DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ALAMEDA, a California charter city

and

ALAMEDA POINT PARTNERS, LLC a Delaware limited liability company

Alameda Point - Site A

Dated as of August 6, 2015

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DISPOSITION AND DEVELOPMENT AGREEMENT

FOR ALAMEDA POINT- SITE A

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**" or "**DDA**") is entered into as of August 6, 2015 ("**Effective Date**") by and between the City of Alameda, a California charter city (the "**City**"), and Alameda Point Partners, LLC a Delaware limited liability company (the "**Developer**"). The City and the Developer are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Agreement with reference to the following facts:

RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Section 19.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

B. The Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility ("**NAS Alameda**"), which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "**Navy**") in 1993 and closed in 1997.

C. In 1996 the Alameda Reuse and Redevelopment Authority (the "**ARRA**"), of which the City is a member, the Local Reuse Authority under federal base closure law, approved the NAS Alameda Community Reuse Plan (the "**Reuse Plan**"), as amended in 1997, to establish a plan for the reuse and redevelopment of the property at the former NAS Alameda, a portion of which (west of Main Street) is commonly referred to as Alameda Point. The Reuse Plan set forth specific policy and planning goals and objectives with regards to the disposition and use of property at the NAS Alameda, which are being implemented under this DDA.

D. In 2003 the City adopted a General Plan Amendment for Alameda Point, which added Chapter 9 (Alameda Point) to the General Plan, in order to implement the community's vision for the reuse of Alameda Point consistent with the goals of the Reuse Plan and other City of Alameda policy documents.

E. The United States, acting by and through the Navy, approved the ARRA's Economic Development Conveyance Application and subsequently executed that certain Memorandum of Agreement between ARRA and the Navy for the No-Cost Economic Development Conveyance of Portions of the Former NAS Alameda, as such subsequently amended (the "**EDC Agreement**").

F. By operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, ceased to exist on February 1, 2012. Accordingly, the ARRA, by Resolution No 55, dated January 31, 2012, authorized the ARRA Executive Director to assign to the City all of ARRA's rights, assets, obligations, responsibilities,

duties and contracts, including the EDC Agreement, subject to the City accepting such Assignment; (ii) Department of Defense designation of the City as the local reuse authority for NAS Alameda; and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

G. Pursuant to City of Alameda Resolution No. 14654, dated February 7, 2012, the City authorized the City Manager to accept the Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to the Department of Defense designating the City as the local reuse authority for NAS Alameda and the Navy executing documents necessary to implement the City as successor to ARRA.

H. By letter dated April 4, 2012, the Department of Defense and the Department of the Navy designated the City as the local reuse authority for NAS Alameda, and accepted the City as the successor to ARRA.

I. In June 2012, the City Council directed City staff, upon acquisition of major portions of Alameda Point, to complete the necessary Environmental Impact Report ("**EIR**"), General Plan amendments, Zoning Ordinance amendments, including the creation of the Alameda Point District (Alameda Municipal Code 30-4.24), and a Master Infrastructure Plan ("**MIP**") (collectively, the "**Planning Documents**") required to implement the Reuse Plan in compliance with the California Environmental Quality Act ("**CEQA**"), the City of Alameda General Plan and the Reuse Plan.

J. On June 6, 2013, the Navy transferred approximately 1,379 acres, including 509 acres of land and 870 acres of submerged land, at the Alameda Point property pursuant to the EDC Agreement.

K. On February 4, 2014, the City Council approved the Planning Documents, which included approval of a mixed-use, transit-oriented development consistent with the Reuse Plan and General Plan and consists of the rehabilitation, reuse and new construction of approximately 5.5 million square feet of commercial and workplace facilities for approximately 8,900 jobs; maritime and water related recreation uses in and adjacent to the Seaplane Lagoon, including a new ferry terminal; rehabilitation and new construction of 1,425 residential units for a wide variety of household types for approximately 3,240 residents. This DDA is intended to implement the goals and policies described in the approved Planning Documents with respect to the Property.

L. On February 18, 2014, the City and the State of California ("**State**"), acting by and through its State Lands Commission (the "**Commission**"), entered into that certain Naval Air Station Alameda Title Settlement and Exchange Agreement, whereby the State and the City agreed to complete an exchange of property rights (the "**Exchange**") to (1) confirm the Tidelands Trust Restriction on certain lands to be acquired by the City pursuant to the EDC Agreement, (2) confirm that the Tidelands Trust Restriction did not affect certain lands to be acquired by the City pursuant to the EDC Agreement and (3) remove the Tidelands Trust Restriction from certain lands to be acquired by the City pursuant to the EDC Agreement in exchange for the City's agreement to confirm or impose the Tidelands Trust Restriction on certain lands to be acquired by the City pursuant to the EDC Agreement (the "**Exchange Agreement**").

M. The Planning Documents require all new development at Alameda Point to comply with the Transportation Demand Management Plan for Alameda Point ("**TDM Plan**"), which was approved by the City Council on May 20, 2014. The TDM Plan outlines a plan for mitigating traffic impacts from new development during peak hours and supporting the creation of a transit-oriented development at Alameda Point including the formation of a Transportation Management Association and the establishment of fees or special taxes on developed property to pay the costs of implementation of the TDM Plan. The Developer has prepared and upon approval of the DDA, City will have approved a TDM Compliance Strategy for the Property, as attached hereto as Exhibit J. Through this DDA and as a condition of development, the Developer shall be required to implement the terms of the approved TDM Compliance Strategy.

N. The amended Zoning Ordinance for Alameda Point required that a specific plan be adopted for the Waterfront Town Center zoning sub-district. In conformance with the Zoning Ordinance, the City Council adopted the Town Center specific plan on July 15, 2014 ("**Town Center Plan**"). This DDA is intended to implement the goals and policies described in the Town Center Plan.

O. The City is the fee title owner of or has the right to acquire under the EDC Agreement that certain portion of Alameda Point known as Site A which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway in the property, and is more particularly described in Exhibit A and shown on the map of the Property attached hereto as Exhibit B (the "**Property**").

P. On or about May 1, 2014 the City issued a request for qualifications seeking a developer to develop the Property consistent with the Planning Documents, the Town Center Plan and the TDM Plan. The Developer has demonstrated to the City its experience with successfully developing properties similar to the Property, as demonstrated by its statement of qualifications submitted to the City on June 16, 2014. On December 1, 2014, pursuant to City Council authorization, the City and the Developer entered into the Exclusive Negotiations Agreement (the "**ENA**") for purposes of negotiating this Agreement.

Q. The Developer understands and agrees that any proposed Project (defined below) must be consistent with the Planning Documents, the TDM Plan, the TDM Compliance Strategy, and the Town Center Plan, among other regulatory and policy documents, and that this DDA is entered into in furtherance of and is intended to implement the goals and policies contemplated by previously approved policy documents.

R. Pursuant to the terms of this Agreement, the City will convey, lease or provide other specified rights to the Property to the Developer, and the Developer will develop and construct a high quality, mixed-use "urbanistic" project that will attract a mix of residential, commercial, retail, restaurants, and service businesses that can help create a walkable, inviting shopping experience, provide a "sense of place" for the community, create jobs for residents of the community and be the catalyst for the revitalization of the Alameda Point district and community as a whole.

S. The Developer proposes to develop the following specified improvements consistent with the Town Center Plan and the Planning Documents (collectively, the "**Project**"):

1. Approximately 800 residential units (the "**Residential Units**");

2. Approximately 600,000 square feet of permitted and conditionally permitted non-residential uses including but not limited to, retail, commercial, civic and other commercial space in newly constructed and rehabilitated buildings (the "**Commercial Element**"); and

3. The on-site and off-site public improvements and the Major Alameda Point Amenities specified in Exhibit G, attached hereto (the "**Infrastructure Package**").

T. On July 7, 2015, the City Council approved the following additional land use approvals for the Project (collectively, the "**Project Approvals**"):

1. Development Agreement Alameda Point-Site A, recorded in the Official Records of Alameda County as Document No. _____ (the "**Development Agreement**");

2. Alameda Point Site A Transportation Demand Management Compliance Strategy, attached hereto as Exhibit J, the "**TDM Compliance Strategy**");

3. A waiver of AMC Sections 30-50 thru 30-53 Multiple Dwelling Units Prohibited;

4. A determination that no further environmental review under CEQA is required based on CEQA Guidelines Sections 15182 and/or 15183.

U. The Developer intends to implement the Project in three (3) separate phases (each a "**Phase**"). Each Phase is more particularly described in the Phasing Plan attached as Exhibit C.

V. This Agreement provides for the City's conveyance of the following rights to the Property to the Developer:

1. The conveyance of fee simple ownership to the portion of the Property described in Exhibit B (the "Transfer Property");

2. The conveyance of a ground lease interest in the portion of the Property described in Exhibit B (the "Lease Property"); and

3. The conveyance of a temporary construction easements or encroachments permits to portions of the Property or the adjacent property necessary for the construction of the Project (the "ROE Property").

W. Through this Agreement, the City is imposing occupancy and affordability restrictions on portions of the Project in compliance with the City's Inclusionary Housing Ordinance, the Renewed Hope Settlement Agreement, and the City's Density Bonus Regulations.

X. This Agreement and the Affordable Housing Implementation Plan attached as Exhibit M will also constitute the Inclusionary Housing Agreement required under the City's Inclusionary Housing Ordinance and the Affordable Housing Agreement required under the Density Bonus Regulations.

Y. On May 11, 2015, the Planning Board approved the Development Plan and on June 16, 2015, the City Council upheld the Planning Board approval of the Development Plan for the Project consistent with the Alameda Municipal Code Section 30-4.13 (j), Planning Documents and the Town Center Plan, including approval of a Density Bonus Application (the "**Development Plan**").The EIR requires the implementation of certain CEQA mitigation measures through the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit D (the "**MMR Program**"). The City as the "lead agency" has considered, approved and made the required CEQA findings in connection with the EIR that has served as the environmental documentation under CEQA for the City's consideration of approval of this Agreement and the Project.

Z. The Property is affected by certain Hazardous Materials, which are addressed in several Sections of this Agreement and in the MMR Program.

AA. Pursuant to Government Code Section 65402, the City's Planning Board has made the findings of General Plan conformance with respect to the Development Agreement.

BB. Construction of the Project will substantially improve the economic and physical conditions of the Property and the City in accordance with the purposes and goals set forth in the Reuse Plan, the City's General Plan, the Town Center Plan, and the Planning Documents. This Agreement is declaratory of the policy goals and objectives of the various policy documents previously considered and adopted governing the development and disposition of property at the NAS Alameda. The execution and implementation of this DDA is an administrative action, in that it pursues plans and policies that have previously been adopted by the various public agencies with regards to the development of the NAS Alameda generally, and the Property in particular.

CC. The Developer has represented that it has the necessary experience, skill, and ability to carry out the commitments contained in this Agreement.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Developer agree as follows:

ARTICLE 1.
TERM OF THE AGREEMENT

Section 1.1 Effective Date. The Effective Date of this Agreement is stated in the first paragraph of this Agreement and represents that date which is thirty (30) days after the date the Ordinance approving this Agreement is adopted by the City Council. This Agreement shall be executed by the City within ten (10) days after the Effective Date and a DDA Memorandum substantially in the form attached as Exhibit E (the "**Memorandum**") will be recorded in the public records with the Alameda County Recorder (the "**Official Records**") against those portions of the Property owned by the City as of the Effective Date. The City and the Developer shall execute and record in the Official Records an amendment to the Memorandum within ten (10) days after acquiring fee title to any additional portion of the Property.

Section 1.2 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) August 7, 2035 (the "**Expiration Date**") which is twenty (20) years from the

Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; or (c) the date of issuance by the City of the final Estoppel Certificate of Completion for the last Phase or Sub-Phase of Vertical Improvements ("**Term**").

Section 1.3 No Extension of the Term. Except as a result of the express extension rights set forth in this Section 1.3, the Term of this Agreement shall not extend beyond the Expiration Date, unless and until the City Council, in its sole discretion, approves such an extension amending the Agreement to provide for a term beyond the initial twenty (20) years. The foregoing notwithstanding, the Term of this Agreement may not extend more than ten (10) years beyond the last date set forth in the Milestone Schedule for Vertical Improvement Completion as a result of the extension rights provided below, except as provided in Section 8.15. Nothing in this Section 1.3 shall be construed to limit the scope or duration of those obligations that expressly survive the expiration or termination of this Agreement.

(a) Options to Extend. The Developer shall have the right, but not the obligation to extend (i) each of the Outside Phase Closing Dates; (ii) each of the Infrastructure Phase Completion Dates and (iii) each of the Vertical Improvement Completion Dates (the Outside Phase Closing Date, the Infrastructure Phase Completion Dates and the Vertical Improvement Completion Dates shall be referred to herein as the "**Major Milestone Dates**") by providing written notice of the extension to the City and agreeing to make the following payment (or applicable portion thereof) to the City (each, an "**Extension Payment**") pursuant to the provisions of this Section 1.3(a).

(1) If less than fifty percent (50%) of the Phase 1 Infrastructure Phase (as determined based on the total expenditures for the Phase 1 Infrastructure Phase complete at the time of the extension in relation to the total value set forth in the applicable Phase Construction Contract for the Phase 1 Infrastructure Phase) is complete at the time that the Extension Payment is due, then the Extension Payment shall be Fifty Thousand Dollars ($50,000) per acre of land of the affected portion of the Property; and

(2) If fifty percent (50%) or more of the Phase 1 Infrastructure Phase (as determined based on the total expenditures for the Phase 1 Infrastructure Phase complete at the time of the extension in relation to the total value set forth in the applicable Phase Construction Contract for the Phase 1 Infrastructure Phase) is complete at the time the Extension Payment is due, then the Extension Payment shall be Ten Thousand Dollars ($10,000) per acre of land of the affected portion of the Property.

Each Extension Payment shall entitle the Developer to one (1) year of extension of the applicable Major Milestone Date and all subsequent Major Milestone Dates. Each Extension Payment shall be due and payable in phases as follows:

(y) Upon Developer's exercise of the right to extend the Milestone Schedule pursuant to this Section 1.3(a), Developer shall pay the portion of the Extension Payment calculated based on the number of acres of the Property directly related to the applicable Major Milestone Date extended; and

(z) To the extent that Developer fails to meet the subsequent Major Milestone Dates applicable to a subsequent Phase or Phases that are in effect immediately prior to exercise of the instant extension right (as such date or dates may be extended pursuant to Section 1.3(b) below),

Developer shall pay the portion of the Extension Payment calculated on the number of acres of Property directly related to each such subsequent Major Milestone Date Developer fails to meet, which payment shall be made on the applicable Major Milestone Date Developer failed to meet.

By way of example only:

(1) If Developer elected to extend the Phase 1 Infrastructure Phase Completion Date pursuant to this Section 1.3(a), and

(2) Prior to such extension (a) the Phase 1 Infrastructure was more than fifty percent (50%) complete and (b) the Phase 2 Closing Date then in effect was December 31, 2020 and the Phase 3 Closing Date then in effect was December 31, 2024; then

(3) Upon exercise of the extension, Developer would pay a portion of the Extension Payment equal to $300,000 [($10,000/acre multiplied by 30 acres (i.e., the number of acres in Phase 1)];

(4) No further payment of the Extension Payment would be due with respect to the Phase 1 Vertical Construction Completion Major Milestone Date with respect to the extension of the Phase 1 Infrastructure Completion Date;

(5) Provided that Developer closed escrow on Phase 2 on or before December 31, 2020 (as such date may be extended pursuant to Section 1.3(b) below), (even though such Milestone Date was extended to December 31, 2021), no payment of the Extension Payment would be due with respect to Phase 2 Outside Phase Closing Date; and

(6) If Developer failed to close escrow on Phase 3 on or before December 31, 2024 (and such date had not been extended pursuant to Section 1.3(b) below), (even though such had been extended to December 31, 2025), Developer would pay an additional $227,000 [($10,000/acre multiplied by 22.7 acres (i.e., the number of acres in Phase 3)]) to the City on or before December 31, 2024.

Except as set forth in this Agreement, each Extension Payment shall be immediately non-refundable to the Developer. Any Extension Payments calculated pursuant to Section 1.3(a)(1) shall not be applicable to any Land Payment set forth in Section 2.2. Any Extension Payments calculated pursuant to Section 1.3(a)(2) shall be credited to the Ferry Terminal Payment, provided, however, if at the time such Extension Payment is made, the Ferry Terminal Payment has been paid in full, the Extension Payment calculated pursuant to Section 1.3(a)(2) shall be in addition to any other payments made by the Developer to the City pursuant to this Agreement. If the Extension Payment paid pursuant to Section 1.3(a)(2) is credited toward the Ferry Terminal Payment, the City shall use such payment consistent with the uses for the Ferry Terminal Payment set forth in Section 2.2(b).

Notwithstanding anything set forth above, Developer shall not have the right to extend any Major Milestone Date by making an Extension Payment pursuant to this Section 1.3(a) if any of the following has occurred (i) the Developer has previously made five Extension Payments pursuant to this Section 1.3(a) in order to extend Major Milestone Dates by five (5) years or (ii) with respect to any particular Major Milestone Date, the Developer has previously made

Extension Payments that have consecutively resulted in a three (3) year extension of that Major Milestone Date.

(b) Force Majeure. In addition to the extensions set forth in Section 1.3(a), either Party has the right to extend the applicable Milestone Schedule (and all subsequent Milestone Schedule dates) by Standard Force Majeure or Economic Force Majeure:

(1) Standard Force Majeure. Standard Force Majeure shall mean delay caused by any of the following: the Navy's delay in transferring a portion of the Property pursuant to the EDC Agreement, except for a delay in the transfer of the portion of the Property containing the Storm Drain Line (as defined in Section 8.15); the State's delay in transferring any portion of the property pursuant to the Exchange Agreement; strikes, lock- outs 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; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project 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; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); 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.

(2) Economic Force Majeure. Economic Force Majeure shall mean a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period, measured on a quarterly basis. Economic Force Majeure shall commence upon Developer's notification to the City of the Economic Force Majeure (together with appropriate backup evidence). Economic Force Majeure shall continue prospectively on a quarterly basis and remain in effect in that Phase until the Home Price Index increases for four consecutive quarters during the preceding twelve (12) month period and the index has increased by a total of at least ten percent from its most recent minimum point. "**Home Price Index**" means the quarterly not seasonally adjusted "purchase only" index published by the Federal Housing Finance Agency representing home price trends for the Oakland- Hayward-Berkeley Metropolitan Statistical Area Division. If the Home Price Index is discontinued, the Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Oakland-Hayward-Berkeley Metropolitan Statistical Area Division as possible.

(3) Except if an event of Economic Force Majeure has been declared, the Developer's inability or failure to timely satisfy the pre-disposition requirements of Section 3.1 (regarding submission and procurement of an approved Phase Update, Sub-Phase Update or Public Financing Plan) and Section 4.3(a)(6) (regarding submission of satisfactory evidence of availability of funds to construct the Project or any Phase of the Project) shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an

excused delay under this Section 1.3(b) (unless such matter relates to the City's default hereunder).

(c) If Developer claims a Standard Force Majeure, an Economic Force Majeure or elects to extend an Infrastructure Phase Completion Date pursuant to Section 1.3(a) after Commencement of Construction of any Infrastructure Phase but prior to completion of construction of the Infrastructure Phase, Developer shall be obligated to do all of the following: (i) complete the Infrastructure Sub-Phase (as defined in Section 5.4) Commenced, (ii) ensure that all portions of the Property and the adjacent property remain accessible to vehicular and pedestrian traffic at all times and served by utilities, including providing temporary hook-ups for utilities that are sufficient to provide service for the expected duration of the delay; and (iii) secure any construction site to prevent injury or damage prior to any such Standard Force Majeure or Economic Force Majeure becoming effective.

(d) The extension of time for force majeure events shall be from the time the Party claiming the extension provides written notice to the other Party in accordance with Section 18.1 of the event that gave rise to such period of delay which notice shall specify the Milestone Dates that are being extended. The extension of time shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time the applicable Milestone Dates (and all subsequent Milestone Schedule dates affected by the force majeure event) will be adjusted to account for the extension period, provided however no Party may request or claim extensions pursuant to this Section 1.3 for a cumulative period in excess of ten (10) years (except for the limited purposes set forth in Section 8.15).

Section 1.4 Milestone Schedule. During the Term, the Developer and the City will each be required to perform certain tasks and to fulfill certain obligations as set forth in this Agreement, the Exhibits and other implementing documents. A schedule of the deadlines for performance of various conditions and requirements under this Agreement is set forth in the Milestone Schedule attached as Exhibit F. Major Milestone Dates may be (a) extended pursuant to Section 1.3 or (b) modified by an Operating Memoranda approved by the Developer and the City in accordance with Section 18.16. All deadlines set forth in the Milestone Schedule that are not considered Major Milestone Dates are considered "**Progress Milestone Dates**." The Parties shall make commercially reasonable efforts to meet the Progress Milestone Dates but failure to meet a Progress Milestone Date shall not be considered an Event of Default pursuant to Sections 17.3 and 17.4 unless, as a result of such failure, it would be impossible for a Major Milestone Date (as such date may be extended pursuant to Section 1.3) to be met. If a Party fails to meet a Progress Milestone Date, either Party can require the other Party to meet and confer regarding the impact to the Milestone Schedule of such failure with the goal of the Parties reaching mutual agreement on adjustments to the Progress Milestone Dates in the Milestone Schedule. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party.

ARTICLE 2.
FINANCIAL TERMS

Section 2.1 Deposit.

(a) ENA Deposit. In accordance with the terms of the ENA, the Developer delivered to the City a non-refundable deposit in the amount of Two Hundred Thousand Dollars ($200,000), in the form of cash pursuant to the ENA (the "**ENA Deposit**"). The City promptly deposited the ENA Deposit in a short-term interest-bearing account. The ENA Deposit is intended to assist the City in offsetting City staff and outside legal and consultant expenses associated with the negotiation of the DDA. The Developer understands and agrees that the ENA Deposit including interest earned, if any, is non-refundable and not intended as reimbursement. Developer shall not be entitled to a return of any portion of the ENA Deposit under any circumstances.

(b) DDA Deposit. On or before the date that is three (3) Business Days after the Developer's receipt of a fully executed original of this Agreement, the Developer shall deliver to the City an additional deposit in the cash amount of One Hundred Thousand Dollars ($100,000) (the "**DDA Deposit**"). The City shall promptly deposit the DDA Deposit in a short-term interest-bearing account. The DDA Deposit is intended to assist the City in offsetting City staff and outside legal and consultant expenses associated with the negotiation of this Agreement during the ENA period. The Developer understands and agrees that the DDA Deposit, including interest earned, if any, is non-refundable and not intended as reimbursement. Developer shall not be entitled to a return of any portion of the DDA Deposit under any circumstances.

Section 2.2 Land Payment. The City has determined to convey the Transfer Property and the Lease Property to Developer in its current condition. Development of the Project on the Property will require substantial infrastructure improvements both on-site and off-site. As a condition of the City conveying the Transfer Property and the Lease Property to the Developer, the Developer has agreed to install the Infrastructure Package at its costs in order to facilitate the development of the Project. Taking into account all of the Developer's obligations pursuant to this Agreement including the obligation to install the Infrastructure Package pursuant to Section 5.1, the Developer and the City have determined that the fair market value of the Transfer Property and the leasehold interest in the Lease Property, each in the condition such property is to be conveyed pursuant to this Agreement is Fifteen Million Dollars (**$15,000,000**) (the "**Land Payment**") plus the Contingent Profit Participation (defined below), if any. The Land Payment shall be allocated among the Phases on a per acre basis ($220,588/acre) as follows (each, a "**Phase Land Payment Allocation**"):

i. Phase 1: $6,616,657, based on approximately 30 acres;

ii. Phase 2: $3,375,996, based on approximately 15.3 acres; and

iii. Phase 3: $5,007,347, based on approximately 22.7 acres.

Notwithstanding the foregoing allocation to the contrary, due to the Parties' desire to accelerate the design, permitting and construction of the Ferry Terminal (defined below) prior to the Close of Escrow for Phases 2 and 3, the Land Payment shall be paid as follows:

(a) Sports Complex Payments.

(1) First Sports Complex Payment. Within three (3) Business Days after Developer's receipt of a fully executed original of this Agreement, the Developer shall deposit cash in the amount of Two Million Five Hundred Thousand Dollars (**$2,500,000**) (the

"**First Sports Complex Payment**") into an escrow ("**Escrow**") opened with the Pleasanton, California office of the First American Title Company ("**Escrow Holder**"). The First Sports Complex Payment shall be released to the City upon the Phase 1 Closing. The First Sports Complex Payment shall be credited toward the Land Payment.

Notwithstanding the foregoing, the Developer may elect to provide a guarantee for Two Million ($2,000,000) of the First Sports Complex Payment in a form acceptable to the City in its reasonable discretion from a credit worthy entity acceptable to the City in its reasonable discretion provided the Developer deposits in cash not less than Five Hundred Thousand Dollars ($500,000) into Escrow as required above.

