mitigation Measure NOISE-2b (revised): All new projects The applicant shall show that they comply with maximum noise levels outlined in the City's Noise Ordinance and the average sound level goals outlined in the City's General Plan.	Submittal of acoustical studies to City Building Division for review and approval, wherein compliance with City's General Plan can be verified.	Project applicant or designee	Prior to issuance of building permits.	City of Alameda
	GPA EIR Mitigation Measure NOISE-3 (revised): New projects in the Northern Waterfront GPA should. The applicant shall submit require acoustical studies, describing how the exterior and interior noise level standards will be met for the proposed project as well as any impacts on adjacent projects. Studies shall also satisfy the acoustical requirements of the City's General Plan, Title 24, of the Uniform Building Code.	Submit indicated acoustical studies to City Building Division for review and approval, and demonstrated compliance with recommendations therein required to meet the specifications of the mitigation measure.	Project applicant or designee	Prior to issuance of building permits.	City of Alameda

Transportation and Traffic

SFEIR Impact 4.G-2: The proposed project would increase traffic volumes at study intersections. (Significant and Unavoidable)	GPA EIR Mitigation Measure TRN-4b (revised): <u>To reduce the number of automobile trips generated by the project and reduce automobile level of service impacts at the Webster Street and Park Street gateways to the City, require that the project include a Transportation Demand Management Plan and funding program for Planning Board review and approval. The TDM plan should include a suite of measures intended to reduce vehicle trips by project residents, employees, and visitors to the site, that may include but are not limited to the following:</u> • Annual funding for operations of transit services between the site, the Northern waterfront area, and Oakland BART stations. • AC Transit Easy Passes for all project residents and employees. • On-Site Car Share Parking • On-Site Bicycle Parking	Submit Transportation Demand Management (TDM) Plan for review and approval by the City of Alameda; submit annual TDM monitoring plan for review and approval by the City of Alameda.	Project applicant or designee	Initial submittal of TDM(s): Prior to issuance of building permits for each project phase. Submittal of TDM monitoring reports: On an annual basis.	City of Alameda
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Transportation and Traffic (cont.)

SFEIR Impact 4.G-2 (cont.)	• <u>Dedicated on-site carpool parking</u> • <u>Residential Website/Source for Transportation Info</u> • <u>Collaborative Work Space</u> • <u>Unbundled Parking</u> • <u>On-Site Transportation Coordinator</u> • <u>Transportation "Welcome Packet"</u> • <u>Real-Time Transit Information (e.g., TransitScreen)</u> • <u>Designated Pick-Up/Drop-Off Ridesourcing Services</u> • <u>Pre-Tax Commuter Benefits</u>				
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ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
	• <u>Transit Pass Subsidy Program (e.g., AC Transit EasyPass)</u> • <u>The Planning Board may also consider a congestion pricing system to increase the cost for automobile entering or leaving the project site during peak commute hours.</u> • <u>Implementation and monitoring protocols to ensure progress on the implementation of each measure is tracked. The effectiveness of each measure shall also be studied so that the plan may be adjusted over time to continue to reduce the project's contribution to citywide and regional vehicle trips through the life of the project.</u>				
	SFEIR Mitigation Measure 4.G-2: To minimize automobile level of service impacts in the vicinity of the project require that the project signalize the intersections at Entrance and Clement and at Entrance and Buena Vista. If the project or other parties construct the final extension of Clement Avenue through the Shell Oil facility, the signalization of Entrance and Buena Vista may not be necessary. The completion of the extension will reduce automobile and truck trips on Buena Vista and eliminate the need for southbound vehicles from the project to use the Buena Vista.	Signalize identified intersection in time and manner specified in the mitigation measure, to satisfaction of City Department of Public Works.	Project applicant or designee	Prior to issuance of occupancy permits.	City of Alameda
	SFEIR Mitigation Measure 4.G-3: To minimize automobile level of service impacts in the vicinity of the project require the Encinal Terminals project to pay for a fair share of the Clement Extension project including fair share contribution to the completion of the Clement Avenue Extension (pedestrian, bicycle, transit, and automobile extensions) and intersection signalization from Atlantic Avenue to Grand Avenue. If the Del Monte project fails to begin construction of the Clement Avenue extension from Atlantic to Entrance Road prior to approval of the Encinal Terminals project, require the Encinal Terminals project to construct the extension with a later fair share contribution to be provided by the Del Monte project and other developments within the area.	Pay fair share fees in time and manner specified in the mitigation measure.	Project applicant or designee	Prior to issuance of occupancy permits for each phase of the development	City of Alameda
	SFEIR Mitigation Measure 4.G-4: To minimize automobile level of service impacts at the Webster Street and Park Street gateways to the City, require the Encinal Terminals project to pay a fair share contribution to citywide transportation improvements identified in the Citywide Development Impact Fee Ordinance.	Pay fair share fees in time and manner specified in the mitigation measure.	Project applicant or designee	Prior to issuance of occupancy permits for each phase of the development	City of Alameda

ENCINAL TERMINALS MASTER PLAN MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Monitoring Party
SFEIR Impact 4.G-3: Implementation of the proposed project would cause the Pedestrian LOS to degrade to worse than LOS B, but would not create a safety hazard for pedestrians. (Less than Significant)	SFEIR Mitigation Measure 4.G-3a: Prior to project occupancy, the project applicant shall fund the signal optimization at the Buena Vista Avenue and Sherman Street intersection during the p.m. peak hour to reduce pedestrian delays.	Pay fees in time and manner specified in the mitigation measure.	Project applicant or designee	Prior to issuance of first occupancy permit.	City of Alameda
	SFEIR Mitigation Measure 4.G-3b: Prior to project occupancy, the project applicant shall fund the signal optimization at the Challenger Drive and Marina Village Drive intersection during the p.m. peak hour to reduce pedestrian delays.	Payment of fees in time and manner specified in the mitigation measure.	Project applicant or designee	Prior to issuance of first occupancy permit.	City of Alameda
SFEIR Impact 4.G-11: The proposed project would result in cumulative transportation impact to intersection levels of service. (Significant and Unavoidable)	Implement Revised GPA Mitigation Measure TRN-4b and SFEIR Mitigation Measures 4.G-2, 4.G-3, 4.G-4, 4.G-3a, and 4.G-3b.	See measures listed above.	See measures listed above.	See measures listed above.	See measures listed above.
Utilities and Service Systems					
SFEIR Impact 4.H-2: The proposed project would not have wastewater service demands that would result in a determination by the service provider that it does not have adequate capacity to serve projected demand, necessitating the construction of new or expanded wastewater treatment facilities. (Less than Significant with Mitigation)	Mitigation Measure 4.H-2: The project sponsors shall: 1) replace or rehabilitate any existing sanitary sewer collection systems, including sewer lateral lines, to ensure that such systems and lines are free from defects or, alternatively, disconnected from the sanitary sewer system; and 2) ensure any new wastewater collection systems, including new lateral lines, for the project are constructed to prevent infiltration and inflow (I&I) to the maximum extent feasible while meeting all requirements contained in the Regional Private Sewer Lateral Ordinance and applicable municipal codes or City ordinances.	Comply with terms of the mitigation measure to the satisfaction of the City Department of Public Works and applicable utility providers.	Project applicant or designee	Prior to issuance of first occupancy permit.	City of Alameda