(2) Second Sports Complex Payment. Through the Closing for the City's transfer of the Phase 1 Property to the Developer, the Developer shall pay to the City the amount of Two Million Five Hundred Thousand Dollars **($2,500,000)** (the "**Second Sports Complex Payment**"). The Second Sports Complex Payment shall be credited toward the Land Payment. The First Sports Complex Payment and the Second Sports Complex Payment are collectively referred to herein as the "**Sports Complex Payment.**"

(3) Except as otherwise set forth in this Agreement, the Sports Complex Payment shall be non-refundable to the Developer upon its deposit into Escrow.

(4) The City shall expend the Sports Complex Payments pursuant to the provisions of Section 11.6 below.

(b) Ferry Terminal Payment. Contingent upon the Closing for the City's transfer of the Phase 1 Property to the Developer, the Developer shall be obligated to pay Ten Million Dollars **($10,000,000)** (the "**Ferry Terminal Payment**") towards (i) the costs incurred for the permitting, design and construction of the Seaplane Lagoon Ferry Terminal and appurtenant parking improvements, and, if the Ferry Terminal has been completed or is adequately funded from other sources, (ii) the costs incurred for the acquisition of equipment necessary to operate the Ferry Terminal or (iii), subsidizing the cost to provide ferry service to the Ferry Terminal, each as more particularly set forth in Section 5.2(b) below. The Developer shall deliver to the City a promissory note in the amount of the Ferry Terminal Payment substantially in the form of Exhibit U at the Phase 1 Closing ("**Ferry Terminal Payment Note**").

The Developer further agrees to assist the City with procurement of funds in excess of the Ferry Terminal Payment, if necessary, to complete construction of the Ferry Terminal and appurtenant parking improvements as set forth in more detail in the Development Plan. The Developer shall not be required to incur any third party costs or agree to additional Project requirements or conditions in satisfaction of the foregoing covenant.

Section 2.3 Contingent Profit Participation.

(a) In addition to the Land Payment to be paid by the Developer as set forth in Section 2.2 above, the Developer shall pay to the City a contingent profit participation ("**Contingent Profit Participation**") as described below. For purposes of determining Contingent Profit Participation the following terms shall have the following meanings:

(1) "**Development Costs**" means all of the following included costs: (A) all third party, out-of-pocket costs related to (i) the acquisition of the Transfer Property and Lease Property (including, without limitation, the legal fees incurred in the negotiation of this Agreement, the ENA Deposit, the DDA Deposit, the Sports Complex Payment, the Ferry Terminal Payment, acquisition of the Project Approvals and all other land use entitlements and permits necessary for the construction of the Infrastructure Package, the Developer's due diligence inspection of the Property, transfer taxes and all title and escrow fees), (ii) design and construction of the Infrastructure Package including, without limitation, consultant costs, plan check, building and inspection fees, any unreimbursed Hazardous Materials costs (including but not limited to, remediation, mitigation, monitoring, oversight costs and costs to pursue the Navy), amounts paid to contractors for materials and labor, loan fees and any fees paid to procure equity capital (excluding any preferred return), (iii) land carry costs related to the Transfer Property and Lease Property limited to property taxes and assessments, possessory interest tax payments and insurance costs, (iv) the Phase 0 activities; (v) Project insurance requirements related to the acquisition of the Transfer Property and Lease Property and construction of the Infrastructure Package (including, but not limited to, the premium for the Pollution Liability Insurance Policy); (vi) unreimbursed costs to form any special tax or assessment district; (vii) costs incurred by the Developer to rehabilitate existing buildings on the Property pursuant to the Lease Agreements or Trust Lease Agreement; (viii) any equity or grant funds contributed to the Qualified Affordable Housing Developer for construction of the Affordable Housing Units or funds loaned to the Qualified Affordable Housing Developer but only if such loan by its terms is expressly forgiven at the conclusion of the loan term; and (ix) the marketing and sale or transfer of any portion of the Property prior to the commencement of construction for the Vertical Improvements thereon (including, without limitation, brokers fees, legal fees to negotiate purchase agreements with purchasers that are not affiliated with the Developer, transfer taxes and all title and escrow fees), (B) a development fee paid to the Developer or a Developer Affiliate equal to three percent (3.0%) of all other Development Costs; and (C) a warranty reserve retained by Developer equal to one percent (1.0%) of Gross Proceeds. Development Costs shall exclude: (a) the repayment of the principal and interest of any loan obtained by the Developer; (b) any distributions, preferred return or other capital return to the members of the Developer; (c) any costs incurred by the Developer or its members related to responding to and participating in the RFQ selection process and negotiation of the ENA; (d) any contributions made to political candidates, ballot measures, political actions committees or otherwise related to political causes; (e) any charitable contributions or other contributions to community organizations not specifically required by the City under the terms of or in the implementation of this Agreement; and (f) any Extension Payment made pursuant to Section 1.3(a) above.

(2) "**Final Completion**" of the Project shall mean the first day of the month following the expiration of the 90th day after the completion of construction of the Infrastructure Package (as determined pursuant to the Public Improvement Agreements (defined below) for Phase 1, Phase 2 and Phase 3.)

(3) "**Gross Proceeds**" means all cash revenues received by the Developer from any source whatsoever in connection with the sale, lease, exchange or other disposition of all or any part of the Transfer Property and the Lease Property, which shall include any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Transfer Property and the Lease Property, lease payments and other payments

received from Phase 0, interim uses or the Lease Agreements, and proceeds from any assessment or special tax districts formed for purposes of providing funds for capital costs associated with the Project actually received by Developer, but shall exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer. If the Developer receives a promissory note or other negotiable instrument in conjunction with the sale, exchange or disposition of any portion of the Property to entities other than an Affiliated Purchaser, the Developer shall be deemed to have received Gross Proceeds equal to the principal amount of the promissory note upon the close of escrow of such sale. Notwithstanding any agreed upon purchase price for any portion of the Property between the Developer and an Affiliated Purchaser, the Gross Proceeds from such transaction shall be determined pursuant to the appraisal process set forth in Exhibit W. Further, the Gross Proceeds associated with any portion of the Transfer Property retained by Developer upon Final Completion shall be determined pursuant to the appraisal process set forth in Exhibit W.

(4) "**IRR**" means the internal rate of return or the rate of return realized through the date of calculation, determined by taking into account all Development Costs incurred and all Gross Proceeds received (or deemed received), during the period prior to the applicable Phase Completion or Final Completion. For purposes of calculating the IRR, all Development Costs incurred prior to Project Commencement shall be deemed to have been incurred upon Project Commencement. "IRR" shall be conclusively determined (absent manifest error) by using the XIRR function in Microsoft Excel 2013, and inputting, as of the day on which it is actually made, the amounts of all Development Costs paid by the Developer and the amounts of all applicable Gross Proceeds received (or deemed received) by the Developer. If the IRR function is no longer available in the version of Microsoft Excel or has been materially altered from the IRR function contained in Microsoft Excel 2013, "IRR" shall be conclusively determined (absent manifest error) by using the comparable function in the version of Microsoft Excel then broadly in use or another comparable software program, as reasonably determined by the Developer.

(5) "**Minimum IRR**" means a Project IRR equal to at least eighteen percent (18%).

(6) "**Project Commencement**" means the Effective Date of this Agreement.

(7) "**Phase Completion**" for each Phase of the Project shall mean the first day of the month following expiration of the 90th day after the completion of the construction of the Infrastructure Package (as determined pursuant to the applicable Public Improvement Agreement) for the applicable Phase.

(8) "**Required Multiple**" means the Developer has received total Unleveraged Cash Flow equal to one and sixth tenths (1.6) times the equity invested in the Project by the Developer related to the acquisition of the Property, installation of the Infrastructure Package and sale of the Property to any unaffiliated purchaser.

(9) "**Threshold Return**" means that the Developer has achieved both the Minimum IRR and the Required Multiple.

(10) "**Unleveraged Cash Flow**" means Gross Proceeds received by the Developer less Development Costs paid by the Developer.

(b) Calculation of Contingent Profit Participation. Subject to subsections (d) through (e) of this Section 2.3, within ninety (90) days after each Phase Completion, the Developer shall undertake to finish a complete accounting and computations setting forth, (i) on an aggregate basis, the Unleveraged Cash Flow received from the Project Commencement through the applicable Phase Completion (the "**Final Phase Accounting**") and (ii) the determination whether the Developer has achieved the Threshold Return. If the Threshold Return has been achieved, the Contingent Profit Participation accrued through such Phase Completion shall be an amount equal to the following:

(1) Ten percent (10%) of the difference between (A) the Unleveraged Cash Flow up to the point in time at which the IRR on Unleveraged Cash Flow equals twenty percent (20%) less (B) the amount of Unleveraged Cash Flow through the point in time at which the IRR on Unleveraged Cash Flow equals the Minimum IRR for the Phase Completion and, cumulatively, for all Phase Completions; plus

(2) Twenty percent (20%), of the difference between (A) the Unleveraged Cash Flow up to the point in time at which the IRR on Unleveraged Cash Flow equals twenty-two percent (22%) less (B) the amount of Unleveraged Cash Flow from the point in time at which the IRR on Unleveraged Cash Flow equals 20% for each Phase Completion and, cumulatively, for all Phase Completions; plus

(3) Thirty percent (30%) of the difference between (A) the Unleveraged Cash Flow up to the point in time the IRR on Unleveraged Cash Flow equals twenty-five percent (25%) less (B) the amount of Unleveraged Cash Flow from the point in time at which the IRR on Unleveraged Cash Flow equals 22% for each Phase Completion and, cumulatively, for all Phase Completions; plus

(4) Fifty percent (50%) of the difference between (A) the Unleveraged Cash Flow less (B) the amount of Unleveraged Cash Flow from the point in time the IRR on Unleveraged Cash Flow equals 25% for each Phase Completion and, cumulatively, for all Phase Completions.

For avoidance of doubt, the Contingent Profit Participation is calculated on a cumulative basis at each Phase Completion taking into account all prior Phases, based on Unleveraged Cash Flow through such Phase Completion, and only that amount calculated as of the latest Phase Completion is actually due.

(c) Payment of the Contingent Profit Participation. If the Phase Accounting for Phase 1, 2 or 3 determines (through such Phase Completion) the Threshold Return has been achieved, the Developer shall deposit into a segregated account jointly controlled by the City and the Developer (the "**Contingent Profit Participation Account**") an amount equal to (taking into account any prior deposits) the Contingent Profit Participation on or before the day that is thirty (30) days after delivery of the applicable Phase Accounting, provided such deposit does not cause the Developer to receive less than the Required Multiple. Within thirty (30) days of receipt of the Phase Accounting, the City may determine to exercise its Audit rights pursuant to subsection 2.3(f) below, in which case any payment pursuant to this subsection 2.3(c) shall

become due and payable on the later to occur of the date otherwise due and the date that is thirty (30) days after receipt of the City's audit by the Developer. The City may withdraw no more than fifty percent (50%) of the amount deposited in the Contingent Profit Participation Account prior to the Final Accounting (as defined below) after giving the Developer notice of such withdrawal and the purposes for such a withdrawal, which purposes will be limited to uses related to the maintenance, development and reuse of Alameda Point.

The City desires to utilize a portion of any Contingent Profit Participation to increase the number of Moderate Income Housing Units located in the Block 3 residential condominium development by up to ten (10) units. Therefore, the City is willing to allow the Developer to retain a portion of the funds that would otherwise be paid as Contingent Profit Participation to compensate the Developer for the difference in revenue that the Developer would receive from the sale of the subject units as market rate housing units rather than Moderate Income Housing Units. The number of additional Moderate Income Housing Units to be included in Block 3 shall be determined by dividing (a) the Contingent Profit Participation generated from Phase 1 by (b) the difference between the average actual sales price for the applicable market rate condominium units or, if units have not sold yet, the projected sales price for the applicable market rate condominium units on Block 3 and the Affordable (as defined in the Affordable Housing Implementation Plan) sales price for the applicable Moderate Income Housing Units on Block 3 provided, however, the result of such calculation shall be rounded down to the nearest whole number and in no event shall the number of Moderate Income Housing Units on Block 3 be increased by more than ten (10) units. The reference to the "applicable units" in the foregoing calculation is intended to cause the Parties to take into account the number of bedrooms for the units contemplated to be included as Moderate Income Housing Units pursuant to this Section 2.3 and to calculate the price differential using the average market rate and Affordable sales prices for equivalent units types. If applicable, the projected sales price for a market rate condominium unit will be the projected sales price identified in the Sub-Phase Update for Block 3, as approved by the City.

Therefore, if the Final Phase Accounting for Phase 1 determines that the Threshold Return has been achieved, the Parties agree that notwithstanding any provision of this Agreement to the contrary:

(1) The portion of the funds that would otherwise be deposited into the Contingent Profit Participation Account necessary to compensate the Developer for the difference in revenue related to the additional Moderate Income Housing Units created by this Section 2.3(c) (the "Additional Affordable Housing Funds" or "AAH Funds") shall be retained by the Developer;

(2) The balance of the Phase 1 Contingent Profit Participation, if any, shall be deposited into the Contingent Profit Participation Account;

(3) The AAH Funds shall be included in the Final Accounting completed in accordance with Subsection 2.3(e) below for purposes of determining the aggregate Contingent Profit Participation, but in no event shall the City be obligated to refund any portion of the AAH Funds if the Final Accounting shows that the aggregate Contingent Profit Participation is less than the amount previously deposited in the Contingent Profit Participation Account plus the AAH Funds;

(4) The Developer shall select the units to be converted to Moderate Income Housing Units (which selection shall be subject to the applicable requirements of the Affordable Housing Plan regarding location and unit type) and such units shall thereafter be subject to the applicable provisions the Affordable Housing Implementation Plan.

(d) Accounting of Contingent Profit Participation Payments. Developer shall maintain accurate books and records setting forth all components used for determining the Contingent Profit Participation. Developer shall provide to the City copies of the periodic reporting respecting Development Costs and Gross Proceeds provided by Developer to each of its members or partners ("**Developer's Interim Statement**"), which reporting shall be in the form and with such detail as required by the Developer's Limited Liability Company Agreement and subject to the provisions of this Section 2.3, in conformance with generally accepted accounting principles consistently applied ("**GAAP**").

(e) Final Accounting. Within ninety (90) days after Final Completion, Developer shall prepare a reconciliation of the aggregate of any Contingent Profit Participation deposits to the Contingent Profit Participation Account and shall prepare a complete accounting and computations setting forth (i) in the aggregate the Development Costs incurred and the Gross Proceeds, each from the Project Commencement Date through the Final Completion (the "**Final Accounting**") and (ii) the determination whether the Developer has achieved the Threshold Return. If the Final Accounting shows that (i) the Project as a whole has achieved the Threshold Return, and (ii) the deposits to the Contingent Profit Participation Account are, in the aggregate, less than the total amount owed to the City, the amounts deposited in the Contingent Profit Participation Account plus any interest earned (less any prior withdrawals) shall be released to the City and Developer shall pay to the City the deficiency with the Final Accounting to the extent the payment to the City will not cause the Developer to receive less than the Required Multiple. If the Final Accounting shows that the deposits to the Contingent Profit Participation Account exceed the total amount owed to the City, the Contingent Profit Participation based on the Final Accounting, if any, plus a proportionate amount of any interest earned on the deposit (less any prior City withdrawals) shall be released to the City and the remaining amounts in the Contingent Profit Participation Account shall be returned to the Developer. If the aggregate amount of any prior City withdrawals exceeds the Contingent Profit Participation plus a proportionate amount of any interest earned on the deposit, the City shall refund the excess amount to the Developer within thirty (30) days after the City's receipt of the Final Accounting. The City upon receipt of the Final Accounting may determine to exercise its Audit rights pursuant to subsection 2.3(f) below, in which case any payment pursuant to this subsection 2.3(e) shall become due and payable on the later to occur of the date otherwise due and the date that is thirty (30) days after receipt of the City's audit by the Developer.

(f) Audit Rights. The City shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Gross Proceeds, Development Costs and the Contingent Profit Participation. Such audit shall be conducted during normal business hours upon five (5) business days' notice at the principal place of business of the Developer and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. The City shall not be entitled to more than one audit for any particular calendar year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. The City shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has

been a deficiency in the payment of any Contingent Profit Participation, Developer shall immediately deposit in the Contingent Profit Participation Account if the audit is prior to the Final Accounting or pay directly to the City if the audit is after the Final Accounting, any such deficiency with interest at the greater of seven percent (7%) or the rate set forth in California Code of Civil Procedure Section 685.010, determined as of and accruing from the date that said payment should have been made. In addition, if Developer's Interim Statements shall have been determined to have understated the City's Contingent Profit Participation in any calendar year by more than five percent (5%), the Developer shall pay, in addition to the interest charges referenced above, all of the City's reasonable costs and expenses connected with the audit or review of Developer's accounts and records. All such payments shall be paid by the Developer within ten (10) days of receipt of written notice to Developer of such underpayment.

(g) Security For Profit Participation Payment. Developer's obligations with respect to the payment of the Contingent Profit Participation shall be unconditional obligations of Developer.

ARTICLE 3.
FINANCING PLAN

Section 3.1 Financing Plan. The Developer has submitted to the City a financing plan for the Project ("**Project Financing Plan**" identified as the cash flow analysis dated April 20, 2015 consistent with the summary cash flow analysis provided to the City Council for its May 19, 2015 meeting), which Project Financing Plan shall be updated when each Phase Update and each Sub-Phase Update is submitted to the City pursuant to this Section 3.1.

(a) Phase Update. Developer shall submit to the City an update to the Project Financing Plan with respect to each Phase (each "**Phase Update**") for the City's review and approval pursuant to Section 3.2 prior to the applicable date in the Milestone Schedule that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Phase that was previously included in the Project Financing Plan:

(1) A detailed development budget (including all direct, indirect, and financing costs) for acquiring the applicable Phase and developing and constructing the Infrastructure Package allocated to the applicable Phase. The information related to the portion of the Infrastructure Package allocated to the applicable Phase shall be based on the approved Phase Construction Contract for such improvements (including any material cost changes arising from the negotiated terms and guaranteed construction cost set forth in the Phase Construction Contract). The detailed development budget shall be in the same general form and content as the information contained in and/or used as the basis for procuring: (1) the debt and equity funds described below in Section 3.1(a)(2) and (2) the Phase Construction Contracts.

(2) A copy of all commitments obtained by the Developer for debt financing, such as construction loan financing or other financing from external debt financing sources to assist in financing the acquisition of the applicable Phase and the construction of the Infrastructure Package allocated to such Phase that will not be funded by the formation of an assessment or special tax district pursuant to Section 11.5, certified by the Developer to be true and correct. The City shall cause such commitments to be reviewed under Section 3.2 solely to

determine the validity of the commitments and the proposed amount, terms and timing of the debt financing to be provided for the Phase under such commitments, and not for review or approval of any other business or financial terms.

(3) A description of any joint ventures, partnerships or conveyances that the Developer proposes to enter into in order to provide equity funds for acquiring, developing and constructing the then current Phase of the Project, including copies of any then executed joint venture, partnership and/or conveyance agreements. Such description and agreements shall be made available for the City's review at a meeting between the Developer, City staff and City's designated consultant. The City shall cause such description to be reviewed under Section 3.2 solely to determine the validity of the agreement and the proposed amount, terms and timing of the equity funding to be provided for the Phase of the Project under such agreements, and not for review or approval of any other business or financial terms. The Developer shall retain any agreements and the City shall retain the description and summaries of the agreements confirming the identity of the parties. Any documents retained by the City shall be subject to potential public disclosure pursuant to the California Public Records Act and/or the City's Sunshine Ordinance.

(4) A financial statement certified by a managing partner or member of the Developer, a letter of verification from the Developer's corporate bank, or other evidence in form reasonably satisfactory to the City and Developer's commitment letter demonstrating that the Developer has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between costs of acquisition of the applicable Phase and the construction of the Infrastructure Package allocated to such Phase that will not be funded by the formation of an assessment or special tax district pursuant to Section 11.5 and the amount available to the Developer from external sources, including any financing obtained by Developer pursuant to Section 3.1(a)(2) above, to pay such anticipated acquisition, development and construction costs.

(5) A description, certified by a managing partner or member of the Developer setting forth the amount, nature and providers of any Completion Assurances to be provided by the Developer to equity investors and/or lenders to obtain the equity and debt financing described in Sections 3.1(a)(2) above.

(6) An updated "sources and uses" breakdown of the costs of constructing and operating the Affordable Housing Units as required by the Affordable Housing Implementation Plan.

(7) A summary schedule showing overall expenditures and revenues and expected timing.

(8) An update to the Project Financing Plan for the balance of the Project. The update to the Project Financing Plan shall include the level of detail included in the original Project Financing Plan.

(b) Sub-Phase Update. The Developer shall submit to the City an update to the Project Financing Plan with respect to each Sub-Phase (each a "**Sub-Phase Update**") for the City's review and approval pursuant to Section 3.2 prior to the earlier to occur of (i) the proposed transfer of such Sub-Phase to an unaffiliated buyer or (ii) the issuance of the first building

permits for Vertical Improvements for such Sub-Phase, that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Sub-Phase that was previously included in the Project Financing Plan:

(1) A detailed development budget (including all direct, indirect, and financing costs) for the construction of the applicable Sub-Phase Vertical Improvements. After negotiation of any Vertical Improvement Construction Contract, the Developer shall update the detailed development budget to reflect any material cost changes resulting from the negotiated terms and guaranteed construction cost set forth in the Vertical Improvement Construction Contract. The detailed development budget shall be in the same general form and content as the information contained in and/or used as the basis for procuring: (1) the debt and equity funds described Section 3.1(b)(2) below and (2) the applicable Vertical Improvement Construction Contracts.

(2) A copy of all commitments obtained by the Developer for debt financing, such as construction loan financing or other financing from external debt financing sources to assist in financing the construction of the applicable Sub-Phase Vertical Improvements, certified by the Developer to be true and correct, including any joint venture, partnership and/or conveyance agreements. The City shall cause such commitments to be reviewed under Section 3.2 solely to determine the validity of the commitments and the proposed amount, terms and timing of the debt financing to be provided for the applicable Sub-Phase Vertical Improvements under such commitments, and not for review or approval of any other business or financial terms.

(3) A description of any joint ventures, partnerships or conveyances that the Developer proposes to enter into in order to provide equity funds for acquiring, developing and constructing the Vertical Improvements for the applicable Sub-Phase of the Project, including copies of any then executed joint venture, partnership and/or conveyance agreements. Such description and agreements shall be made available for the City's review at a meeting between the Developer, City staff and City's designated consultant. The City shall cause such description to be reviewed under Section 3.2 solely to determine the validity of the agreement and the proposed amount, terms and timing of the equity funding to be provided for the Sub-Phase of the Project under such agreements, and not for review or approval of any other business or financial terms. The Developer shall retain any agreements and the City shall retain the description and summaries of the agreements confirming the identity of the parties. Any documents retained by the City shall be subject to potential public disclosure pursuant to the California Public Records Act and/or the City's Sunshine Ordinance.

(4) A financial statement certified by a managing partner or member of the Developer, a letter of verification from the Developer's corporate bank, or other evidence in form satisfactory to the City and a Developer commitment letter demonstrating that the Developer has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between costs of the construction of the applicable Sub-Phase Vertical Improvements and the amount available to the Developer from external sources to pay such anticipated acquisition, development and construction costs.

(5) A description, certified by a managing partner or member of the Developer setting forth the amount, nature and providers of any Vertical Improvement

Completion Assurances to be provided by the Developer to equity investors and/or lenders to obtain the equity and debt financing described in Sections 3.1(b)(2).

(6) A summary schedule showing overall expenditures and revenues and expected timing.

(c) Public Financing Plan. The Developer is aware of the City's Policy of Fiscal Neutrality, adopted through Resolution No. 13640 of the City Council and the TDM Compliance Strategy. The City has determined that the Project must provide the following maximum annual amounts to the City to achieve compliance with such Policy and the TDM Compliance Strategy, with each such initial amount to increase each fiscal year, commencing with fiscal year 2015-16, by an amount equal to the greater of (x) two percent of the amount in effect for the prior fiscal year, or (y) the CPI Increase: (i) for TDM Compliance Strategy services, $586,000; (ii) for other municipal services to be provided by the City to the Project, $311,000; (iii) for maintenance of flood control improvements, $258,000; and (iv) for a capital reserve for flood control improvements, $86,000. The foregoing initial amounts, as increased from time to time, are collectively referred to as the "**Public Agency Contributions**." The foregoing Public Agency Contributions are the amounts based on the built-out Project and will be allocated on a pro rata basis for each Phase, which proration shall be based on the number of residential units and the square footage of non-residential uses included in each Phase, and the total number of residential units and the square footage of non-residential uses in the Project as a whole. The portion of the Public Agency Contributions allocated to each Phase shall be further allocated among the various portions of the Phase pursuant to the rate and method of apportionment applicable to any respective special tax district, or based on the engineers report applicable to any respective assessments. The City shall administer all funds collected in respect of the Public Agency Contributions in accordance with applicable City policies and procedures.

In order to ensure that the City will receive the Public Agency Contributions, the Project area shall be included in one or more special tax or assessment districts as determined by the City, which shall allow for annual special tax or assessment levies in amounts, taking into account administrative costs and costs of collection, sufficient to provide the City with net amounts equal to the Public Agency Contributions. The Developer shall cooperate with the City in forming, and shall vote in favor of, the financing district or districts as determined by the City, so long as the annual special taxes and assessments to be levied therein are consistent with the foregoing. The Developer shall assure that, if any portion of the Property is sold prior to the completion of the formation of the financing districts, it will provide in the sale documentation a requirement that the purchaser vote in favor of the financing district or districts. The financing districts shall be fully formed prior to the recordation of any map designating individual parcels within the Project.

The Developer shall submit to the City within the time set forth in the Milestone Schedule a Public Financing Plan that includes a proposal as to how the burden of the annual Public Agency Contributions will be apportioned among the land uses in the Project; subject to the following: (i) the amount apportioned to any market rate residential units (townhomes, condominiums or single family homes) shall, when taking into account the annual Public Agency Contributions, ad-valorem tax levies, all other overlapping tax and assessment debt, excluding projected homeowner's association dues, shall not exceed one and nine-tenths percent (1.9%) of the reasonably expected sales prices of such for sale housing; (ii) there shall be no apportionment of

the annual Public Agency Contributions to any publicly-owned property; (iii) there shall be no apportionment of the annual Public Agency Contribution on properties developed with Very Low Income and Low Income Homes (as those terms are defined in the Affordable Housing Implementation Plan) and (iv) the amount of the annual Public Agency Contributions apportioned to any other property in the Project shall be reasonable in relation to the expected value of such other property, as determined by the Developer's and City's financial advisors for such districts. The first levy of special taxes or assessments for the annual Public Agency Contributions on any specific parcel in the Project shall occur in the fiscal year in which a parcel is expected to receive a certificate of occupancy of Vertical Improvements; provided that the levies to fund the annual Public Agency Contributions described in clauses (iii) and (iv) of the second sentence of this Section 3.1(c) shall commence no later than the fiscal year following the City's acceptance for permanent maintenance of the flood control improvements for the applicable Phase described in the Infrastructure Package.

The City shall select all consultants necessary to form any special tax or assessment districts, including formation counsel, assessment engineer or special tax consultant and financial advisor. The Developer shall pay all documented costs of formation of the special tax and assessment districts required by this Section 3.1(c) promptly following receipt of invoices from the City for such costs, including the fees of the aforementioned consultants and a reasonable amount determined by the City to compensate the City for Staff time in connection therewith.

The City shall provide the Developer with a copy of any proposed budget for the special tax or assessment district formed pursuant to this Section 3.1(c) related to the TDM Compliance Strategy for the first five (5) years of such district's assessments for review and comment at least thirty (30) calendar days prior to such budget being finalized.

In the event that, at any time, it is reasonably expected that the Project will include improvements substantially different in scope and composition than approximately 800 residential units and 600,000 square feet of non-residential uses contemplated by this Agreement, the City shall determine appropriate revisions to the annual Public Agency Contributions (on both a build-out and Phase basis) described in clauses (i) and (ii) of the second sentence of this Section 3.1(c) as necessary to ensure compliance with the City's Fiscal Neutrality Policy and TDM Compliance Strategy and shall provide the Developer with an opportunity to discuss any such revisions; provided that the City's determination of the revisions shall be conclusive and binding upon the Parties. No such revisions will be made to the Public Agency Contributions described in clauses (iii) and (iv) of the second sentence of this Section 3.1(c) in any event.

In the event that the Developer desires to have the City form an assessment district or a special tax district to finance costs of public infrastructure improvements, it shall include all primary financial aspects of such district or districts in its Pubic Financing Plan (projected formation costs, levy amounts, bond issues, etc.), subject in any event to the provisions of Section 11.5.

Section 3.2 Review of Financing Plan Updates By City. Upon receipt by the City of the proposed Phase Update, Sub-Phase Update, or Public Financing Plan the City Manager shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date the City Manager receives the proposed plan or update. If the proposed plan or update is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted plan or

update. The Developer shall thereafter submit a revised plan or update within thirty (30) days of the notification of disapproval. The City Manager shall either approve or disapprove in writing the submitted revised Phase Update, Sub-Phase Update, or Public Financing Plan within thirty (30) days of the date such revised plan or update is received by the City. The City Manager shall approve the initial or revised plan or update if (i) it contains the elements described in the definition of the Phase Update, Sub-Phase Update, or Public Financing Plan as applicable, contained in Section 3.1 above, (ii) demonstrates sufficient funding to pay the total development costs of the Project, Phase or Sub-Phase, as applicable and all other applicable obligations of the Developer under this Agreement; and (iii) the Public Financing Plan provides annual funding for transportation demand services and programs, levee maintenance, municipal services and community benefits in an amount not less than the greater of (x) the Public Agency Contributions set forth in Section 3.1(c) and (y) the amounts determined to be necessary pursuant to the rate and method prepared for the formation of an assessment or special tax district, if available at the time of the submission of the Public Financing Plan.

(a) If the City disapproves the revised proposed Phase Update, Sub-Phase Update or Public Financing Plan, this Agreement may be terminated pursuant to Article 17.

(b) The Developer shall submit any material revision to an approved Phase Update, Sub-Phase Update or Public Financing Plan to the City Manager for his/her review and approval. Any proposed revised Phase Update, Sub-Phase Update, or Public Financing Plan shall be considered and approved or disapproved by the City Manager in the same manner and according to the same timeframe set forth above for the initial plan or update. Until a revised plan or update is approved by the City Manager, the previously approved Project Financing Plan, Phase Update, Sub-Phase Update or Public Financing Plan shall govern the financing.

ARTICLE 4.
DISPOSITION OF PROPERTY AND ESCROW

Section 4.1 Opening Escrow. The Closing of any Phase shall be completed through Escrow and the Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement.

Section 4.2 Close of Escrow. Subject to the satisfaction of the applicable conditions precedent set forth in Sections 4.3(a) and (b) and any extensions pursuant to Section 1.3(a) or Section 1.3(b) above, escrow shall close on the transfer of each Phase to the Developer on or before the earlier to occur of the following dates Phase 1 – December 12, 2016, Phase 2 – August 24, 2022 and Phase 3 – March 29, 2027 (each, an "**Outside Phase Closing Date**") and the date that is thirty (30) calendar days after all conditions precedent to the applicable Closing set forth in Section 4.3 have been met (each such earlier, the "**Closing Date**").

On the applicable Closing Date, the City shall: convey to the Developer the applicable portions of the Transfer Property pursuant to a Quitclaim Deed substantially in the form of Exhibit I, provided, however, with respect to the Phase 1 Property, the City shall convey the Affordable Housing Site (as defined in the Affordable Housing Implementation Plan) to the Qualified Affordable Housing Developer in accordance with the provisions of the Affordable Housing Implementation Plan subsequent to the Closing Date for the Phase 1 in accordance with

the conditions precedents for the conveyance of the Affordable Housing Site in the Affordable Housing Implementation Plan.

If pursuant to Section 8.15, the Developer is obligated to or elects to accept conveyance of Phase 1 without Block 11, within ninety (90) days of the Navy conveyance to the City of the property containing the Storm Drain Line (as defined in Section 8.15) the City shall convey to the Developer Block 11 pursuant to the applicable provisions of the Article 4.

Section 4.3 Conditions Precedent to Closing.

(a) Conditions Precedent to the City's Obligation. The obligation of the City to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the City in its sole discretion:

(1) the applicable Phase has been conveyed in fee to the City from the Navy pursuant to Section 11.3 below or pursuant to the provisions of Section 8.15, the Developer is obligated or elects to accept conveyance of Phase 1 without Block 11;

(2) the City has completed any Tidelands Trust exchange that affects the applicable Phase pursuant to the Exchange Agreement and Section 11.4 below;

(3) there are no uncured Developer Events of Default;

(4) the DDA Memorandum shall have been recorded against the applicable Phase;

(5) the Developer has timely submitted to the City and the City has reviewed and approved all of the submittals required under this Agreement for the applicable Phase, including but not limited to, the approval of the applicable Phase Update including the Public Financing Plan, and the approval of the Phase Construction Contract pursuant to Section 5.5;

(6) the Developer shall have submitted to the City within the time set forth in the Milestone Schedule, evidence in the form reasonably satisfactory to the City Manager that any conditions to the release or expenditure of funds described in the applicable approved Phase Update Financing Plan have been met or will be met at the Closing on any Phase and that such funds will be available at the Closing for the acquisition of the applicable Phase and construction of the applicable Infrastructure Phase. Such satisfactory evidence may consist of letters from the funding sources identified in the approved Phase Update Financing Plan stating that the applicable funds, in the amounts called for in the approved Phase Update Financing Plan, will be available to the Developer for the acquisition of the applicable Phase and construction of the applicable Infrastructure Phase at the time of Closing or such later time as called for in the Phase Update Financing Plan. Only upon delivery of such evidence in form satisfactory to the City Manager shall this condition be deemed met;

(7) the Developer and the City shall have entered into an Public Improvement Agreement for the Backbone Infrastructure for the applicable Phase in accordance with Section 5.6;

(8) the Developer shall have obtained approval of a Tentative Large Lot Map for the applicable Phase including approval of the Infrastructure Sub-Phases;

(9) the Developer has submitted all certificates of insurance in form reasonably satisfactory to the City Risk Manager demonstrating compliance with the insurance requirements in Article 16;

(10) the Developer shall have obtained all Supplemental Approvals required under Section 5.4, including the payment of the required grading, demolition and building permit fees; and

(11) the Developer shall have entered into an Affordable Housing Plan Assignment with a Qualified Affordable Housing Developer in accordance with the Affordable Housing Implementation Plan.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the applicable Outside Closing Date (as such date may be extended pursuant to this Agreement), this Agreement shall terminate in accordance with the provisions of Sections 17.2 or 17.4, as applicable.

(b) Conditions Precedent to the Developer's Obligation. The obligation of the Developer to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the Developer in its sole discretion:

(1) the applicable Phase has been conveyed to the City from the Navy pursuant to Section 11.3 below, or pursuant to the provisions of Section 8.15, the Developer is obligated or elects to accept conveyance of Phase 1 without Block 11;

(2) the City has completed any Tidelands Trust exchange that affects the applicable Phase pursuant to the Exchange Agreement and Section 11.4 below;

(3) the Navy shall have issued one or more final Findings of Suitability for Transfer ("**FOST**") for the applicable Phase and (A) the Environmental Protection Agency's comments related to such FOST(s) shall not propose additional investigation or remediation or otherwise materially disagree with the findings set forth in the FOST and (B) any FOST issued after the Effective Date shall not include (i) a provision which prohibits the applicable land uses identified in the Development Plan or (ii) subject to the provisions of clause (i), restrictions or land use covenants which are inconsistent with or more onerous than the terms contained in the FOST(s) related to the Property that were issued prior to the Effective Date, provided, however, the restrictions set forth in the Final Record of Decision (ROD) for OU-2B or any other Final ROD as of the Effective Date shall not be considered in conflict with the Development Plan;

(4) the DDA Memorandum shall have been recorded against the applicable Phase;

(5) the Developer and the City Council shall have approved the Ferry Terminal Plan pursuant to Section 5.2;

(6) the Developer shall have approved the metes and bounds legal description for the Transfer Property;

(7) the Developer shall have received confirmation from the Escrow Holder that the Escrow Holder is irrevocably committed (upon payment of the applicable premium and the Close of Escrow) to issue the applicable Title Policy to the Developer in the form required by Section 4.7;

(8) there has been no material adverse change in the physical condition of the Phase that would render the Phase unsuitable for the development of the Phase pursuant to the Project Approvals in the time period between Effective Date and the applicable Closing Date;

(9) there shall have been no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which were not existing as of the Effective Date and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for units within the Project;

(10) there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Phase or the development of the applicable Phase pursuant to the Project Approvals and the Subsequent Approvals, or that adversely affects the City's ability to perform its obligations under this Agreement;

(11) all leases, tenancies, third party occupancy agreements, service contracts, utility contracts and other contracts that are not Permitted Exceptions or pursuant to the Lease Agreement and that affect the applicable Phase shall have been terminated, all tenants and other parties shall have vacated the applicable Phase, and all personal property not transferred to the Developer pursuant to the Bill of Sale shall have been removed from the applicable Phase;

(12) all of the representations and warranties of the City contained in this Agreement shall be true and correct in all material respects as of the date of Closing;

(13) there are no uncured City Events of Default;

(14) the City has provided the Developer with the right of entries, encroachment permits and/or temporary construction easements reasonably necessary to construct the off-site improvements included in the Backbone Infrastructure allocated to the applicable Phase (the "**Off-Site Rights of Entry**"); and

(15) The Development Agreement and the Project Approvals shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the Developer prior to the applicable Outside Closing Date (as the same may be extended pursuant to the terms of this Agreement), this Agreement shall terminate in accordance with the provisions of Sections 17.2 or 17.3, as applicable.

Section 4.4 Closing Deliverables.

(a) City Deliverables. At least one (1) business day prior to the Closing Date for each Phase, the City shall deliver the following to Escrow Holder:

(1) a metes and bounds legal description of the Transfer Property to be conveyed;

(2) a duly executed and notarized original Quitclaim Deed conveying the applicable Phase Transfer Property to the Developer in the form substantially similar to Exhibit I attached hereto;

(3) if applicable, a duly executed original of all required Off-Site Rights of Entry;

(4) two (2) duly executed original counterparts of the general assignment conveying any interest in the intangible property applicable to such Phase Transfer Property in the form substantially similar to Exhibit O (the "**General Assignment**");

(5) a duly executed bill of sale for the personal property applicable to the applicable Phase Transfer Property in the form substantially similar to Exhibit P (the "**Bill of Sale**");

(6) a duly executed and notarized counterpart of the Public Improvement Agreement for the applicable Phase in the form substantially similar to Exhibit Q (the "**Public Improvement Agreement**");

(7) a duly executed and notarized original of the notice of the City's release of environmental claims set forth in Section 4.6(h) below in substantially the form substantially similar to Exhibit V-1 (the "**Notice of City Release of Environmental Claims**");

(8) a FIRPTA certificate and a CA Real Estate Withholding Certificate, each duly executed by the City;

(9) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the City;

(10) an executed closing statement reasonably acceptable to the City; and

(11) such affidavits and other documents that are consistent with this Agreement and which are reasonably required by the Escrow Holder.

(b) Developer Deliverables. At least one (1) business day prior to the Closing Date for each Phase, the Developer shall deliver to Escrow Holder:

(1) a duly executed and notarized original Quitclaim Deed conveying the applicable Phase Transfer Property to the Developer in the form substantially similar to Exhibit I attached hereto

(2) Cash or other immediately available funds in an amount equal to (A) with respect to Phase 1 only, the Second Sports Complex Payment, (B) any fees required pursuant to the Public Improvement Agreement that are necessary to commence construction of the Backbone Infrastructure for the applicable Phase (the **"PIA Fees"**) and (C) the funds required by the Developer pursuant to Sections 4.7(a) and (b) below (collectively, the **"Closing Funds"**);

(3) For the Phase 1 Conveyance, the duly executed Ferry Terminal Payment Note.

(4) two (2) duly executed original counterparts of the General Assignment;

(5) a duly executed and notarized original counterpart of the Public Improvement Agreement;

(6) originals of the completion and payment surety bonds required by the Public Improvement Agreement, the amount of which shall be equal to the cost of the Backbone Infrastructure allocated to such Phase (the "**Bonds**");

(7) evidence of insurance required by the Public Improvement Agreement and this Agreement (the "**Insurance Documents**");

(8) the fully executed CC&R's (defined below) (or, with respect to subsequent Phases, the applicable Declaration of Annexation);

(9) a duly executed and notarized original of the notice of the Developer's release of environmental claims set forth in Section 4.6(f) below in substantially the form substantially similar to Exhibit V-2 (the "**Notice of Developer Release of Environmental Claims**");

(10) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the Developer;

(11) an executed closing statement reasonably acceptable to the Developer; and

(12) such affidavits and other documents that are consistent with this Agreement and which are and reasonably required by the Escrow Holder.

Section 4.5 Condition of Title. The City may convey each Phase of the Transfer Property and Lease Property to the Developer pursuant to a metes and bounds legal description approved by the City and the Developer in accordance with the provisions of Government Code Section 66426.5.

(a) "**Permitted Exceptions**" means the following liens, encumbrances, clouds and conditions, rights of occupancy or possession, as they may relate to the Property:

(1) applicable building and zoning laws and regulations;

(2) the provisions of this Agreement as evidenced by the DDA Memorandum;

(3) the provisions of the applicable Quitclaim Deed;

(4) the provisions of the quitclaim deed conveying the applicable portion of the Property from the Navy to the City provided such provisions are consistent with and not more onerous than the terms contained in the quitclaim deeds listed on Exhibit X.

(5) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Quitclaim Deed;

(6) the Site Management Plan related to hazardous materials as long as the terms of the Site Management Plans are consistent with and not more onerous than the Site Management Plan listed on Exhibit U;

(7) Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**");

(8) the terms of any Covenant to Restrict Use of Property Environmental Restrictions applicable to the Phase (the "**CRUP**") provided that the terms of the applicable CRUP are consistent with and not more onerous than the terms of the CRUPs listed on Exhibit X;

(9) liens, encumbrances, clouds and conditions, rights of occupancy or possession shown as exceptions in the Preliminary Title Report including but not limited to exceptions, covenants, conditions and restrictions imposed by the Navy, the State of California or any other regulatory entity. Upon receipt of the Preliminary Title Report, the Developer and the City shall cooperate to remove any exceptions that are unacceptable to the Developer, provided however, the City shall not be obligated to incur any costs related to the removal of any such exceptions and the Developer shall not deem any exceptions that are consistent with the Permitted Exceptions set forth in this Section 4.5(a) unacceptable;

(10) any other matters approved by the Developer.

Section 4.6 Condition of the Property.

(a) Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), the City has provided the Developer with copies of the documents in its possession related to hazardous materials affecting the Property (the "**Hazardous Materials Documents**") as set forth in Exhibit U. To the best of the City's knowledge, the Hazardous Materials Documents depict the condition of the Property with respect to the matters covered in such documents as of the date of such documents and as of the Effective Date. The City is not

liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.

(b) Developer Investigation. The Developer and its agents have had the right and adequate opportunity to enter onto the Property for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Property and to undertake tests related to the existence of Hazardous Materials on the Property.

(c) "As is" Purchase. Except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that the City is selling and the Developer is buying the Property on an "**as is with all faults**" basis, and that the Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

(d) No Warranties by City and No Reliance by Developer. Except for the representations and warranties and covenants of the City contained in this Agreement,

(1) the Developer affirms that the Developer has not relied on the skill or judgment of the City or any of its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents or volunteers to select or furnish the Property for any particular purpose,

(2) that the City makes no warranty that the Property is fit for any particular purpose,

(3) the Developer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it made relative to the Property and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency);

(4) as of the Closing of each Phase and with respect to that Phase only, the Developer undertakes and assumes all risks associated with all matters pertaining to the

Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency.

Without limiting the generality of the foregoing provisions of this subsection 4.6(d), except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that as between the Developer and the City, the City shall have no responsibility for the suitability of the Property for the development of the Project.

(e) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.6 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.6 are an integral part of this Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer without the disclaimers and other agreements set forth in this Section 4.6. Nothing set forth in this Section 4.6 is intended to affect Developer's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

(f) Developer's Release of the City. Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the Developer, on behalf of itself and anyone claiming by, through or under the Developer (including, without limitation, any successor owner of the applicable Phase) hereby waives its right to recover from and fully and irrevocably releases the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Applicable Phase; (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Phase, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the applicable Phase as of the Phase Closing Date and; and (C) any information furnished by the City Released Parties related to the applicable Phase under or in connection with this Agreement.

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the NAS Alameda property acquired by the City to the applicable Phase, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the City Released Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the

Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date; (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in this Agreement; or (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the applicable Phase, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City (collectively, the "**Excluded Developer Claims**").

(g) Scope of Release. The release set forth in subsection 4.6(f) includes Claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the City Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**
>
> Developer's Initials: _____

(h) City's Release of the Developer. Effective as of the Closing Date for each Phase and solely with respect to the applicable Phase, the City, on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of any portion of NAS Alameda Property acquired by the City, whether prior to or after the applicable Phase Closing Date), hereby waives its right to recover from and fully and irrevocably releases the Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from the applicable Phase to any portion of the NAS Alameda Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Developer Released Parties in any way from, or be deemed a waiver of any Claims by the City (or anyone claiming by through or under the City, including, but not limited to, any successor owner of the applicable Phase) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing Date; (iv) a breach of the Developer's obligations under this Agreement or any other agreement between the City and the Developer; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by any of the Developer Released Parties at, on, under or otherwise affecting the applicable Phase or any other portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Developer.

(i) Scope of Release. The release set forth in subsection 4.6(h) includes claims of which the City is presently unaware or which the City does not presently suspect to exist which, if known by the City, would materially affect the City's release of the Developer Released Parties. The City specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the City agrees, represents and warrants that the City realizes and acknowledges that factual matters now unknown to the City may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the City further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the City nevertheless hereby intends to release, discharge and acquit the Developer Released Parties from any such unknown Claims. Accordingly, the City, on behalf of itself and anyone claiming by, through or under the City, hereby assumes the above-mentioned risks and hereby expressly waives any right the City and anyone claiming by, through or under the City, may have under Section 1542 of the California Civil Code, which reads as follows:

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

City's Initials: 

(j) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the City specifically acknowledges and agrees that, as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from the applicable Phase to any portion of the NAS Alameda Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Closing Date, the Developer shall not be

responsible for any required remediation of any such Hazardous Materials at any portion of the NAS Alameda Property acquired by the City.

(k) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the Developer specifically acknowledges and agrees, that as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from property owned by the City to the applicable Phase, which such Incidental Migration occurs prior to or after the applicable Closing Date, the City shall not be responsible for any required remediation of any such Hazardous Materials at any portion of the applicable Phase.

(l) The City hereby agrees that nothing in this Section 4.6 shall release the City from its obligations under this Agreement.

Section 4.7 Costs of Escrow and Closing.

(a) All expenses that are required to be prorated including but not limited to non-delinquent ad valorem taxes, if any, for each Phase of the Property being transferred and the lien of any bond or assessment related to each Phase of the Property being transferred shall be prorated as of the applicable Closing Date.

(1) Basis of Proration. If taxes and assessments due and payable have not been paid before Closing, the City shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and the Developer shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation fixed as of the most recent date. The Developer shall pay all supplemental taxes resulting from the change in ownership and reassessment occurring as of the applicable Closing Date.

(2) Initial Use of Estimates; True Up Based on Final Amounts. Any expense amount which cannot be ascertained with certainty as of the applicable Closing shall be prorated on the basis of the Parties' reasonable estimates of such amount. With respect to the property tax bills for each Phase, the Parties shall prorate the property taxes for such Phase using the applicable Phase Land Payment Allocation. Once the previously estimated amounts have been finalized, the Parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) business days after receipt of the final amount. If either Party has overpaid an amount based on the prior estimate, the other Party shall reimburse the overpaying party within ten (10) business days after receipt of the final amount.

(3) The provisions of this Section shall survive the applicable Closing and shall not merge with the applicable Quitclaim Deed.

(b) Transaction and Closing Costs. The Developer shall pay the premium for an ALTA Owner's Policy (Form 1970) insuring the Developer's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer (such as the lien of a Security Financing Interest) (collectively the "**Title Policies**") (including title endorsements) in excess thereof. All other costs of escrow (including, without limitation,

any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer. These costs borne by the Developer shall be in addition to the Land Payment. The Parties agree that the transfer taxes payable under this Section 4.7(b) with respect to the Close of Escrow for each Phase shall be calculated on the applicable Phase Land Payment Allocation, provided, however, that if the County of Alameda requires a different allocation of transfer tax Developer shall be responsible for making such payment.

(c) Closing Procedures. When all of the funds, documents and other items required by Section 4.4 for the applicable Phase Closing have been timely deposited into Escrow, Escrow Holder shall Close Escrow as follows:

(1) Record the following documents in the Official Records in the following order (collectively, the "**Recording Documents**"):

(A) the Quitclaim Deed;

(B) the Public Improvement Agreement;

(C) the CC&R's or, if applicable, the Declaration of Annexation;

(D) the Notice of City Release of Environmental Claims; and

(E) the Notice of Developer Release of Environmental Claims.

(2) Issue the Title Policy to Buyer;

(3) Pro rate taxes, assessments and other charges pursuant to Section 4.7 and pay the applicable charges from the applicable funds deposited by the City or the Developer;

(4) Pay the Closing Costs from the applicable funds deposited by the Developer;

(5) Deliver the following to the City: conformed copies of the Recording Documents, an original of the General Assignment, the Public Improvement Agreement Fees , the Bonds, the Insurance Documents and if applicable the Sports Complex Payment and the Ferry Terminal Payment Note; and

(6) Deliver the following items to the Developer: conformed copies of the Recording Documents, an original of the General Assignment, the original Bill of Sale, the original Title Policy, and the Off-Site Rights of Entry.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, Escrow Holder shall notify the Parties and retain all funds and documents pending receipt of further instructions jointly issued by Parties.

Section 4.8 Real Estate Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission or

third-party finder's fees in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The Parties' respective obligations to indemnify defend and hold harmless under this Section 4.8 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 4.9 Survival. The terms and conditions in Article 4 shall expressly survive the Closing, shall not merge with the provisions of the Quitclaim Deed or any other closing documents and shall be deemed to be incorporated by reference into the Quitclaim Deed. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

ARTICLE 5.
INFRASTRUCTURE CONSTRUCTION

Section 5.1 Basic Obligations. The Developer shall design and construct the Infrastructure Package in three (3) phases (each, an "**Infrastructure Phase**") in conjunction with the development of the Phases pursuant to the phasing plan included in the Infrastructure Package. The cost of the design and construction of infrastructure consistent with the Infrastructure Package is estimated to be One Million Three Hundred Thousand Dollars **($1,300,000)** per gross acre included in the Property, for an aggregate amount of Eighty Eight Million Dollars **($88,000,000)**.

The Developer shall cause commencement and completion of construction of the Project within the times set forth in the Milestone Schedule and consistent with the terms of the approved Phasing Plan. The Developer shall be responsible for all costs associated with the Infrastructure Package.

Section 5.2 Major Alameda Point Amenities. The Developer's obligations under this Section 5.2 (other than the obligations pursuant to subsections (b)(2) and (b)(5)) are contingent upon the Closing for the conveyance of Phase 1.

(a) Seaplane Lagoon Plaza. As part of the Backbone Infrastructure included within the Phase 1 Infrastructure Phase, the Developer hereby agrees to construct a portion of the Seaplane Lagoon Plaza and waterfront promenade park consistent with the Development Plan (the "**Seaplane Plaza Improvements**").

(b) Ferry Terminal. As part of the Phase 1 Infrastructure Phase, the Developer hereby agrees to cooperate with the City in the construction of a permitted and operating ferry terminal at Seaplane Lagoon, including any necessary associated parking improvements (the "**Ferry Terminal**").

(1) The Parties shall negotiate in good faith and use commercially reasonable efforts to agree upon a conceptual design, cost estimate, and delivery schedule for the Ferry Terminal (with a goal of completing the same on or before December 31, 2018) and obtain City Council approval of the same before the date set forth in the Milestone Schedule (the

"**Ferry Terminal Plan**"). The Ferry Terminal Plan shall be the Parties' reasonable determination of a conceptual design without requiring detailed architectural drawings and the Parties' best estimate of the schedule and costs based on information available and is not dependent upon receipt of approval for the Ferry Terminal Plan by any third party or receipt of commitments for funding for operations or equipment for ferry service. Upon approval of the Ferry Terminal Plan, the Milestone Schedule shall be updated to include the schedule for the Ferry Terminal.

(2) From and after the Parties' agreement on the Ferry Terminal Plan , the City shall use commercially reasonable efforts to obtain (on or before the dates set forth in the Ferry Terminal Plan) the third party permits and approvals necessary for construction and operation of a Ferry Terminal that is consistent with the Ferry Terminal Plan (collectively, the "**Ferry Terminal Permits**").

(3) From and after the City's acquisition of the Ferry Terminal Permits, the Developer shall use commercially reasonable efforts to complete a Ferry Terminal that is consistent with the conceptual design included in the Ferry Terminal Plan and complete the construction of the improvements shown in such plan, each consistent with the schedule included in the Ferry Terminal Plan.

(4) The following costs shall be paid by the Developer from the Ferry Terminal Payment: (A) the third party costs incurred by the Parties pursuant to Sections 2.2(b) and (B) a reimbursement of City and Developer overhead equal to five percent (5%) of the third party costs incurred by such Party. Consistent with the foregoing, the City shall have the right to submit monthly requests for payment to the Developer for costs incurred after the Effective Date, which requests shall include copies of applicable contracts, invoices and the City's approval of the same. For avoidance of doubt, the requests for payment shall not be submitted on a reimbursement basis, but may be submitted by the City prior to payment of the applicable invoices.

(5) Prior to the Phase 1 Closing Date if the schedule for the Ferry Terminal in the approved Ferry Terminal Plan requires that the permitting process begins prior the Phase 1 Closing Date, the Developer shall pay the City requests for payment of Section 5.2(b)(4) costs up to a total amount of Three Hundred Fifty Thousand Dollars ($350,000), and any amounts advanced by the Developer prior to the Phase 1 Closing shall be credited toward the Ferry Terminal Payment and shall be nonrefundable. From and after the City's acquisition of the required Ferry Terminal Permits, the Developer shall submit, on a quarterly basis, an accounting of the third party costs incurred by the Developer in satisfaction of its obligations under Section 5.2(b)(3) above, which accounting shall include copies of applicable contracts, invoices and checks.

(6) In the event that either Party fails, after written notice and an opportunity to cure within thirty (30) calendar days after receipt of such notice, to complete its obligations under Section 5.2(b)(2) or (3), as applicable (the "**Defaulting Party**"), the other Party (the "**Non-Defaulting Party**") shall have the right, upon written notice to the Defaulting Party, to assume the Defaulting Party's rights and obligations under this Section 5.2.

(7) If for any reason the Ferry Terminal is not constructed and Developer remains obligated to fund the Ferry Terminal Payment under the terms of the Ferry

Terminal Payment Note, the City and the Developer shall meet and confer on the use of the Ferry Terminal Payment to fund enhanced transit services benefiting the Project, provided, however, if the City and the Developer cannot agree on such uses, the City shall use the Ferry Terminal Payment to fund enhanced transit services benefiting the Project as determined by the City.

Section 5.3 Construction Pursuant to Approved Construction Documents. From and after the Closing on each Phase, the Developer shall cause construction of the applicable Infrastructure Phase in accordance with (a) the Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations) and (b) the applicable Public Improvement Agreement. Nothing in this section shall preclude or modify the Developer's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations.

Section 5.4 Subsequent Approvals.

(a) Supplemental Approvals. As a condition precedent to the conveyance of any Phase of the Property, the Developer shall apply to the City and other applicable governmental entities for, and shall diligently pursue procurement the Supplemental Approvals for the applicable Phase, including design review for the initial Sub-Phase of Vertical Improvements in the applicable Phase. Developer shall apply for the first Supplemental Approval for each Phase no later than the date set forth in the Milestone Schedule and shall continue to submit applications for additional Supplemental Approvals as necessary to ensure receipt of all of the Supplemental Approvals for each Phase by the date set forth in the Milestone Schedule. As part of the approval of the Backbone Infrastructure Improvement Plans and Tentative Map approval for each Phase, the Planning Board and the City Council shall also approve a sequencing plan for the construction of the Infrastructure Phase that sets out clearly delineated sub-phases for the Backbone Infrastructure in the Infrastructure Phase ("**Infrastructure Sub-Phases.**") The Ferry Terminal will be a separate Infrastructure Sub-Phase. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The City, in its capacity as the property owner and not in its regulatory capacity, (i) will sign any application for a Tentative or Final Map if such application is filed while the City owns any property subject to the Map; (ii) use commercially reasonable efforts to obtain the Navy's signature on any application for a Tentative Map or Final Map if the Navy owns any of the property subject to such Map at the time of application and (iii) sign any Tentative Map or Final Map as the owner of the property subject to the Map once such Map is approved in accordance with the City's standard process for approval of Subdivision Maps.

(b) Additional Approvals- Horizontal. The Developer shall apply for, diligently pursue the procurement of and have obtained any other permits, approvals, from the appropriate governmental entities or public utilities necessary for construction of the applicable Infrastructure Phase consistent with this Agreement (collectively, the "**Additional Approvals- Horizontal**"). The Additional Approvals- Horizontal shall include any permits and approvals from other governmental entities necessary for the construction of the Backbone Infrastructure that are not Supplemental Approvals. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The

Developer shall submit to the City evidence that it has filed an application for the main line extension including a fully executed water service agreement and have paid any fees required by such water services agreement to the East Bay Municipal Utility District within the time set forth in the Milestone Schedule.

(c) Evidence of Approvals. Within the time set forth in the Milestone Schedule, the Developer shall submit to the City evidence that all Supplemental Approvals and Additional Approvals-Horizontal related to the applicable Phase have been obtained. Only upon delivery of such evidence in form reasonably satisfactory to the City shall the conditions of this Section 5.4 be deemed met. If such evidence is not delivered within the time specified in the Milestone Schedule, this Agreement may be terminated pursuant to Article 17.2 or 17.4, as applicable.

Section 5.5 Construction Contract.

(a) As a condition precedent to conveyance for each Phase of the Project and within the time set forth in the Milestone Schedule, the Developer shall submit to the City the proposed construction contract with the General Contractor for the construction of the Backbone Infrastructure required by the applicable Public Improvement Agreement (the "**Phase Construction Contracts**"). Each proposed Phase Construction Contract shall:

(1) Specify a guaranteed maximum price or be another type of construction contract in which the pricing mechanism provides reasonable assurance that the total construction cost under the Phase Construction Contract will be an amount not exceeding the construction cost set forth in the approved Phase Update to the Financing Plan including contingency amounts;

(2) Meeting the requirements of Section 5.8 below; and

(3) Is otherwise in a form consistent with the terms of this Agreement with respect to construction of the applicable Phase and shall deliver written verification that the executed Phase Construction Contract complies with this Agreement.

(b) The City Manager shall either approve or disapprove the submitted Phase Construction Contract within fifteen (15) Business Days from the date the City receives the Construction Contract. If the proposed Construction Contract is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Construction Contract. The Developer shall thereafter submit a revised Construction Contract within ten (10) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Construction Contract within five (5) business days of the date such revised Construction Contract is received by the City. The City Manager shall approve an initial or revised Construction Contract if it meets the standards set forth in subsection (a) of this Section 5.5 and is with a licensed and experienced General Contractor.

(c) If the Construction Contract is not approved by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Article 17. Only upon City Manager approval of a Phase Construction Contract shall the pre-disposition condition of this Section 5.5 be deemed met.

(d) Following the City Manager's approval of a Phase Construction Contract pursuant to this Section 5.5, the Developer may, without City approval, make changes to such Phase Construction Contract that are consistent with, and do not cause the Phase Construction Contract to be out of compliance with, this Agreement; provided, however, that the Developer shall first provide the City with notice, clearly indicating the nature of the proposed changes, not less than ten (10) days before the Developer enters into an instrument effectuating such changes. The Developer shall not make any changes to a Phase Construction Contract previously approved by the City Manager pursuant to this Section 5.5 that would cause the Phase Construction Contract to be out of material compliance with this Agreement without the prior written consent of the City.

Section 5.6 Public Improvement Agreement and Subdivision Map. As a condition precedent to the conveyance of any Phase of the Property and within the time set forth in the Milestone Schedule, the Developer and the City shall have entered into an Public Improvement Agreement for the Backbone Infrastructure for the applicable Phase in substantially the form attached as Exhibit Q. Developer shall provide the completion assurances required pursuant to the applicable Public Improvement Agreement as a condition of closing on each Phase. Developer shall also be responsible for preparing and obtaining approvals for any Tentative and Final Maps. The City shall cooperate with the Developer in the preparation of such Tentative and Final Maps. The Developer shall be responsible for any City Processing Fees related to the Tentative and Final Map in accordance with the Development Agreement.

Section 5.7 Developer Responsibility for All Costs of the Project. The Developer shall be solely responsible for all pre-development costs and expenses and all development costs and expenses related to the development of the Project including the Infrastructure Package. In the event the costs of developing the Project exceed the Developer's estimates of such costs, the Developer shall nonetheless be responsible to complete, at its expense the development of the Project in accordance with this Agreement.

Section 5.8 Local Workforce Development.

(a) The Parties hereby agree (i) to a goal that residents of the City of Alameda, and Alameda County ("**Local Residents**"), will perform up to twenty-five percent (25%) of all construction job hours worked on the Project, if such workers are available, capable and willing to work (the "**Local Hire Goal**") and (ii) that participants in the Alameda Point Collaborative Program will be referred to the apprentice programs of the union(s) and establish a goal that such participants will perform fifteen percent (15%) of all apprentice construction job hours worked on the Project as such referrals are available, capable/qualified and willing to work (the "**Apprentice Goal**"). All participants that will be referred to the contractors to meet this requirement will have gone through a pre-apprenticeship program that meets the Multi-Craft Core Curriculum as established by the National Building Trades. The Developer shall use good faith efforts to achieve the Local Hire Goal and Apprentice Goal. Developer shall be conclusively deemed to have satisfied its obligations under this Section 5.8 if it either:

(1) Demonstrates to the City's reasonable satisfaction that Local Residents have actually worked twenty five percent (25%) of the construction job hours on the Project and that Alameda Point Collaborative Program referrals have actually worked fifteen percent (15%) of all apprentice construction job hours worked on the Project (If the Local

Resident is also a High School graduate of the Alameda Unified School District, hours worked by such Local Resident will count double); or

(2) Demonstrates to the City's reasonable satisfaction that Developer has:

(A) Included a requirement in each Construction Contract requiring the General Contractor and all subcontractors to use good faith efforts to achieve the Local Hire Goal and Apprentice Goal, which good faith efforts shall include, (1) when permitted, implementing union hiring hall procedures that request residents from the City of Alameda, and if those are not available, then request residents from Alameda County on a priority basis and (2) requesting qualified referrals from the Alameda Point Collaborative Program; and

(B) Included a requirement in each Construction Contract requiring the General Contractor and all subcontractors to submit quarterly reports to the City which include, (1) estimates of the total Project construction job hours and total apprentice hours to be performed by the contractor, (2) total Project construction job hours actually worked by Local Residents, (3) total Project apprentice hours worked by referrals from the Alameda Point Collaborative Program, (4) copies of their certified payroll reporting forms for the reporting period and (5) a summary of the contractors good faith efforts to meet the Local Hire Goal and Apprentice Goal.

(b) In the event that the Developer transfers any portion of the Project, such transferee's compliance with this Section 5.8 shall be separately calculated/assessed from the Developer's compliance.

Section 5.9 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Project to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

Section 5.10 Entry by the City. The Developer shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 5.11 Progress Reports. Until such time as the final Phase of the Project is entitled to issuance of an Estoppel Certificate of Completion, the Developer shall provide the City with quarterly progress reports, or more frequently as reasonably requested by the City, regarding the status of the construction of the Project improvements.

Section 5.12 Necessary Safeguards. The Developer shall or shall cause its Contractors to erect and properly maintain at all times, all reasonable and necessary safeguards for the protection of workers and the public.

ARTICLE 6.
VERTICAL CONSTRUCTION

Section 6.1 Basic Obligations. From and after the Closing on each Phase, the Developer or its assignee shall cause construction of the Vertical Improvements in each Phase in accordance with the terms of this Agreement, the approved Development Plan, the Planning Documents, the TDM Plan and the TDM Compliance Strategy, the Town Center Plan, the Project Approvals, the Supplemental Approvals and any additional applicable approvals, including compliance with the MMR Program related to or required in connection with such construction. The Developer or its assignee shall cause commencement and completion of construction of the Vertical Improvements within each Phase within the times set forth in the Milestone Schedule and consistent with the terms of the approved Phasing Plan. The Developer or its assignee shall be responsible for all costs associated with the Vertical Improvements. The Developer or its assignee may elect to develop the Vertical Improvements in Sub-Phases in which event the obligations set forth in this Article 6 shall apply to each Sub-Phase.

Section 6.2 Construction Pursuant to Approved Construction Documents. The Developer shall cause construction of the Vertical Improvements in each Phase in accordance with the applicable Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations), and the terms and conditions of all City and other governmental approvals. Nothing in this section shall preclude or modify the Developer's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations. The Developer shall ensure a diversity of design within the Project. In order to ensure that the Project includes a diverse range of architectural styles, the Developer shall use different architectural firms on adjacent blocks consistent with the Conditions of Approval for the Development Plan.

Section 6.3 Construction Permits and Approvals.

(a) Additional Approvals- Vertical. As a condition precedent to the commencement of construction of the Vertical Improvements for any Sub-Phase of the Property the Developer shall apply for, diligently pursue the procurement of and have obtained any permits and approvals from the City or other appropriate governmental entities or public utilities necessary for commencement of construction of the applicable Sub-Phase of the Vertical Improvements consistent with this Agreement, including any permits and approvals necessary for the construction of the in-tract Infrastructure included in the Infrastructure Phase, including any improvement plans and Public Improvement Agreement required by the City for such in-tract Infrastructure (collectively, the "**Additional Approvals-Vertical**"). The Developer shall

apply for the first Additional Approvals-Vertical for the first Sub-Phase of the Vertical Improvements in each Phase no later than the date set forth in the Milestone Schedule and shall obtain the last Additional Approvals-Vertical necessary for completion of the Vertical Improvements for each Phase no later than the date set forth in the Milestone Schedule. The Additional Approvals-Vertical shall include Design Review for the applicable Sub-Phase Vertical Improvements, the recordation of any Final Map that includes the applicable Sub-Phase and foundation, parking or building permits for the Sub-Phase. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals.

(b) Evidence of Approvals. Within the time set forth in the Milestone Schedule but no later than the date set for commencement of construction of the Vertical Improvements for the applicable Sub-Phase, the Developer shall submit to the City evidence that all Additional Approvals-Vertical necessary for commencement of construction of Vertical Improvements in the Sub-Phase in accordance with this Agreement have been obtained.

(c) Only upon delivery of such evidence in form reasonably satisfactory to the City shall the conditions of this Section 6.3 be deemed met. If such evidence is not delivered within the time specified in the Milestone Schedule, this Agreement may be terminated pursuant to Article 17.2 or 17.4, as applicable.

Section 6.4 Construction Contract.

(a) As a condition precedent to commencement of construction of any Vertical Improvements for the applicable Sub-Phase and within the time set forth in the Milestone Schedule, the Developer shall submit to the City the proposed construction contract with the General Contractor for the construction of such Vertical Improvements (the "**Vertical Improvement Construction Contracts**"). Each proposed Vertical Improvement Construction Contract shall:

(1) Specify a guaranteed maximum price or be another type of construction contract in which the pricing mechanism provides reasonable assurance that the total construction cost under the Vertical Improvement Construction Contract will be an amount not exceeding the construction cost set forth in the approved Sub-Phase Update to the Financing Plan including contingency amounts;

(2) Meeting the requirements of Section 5.8; and

(3) Otherwise be in a form consistent with the terms of this Agreement with respect to construction of the applicable Vertical Improvements and shall deliver written verification that the executed Vertical Improvement Construction Contract complies with this Agreement.

(b) The City Manager shall either approve or disapprove the submitted Vertical Improvement Construction Contract within fifteen (15) Business Days from the date the City receives the Vertical Improvement Construction Contract. If the proposed Vertical Improvement Construction Contract is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to

the previously submitted Vertical Improvement Construction Contract. The Developer shall thereafter submit a revised Vertical Improvement Construction Contract within ten (10) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Construction Contract within ten (10) days of the date such revised Vertical Improvement Construction Contract is received by the City. The City Manager shall approve an initial or revised Vertical Improvement Construction Contract if it meets the standards set forth in subsection (a) of this Section 6.4 and is with a licensed and experienced General Contractor.

(c) If the Vertical Improvement Construction Contract is not approved by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Article 17.2 or 17.4, as applicable.

(d) Following the City Manager's approval of a Vertical Improvement Construction Contract pursuant to this Section 6.4, the Developer may, without City approval, make changes to such Construction Contract that are consistent with, and do not cause the Construction Contract to be out of compliance with, this Agreement; provided, however, that the Developer shall first provide the City with notice, clearly indicating the nature of the proposed changes, not less than five (5) business days before the Developer enters into an instrument effectuating such changes. The Developer shall not make any changes to a Construction Contract previously approved by the City Manager pursuant to this Section 6.4 that would cause the Construction Contract to be out of material compliance with this Agreement without the prior written consent of the City.

Section 6.5 Construction Assurances To City.

(a) Prior to the issuance of the first building permit for each Sub-Phase of Vertical Improvements and within the time set forth in the Milestone Schedule, the Developer shall provide for the benefit of the City assurances of completion of construction of such Sub-Phase Vertical Improvements, including but not limited to payment bonds, performance bonds, or other construction related surety bonds or completion guaranties (the "**Vertical Improvement Completion Assurances**") (i) in an amount, with the terms and conditions, and from the providers comparable to those contained in any Completion Assurances that the Developer provides to its equity investors or debt providers of financing for the Vertical Improvements under the approved Sub-Phase Update to the Financing Plan, or (ii) if no such completion assurances are provided pursuant to clause (i), as otherwise approved by the City.

(b) The City Manager shall either approve or disapprove the submitted proposed Vertical Improvement Completion Assurances, if any, within fifteen (15) Business Days from the date the City receives the Vertical Improvement Completion Assurances. The City shall not withhold its approval of a completion guaranty issued by affiliates of the Developer that have, in the aggregate, a demonstrable net worth equal to twenty five percent (25%) of the hard construction costs of the applicable Vertical Improvements (as demonstrated by the applicable Sub-Phase Update to the Financing Plan). If the proposed Vertical Improvement Completion Assurances are not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Completion Assurances. The Developer shall thereafter submit revised proposed Vertical Improvement Completion

Assurances within fifteen (15) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Completion Assurances within fifteen (15) Business Days of the date such revised Vertical Improvement Completion Assurance are received by the City. The City Manager shall approve the initial or revised Vertical Improvement Completion Assurances if they meet the standards set forth in this Section 6.5.

(c) If the Vertical Improvement Completion Assurances are not approved by the City Manager by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Section 17.2 or 17.4, as applicable. Only upon City Manager's approval of the Completion Assurances shall this condition be deemed met.

Section 6.6 Compliance with DDA Construction Requirements. The Developer shall comply with the requirements of Sections 5.8, 5.9, 5.10, 5.11 and 5.12 in the construction of the Vertical Improvements.

ARTICLE 7.
AFFORDABLE HOUSING REQUIREMENTS

Section 7.1 Affordable Housing Obligations.

(a) As part of the Project, the Developer shall construct or cause to be constructed a sufficient number of Affordable Housing Units to comply with the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement in accordance with the Affordable Housing Implementation Plan attached as Exhibit M.

(b) Developer hereby agrees and acknowledges that in satisfaction of the requirements imposed by the terms of the Renewed Hope Settlement Agreement, Developer is obligated to cause not less than twenty-five percent (25%) of all housing units in the Project to be made permanently affordable as follows: (1) six percent (6%) of all housing units shall be made permanently affordable to households with incomes at or below 50% of the Area Median Income ("AMI"); (2) ten percent (10%) of all housing units shall be made permanently affordable to households with incomes at or below 80% of AMI; and (3) nine percent (9%) of the housing units shall be made affordable to households with incomes at or below 120% of AMI.

(c) Developer shall construct or cause the construction of the Affordable Housing Units in accordance with the schedule and requirements set forth in the Affordable Housing Implementation Plan attached as Exhibit M.

Section 7.2 Schedule for Developing Affordable Housing Units. Developer shall construct and deliver the Affordable Housing Units for each Phase of the Project within the times set forth in the Affordable Housing Implementation Plan and the Milestone Schedule and consistent with the Phasing Plan. Developer shall enter into an Affordable Housing Plan Assignment with a Qualified Affordable Housing Developer within the time set forth in the Milestone Schedule and the Affordable Housing Development Milestone Schedule as a condition precedent to conveyance of Phase 1.

ARTICLE 8.
ADDITIONAL DEVELOPER OBLIGATIONS

Section 8.1 Use and Occupancy. The Developer shall use, operate, and maintain, the Property and the Project in accordance with all requirements and standards of this Agreement, the Phase 0 Activities Plan, the approved Development Plan, the Planning Documents, the TDM Plan and the TDM Compliance Strategy and the Town Center Plan, the Supplemental Approvals, the Additional Approvals-Horizontal and Additional Approvals-Vertical, and all applicable federal, state and local laws and regulations.

Those portions of the Open Space Diagram of the Development Plan designated as Public Park/Plaza other than Block 10 shall, upon completion of construction of the Infrastructure Package applicable to such property and dedication of such property to the City in accordance with this Agreement, be considered "**Public Parks**" for purposes of the City Charter Section 22-12. Developer shall dedicate to the City, in accordance with the terms of the applicable Public Improvement Agreement, the Property designated as Public Park/Plazas on the Open Space Diagram of the Development Plan, other than the Block 10, for public park purposes upon completion of the Infrastructure Phase or Sub-Phase including such portion of the Property. Developer shall retain Block 10 but prior to issuance of an Estoppel Certificate of Completion of Block 10, the Developer shall grant to the City a perpetual public access easement over the open space and plaza portions of Block 10 in a form approved by the City.

The City, in its sole and absolute discretion, shall consider a request from the Developer to allow the Developer to manage and maintain the Public Parks within the Project. If the City agrees to allow the Developer to manage and maintain the Public Parks, it shall be solely within the City's discretion to reduce any municipal services fees collected by the City from the Property or to agree to other financial provisions regarding the Developer's maintenance and management of the Public Parks.

Section 8.2 Project CC&R's. Prior to the Phase 1 Closing, the Developer shall obtain the City's approval of the Covenants, Conditions & Restrictions for the Project (the "**CC&R's**") which (a) require each owner of any portion of the Property to maintain its applicable private improvements adjacent to and visible from the public right of way (building facades, signs, sound walls, fences, parking lots drive aisles and open space areas) as well as all common facilities including but not limited to streets and utilities not accepted for maintenance by the City in a first-class condition consistent with other mixed-use residential and commercial centers in the Oakland metropolitan area; (b) require that each owner of any portion of the Property comply with the TDM Compliance Strategy; and (c) provide the City with the right to (i) enforce such provisions pursuant to the CC&R's and (ii) after applicable notice and right to cure, the right to perform such maintenance and receive a reimbursement of third party expenses. Such maintenance shall include, but not be limited to cleaning, painting, removal of graffiti, repair of vandalism, grounds care, prevention of the accumulation of abandoned property, inoperable vehicles, and waste material, and prevention of unenclosed storage areas.

Section 8.3 Prevailing Wages and Related Requirements. This Agreement has been prepared with the intention that the construction of the Infrastructure Package shall be subject to

the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code.

(a) Notwithstanding the foregoing, nothing in this Agreement constitutes a representation or warranty by the City regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and the Developer shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to any portion of the development of the Project.

(b) The Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer and the Contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Project and to comply with any other requirements related to public contracting. The Developer's obligation to indemnify, defend and hold harmless under this Section 8.3(b) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 8.4 Security Obligation. The Developer shall cause the employment and supervision of private security personnel and methods for the Project comparable in scope and quality to security personnel and methods employed at similar mixed-use residential and commercial centers in the Oakland metropolitan area. The obligations of this Section 8.4 may be satisfied by delegating these obligations to any Project association.

Section 8.5 Expansion, Reconstruction or Demolition. The Developer shall not cause or permit any expansion, reconstruction, or demolition of the Project without the prior written approval of the City in accordance with all applicable ordinances, rules and regulations.

Section 8.6 Damage or Destruction. The Developer shall promptly notify the City of any Casualty with respect to the Property and/or the Project occurring during the Term, and shall diligently seek to procure all insurance proceeds that may be available to compensate for such Casualty. To the extent economically feasible as a result of the availability of insurance proceeds plus the Developer's deductible or self-insured retention (together with any additional funds the Developer elects to provide for such purpose), the Developer shall promptly commence and diligently pursue restoration or replacement of the portion of the Property and/or the Project that was damaged by such Casualty during the Term. To the extent economically feasible as a result of the availability of insurance proceeds plus the Developer's deductible or self-insured retention (together with any additional funds the Developer elects to provide for such purpose), the restored or replaced property shall be at least equal in value, quality and use to the value, quality, and use of such damaged property immediately before the Casualty.

Section 8.7 Mitigation Monitoring and Reporting Program. The Developer shall comply with the MMR Program adopted by the City, attached hereto as Exhibit D, as that the

MMR Program may be amended from time to time, and expressly incorporated with this Agreement by this reference.

Section 8.8 Developer's Obligations Regarding Hazardous Materials. Developer shall comply with its obligations regarding the management and disposal of Hazardous Materials as set forth in more detail in Article 14 of this Agreement.

Section 8.9 Developer's Indemnification Obligations. Developer shall comply with its indemnity obligations as set forth in more detail in Article 15 of this Agreement.

Section 8.10 Developer's Insurance Obligations. Developer shall comply with its insurance obligations as set forth in more detail in Article 16 of this Agreement.

Section 8.11 Taxes. From and after each Phase Closing, the Developer shall pay when due all real property taxes and assessments assessed and levied on the portions of the Property conveyed to the Developer and the Project that are attributable to the period following the Closing and shall remove any levy or attachment made on such portion of the Property. Nothing contained herein shall prevent the Developer from applying for and obtaining any property tax exemption available for the Affordable Housing Units.

Section 8.12 Non-Discrimination. The Developer covenants that the Developer shall not discriminate against or segregate any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and the Project, nor shall the Developer or any person claiming under or through the Developer 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, sublessees, vendees or employees in the Property and the Project. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 8.13 Applicability. The Developer shall comply with the provisions of this Article 8 for the applicable time period specified in the various Sections of this Article 8; or if no specified time period is set forth in a particular section, throughout the Term of this Agreement.

Section 8.14 TDM Compliance Strategy. The Developer, its assignees and successor shall at all times comply with the TDM Compliance Strategy approved by the City, attached hereto as Exhibit J, and expressly incorporated with this Agreement by this reference, as the TDM Compliance Strategy may be amended from time to time in compliance with the Alameda Point TDM Plan, including meeting the trip reduction goals in the TDM Plan. Developer's obligation to comply with the TDM Compliance Strategy shall include, but not be limited to, participating in the Transportation Management Association and agreeing to covenants, conditions and restrictions on the Property requiring that all commercial tenant associations, major employers, residential tenant associations and homeowner's associations join and comply with the Transportation Management Association.

In addition to the Developer's obligations pursuant to the TDM Compliance Strategy, if occupancy of 100 or more residential units and 100,000 square feet or more of commercial space occurs prior to the Ferry Terminal being completed and operational at the Seaplane Lagoon, the Developer shall be responsible for providing regular shuttle services from the Project to the Main

Street Ferry Terminal during peak hours until the Ferry Terminal at the Seaplane Lagoon is completed and operational. The shuttle service shall be coordinated with the arrivals and departures of ferries from the Main Street Ferry Terminal. The Developer's obligations pursuant to this paragraph are in addition to and not in replacement of any of the Developer's obligations pursuant to the TDM Compliance Strategy and in particular, nothing herein abrogates the Developer's obligations (a) with respect to "last mile" transit service from the Property to and from BART with 15 minute headways or (b) to comply with the approved Public Financing Plan.

Section 8.15 Navy Conveyance. The Developer acknowledges that a portion of Phase 1 is currently in Navy ownership and currently is not scheduled for conveyance to the City until after the Phase 1 Closing Date on the Milestone Schedule primarily because of the storm drain line shown on Exhibit B ("**Storm Drain Line**"). In order to facilitate the conveyance of Phase 1 in accordance with the Milestone Schedule, the Developer shall, no later than November 1, 2015, inform the City and the Navy of its intention to remove the Storm Drain Line at its cost. If the Developer determines to remove the Storm Drain Line at its cost, the City shall assist the Developer with obtaining Navy approval for the removal of the Storm Drain Line and the subsequent conveyance of Block 11 as expeditiously as possible.

If Developer has elected to remove the Storm Drain Line, the City and the Developer will make a reasonable determination by July 1, 2016, based on all information available, as well as the advice of both the City's and the Developer's experts, of the expected date of conveyance of the Navy property containing the Storm Drain Line from the Navy to the City. If the City and the Developer both reasonably determine that the property containing the Storm Drain Line is expected to be conveyed from the Navy to the City within twelve (12) months of the Phase 1 Outside Closing Date, the Developer shall accept conveyance of all of Phase 1 except Block 11 as shown on the Development Plan on or before the Phase 1 Outside Phase Closing Date in accordance with the terms of this Agreement. If the City and the Developer both reasonably determine that the Strom Drain Line Property is not expected to be conveyed from the Navy to the City within twelve (12) months of the Phase 1 Outside Phase Closing Date, the Developer may elect to delay the Phase 1 Outside Phase Closing Date and Developer shall not be obligated to pay an Extension Payment pursuant to Section 1.3(a) for such delay and such delay shall not reduce the maximum term of any extensions allowed to Developer pursuant to Sections 1.3(a) or 1.3(b), provided such delay is limited to no longer than twelve (12) months. If Developer has elected to delay the Phase 1 Outside Phase Closing Date pursuant to the preceding sentence, Developer shall, no later than the first anniversary of the Phase 1 Outside Phase Closing Date, either (i) elect to accept conveyance of all of Phase 1 except for Block 11 or (ii) extend the Phase 1 Outside Phase Closing Date by making an Extension Payment pursuant to Section 1.3(a), provided, however, any costs incurred by Developer pursuant to this Section 8.15 and associated with the removal of the Storm Drain Line and acceleration of the Navy conveyance of the property containing the Storm Drain Line shall be credited toward any Extension Payment required pursuant to this Section.

If the Developer elects not to remove the Storm Drain Line at its cost and the Navy has not conveyed the property containing the Storm Drain Line to the City by the Phase 1 Outside Phase Closing Date, the Developer may (i) extend the Phase 1 Outside Phase Closing Date by making an Extension Payment pursuant to Section 1.3(a) above or (ii) accept conveyance of all of Phase 1 except for Block 11 on or before the Phase 1 Outside Phase Closing Date.

If the Developer elects to remove the Storm Drain Line, the Developer will be responsible to use commercially reasonable efforts to prepare work plans and any other documents required by the Navy and the regulatory agencies necessary to obtain approval to remove the Storm Drain Line at its sole cost and the Developer shall be responsible for all costs associated with the removal of the Storm Drain Line.

The Developer shall be responsible for preparing work plans and any other documents required by the Navy and the regulatory agencies in order for the Developer to obtain any Off-Site Right of Entry necessary for construction of the Infrastructure Package from the Navy.

If the Developer has elected to accept conveyance of Phase 1 without Block 11, the City shall, within ninety (90) days of conveyance from the Navy to the City of the property containing the Storm Drain Line, convey Block 11 to the Developer in accordance with the applicable closing procedures in Article 4.

Section 8.16 Improvements to Existing Buildings. No later than completion of the Vertical Improvements for Phase 1, the Developer shall repaint the exterior of the existing Buildings 117 and 118 on the Property. To the extent necessary the City shall grant the Developer a right of entry to complete such repainting.

ARTICLE 9.
PHASE 0 ACTIVITIES PLAN AND INTERIM USES

Section 9.1 Existing Leases. A portion of the buildings located on the Property listed in Exhibit K (the "**Leasehold Property**") are leased by the City to the parties identified in Exhibit K (the "**Tenants**") pursuant to existing leases (the "**Existing Leases**"), and the Tenants operate the facilities listed in Exhibit K on the Leasehold Property. Prior to conveyance of the any Phase of the Property affected by an Existing Lease, the City shall deliver the Property free and clear of any claims of any Tenants.

Section 9.2 Phase 0 Activities Plan.

(a) No later than forty-five (45) days after the Effective Date of this Agreement, the Developer shall present to the City Council for its approval a Phase 0 Activities Plan (the "**Phase 0 Activities Plan**"), that is generally consistent with the description of proposed Phase 0 Activities attached hereto as Exhibit N. The Phase 0 Activities Plan shall include the following categories of information with specific information for the initial year of Phase 0 Activities and the Developer shall update the Phase 0 Activities Plan each year pursuant to subsection (b):

(1) a detailed budget for the Phase 0 Activities Plan that demonstrates a level of expenditure by the Developer consistent with the expenditures set forth in the Project Financing Plan and that is broken down by category of expenditure and projected revenues;

(2) a date for commencement of Phase 0 Activities that shall not be later than sixty (60) days after the approval of the Phase 0 Activities Plan by the City Council and agreement by the Parties on the form of the License Agreement;

(3) the calendar for all Phase 0 Activity events for the first year, which events shall be consistent with the description of Phase 0 Activities attached as Exhibit N and which shows a minimum of one signature event per year and at least one event per month, as well as ongoing activities, such as a beach volleyball court;

(4) a site plan for all events;

(5) a marketing plan for the Phase 0 Activities; and

(6) a proposed form of license agreement ("**License Agreement**") granting the Developer access to the property necessary for the Phase 0 Activities.

(b) The Developer shall submit annual updates to the approved Phase 0 Activities Plan at least three months prior to expiration of the prior year's Phase 0 Activities Plan containing the following information in detail reasonably satisfactory to the City Manager: (i) a timeline and calendar for implementation of the Phase 0 Activities Plan, (ii) the activities to be performed, (iii) a projection of any costs associated with the activities and any projected revenues, and (iv) a site plan for planned events.

Section 9.3 Phase 0 Activities Revenue. The Developer hereby agrees that any and all revenue generated from the Phase 0 Activities will be used to cover costs associated with the Phase 0 Activities and to fund other costs associated with the development of the Project. All costs and expenses associated with the Phase 0 Activities will be considered Development Costs as that term is defined in Section 2.3. All revenue generated from the Phase 0 Activities will be included in Gross Proceeds, as that term is defined in Section 2.3.

Section 9.4 Grant of License. Upon approval of the Phase 0 Activities Plan, including the License Agreement, the Developer and the City shall enter into the approved License Agreement granting the Developer a revocable License (the "**License**") to access and use the portions of the Property designated in the approved Phase 0 Activities Plan solely for the purpose set forth in the approved Phase 0 Activities Plan.

Section 9.5 Interim Use of Property subject to Tidelands Trust Restrictions. The City hereby agrees that it shall permit the Developer to use the Lease Property prior to the Phase 1 Closing Date, upon prior written approval by the City. If Developer desires to use portions of the Leased Property subject to the Tidelands Trust Restrictions prior to the Phase 1 Closing Date, the City, upon approval of such use, shall grant the Developer a license for such use in the form of a license agreement to be mutually approved by the City and the Developer subject to the Developer and the City agreeing upon the License fee, if any, for such use.

ARTICLE 10.
LEASING OF PROPERTY

Section 10.1 Interim Leases.

(a) In addition to the license rights granted under Article 9 related to Phase 0 Activities, the City hereby agrees that it shall permit the Developer to Lease Buildings 117 and 118 as shown on the Map of the Property attached as Exhibit B prior to conveyance of the

Property or any applicable portion, pursuant to the terms of those certain "**Lease Agreements**" in substantially the form attached hereto as Exhibit L-1 and L-2 incorporated herein by this reference. The Lease Agreements allow the Developer to sublet the portions of the Property covered by the Lease Agreements to third parties in accordance with terms set forth in this Agreement and the applicable lease. The Developer shall provide the City with copies of fully executed subleases within ten (10) days of execution.

(b) No later than the completion of Vertical Improvements for Phase 1, Developer shall be obligated to (i) give an Election Request to the City in accordance with the terms of the Lease Agreement for Building 117; (ii) make improvements to Building 117 including complete shell and core rehabilitation in order to place Building 117 in a condition to be subleased to a subtenant for uses consistent with the Town Center Plan, the Development Plan, the EIR and this Agreement with a value of two million five hundred dollars ($2,500,000); and (iii) no later than 90% occupancy of the gross rentable area of the non-residential Vertical Improvements and 90% occupancy of the residential units for Phase 1, the Developer shall be obligated to have entered into subleases with subtenants for at least seventy-five percent (75%) of the gross rentable area of Building 117.

(c) All subleases entered into pursuant to the Lease Agreements and this Section 10.1 shall be on a triple net basis. The proposed use under a sublease must be consistent with the Town Center Plan, the Development Plan, the EIR and the proposed use may not interfere with the overall development schedule for the Property or any particular Phase of the Project. In no event may the use for Building 117 be primarily storage, warehouse facilities, or whole sale distribution facilities. Any lease or sublease agreements entered into pursuant to this Section 10.1 shall also include provisions allowing termination as necessary to allow conveyance and development of the property in accordance with the approved Development Plan and the timing of the Phasing Plan and Milestone Schedule in the DDA.

(d) All subleases executed pursuant to this Section 10.1 and all uses of the Property pursuant to the subleases shall be subject to all applicable City permitting and licensing requirements.

(e) All income and expenses related to leases including rehabilitation costs will also be included in the calculation of Unleveraged Cash Flow as that term is defined in Section 2.3(a)(10).

Section 10.2 Lease Property. The City and the Developer shall execute the Trust Lease attached as Exhibit R with respect to the Lease Property on the Effective Date. The Trust Lease provides for the Developer to lease certain portions of the Property subject Tidelands Trust Restriction for a period of time not exceeding sixty-six (66) years and consistent with the Development Plan. The provisions of this DDA shall apply to the Lease Property as if fully set forth in the Trust Lease.

ARTICLE 11.
CITY OBLIGATIONS

Section 11.1 Entitlements. The City shall, upon payment of all applicable fees by the Developer required by the Development Agreement, process the applications for the

Supplemental Approvals, Additional Approvals-Horizontal and Additional Approvals-Vertical for the Project in a timely fashion, and shall cooperate with the Developer in obtaining any approvals necessary from other governmental entities or public utilities provided, however, the City shall not be required to incur any additional costs other than those cost associated with processing of applications and permits within the City's standard processing procedures unless Developer agrees to reimburse the City of any costs associated with expedited processing.

Section 11.2 Permits and Approvals.

(a) City Assistance. The City shall provide reasonable cooperation to the Developer in processing the Developer's applications for City permits and approvals, and all other permits, approvals, and "will serve" letters necessary for construction of the Project.

(b) City Retains Discretion. The Developer acknowledges and agrees that execution of this Agreement by the City, and the City's approvals obtained pursuant to this Agreement are with regard to this Agreement only and do not constitute approval by the City in its typical regulatory or administrative capacity of any required permits, applications, allocations or maps, are not a substitute for the City's typical application, allocation, mapping, permitting, or approval process, and in no way limits the discretion of the City in the permit, applications, allocation, mapping or approval process. In addition to complying with the terms and conditions of this Agreement, Developer must comply with the City's and other government entities' regulatory and administrative processes.

Section 11.3 Conveyance from Navy. The City shall use commercially reasonable efforts to enforce its right to acquire the portions of the Property that are still in Navy ownership from the Navy in accordance with the terms of EDC Agreement and this Agreement. The City shall not amend the provisions of the EDC Agreement that affect the Property without Developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Subject to the foregoing and the City's express obligations under this Agreement including Section 8.15, the City shall bear no liability for any delays in the Milestone Schedule caused by delays in transfer from Navy.

Further, with respect to any final FOST(s) related to the Property that are to be issued after the Effective Date, during the period between the Effective Date and the issuance of the applicable FOST, the City shall cooperate with Developer to ensure that the applicable FOST does not include (a) a restriction prohibiting residential, commercial/retail or open space uses or (b) subject to the provisions of clause (a), restrictions or land use covenants which are inconsistent with or more onerous than the terms contained in the FOST(s) related to the Property that were issued prior to the Effective Date. Notwithstanding the fact that a FOST issued after the Effective Date includes a restriction prohibiting residential, commercial/retail or open space uses, such restriction shall not cause a failure of the condition precedent set forth in Section 4.3(b)(3) unless such restriction is inconsistent with the Development Plan. The restrictions set forth in the Final ROD for OU-2B or any other Final ROD as of the Effective Date shall not be considered in conflict with the Development Plan.

At no third party cost to the City, the City shall assist the Developer with enforcing its rights and the Navy's obligations under CERCLA, the National Defense Authorization Act, the Defense

Base Closure and Realignment Act and the applicable quitclaim deed conveying the property from the Navy to the City and in any negotiations with the Navy regarding the performance of the Navy's continuing Hazardous Materials obligations, which assistance shall include attendance at meetings and providing the Developer with existing information related to the City's prior negotiations with the Navy regarding the Navy's pre-transfer remediation of Hazardous Materials.

From and after the completion of additional remediation by Developer (which shall be performed, if at all, at Developer's sole and absolute discretion) or remediation via natural attenuation of the subject Hazardous Materials to a level approved by the California Department of Toxic Substances Control to permit ground floor residential uses, the City shall cooperate with the Developer in obtaining an amendment to the March 2015 Final Record of Decision for OU-2B and any related recorded restrictions to remove the prohibition of ground floor residential uses.

Section 11.4 Conveyance from State Lands. The City shall use commercially reasonable efforts to enforce its rights to complete the Tidelands Trust exchange in accordance with the Exchange Agreement. The City shall not amend the provisions of the Exchange Agreement that affect the Property without Developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Subject to the foregoing and the City's express obligations under this Agreement, the City shall bear no liability for any delays in the Milestone Schedule caused by delays in transfer from State Lands.

Section 11.5 Public Financing. Upon the written request of the Developer, the City shall consider in good faith the formation of one or more assessment or special tax districts the purpose of which shall be to fund costs of public infrastructure improvements that are included in the Infrastructure Package and are to be owned and operated by the City. In considering such request, the City shall take into account (a) the assessment or special tax districts required by Section 3.1(c), with the intent that the annual Public Agency Contributions shall take priority, and (b) the total apportionment of assessments, special taxes, and overlapping governmental indebtedness on property in the Project shall be in compliance with the constraints described in the third paragraph of Section 3.1(c). In addition, any such district shall include in determining the annual levy amount, as reasonably determined by the City, amounts sufficient to pay all costs of administration of the financing district and, with respect to any bonded district, a debt service coverage amount similar to other districts of similar credit quality.

If any such proposed district is in accordance with the above-described provisions, the City shall in good faith schedule and conduct the necessary public hearings, and consideration of necessary resolutions and ordinances, to form the district or districts, but the Developer understands that the City cannot and will not surrender its authority to make determinations required by applicable law, and any bond issue for any such district will be subject to market conditions at the time of sale of the bonds. The City, in its reasonable discretion, will determine the timing and amount of any debt issued for any such district, consistent with value to lien and other constraints for similar districts in California. Moreover, in connection with the formation of any such district, the City and the Developer shall enter into an acquisition agreement which specifies the conditions under which proceeds of assessments, special taxes, or bonds repayable from assessments or special taxes, will be used to acquire the related infrastructure improvements from the Developer. The terms of the acquisition agreement shall be fully

satisfactory to the Director of Public Works of the City, and shall be consistent, in general, with the terms of the acquisition agreement entered into by the City with respect to its Community Facilities District No. 13-1.

As with the financing districts described in Section 3.1(c), the City shall select all consultants necessary to form any special tax or assessment district, including formation counsel, assessment engineer or special tax consultant, bond counsel, financial advisor and underwriter. The Developer shall pay all documented costs of formation of the special tax and assessment districts promptly following receipt of invoices from the City for such costs, including the fees of the aforementioned consultants and a reasonable amount determined by the City to compensate the City for Staff time in connection therewith. The costs of formation may be reimbursed from the proceeds of bonds issued for the respective district, subject to applicable law.

The City shall consider including in the acquisition agreement described above provisions to allow for bond proceeds available to fund costs of the Infrastructure Package to offset, on a dollar for dollar basis, the dollar amount of performance and payment bonds otherwise required by the City for such Infrastructure subject to, in any event, the agreement by the Developer in the related acquisition agreement, to a satisfactory maintenance period during which the Developer will maintain the improvements to be so financed and provisions that allow the City to use bond proceeds to complete the applicable infrastructure improvements upon a default by the Developer under the acquisition agreement. The Developer understands that bonds to finance infrastructure improvements may only be issued for any such district when the value of the real property included therein reaches an acceptable level relative to the principal amount of the bonds to be issued, as determined by the City. At the Developer's request, the bonds may be issued in series to help correspond proceeds to Project Phases, to the extent determined reasonable by the City's financial advisor based on projected increased costs of issuance by reason of multiple series of bonds and the relative proposed principal amount of any particular series.

The Public Financing Plan and relevant Phase and Sub-Phase Updates required under Section 3.1 shall include information regarding any financing district proposed by the Developer under this Section 11.5.

Section 11.6 Sports Complex Payment. The City shall expend the Sports Complex Payment on cost that facilitate the design, permitting and delivery of the Sports Complex. Not more than five percent (5%) of the Sports Complex Payments may be expended on City overhead.

Section 11.7 Estoppel Certificate of Completion. Within ninety (90) days after receipt by the Developer from the City of certificates of occupancy evidencing that: (a) building occupancy has been granted for all Residential Units for a particular building and/or (b) final building shell approval has been granted for all portions of a building containing any portion of the Commercial Element (prior to commencement of normal interior tenant improvements pursuant to separate plans), and (c) acceptance of the applicable Infrastructure Phase pursuant to the applicable Public Improvement Agreement, including, if applicable, any Major Alameda Point Amenities constructed by the Developer, the City shall issue a certificate of completion for such building or improvements with respect to the Developer's construction obligations pursuant

to Article 5 and 6 of this Agreement with respect that particular Phase (an "**Estoppel Certificate of Completion**") in a form recordable in the Official Records of the County.

(a) Except as set forth in the following paragraph, an Estoppel Certificate of Completion shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to construct the applicable Sub-Phase have been met with regards to the Sub-Phase of the Project for which such estoppel certificate is being issued. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of deed of trust securing money loaned to finance the Project or any portion thereof.

(b) An Estoppel Certificate of Completion shall not constitute a conclusive determination of the satisfaction of the requirements of Section 8.3 with respect to payment of prevailing wages (if applicable) and related matters (since such determination is within the jurisdiction of the DIR and the California judicial system and not the City), and the obligations of the Developer to indemnify, defend and hold harmless set forth in this Agreement shall expressly survive issuance of an Estoppel Certificate of Completion.

Section 11.8 Subdivision of Parcels. From and after the City's acquisition of the entirety of a Phase from the Navy pursuant to Section 11.3, the City shall cause the Transfer Property included in such Phase to be created as a separate legal parcel pursuant to a metes and bounds legal description.

Section 11.9 City Representations. The City acknowledges that the execution of this Agreement by the Developer is made in material reliance by the Developer on each and every one of the representations and warranties made by the City in this Section 11.9.

(a) Authority. The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 11.9 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Property or the Property, or that adversely affects the City's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. Except as (i) disclosed in the Preliminary Title Report and (ii) set forth in EDC Agreement, the LIFOC, Exchange Agreement, Renewed Settlement Hope Settlement Agreement, the City has not made any commitment, agreement or

representation to any government authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on the Developer or would interfere with the Developer's ability to develop and improve the Property into the Project.

(d) Hazardous Materials. To the best of the City's knowledge and except as disclosed herein, the City has received no written notice from any government authority regarding any, and, to the best of the City's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the date hereof or on the Closing Date, or releases of Hazardous Materials that have occurred during the City's possession of the Property, excluding Incidental Migration. The City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. .

ARTICLE 12.
ASSIGNMENT AND TRANSFERS

Section 12.1 Definition of Transfer. As used in this Article 12, the term "**Transfer**" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of this Agreement or of the Property and/or the Project or any part thereof or any interest therein (including, without limitation, any Sub-Phase) or of the improvements constructed thereon, or any contract or agreement to do any of the same which is not subject to an Estoppel Certificate of Compliance; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any Controlling Interest (defined below) in the Developer, or any contract or agreement to do any of the same. As used herein, the term "**Controlling Interest**" means (1) the ownership (direct or indirect) by one Person of more than twenty (20%) of the profits, capital, or equity interest of another Person; or (2) the power to direct the affairs or management of another person, whether by contract, other governing documents or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two persons are both Controlled by the same other person.

Section 12.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Project on the Property and subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment, use, operation and maintenance of the Project to the general welfare of the community.

(b) The fact that a change in ownership or control of the owner of the Property, or any other act resulting in a change in ownership of the parties in control of the Developer, is for practical purposes a transfer or disposition of the Property and the Project.

(c) Restrictions on transfer are necessary in order to assure the achievement of the goals, objectives and public benefits of this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 12 as reasonable and as a material inducement to City to enter into this Agreement. It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 12.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 12 shall apply with respect to any portion of the Property until issuance by the City of an Estoppel Certificate of Completion for such portion of the Property. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City pursuant to Section 12.5. Any Transfer made in contravention of this Section 12.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 12.4 Permitted Transfers. Notwithstanding the provisions of Section 12.3, the following Transfers shall be permitted (subject to satisfaction of all applicable conditions to such Transfer):

(a) Any Transfer creating a Security Financing Interest consistent with the Financing Plan, Phase Update or Sub-Phase Update, as applicable, approved by the City pursuant to Section 3.2 (as demonstrated to the City's reasonable satisfaction), or otherwise consistent with the provisions of Section 13.1 and 13.2.

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest and if the Permitted Mortgagee is the immediate Transferee pursuant to such foreclosure or deed in lieu, the Permitted Mortgagee's initial Transfer of any portion of the Property to a subsequent Transferee.

(c) Any Transfer consisting of the sale, rental or subletting of a Residential Unit or of commercial space in the Commercial Element of the Project in the normal course of the Developer's business operations.

(d) Any Transfer due solely to the death or incapacity of an individual.

(e) Any Transfer to a Developer Affiliate, provided however, any subsequent Transfer by the Developer Affiliate to any other entity shall be subject to the restrictions on Transfer set forth in this Article 12.

(f) Any lease or license entered into pursuant to the Phase 0 Activities Plan with the prior written consent of the City, which consent shall be given at the City's sole discretion.

(g) Any sublease entered into pursuant to the Lease Agreements.

(h) Any assignment pursuant to the Affordable Housing Plan Assignment to a Qualified Affordable Housing Developer.

(i) Any Transfer of a utility, public right of way, maintenance or access easement reasonably necessary for the development of the Project (each a "**Development Easement**")

(j) Any Transfer to an Affiliated Purchaser.

(k) Any Transfer of a Sub-Phase to a Qualified Developer after the Developer has executed a Public Improvement Agreement and provided to the City any bonds or other form of completion assurances required by the Public Improvement Agreement.

Section 12.5 Other Transfers In City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 12.4 shall be subject to prior written consent by the City in accordance with this Section 12.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, the Developer shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of mixed-use developments containing a first-class retail/commercial component similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within ninety (90) days of the receipt from the Developer all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. If the City should fail to act within such ninety (90) day period Developer shall provide the City with written notice of such failure to act which notice shall state in 14-point bold type on the cover page of the notice and on the envelope containing the notice the following:

FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS OF THE DATE OF THE NOTICE WILL RESULT IN THE CITY WAIVING ITS RIGHTS TO OBJECT TO THE TRANSFER PROPOSED IN THIS NOTICE.

If the City fails to respond to the Developer's notice containing the above language within ten (10) business days of the date of the notice and such notice is delivered to the address and in the manner set forth in Section 18.1 below, the proposed Transfer shall be deemed approved.

Section 12.6 Effectuation of Permitted or Otherwise Approved Transfers. Not less than thirty (30) days prior to the intended effectiveness of a Transfer described in this Article 12, the Developer shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to enable the City to determine that the intended Transfer meets the standards for a Transfer under this Article 12.

(a) Within five (5) Business Days after the completion of any Transfer permitted pursuant to this Article 12, the Developer shall provide the City with notice of such Transfer.

(b) No Transfer, whether permitted pursuant to Section 12.4 of 12.5 shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City Attorney and in form recordable among the land records of the County, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of the Developer under this Agreement and any ancillary agreements entered into by the Developer pursuant to this Agreement with respect to the portion(s) of the Property and the Project being transferred; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation prior to transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof shall not be required to give to the City such written agreement until such holder or other person is in possession of the Property, or applicable portion thereof, or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(c) With the regard to all permitted or otherwise approved Transfers in accordance with this Article 12, the City shall provide, within fifteen (15) days of request, a written estoppel to the Developer stating either that Developer has performed any and all obligations required through the date of such Transfer, or, if such is not the case, stating with specificity the obligation(s) which the Developer has failed to perform through the date of such Transfer. In the absence of specific written agreement by the City (which the City may grant or withhold in its sole discretion), no Transfer permitted by this Agreement or approved by the City shall be deemed to relieve the transferor from any obligations under this Agreement. Notwithstanding the foregoing to the contrary,

(1) Developer shall not be liable for any Developer Event of Default caused by a Qualified Developer or a transferee approved pursuant to Section 12.5; and

(2) No transferee permitted pursuant to Section 12.4 or approved pursuant to Section 12.5 shall be liable for any Developer Event of Default caused by Developer or any other transferee under this Agreement.

ARTICLE 13.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 13.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 13.1. Any security instrument and related interest approved pursuant to Section 13.1 (c) is referred to as a "**Security Financing Interest**." Until the Developer is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the

purpose of securing any approved Security Financing Interest financing the construction of the Horizontal or Vertical Improvements on the applicable portion of the Property.

(b) Following the time the Developer is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer may place any mortgages, deeds of trust, and other real property security interest it desires on that portion of the Property.

(c) Any mortgage, deed of trust or other real property security interest securing a loan set forth in any approved Project Financing Plan, Phase Update or Sub-Phase Update (or any approved amendment to such plan or update) shall be deemed an approved Security Financing Interest pursuant to this Article 13. The holder of a Security Financing Interest is referred to herein as a "**Permitted Mortgagee**."

Section 13.2 Permitted Mortgagee Not Obligated to Construct. No Permitted Mortgagee is obligated by, or to perform, any of the Developer's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such Permitted Mortgagee. However, nothing in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 13.3 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 17, delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Project, the City shall at the same time deliver to each Permitted Mortgagee a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the applicable portion of the Project and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to undertake or continue the construction or completion of the applicable portion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to the applicable portion of the Project under this Agreement. The Permitted Mortgagee in that event must agree to complete the applicable portion of the Project, in the manner provided in this Agreement. Any Permitted Mortgagee properly completing the applicable portion of the Project pursuant to this Section 13.3 shall assume all applicable rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to an Estoppel Certificate of Completion for the Project or the applicable Phase or Sub-Phase from the City.

Section 13.4 Failure of a Permitted Mortgagee to Complete the Project. In any case where six (6) months after default by the Developer in completion of construction of the Project under this Agreement, the applicable Permitted Mortgagee, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights

against such Permitted Mortgagee it would otherwise have against the Developer under this Agreement.

Section 13.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Project, and if the Permitted Mortgagee has not exercised its option to complete the Project or applicable Phase or Sub-Phase, upon five (5) Business Days' prior written notice to the Developer and the Permitted Mortgagee, the City may, in its sole discretion (but with no obligation to do so) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the holder to effect such subordination.

Section 13.6 Right of City to Satisfy Other Liens. After the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer thereof, and has failed to do so, in whole or in part, the City may in its sole discretion (but with no obligation to do so), upon five (5) Business Days' prior written notice to the Developer, satisfy any such lien or encumbrances. Nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 13.7 Permitted Mortgagee to be Notified. The Developer shall insert each term contained in this Article 13 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Permitted Mortgagee of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 13.8 Modifications. If any actual or potential Permitted Mortgagee should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

Section 13.9 Miscellaneous Provisions.

(a) Limitation on Liability. In the event that any Permitted Mortgagee assumes the obligations of the Developer under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

(b) Termination. Notwithstanding any other provision of this Agreement to the contrary, if any Developer Event of Default shall occur which, pursuant to any provision of

this Agreement, entitles the City to terminate this Agreement and/or to exercise its rights under Section 17.5 or 17.6, the City shall not be entitled to terminate this Agreement or to revest title to any portion of the Property in the City unless (i) the City has provided the Permitted Mortgagee with notice of default pursuant to Section 13.3 and (ii) within the applicable cure period set forth in Section 13.3, such Permitted Mortgagee shall fail to either:

(1) Cure (Monetary). Cure the Developer Event of Default if the same consists of the nonperformance by the Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City; and

(2) Cure (Non-Monetary). If the Developer Event of Default is not of the type described in clause (1) above, either, in such Permitted Mortgagee's sole discretion, (x) cure such Developer Event of Default, if the same is capable of being cured within the applicable cure period, or (y) commence, or cause any trustee under the Permitted Mortgage to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the applicable portion of the Property pursuant to judicial foreclosure, non-judicial foreclosure or deed-in-lieu process ("**Foreclosure**"); provided that except as extended by clause (3) below, such Foreclosure shall be completed within a maximum of eighteen (18) months following the commencement of such proceeding. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 13.3.

(3) Inability to Foreclose. If a Permitted Mortgagee is prohibited from commencing or prosecuting a Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 13.9(b)(2) above, for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Developer Event of Default required by Section 13.9(b)(1) above and shall continue to perform and/or cure all such obligations as and when the same fall due.

(c) Failure of Permitted Mortgagee to Complete Improvements. Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the Completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 13.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 13.9(b), the City may, at its option, upon thirty (30) calendar days' written notice to the Developer and such Permitted Mortgagee either: (a) purchase the Permitted Mortgage by payment to the Permitted Mortgagee of all amounts thereunder, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Permitted Mortgage; or (b) exercise its rights under Section 17.5 or 17.6 with respect to the applicable portions of the Property.

(d) Amendment; Termination. No amendment or modification to this Agreement may impair or materially alter a Permitted Mortgagee's rights hereunder, or increase a Permitted Mortgagee's obligations hereunder (whether ongoing or contingent obligations) without the consent of such Permitted Mortgagee, provided that such Permitted Mortgagee has agreed that its consent will not be unreasonably withheld. The Developer shall not terminate this Agreement as to any portion of the Property which is subject to any Security Financing Interest without first obtaining the prior written consent of all Permitted Mortgagees whose Permitted Mortgages encumber that portion of the Property.

(e) Condemnation or Insurance Proceeds. Except as otherwise expressly set forth in this Agreement, the rights of any Permitted Mortgagee, pursuant to its Security Financing Interest, to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired.

(f) Loss Payable Endorsement to Insurance Policy. The City agrees that the name of the senior-most Permitted Mortgagee may be added as the primary loss payee to the "loss payable endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

(g) Constructive Notice and Acceptance. Until such time as an Estoppel Certificate of Compliance is recorded with respect to any portion of the Property, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to or a leasehold interest in such portion of the Property.

(h) Bankruptcy Affecting the Developer. The Developer and City hereby agree that this Agreement (including the rights under Section 17.5 and 17.6 contained herein), each Quitclaim Deed and the Trust Lease shall contain and consist of covenants running with the land and that neither this Agreement, any Quitclaim Deed nor the Trust Lease shall be subject to rejection in bankruptcy and Developer hereby waives its rights to reject this Agreement, any Quitclaim Deed and/or the Trust Lease in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement, any Quitclaim Deed or the Trust Lease in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement, Quitclaim Deed or Trust Lease, as applicable, and the portions of the Property corresponding thereto to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, neither this Agreement nor the Trust Lease shall terminate and each Permitted Mortgagee shall, become the Developer hereunder as if the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within fifteen (15) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

(i) New Agreement and Ground Lease with Permitted Mortgagee.

(1) Request by Senior Permitted Mortgagee. In the event of termination of this Agreement and/or the Trust Lease for any reason (including by reason of any

Developer Event of Default or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property), the City, if requested by the then-most senior Permitted Mortgagee (or by the next most senior Permitted Mortgagee if Permitted Mortgagees with more senior priority do not so request) will enter into a new disposition and development agreement and/or Trust Lease with the Permitted Mortgagee, provided that such party is the then-owner of the Property, upon the same terms, provisions, covenants and agreements set forth in this Agreement and/or the Trust Lease and commencing as of the date of termination of this Agreement and/or the Trust Lease, as the case may be (collectively, the "**New Agreement**"), subject to the following:

(A) Request for New Agreement. Such Permitted Mortgagee or requesting party shall have provided written notice to the City requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement;

(B) Payment of Due and Unpaid Sums. Such Permitted Mortgagee or requesting party shall pay to the City at the time of the execution and delivery of the New Agreement those sums specified in Section 13.9(b) which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any reasonable attorneys' fees and experts' fees and court costs and court expenses (including attorney's and expert's fees) to which the City shall have been subjected by reason of the Developer Event of Default; and

(C) Perform and Observe All Covenants. Such Permitted Mortgagee or requesting party shall, subject to the provisions of this Article, be subject to and shall perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee, and failure to do so shall, after notice and opportunity to cure as provided by this Agreement, be a Developer Event of Default under this Agreement.

(2) Request by the City. In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default by Developer or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property) the then-most senior Permitted Mortgagee, if requested by the City, and provided that such party is the then-owner of the Property, will enter into a new Agreement with the City upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement ("**New Agreement**"), subject to the following:

(A) Response to Request for New Agreement. The City shall have provided written notice to such Permitted Mortgagee requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement, with a copy to each other Permitted Mortgagee; and

(B) Perform and Observe All Covenants. The Permitted Mortgagee shall, subject to the provisions of Section 13.9(a) and (b), perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee and failure to do so shall, after notice and opportunity to cure, be a Developer Event of Default under this Agreement.

(3) Priority of New Agreement. Any New Agreement shall be prior to any Security Financing Interest or other lien, charge, or encumbrance on the Property in favor of such Security Financing Interest and each Security Financing Interest shall execute such additional consents and/or subordination agreements as may reasonably requested by the City or the new Developer to evidence the priority of the New Agreement to all Security Financing Interests, whether recorded prior or subsequent to execution of the New Agreement.

ARTICLE 14.
HAZARDOUS MATERIALS

Section 14.1 Developer's Obligations Regarding Hazardous Materials.

(a) Existing Property Environmental Conditions. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to Hazardous Materials that existed on the applicable Phase of the Property prior to the Phase Closing Date ("**Existing Phase Environmental Conditions**") affecting such Phase: as between the Developer and the City, the Developer shall comply with any recorded covenants related to the Existing Phase Environmental Conditions, comply with the Site Management Plan and, as between the City and the Developer, the Developer shall be responsible for addressing any additional remediation required at a formerly closed site by any regulatory agency (other than the City) due to reevaluation in accordance with applicable law by any regulatory agency (other than the City) of the applied remediation strategy or any change in law or regulation related to the remediation standards, including any a change in remediation standards or risk screening levels ("**Regulatory Reopener**"). If the Developer effectuates a Transfer permitted pursuant to Article 12 in the manner required by Article 12, then the transferring Developer shall have no further obligation pursuant to this Section 14.1 with respect to the portion of the Property Transferred.

(b) New Releases. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to releases of Hazardous Material at the Phase caused by the Developer Parties, which releases first occur after the applicable Phase Closing Date, excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date ("**New Releases**"): as between the Developer and the City, the Developer shall keep and maintain any portion of the Transfer Property and Lease Property conveyed or leased to the Developer or subject to a License Agreement in compliance with, and shall not cause or permit the Transfer Property and Lease Property to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Transfer Property and Lease Property including, but not limited to, soil and ground water conditions. The Developer shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Property conveyed, leased or licensed to the Developer, or transport to or from such Property or the development any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of mixed-use commercial and residential developments or in accordance with law or this Agreement. The Developer shall be responsible for complying with the requirements of the Site Management Plan(s) related to the Property after conveyance of the Property or any portion thereof to the Developer.

Section 14.2 Notification To City; City Participation. The Developer shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, the Transfer Property and Lease Property, or the Project pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against the Developer, the Transfer Property and Lease Property, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "**Hazardous Materials Claims**"); and (3) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or the Project that could cause part or all of the Property or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property or the Project under any Hazardous Materials Law. At its sole costs and expense, the City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

Section 14.3 Developer's Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 15.2.

ARTICLE 15. INDEMNIFICATION

Section 15.1 General Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's or the Contractors' performance or non-performance under this Agreement or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by the Developer, the Contractors, any Licensee, or the tenants. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the applicable Indemnified Party's gross negligence or willful misconduct. If the Developer effectuates a Transfer permitted pursuant to Article 12 in the manner required by Article 12, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. The Developer's obligation to indemnify, defend and hold harmless under this Section 15.1 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. Notwithstanding the foregoing to the contrary, provisions of this Section 15.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 15.2 below.

Section 15.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens damage, cost, expense or liability the City may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the

Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the City in connection with clauses (1) , including but not limited to reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 15.2 shall not extend to any claim arising solely from the City's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 15.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 12 in the manner required by Article 12, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer.

Section 15.3 No Limitations Based Upon Insurance. The indemnification, defense and hold harmless obligations of the Developer under this Article 15 and elsewhere in this Agreement (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which the Developer is required to carry under this Agreement. In claims against any of the Indemnified Parties by an employee of the Developer, or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Developer or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable.

ARTICLE 16.
INSURANCE REQUIREMENTS

Section 16.1 Required Insurance Coverage. Except as otherwise provided in Section 16.11, during the Term the Developer shall maintain or cause to be maintained and kept in force, at the sole cost and expense of the Developer or the Contractors the insurance applicable to the Project and required under this Article 16.

Section 16.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars ($2,000,000) with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Five Million Dollars ($5,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Effective Date and covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 15.1. Such insurance in excess of One Million Dollars ($1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 16.3 Vehicle Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than One Million Dollars ($1,000,000) (combined single limit) including any automobile or vehicle whether hired or owned by the Developer.

Section 16.4 Workers' Compensation Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with Article I of Chapter 4 of Part I of Division 4 of the California Labor Code.

Section 16.5 Property Insurance. After conveyance of any portion of the Property to the Developer and continuing through the Term, the Developer shall maintain or cause to be maintained and kept in force, property insurance covering all real and personal (non-expendable) property (except for personal property otherwise typically covered by insurance maintained by tenants) conveyed to Developer and the Vertical Improvements, in form appropriate for the nature of such property, covering all risks of loss, including earthquake (only if required by the Developer's lender and to the extent available at commercially reasonable cost), for 100% of the replacement value, with deductible, if any, reasonably acceptable to the City Risk Manager.

Section 16.6 Construction Contractor's Insurance. The Developer shall cause the General Contractor to maintain insurance of the types and in at least the minimum amounts described in Sections 16.2 (exclusive of the cross-reference to Section 15.1), 16.3, and 16.4, and shall require that such insurance shall meet all of the general requirements of Sections 16.8 and 16.9. Except with respect to construction of tenant improvements, the Developer shall also cause the General Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction.

Section 16.7 Pollution Liability Insurance Policy.

(a) Within the time set forth in the Milestone Schedule and as a condition precedent to any conveyance hereunder, the Developer shall procure to the reasonable satisfaction of Developer and the City, at its cost, a real estate environmental liability insurance policy (a "**Pollution Liability Insurance Policy**") covering pre-existing conditions with a ten (10) year term that names the Developer as the named insured with the right to control the policy, and the City as an additional insured. The Pollution Liability Insurance Policy shall meet the requirements of Section 16.9(e), shall include a Twenty Five Million ($25,000,000) policy per claim and in the aggregate coverage limit and a maximum deductible of One Hundred Thousand Dollars ($100,000) or other amount reasonably agreed by the City, and shall provide the following types of coverage:

(1) Pollution Legal Liability;

(2) On-Site and Off-Site Clean-Up Costs;

(3) Non-Owned Disposal Site;

(4) In-Bound and Out-Bound Contingent Transportation

(5) Legal Defense Expense

(6) Business Interruption for Developer, including to the extent reasonably available, soft-costs and construction delays

(b) The Developer shall confer with and consider in good faith the input of the City in connection with procurement of a Pollution Liability Insurance Policy. The Developer shall pay the premiums and any other costs of procuring the Pollution Liability Insurance Policy, and any required deductible amount to activate the insurance in the event of a claim.

(c) Nothing in this Agreement shall preclude or prevent the Developer from seeking and applying proceeds from claims made under the Pollution Liability Insurance Policy toward costs of remediation of Hazardous Materials provided, however, that the Developer shall be solely responsible for the payment of any deductible and other costs in connection with procuring such proceeds.

(d) Developer shall use commercially reasonable efforts to renew the Pollution Liability Insurance Policy for one additional ten (10) year term prior to expiration of the Pollution Liability Insurance Policy.

Section 16.8 General Insurance Requirements. With the exceptions of the Pollution Liability Insurance Policy, the insurance required by this Article 16 shall be provided under an occurrence form, and the Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the General Contractor's insurance requirement set forth in Section 16.6, which shall be maintained until the Developer is entitled to issuance of an Estoppel Certificate of Completion for the applicable Phase and the Pollution Liability Insurance Policy, which shall be maintained as specified in Section 16.7). Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two and one-half (2.5) the occurrence limits specified above.

Section 16.9 Additional Requirements. The insurance policies required pursuant to this Article 16 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds the City and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "**Additional Insureds**"). All insurance policies shall contain:

(a) an agreement by the insurer to give the City at least thirty (30) days' notice (ten(10) days' notice for non-payment of premium) prior to cancellation or any material change in said policies;

(b) except with respect to the Pollution Liability Insurance Policy, an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by the City. For the Pollution Liability Insurance Policy, the policy shall contain an agreement by the insurer that, upon acquisition of any portion of the Property by the Developer, with respect to the portion of the Property so acquired, whether by lease or quitclaim deed, the Pollution Liability Insurance Policy is primary and non-contributing with any insurance that may be carried by the City for environmental conditions at, on or under acquired Property;

(c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

(e) all insurance companies providing coverage pursuant to this Article 16, shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII".

Section 16.10 Certificates of Insurance. Upon the City Risk Manager's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City Risk Manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 16.11 Alternative Insurance Compliance. During such time that a Permitted Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth in Article 16, the Developer may satisfy the insurance requirements of this Article 16, other than the Pollution Liability Insurance Policy by meeting the requirements of such Permitted Mortgagee; provided that Developer shall provide at least five (5) Business Days prior written notice to the City specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for the Developer to comply with **both** the City's and investor's insurance requirement; and (z) the alternative insurance requirement the Developer intends to comply with.

ARTICLE 17.
DEFAULT AND REMEDIES

Section 17.1 Application of Remedies. This Article 17 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 17.2 No Fault of Parties.

(a) Bases For No Fault Termination. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other: if despite the responsible Party's good faith and diligent efforts, a condition precedent set forth in Section 4.3 is not satisfied or, when applicable, waived by the benefitting Party, prior to the date for such satisfaction/waiver (as such date may be extended pursuant to this Agreement), unless such failure is caused by the default of a Party, in which case Section 17.3 or 17.4 shall apply.

(b) Termination Notice; Effect of Termination. Upon the happening of an event described in Section 17.2(a):

(1) The Parties shall meet and confer in good faith for a period not to exceed sixty (60) calendar days in an effort to agree upon a mutually acceptable amendment to this Agreement to address the failed condition; and

(2) If the parties fail to reach agreement pursuant to Section 17.2(b)(i), and at the election of either Party, this Agreement may be terminated with respect to all Phases not previously conveyed to the Developer by written notice to the other Party.

Upon a termination pursuant to this Section 17.2, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to: (1) any payments made by the Developer to the City prior to the termination pursuant to Article 2 shall remain the property of the City; (2) any funds remaining in Escrow pursuant to Article 2 shall be returned to Developer, (3) the delivery of plans and documents as set forth in Section 17.7; and (4) the survival of certain terms of this Agreement as provided in Section 17.8.

Section 17.3 Fault of City.

(a) City Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**City Event of Default**":

(1) The City without good cause fails to convey the Property within the time and in the manner specified in Article 4 and the Developer is otherwise entitled to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(3) The material breach of any of the City's representations or warranties set forth in this Agreement.

(4) A City default under the Development Agreement.

(b) Notice and Cure; Remedies. Upon the happening of an event described in Section 17.3(a), the Developer shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default, and the Developer shall be entitled to the following rights and remedies:

(1) Prior to Phase 1 Closing . With respect to a City Event of Default occurring prior to the Phase 1 Closing, the Developer shall be entitled to: (A) terminate in

writing this entire Agreement; or (B) seek specific performance of this Agreement against the City. In the event the Developer elects the remedy set forth in clause (A), the Developer shall also be entitled to a refund of the First Sports Complex Payment. The above remedies shall constitute the exclusive remedies of the Developer for a City Event of Default occurring prior to the Phase 1 Closing.

(2) After Phase 1 Closing. With respect to a City Event of a Default that occurs after the Phase 1 Closing, the Developer shall be entitled seek specific performance of this Agreement against the City; and/or (ii) exercise any other remedy against the City permitted by law or under this Agreement, provided, however in no event shall the Developer be entitled to seek or receive consequential damages.

Section 17.4 Fault of Developer.

(a) Developer Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**Developer Event of Default**":

(1) The Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Transfer Property or any portion thereof within the time and in the manner specified in Article 4 other than a failure of a condition precedent set forth in Section 4.3(b).

(2) The Developer fails to meet the Milestone Schedule (as the same may be extended pursuant to this Agreement) with respect to conveyance of any portion of the Property.

(3) The Developer fails to construct the Project in the manner set forth in Articles 5 and 6 and by the applicable Major Milestone Schedule deadlines (as the same may be extended pursuant to this Agreement) or the Developer fails to meet a Progress Milestone Date and as a result it would be impossible for the Developer to meet a subsequent Major Milestone Date.

(4) The Developer fails to construct or cause the construction of the Affordable Housing Units in accordance with the Affordable Housing Implementation Plan.

(5) The Developer is in default under any Public Improvement Agreement.

(6) The Developer fails to submit to the City, for its approval a Phase 0 Activities Plan in accordance with the requirements of Article 9, or the Developer fails to use commercially reasonable efforts to implement the approved Phase 0 Activities Plan.

(7) The Developer attempts or completes a Transfer except as permitted under Article 12.

(8) The Developer breaches any material provision of this Agreement.

(9) The Developer breaches any material provisions of the Trust Lease that results in the termination of the Trust Lease.

(10) Any representation or warranty of the Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City.

(11) A court having jurisdiction shall have made or entered any decree or order: (A) adjudging the Developer to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of the Developer seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of the Developer.

(12) The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event.

(13) The Developer shall have voluntarily suspended its business, or the Developer shall have been dissolved or terminated.

(b) Notice and Cure; Remedies. Upon the happening of any event described in Section 17.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (8) or (9) of Section 17.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer has caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies:

(1) Prior to Phase 1 Closing Date. With respect to a Developer Event of Default occurring prior to the Phase 1 Closing Date, the City shall be entitled to: (A) terminate in writing this entire Agreement (B) retention of any amounts paid by the Developer to the City pursuant to Sections 1.2,1.3, 2.1, 2.2 and 5.2(b)(4) of this Agreement as Liquidated Damage Amount; and (C) exercise the rights and remedies described in Section 17.7. The above remedies shall constitute the exclusive remedies of the City for a Developer Event of Default occurring prior to the Closing on the first Phase of the Property.

IF THE CITY ELECTS TO SO TERMINATE THIS AGREEMENT DUE TO A DEVELOPER EVENT OF DEFAULT OCCURRING PRIOR TO THE PHASE 1 CLOSING DATE, THEN THIS AGREEMENT SHALL BE TERMINATED AND THE CITY SHALL BE ENTITLED (AS ITS SOLE REMEDIES FOR SUCH DEVELOPER EVENT OF DEFAULT) TO THE LIQUIDATED DAMAGES AMOUNT FOR ALL LOSS, DAMAGE AND EXPENSES SUFFERED BY THE CITY AND TO THE REMEDIES DESCRIBED IN SECTION 17.7, IT BEING AGREED THAT THE CITY'S DAMAGES ARE IMPOSSIBLE TO ASCERTAIN, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS, OBLIGATIONS OR LIABILITIES HEREUNDER, EXCEPT FOR SUCH OBLIGATIONS THAT SURVIVE THE TERMINATION OF THIS AGREEMENT AS PROVIDED HEREIN.

The City's initials _____ The Developer's initials _____.

(2) Between Phase 1 Closing Date and Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Phase 1 Closing Date but prior to the date the Developer is entitled to issuance of an Estoppel Certificate of Completion for the final Phase of the Project, the City shall be entitled to: (A) terminate in writing this Agreement with respect to any portion of the Property not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance; (B) retention of any amounts paid by the Developer to the City pursuant to Section 1.2, 1.3, 2.1, 2.2, 2.3, and 5.2(b)(5) of this Agreement as Liquidated Damage Amount; (C) seek specific performance of any Vertical Improvement Completion Assurance; (D) exercise the rights and remedies described in Sections 17.5, 17.6 and 17.7; and/or (E) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

(3) After Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project, the City shall be entitled to: (A) prosecute an action for damages against the Developer; (B) seek specific performance of this Agreement against the Developer; and/or (C) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

Section 17.5 Right of Reverter/Power of Termination. If this Agreement is terminated pursuant to Section 17.4(b)(2) following the Closing on any portion of the Property and prior to the time when the Developer is entitled to issuance of an Estoppel Certificate of Completion for the final Phase of the Project, then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of any portion of the Property conveyed to the Developer not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance ("**Revested Parcel**") with all improvements on the Revested Parcel, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Revested Parcel. The City's rights under this Section 17.5 shall terminate and be of no further force and effect once the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project.

(a) Such right of reverter shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(1) Any Security Financing Instrument with respect to the Revested Parcel; or

(2) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Revested Parcel, provided that the holder has elected to complete the Project in a manner provided in this Agreement.

(b) Upon revesting in the City of title to the Revested Parcel as provided in this Section 17.5, the City shall, in a commercially reasonable manner resell the Revested Parcel to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Project on the Revested Parcel or such other improvements acceptable to the City. Upon such resale of the Revested Parcel, the proceeds thereof shall be applied as follows:

(1) First to reimburse the City for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Revested Parcel (but less any income derived by the City from any part of the Revested Parcel in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Revested Parcel (or, in the event the Revested Parcel is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Revested Parcel was not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Revested Parcel at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the improvements on the Revested Parcel or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to any payments made by the Developer to the City pursuant to Article 2, plus the fair market value of the improvements the Developer has placed on or for the benefit of the Revested Parcel (including Infrastructure Package improvements), less any gains or income withdrawn or made by the Developer from the Revested Parcel or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (3) shall not exceed the fair market value of the Revested Parcel together with the improvements thereon as of the date of the Developer Event of Default which gave rise to the City's exercise of the right of reverter.

(3) Any balance remaining after such reimbursements shall be retained by the City as its property.

(c) The rights established in this Section 17.5 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 17.6 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter, and take possession of the Property not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance with all improvements thereon, if this Agreement is terminated pursuant to Section 17.4(b)(2) after the Phase 1 Closing Date and prior to the time when the Developer is entitled to issuance of an Estoppel Certificate of Completion for the final Phase of the Project. The City's rights under this Section 17.6 shall terminate and be of no further force and effect once the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project.

(b) Such right to repurchase, reenter, and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit any Security Financing Instrument with respect to the Property; or any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property, provided that the Permitted Mortgagee has elected to complete the Project in a manner provided in this Agreement.

(c) To exercise its right to repurchase, reenter and take possession with respect to the Property not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance, the City shall pay to the Developer in cash an amount equal to any payments made by the Developer to the City in cash pursuant to Sections 2.2 and 2.3 of this Agreement, plus the lesser of the (1) actual cost and (2) the fair market value of the improvements existing on or for the benefit the portion of the Property subject to the Option (including Infrastructure Package improvements) at the time of the repurchase, reentry, and repossession, less any gains or income withdrawn or made by the Developer from the portion of the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

Section 17.7 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 17.2(a)(1) or Section 17.4, then the Developer shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project.

Section 17.8 Survival. Upon termination of this Agreement under this Article 17, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 17.9 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

ARTICLE 18.
GENERAL PROVISIONS

Section 18.1 Notices, Demands and Communications.

(a) Method. Any notice or communication required hereunder to be given by the City or the Developer shall be in writing and shall be delivered by each of the following methods: (1) electronically (e.g., by e-mail delivery); and (2) either personally, by reputable overnight courier, or by registered or certified mail, return receipt requested. Notwithstanding the time of any electronic delivery, the notice or communication shall be deemed delivered as follows:

(1) If delivered by registered or certified mail, the notice or communication shall be deemed to have been given and received on the first to occur of: (A) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (B) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally or by overnight courier, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed.

(2) Either Party may at any time, by giving ten (10) days' prior written notice to the other Party pursuant to this section, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Addresses. Notices shall be given to the Parties at their addresses set forth below:

If to the City to:
City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700
Facsimile: 510-865-1498
Email: lwarmerdam@alamedaca.gov

With a copy to:
City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4752
Facsimile: 510-865-4028
Email: jkern@alamedacityattorney.org

If to Developer to: Alameda Point Partners, LLC
c/o Trammel Crow Residential
39 Forrest Street, Suite 201
Mill Valley, CA 94941
Telephone: 415-381-3001
Facsimile: 415-381-3003
Email: bd@thompsondorfman.com

With copies to: SRM Ernst Development Partners
2220 Livingston Street Suite 208
Oakland, CA 94606
Telephone: 510-219-5376
Facsimile: 510-380-7056
Email: jernst@srmernst.com

With copies to: Madison Marquette
909 Montgomery Street Suite 200
San Francisco, CA 94133
Telephone: 415-277-6828
Facsimile: 415-217-5368
Email: pam.white@madisonmarquette.com

With copies to: Marc Stice
Stice & Block
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: 510-735-0032
Email: mstice@sticeblock.com

(c) Special Requirement. If failure to respond to a specified notice, request, demand or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result under this Agreement, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

Section 18.2 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 the Developer, or any successor in interest, in the event of a City Event of Default.

Section 18.3 Time of the Essence. Time is of the essence in this Agreement.

Section 18.4 Title of Parts and Sections. Any titles of the Sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 18.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair

meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 18.6 Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force.

Section 18.7 Legal Actions. Any legal action under this Agreement shall be brought in the Alameda County Superior Court. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement) including any appeals. In the case of the attorneys' fees payable to the City when the City has been represented by legal counsel employed within the City Attorney's Office, the attorneys' fees shall be measured by the reasonable attorneys' fees that would have been paid by the City had it instead been represented by outside counsel in the matter.

Section 18.8 Binding Upon Successors; Covenants to Run With Land. This 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 by the Developer except as permitted in Article 12. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 18.9 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction, the Land Payment represents fair market value, and the City has not provided any other subsidies, fee waivers, or other special treatment.

Section 18.10 Provisions Not Merged With Quitclaim Deed. None of the provisions of this Agreement shall be merged by the Quitclaim Deed or any other instrument transferring title to any portion of the Property, and neither the Quitclaim Deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 18.11 Entire Understanding of the Parties. This Agreement and any subsequent agreements contemplated by this Agreement to be entered into by the Parties constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 18.12 Approvals.

(a) City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager,

without further approval by the City Council, and any such action shall be in writing, provided, however, any such actions that would extend a Major Milestone Date (other than as allowed in Section 1.3 and 8.15) must be approved by the City Council.

(b) Standard of Approval. Whenever this Agreement grants the City or the Developer the right to take action, exercise discretion or make allowances or other determinations, the City or the Developer shall act reasonably and in good faith, except where a sole discretion standard is specifically provided.

Section 18.13 Authority of Developer. The persons executing this Agreement on behalf of the Developer do hereby covenant and warrant that:

(a) Alameda Point Partners, LLC a Delaware limited liability company, is a duly authorized and existing Delaware limited liability company;

(b) Alameda Point Partners, LLC, a Delaware limited liability company, is and shall remain in good standing and qualified to do business in the State of California;

(c) Alameda Point Partners, LLC, a Delaware limited liability company, has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

(d) the execution and delivery of this Agreement were duly authorized by proper action of Alameda Point Partners, LLC, a Delaware limited liability company, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

(e) the persons executing this Agreement on behalf of Alameda Point Partners, LLC, a Delaware limited liability company have full authority to do so; and

(f) this Agreement constitutes the valid, binding and enforceable obligation of Alameda Point Partners, LLC, a Delaware limited liability company.

Section 18.14 Amendments. This Agreement may be amended only by means of a writing signed by the Parties, and pursuant to a resolution approved by the City Council, except that amendments expanding the Property to which this Agreement applies shall be approved by ordinance adopted by the City Council.

Section 18.15 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 18.16 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or

appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(a) Operating Memoranda that implement the provisions of this Agreement or that provide clarification to existing terms of this Agreement or revise Progress Milestone Dates may be executed on the City's behalf by its City Manager, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Agreement or alter any Major Milestone Dates: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 18.14, and must be approved by resolution of the City Council.

ARTICLE 19.
DEFINITIONS AND EXHIBITS

Section 19.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) **"Additional Approvals-Horizontal"** shall have the meaning set forth in Section 5.4.

(b) **"Additional Approvals – Vertical"** shall have the meaning set forth in Section 6.3.

(c) "**Affiliated Purchaser**" means an entity in which the Developer or a Developer Affiliate has at least a five percent (5%) ownership interest in the transferee and the power to direct the affairs or management of the proposed transferee, whether by contract, other governing documents or operation of Law or otherwise.

(d) "**Affordable Housing Implementation Plan**" means the agreement between the City and the Developer providing for the development of affordable housing as required pursuant to this Agreement. The Affordable Housing Agreement is attached hereto as Exhibit M, incorporated herein by this reference.

(e) "**Affordable Housing Units**" means the Very Low-Income Units, Low-Income Units and Moderate-Income Units developed in accordance with this Agreement subject to the Inclusionary Regulatory Agreement or Affordable Resale Restriction.

(f) "**Agreement**" means this Disposition and Development Agreement.

(g) "**Approved Construction Documents**" means the construction plans and specifications submitted by the Developer and approved by the City in connection with the City's grant of the necessary grading, demolition, building, and related permits for the Project, together

with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

(h) "**Backbone Infrastructure**" means, with respect to each Phase, the infrastructure identified in the Infrastructure Package.

(i) "**Business Day**" means a day on which the offices of the City are open to the public for business.

(j) "**Casualty**" means any damage or destruction to the Project in excess of One Hundred Thousand Dollars ($100,000), which amount shall be adjusted in accordance with increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "CPI-U"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "CPI-W"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority shall be used for making the computation.

(k) "**CEQA**" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and all relevant state and local guidelines in connection therewith.

(l) "**City**" means the City of Alameda, California, a municipal corporation. Those acting on behalf of the City may include the City Council, the City Planning Board, the City Manager and the City's boards, commissions, departments, employees and consultants.

(m)"**City Council**" means the Alameda City Council.

(n) "**City Event of Default**" has the meaning given in Section 17.3.

(o) "**City Manager**" means the Alameda City Manager or the City Manager's designee.

(p) "**City Released Parties**" has the meaning given in Section 4.6.

(q) "**Closing**" means the close of escrow through which the City will convey its fee estate or any portion thereof in each Phase of the Property to the Developer.

(r) "**Commencement of Construction or Commenced**" shall mean the performance of any work on any Infrastructure Sub-Phase or Sub-Phase of Vertical Improvements on the Property including clearing, grading, or other preliminary site work.

(s) "**Commercial Element**" has the meaning given in Recital S.2.

(t) "**Completion Assurances**" means any payment and performance bonds, labor and materials bonds, or completion guarantees from the Developer or other persons or entities,

irrevocable letters of credit, or other legal instruments providing assurances and remedies for the completion of any Infrastructure Phase or Sub-Phase of Vertical Improvements by the Developer.

(u) "**Contractors**" means, collectively, the General Contractor and any other contractors or subcontractors retained directly or indirectly by the Developer, the General Contractor, or any tenant in connection with the construction of any Infrastructure Sub-Phase or Sub-Phase of the Vertical Improvements, including the initial tenant improvements within the Project.

(v) "**CPI Increase**" means increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "**CPI-U**"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "**CPI-W**"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation.

(w) "**Day**" means calendar day unless otherwise specified.

(x) "**DDA Memorandum**" means the memorandum of this Agreement, substantially in the form of the attached Exhibit E, to be recorded as provided in Section 1.1.

(y) "**Density Bonus Regulations**" means City of Alameda Ordinance 3012, set forth in Section 30-17 (Density Bonus Regulations) of Chapter XXX (Development Regulations) of the Municipal Code.

(z) "**Deposit**" means the good faith deposit provided by the Developer pursuant to Section 2.1 in the amount of (i) Two Hundred Thousand Dollars ($200,000) deposited at the time the ENA was executed; and (ii) One Hundred Thousand Dollars ($100,000) deposited within five (5) Business Day of the Effective Date, and all interest that is earned on the Deposit after the City deposits the Deposit in an interest-bearing account.

(aa) "**Developer**" means Alameda Points Partners, LLC, a Delaware limited liability company or any successor permitted pursuant to the terms of this Agreement.

(bb) "**Developer Affiliate**" means (1) EDP Alameda Point, LLC, a Delaware limited liability company, Madison Realty Partnership, LLC, a Delaware limited liability company, or NCCH 100 Alameda, L.P., a Delaware limited partnership, or (2) any entity that controls, is controlled by or is under common control with any one of the entities named in clause (1). For the purposes of this definition, the terms "controls, is controlled by or is under common control with" means that the subject entity (A) owns twenty (20%) or more of the profits, capital, or equity interest of the applicable entity(ies) and (B) has the power to direct the affairs or management of the applicable entity(ies), whether by contract, other governing documents or operation of Law or otherwise.

(cc) "**Developer Event of Default**" has the meaning given in Section 17.4.

(dd) "**Development Agreement**" means that certain development agreement between the City and the Developer pursuant to Government Code Section 65864.

(ee) "**Development Costs**" has the meaning set forth in Section 2.3.

(ff) "**Development Plan**" means the plan setting forth the parameters of the Project approved by the Planning Board on May 11, 2015, and upheld by the City Council on June 16, 2015, consistent with the Alameda Municipal Code Section 30-4.13 (j), the Planning Documents, and the Town Center Plan attached as Exhibit H hereto.

(gg) "**DIR**" means the California Department of Industrial Relations.

(hh) "**EDC Agreement**" means the Memorandum of Agreement For the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority, dated as of June 6, 2000, as amended.

(ii) "**Effective Date**" has the meaning set forth in Section 1.1.

(jj) "**EIR**" has the meaning set forth in Recital J.

(kk) "**ENA**" means the Exclusive Negotiation Agreement entered into by the City and the Developer as of December 1, 2014.

(ll) "**Escrow Holder**" means the Pleasanton, California office of First American Title Insurance Company, or such other title company or qualified escrow holder upon which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in Article 4 of this Agreement.

(mm) "**Estoppel Certificate of Completion**" means a certificate defined in Section 11.7.

(nn) "**Financing Plan**" shall mean the Project Financing Plan, as updated by the Phase Updates and Sub-Phase Updates as such terms are defined in Section 3.1.

(oo) "**General Contractor**" means a licensed and experienced general contractor approved by the City pursuant to Section 5.5 or Section 6.4 and with which the Developer enters into the Construction Contracts for construction of the Project.

(pp) "**Hazardous Materials**" means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

(qq) "**Hazardous Material Delay**" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization, and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Property

(based on information included in the Hazardous Materials Documents), (B) previously identified at the Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials Documents), except to the extent the Hazardous Materials are associated with an open Petroleum Program site (which are addressed in clause (2) below), or (C) encountered in the construction of any portion of the Infrastructure Package located outside of the Property boundaries, except to the extent the Hazardous Materials are associated with OU-2C's Industrial Waste Line or Storm Drain Lines A, B, or C; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERLCA Hazardous Materials located at the Property to the extent such investigation or remedial action is necessary to permit the land uses identified in the Development Plan; or (3) perform investigation or remedial action for Hazardous Materials that are the result of a Regulatory Reopener.

(rr) "**Hazardous Materials Laws**" means any applicable federal, state or local laws, ordinances, or regulations related to any Hazardous Materials.

(ss) "**Incidental Migration**" means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

(tt) "**Inclusionary Housing Ordinance**" means City of Alameda Ordinance 2926, set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations) of the Municipal Code.

(uu) "**Indemnification Obligations**" has the meaning given in Section 15.3.

(vv) "**Indemnified Parties**" means, collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

(ww) "**Infrastructure Package**" means the infrastructure to be constructed as part of the Project as more specifically set forth in Exhibit G.

(xx) "**Land Payment**" has the meaning given in Section 2.2.

(yy) "**Liquidated Damage Amount**" means the amount set forth in Section 17.4(b).

(zz) "**Major Alameda Point Amenities**" means the Sports Complex and the Ferry Terminal, as more particularly described in Section 5.2.

(aaa) "**Major Milestone Dates**" means the Outside Phase Closing Dates, the Infrastructure Phase Completion Dates and the Vertical Improvement Completion Dates set forth in the Milestone Schedule.

(bbb) "**Milestone Schedule**" means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit F, and as may be modified from time to time pursuant to Section 1.4.

(ccc) "**Mitigation Measures**" means the mitigation measures set forth in the Mitigation Monitoring and Reporting Program that is attached as Exhibit D.

(ddd) "**Mitigation Monitoring and Reporting Program**" or "**MMR Program**" has the meaning set forth in Recital Z and is attached as Exhibit D.

(eee) "**Operating Memorandum**" has the meaning given in Section 18.16.

(fff) "**Outside Phase Closing Date**" has the meaning given in Section 4.2.

(ggg) "**Permitted Exceptions**" has the meaning given in Section 4.5(a).

(hhh) "**Phase 0 Activities Plan**" has the meaning set forth in Section 9.2.

(iii)"**Phasing Plan**" means the Phasing Plan attached as Exhibit C.

(jjj)"**Phase Construction Contract**" means the Construction Contract between the Developer and the General Contractor for construction of the Infrastructure Phase or any portion thereof, as submitted by the Developer and approved by the City pursuant to Section 5.5.

(kkk) "**Pollution Liability Insurance Policy**" has the meaning given in Section 16.7.

(lll)"**Preliminary Title Report**" means the preliminary title report for the Property prepared by the Escrow Holder.

(mmm) "**Project**" means the improvements to be constructed and developed by the Developer in accordance with this Agreement. The proposed Project is generally described in Recitals S, and will be more specifically set forth and depicted in the Development Plan and the Approved Construction Documents.

(nnn) "**Property**" has the meaning given in Recital O, and is more particularly described in the attached Exhibit A, and shown on the map of the Property attached hereto as Exhibit B.

(ooo) "**Public Improvement Agreement**" shall mean the Public Improvement Agreement or Subdivision Improvement Agreement for the Backbone Infrastructure or the in tract Infrastructure for each Phase substantially in the form attached as Exhibit Q.

(ppp) "**Qualified Developer**" means a real property development entity (including without limitation a retailer that develops its own buildings) that (i) in the reasonable judgment of the City is financially capable of performing the Developer's obligations under this Agreement and any other agreements related to the portion of the Property proposed to be Transferred or has submitted a Sub-Phase Update to the City for the portion of the Property proposed to be Transferred and the City has approved such Sub-Phase Update pursuant to Section 3.2; (ii) has experience developing major projects in the land use category (e.g. mixed

uses, office, retail residential) applicable to the portion of the Property proposed to be Transferred, which projects are comparable to the development proposed for the portion of the Property proposed to be Transferred; and (iii) is able to demonstrate to the City's reasonable satisfaction that it has the experience and capability to develop a quality project on the portion of the Property proposed to be Transferred.

(qqq) "**Quitclaim Deed**" means the quitclaim deed by which the City will convey its fee estate in the Property to the Developer at the Closings. A form of the Quitclaim Deed is attached to this Agreement as Exhibit I.

(rrr) "**Renewed Hope Settlement Agreement**" means that certain Settlement Agreement dated as of March 20, 2001 related to the *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*

(sss) "**Residential Units**" has the meaning given in Recital S.1.

(ttt)"**Security Financing Interest**" has the meaning given in Section 13.1.

(uuu) "**Sports Complex**" means the forty-four acres sports and recreational complex to be constructed on the Public Benefit Conveyance parcel of the NAS Alameda.

(vvv) "**Sub-Phase**" means each block of the Project as identified in the Development Plan

(www) "**Supplemental Approvals**" means collectively the following City approvals related to and necessary for development of the Infrastructure Package on the applicable Phase of the Property consistent with this Agreement:

(1) a tentative tract map or tentative parcel map;

(2) design review approval for the design of the parks and waterfront improvements included in the applicable Phase;

(3) Improvement Plans for the Backbone Infrastructure included in the Infrastructure Package for the applicable Phase;

(4) a grading permit and demolition permit;

(5) a Public Improvement Agreement for the Backbone Infrastructure in the applicable Phase;

(6) will serve letters or other contracts from the utility companies providing utility services to the Property demonstrating that utility service is available for the applicable Phase; and

(7) design review approval for the first Sub-Phase of Vertical Improvements to be constructed as part of the Phase.

(xxx) "**Term**" has the meaning given in Section 1.2.

(yyy) "**Tidelands Trust Restriction**" means the restrictions imposed on property subject to the public trust that limit the use of such properties to uses consistent with

Senate Bill 2049, Chapter 734 of the Statutes of 2000 amending Section 1 of Chapter 594 of the Statutes of 1917

(zzz) "**Title Policies**" has the meaning given in Section 4.7.

(aaaa) "**Town Center Plan**" means the Waterfront and Town Center Precise Plan for Alameda Point approved by the City Council on July 15, 2014, and all documents comprising the approval by the City of the Town Center Plan.

(bbbb) "**Transfer**" has the meaning given in Section 12.1.

(cccc) "**Trust Lease**" shall mean that certain lease attached as Exhibit R leasing certain property subject to the Tidelands Trust Restriction from the City to the Developer.

(dddd) "**TDM Compliance Strategy**" has the meaning given in Section 8.14.

(eeee) "**Vertical Improvements**" shall mean for a particular Phase or Sub-Phase, the buildings and other improvements specified for such Phase in the Development Plan.

(ffff) "**Vertical Improvement Construction Contracts**" means the Construction Contract between the Developer and the General Contractor for construction of the Sub-Phase of the Vertical Improvements, as submitted by the Developer and approved by the City pursuant to Section 6.4

Section 19.2 Exhibits. The following exhibits are attached to (or upon preparation will be attached to) and incorporated into this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D	Mitigation Monitoring and Reporting Program and Environmental Checklist
Exhibit E	Form of DDA Memorandum
Exhibit F	Milestone Schedule
Exhibit G	Infrastructure Package
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	TDM Compliance Strategy
Exhibit K	Existing Leases
Exhibit L	Lease Agreements
Exhibit M	Affordable Housing Implementation Plan
Exhibit N	Description of Phase 0 Activities
Exhibit O	General Assignment
Exhibit P	Bill of Sale
Exhibit Q	Public Improvement Agreement
Exhibit R	Trust Lease
Exhibit S	Intentionally Omitted
Exhibit T	Ferry Terminal Payment Note
Exhibit U	City Disclosure Documents

Exhibit V-1	Notice of City Release of Environmental Claims
Exhibit V-2	Notice of Developer Release of Environmental Claims
Exhibit W	Appraisal Process
Exhibit X	List of Navy Quitclaim Deeds and CRUPs

[The Remainder of this Page is Intentionally Left Blank]

In WITNESS WHEREOF, the Parties have signed this Disposition and Development Agreement on the dates indicated below.

CITY OF ALAMEDA

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest: **Recommended for Approval:**

_____
Lara Weisiger, City Clerk

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____ 7/21/15
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. 3127

Signatures continue on next page

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: Bruce Dafman

Title: Vice President

Exhibits:

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Exhibit V-2	Notice of Developer Release of Environmental Claims
Exhibit W	Appraisal Process
Exhibit X	List of Navy Quitclaim Deeds and CRUPS

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Property referred to in the Agreement to which this Exhibit A is attached is situated in the State of California, Alameda County, City of Alameda and is described as follows:

APRIL 29, 2015
JOB NO.: 1087-010

LEGAL DESCRIPTION
"SITE A" BOUNDARY
ALAMEDA POINT
ALAMEDA, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, A PORTION OF THOSE CERTAIN PARCELS OF LAND DESCRIBED AS PARCEL NINE AND PARCEL TEN OF THE PHASE 1 AGREED TRUST LANDS, AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN PATENT DEED RECORDED JUNE 30, 2014, AS DOCUMENT NO. 2014154596 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, AND A PORTION OF THOSE CERTAIN PARCELS OF LAND DESCRIBED AS PARCEL ONE OF THE PHASE 1 AGREED NON-TRUST LANDS, AND PARCEL ONE AND PARCEL TWO OF PHASE 1 TRUST TERMINATION LANDS, AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN PATENT DEED RECORDED JUNE 30, 2014, AS DOCUMENT NO. 2014154597 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EASTERN LINE OF SAID PARCEL 1 (28 RS 14), SAID POINT BEING THE SOUTHERN TERMINUS OF THAT CERTAIN COURSE DESIGNATED AS, "NORTH 00°33'45" EAST 2,344.42 FEET", ON SHEET 11 OF 12 OF SAID RECORD OF SURVEY;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG SAID EASTERN LINE, NORTH 00°33'45" EAST 128.24 FEET;

THENCE, LEAVING SAID EASTERN LINE, NORTH 89°26'15" WEST 16.00 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, SOUTH 00°33'45" WEST 101.51 FEET;

THENCE, ALONG THE ARC OF A TANGENT 2,061.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°05'27", AN ARC DISTANCE OF 183.17 FEET;

THENCE, NORTH 85°08'27" WEST 1,771.66 FEET;

THENCE, SOUTH 04°51'33" WEST 50.00 FEET;

THENCE, NORTH 85°08'27" WEST 178.64 FEET;

THENCE, NORTH 04°47'18" EAST 273.28 FEET;

THENCE, NORTH 85°12'42" WEST 1,323.73 FEET;

THENCE, NORTH 04°51'29" EAST 198.36 FEET;

THENCE, SOUTH 85°08'27" EAST 788.87 FEET;

THENCE, NORTH 04°51'33" EAST 240.00 FEET;

THENCE, SOUTH 85°08'27" EAST 387.96 FEET;

THENCE, NORTH 04°51'33" EAST 649.00 FEET;

THENCE, SOUTH 85°08'27" EAST 1,989.54 FEET;

THENCE, SOUTH 00°33'45" WEST 915.57 FEET;

THENCE, SOUTH 00°11'43" EAST 113.41 FEET TO SAID POINT OF BEGINNING.

CONTAINING 68.21 ACRES OF LAND, MORE OR LESS.

END OF DESCRIPTION

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER OF SALE OF THE LAND DESCRIBED.

EXHIBIT B

MAP OF THE PROPERTY

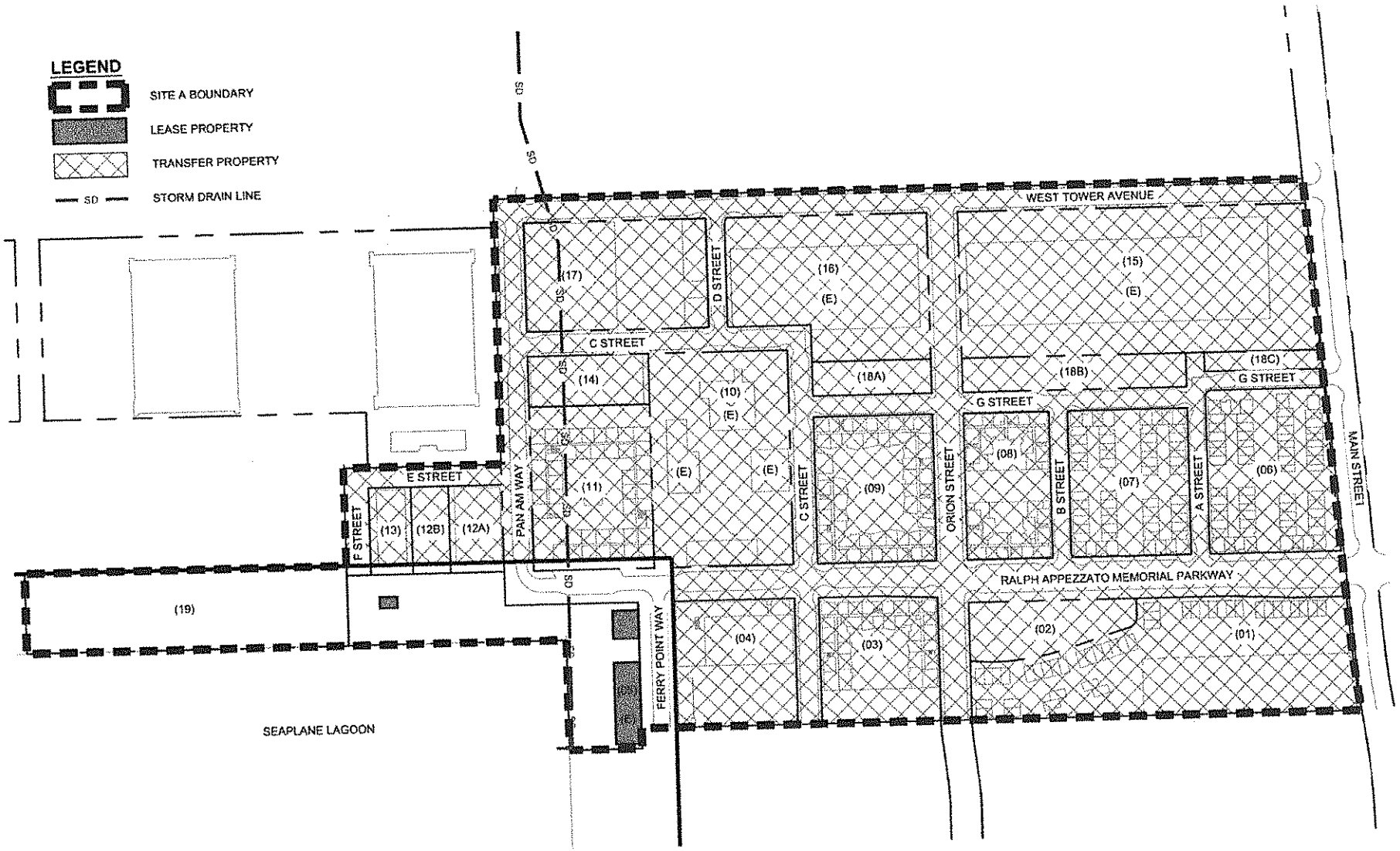


EXHIBIT B

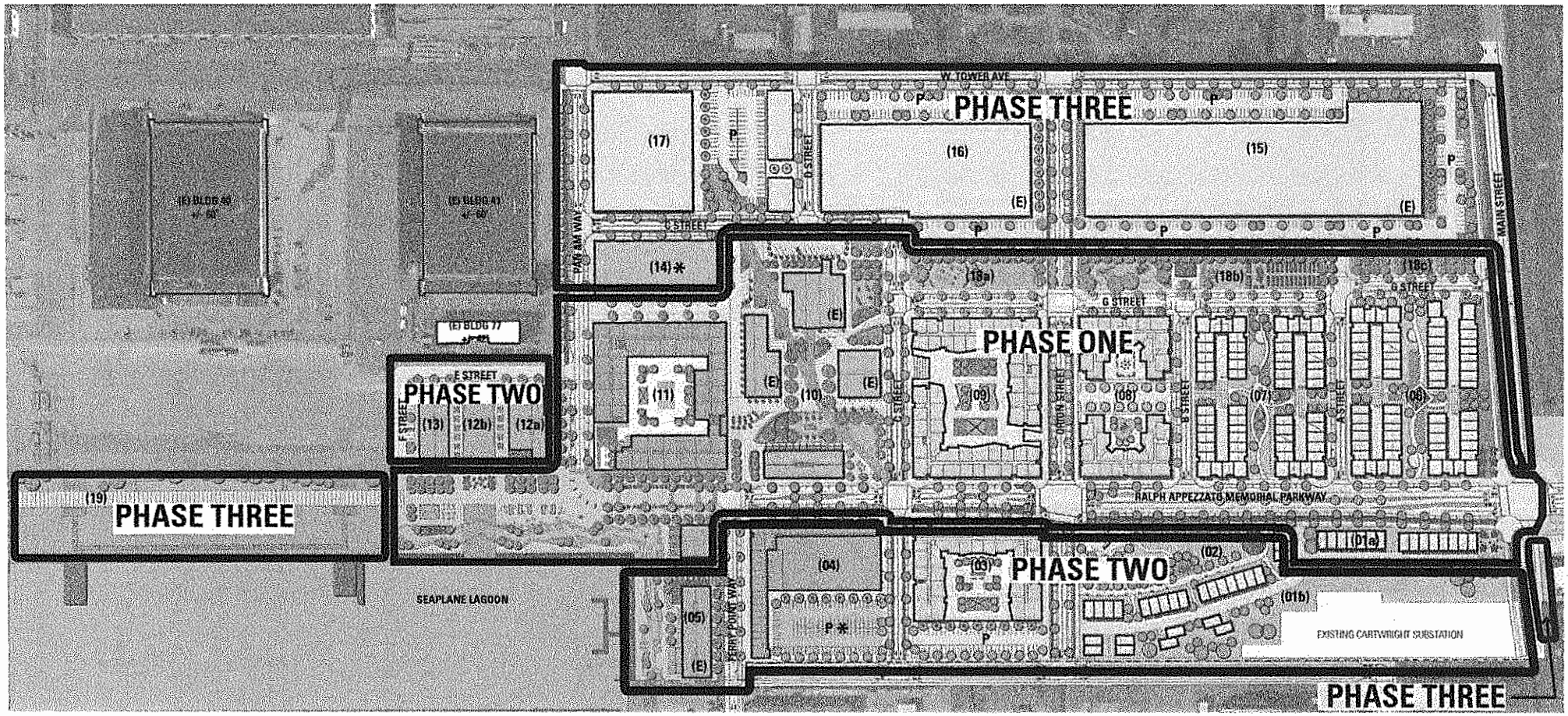
MAP OF SITE A PROPERTY

05/29/2015

NOT TO SCALE

EXHIBIT C

PHASING PLAN



LEGEND

- **(E)** EXISTING BUILDING
- **(##)** BLOCK NUMBER
- **P** SURFACE PARKING
- ***** POTENTIAL PARKING GARAGE

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

*EXISTING BUILDINGS AND/OR SITES MAY BE OCCUPIED WITH USES CONSISTENT WITH THIS PLAN DURING ANY PHASE

ALAMEDA POINT | ALAMEDA, CA

PHASING DIAGRAM

BARarchitects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

14072

MAY 27, 2015

Phasing Plan – Alameda Point Site A
Proposed Buildings and Uses

Project Phase	Parcel Number	Acres	Proposed Use/Building Type	Building Square Footage, Units, or Acres/Parking Spaces
Phase 1	1a	±0.85	Residential/Townhomes	±15 units/ up to 30 spaces
	6	±2.83	Residential/Townhomes	±64 units/ up to 128 spaces
	7	±2.43	Residential/Townhomes	±60 units/up to 120 spaces
	8	±1.73	Residential/Podium Very-Low and Low Income Affordable Housing Project	±128 units/up to 192 spaces
	9	±2.42	Residential/Podium	±182 units/up to 273 spaces
	10	±4.08	Open Space	±3.05 acres
			Retail	±46,000 square feet/50 spaces
	11	±2.58	Mixed Use	Residential: ±220 units/up to 330 spaces Retail: ±50,000 square feet/24 spaces
	18	±1.35	Open Space	±1.92 acres
Phase 1 Subtotal		**±16.92**	**Residential: 669 units/up to 1,073 parking spaces** **Retail: ±96,000 square feet/±74 parking spaces** **Open Space: ±4.97 acres**	

Phasing Plan – Alameda Point Site A
Proposed Buildings and Uses

Project Phase	Parcel Number	Acres	Proposed Use/Building Type	Building Square Footage, Units, or Acres/Parking Spaces
Phase 2	1b	±4.24	Residential/Townhomes	±27 units/up to 54 spaces
	2	±1.15	Open Space	±1.15 acres
	3	±2.09	Residential/Podium/surface lot	±106 units/up to 159 spaces
	4	±2.15	Mixed Use/Parking	Hotel: ±100,000 square feet (±150 rooms)/±112 parking spaces Retail: ±6,000 square feet Parking Structure: up to 560 parking spaces
	5	±3.49	Open Space	±3.10 acres
	12(a)	±0.6	Retail	±20,000 square feet
	12(b)	±0.54	Open Space	±0.54 acre
	13	±0.4	Retail	±13,000 square feet
Phase 2 Subtotal		**±14.26**	**Residential: ±133 units/up to 213 parking spaces Hotel: ±100,000 square feet (±150 rooms)/±112 parking spaces Retail: ±59,000 square feet Parking Structure: up to 560 parking spaces Open Space: ±4.79 acres**	
Phase 3	14	±0.84	Parking	Up to 670 parking spaces
	15	±7.53	Commercial	±161,700/up to 243 spaces
	16	±3.7	Commercial	±90,950/up to 100 spaces
	17	±2.73	Commercial	±57,000/up to 110 spaces
	19	±3.59	Open Space	±3.59 acres
Phase 3 Subtotal		**±18.39**	**Commercial: ±309,650 square feet/up to 453 spaces Parking Structure: up to 670 parking spaces Open Space: ±3.59 acres**	
Total		**±68**	**Residential: 800 units/up to 1,200 parking spaces Hotel: ±100,000 square feet (±150 rooms)/±112 parking spaces Retail: ±155,000 square feet/±74 spaces Commercial: ±309,650 square feet/up to 453 spaces Parking Structures and lots: up to 1,230 spaces Open Space: ±13.35 acres**	

EXHIBIT D

MITIGATION MONITORING AND REPORTING PROGRAM AND ENVIRONMENTAL CHECKLIST

CITY OF ALAMEDA

ENVIRONMENTAL CHECKLIST FOR STREAMLINED REVIEW

Pursuant to California Public Resources Code Sections 21083.3 and CEQA Guidelines and 15183

Project Title:	Site A of the Alameda Point Project
Lead Agency:	City of Alameda 2263 Santa Clara Street Alameda, CA 94501
Contact Person:	Andrew Thomas, City Planner 2263 Santa Clara Street Alameda, CA 94501 Phone: (510) 747-6881
Project Sponsor:	Alameda Point Partners, LLC Joe Ernst 2220 Livingston Street, Suite 208 Oakland, CA 94606 Phone: (510) 219-5376
General Plan Designation:	Mixed-Use 1 (AP-1) (also known as Civic Core Subarea) Mixed-Use 3 (AP-3) (also known as Marina Subarea)
Zoning:	Waterfront Town Center (AP-WTC) Sub-district

1.0 PROJECT SUMMARY

The Alameda Point Town Center and Waterfront Precise Plan (Town Center Plan)[1] envisions Site A as a transit-oriented mixed-use project that helps realize the City of Alameda's vision for the development of Alameda Point. Development of the proposed mixed-use project at Site A on Alameda Point (proposed project) would entail the redevelopment of a 68-acre portion of the former Alameda Point Naval Air Station (NAS Alameda) entirely within the Town Center Plan area. The proposed project would serve as the retail core of Alameda Point; and at full buildout, would include up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, which would occupy new buildings and repurposed existing buildings. The total number of residential units and commercial/retail/hotel square footages are an estimated maximum; the square footage of actual constructed uses may be slightly less. In addition, approximately 13.35 acres of open space and parks would be developed as part of the proposed project. New and replacement utilities and infrastructure and new streets and streetscape improvements would be constructed on the project site.

[1] As specified in the Town Center Plan, it is a specific plan pursuant to Government Code Section 65450 *et seq.*, for the implementation the City of Alameda's vision for the heart of the former NAS Alameda and fulfills the request for a Town Center Waterfront Masterplan required under AMC 30-4-24 Alameda Point District.
Skidmore, Owings & Merrill, LLP, et al., 2014. Alameda Point Town Center and Waterfront Precise Plan. Final Report, July.

2.0 BASIS FOR STREAMLINING

Implementation of the Alameda Point Project (APP), as described in the Town Center Plan, including development of Site A, was analyzed in the APP Environmental Impact Report (EIR).[2] This allows the use of the California Environmental Quality Act (CEQA) streamlining and/or tiering provisions, pursuant to California Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183, for projects developed under the Town Center Plan.

In addition, none of the conditions for preparation of a subsequent EIR per Section 15162(a) would apply to the proposed project, as described below, allowing for streamlining of the project:

1. The proposed Site A development does not involve substantial changes that would require major revisions to the APP EIR. As described below under Section 3.1, the APP EIR evaluated buildout of approximately 5.5 million square feet of developed space consisting of 3,060,500 square feet of manufacturing/warehouse uses; 1,627,500 square feet of office/business park/institutional uses; 812,000 square feet of retail/commercial uses; 1,425 residential units;[3] 291 acres of parks and open space; a new ferry terminal, and 530 marina slips. As described under Project Description in the Environmental Checklist below, the proposed Site A development would represent substantially less development than evaluated in the APP EIR, consisting of up to 800 residential units; 600,000 square feet of retail, commercial, and hotel uses; and approximately 13.35 acres of open space and parks. No new significant environmental effects or substantial increase in the severity of previously identified significant effects would result from the proposed development of Site A, as outlined in the Environmental Checklist below.

2. There are no substantial changes in the circumstances of the project. The existing conditions described in the APP EIR adequately describe the environment, and the circumstances of the proposed Site A development are consistent with the analysis in the APP EIR. No new significant environmental effects or substantial increase in the severity of previously identified significant effects would result from the proposed development of Site A, as outlined in the Environmental Checklist below.

3. There is no new information of substantial importance that was not known, and could not have been known at the time of the APP EIR. The EIR was certified on February 4, 2014. As outlined in the Environmental Checklist below, the project would not have more significant effects, or significant effects that are substantially more severe than shown in the APP EIR. No mitigation measure or alternatives identified in the APP EIR that are found to be infeasible would be feasible, nor are considerably different mitigations or alternatives available that would substantially reduce significant effects.

The attached Checklist evaluates the potential project-specific environmental effects of the proposed project, and evaluates whether such impacts were adequately covered by the APP EIR, consistent with CEQA Guidelines Section 15183, described below. This Checklist hereby incorporates by reference the APP EIR analysis of all potential environmental impact topics, including all background information it contains regarding the environmental setting of the APP. The APP EIR is available for review at the offices of the Planning Division in the City of Alameda's Community Development Department, located at 2263 Santa Clara Avenue. In addition, an electronic copy of the APP EIR is available on the City's website at: http://alamedaca.gov/alameda-point/eir.

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[2] ESA, 2013. Alameda Point Project Environmental Impact Report. SCH No. 2013012043. Certified February 4, 2014.

[3] Of the 1,425 residential units analyzed in the APP EIR, 1,157 would be new units, and 268 are existing single-family and multi-family housing units.

2.1 CEQA Guidelines Section 15183

Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 allow streamlined environmental review for projects that are "consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site" (Section 15183[a]).

Section 15183(c) specifies that "if an impact is not peculiar to the parcel or to the proposed project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, then an EIR need not be prepared for the project solely on the basis of that impact."

Section 15183(b) states that "in approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis: (1) are peculiar to the project or the parcel on which the project would be located; (2) were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent; (3) are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or (4) are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR."

Section 15183(d) further states that the streamlining provisions of this section "shall apply only to projects that meet the following conditions: (1) the project is consistent with a community plan adopted as part of a general plan, a zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or a general plan of a local agency; and (2) an EIR was certified by the lead agency for the zoning action, the community plan, or the general plan."

2.2 Applicability of Section 15183 to Site A

The proposed project for Site A would be consistent with the General Plan designations and zoning for the site described in the Town Center Plan, as outlined below, and would meet the requirements for streamlining under CEQA Guidelines Section 15183(d)(1), described above.

- The land use designations for Site A are Mixed-Use 1 (AP-1) (also known as Civic Core Subarea) and Mixed-Use 3 (AP-3) (also known as Marina Subarea). The Alameda Point Chapter of the General Plan designates a majority of the project site as Alameda Point AP-1, with a portion of the site fronting Seaplane Lagoon designated as AP-3. AP-1 emphasizes public-serving and civic uses, and allows business park, office, civic, residential, public/institutional, parks and public open space, commercial, and other supporting uses. AP-3 allows marine-related industry, office, commercial, residential, recreation, and supporting retail uses, and encourages uses to be structured to promote waterfront activity and vitality in the open-space spine along the Bay. These mixed-use areas encourage the development of two or more uses on a single site, or within one structure.

  The proposed mixed-use project would be consistent with the above designations. The majority of the project site, located in AP-1, would consist of commercial uses, mixed-use buildings, and residential uses in townhouses and podium buildings. The portion of the proposed project in AP-3 would consist of open space, along with supporting retail.

- Site A is zoned Waterfront Town Center (AP-WTC) Sub-district, which provides for a mix of waterfront and visitor-serving uses, including retail, service, entertainment, lodging, recreational, and medium- to high-intensity residential uses. As laid out in the Town Center Plan, the project site's land use designations are: Residential Mixed Use (RMU); Commercial Mixed Use (CMU); Retail, F&B, and Entertainment (R); and Open Space (OS). The majority of the project site is designated RMU, with the portions generally north and east of Seaplane Lagoon designated R or CMU. The portion of the project site along the northern edge of the Seaplane Lagoon is designated OS. Under the Town Center Plan, which is a specific plan and fulfills the request for a Town Center Waterfront Master Plan required under AMC 30-4-24 Alameda Point District, the form-based zoning would grant planning staff extensive discretion over the form and design of the proposed project.

  The proposed project would be consistent with the land use transition concept specified in the Town Center Plan, which is as follows:

  > *Along the edge of Bayport and bordering the Main Street Neighborhoods in the Atlantic Entry District, lower-density multi-family residential use – in the form of 2-3 story townhomes and walk-up flats – is proposed. Toward the Seaplane Lagoon, residential density increases, with 3-5 story apartments over parking and/or retail podia. The greatest mix and intensity of uses (including office, residential, hotel and retail) and the site's tallest buildings (5-6 story) are concentrated at the west end of Ralph Appezzato Memorial Parkway and along Ferry Point Road. A zone of retail, entertainment, dining and other visitor serving uses overlays the Town Center and East Waterfront along Ferry Point Road, connecting residential and commercial centers and providing amenities to both. Along the north edge of the Seaplane Lagoon, maritime and commercial uses provide a transition from the Town Center westward to the more industrial, production-oriented functions currently located along the west side of the Adaptive Reuse Sub-District. Public open space and maritime uses surround the Seaplane Lagoon, providing for enjoyment of the Waterfront.*

- The project site has maximum height limits ranging from 40 to 65 feet; in addition, certain areas have required minimum heights ranging from 20 to 50 feet. Height limits gradually increase from 40 feet at the eastern project boundary along Main Street to their greatest height along the eastern edge of Seaplane Lagoon. In addition, heights above 65 feet can be approved along blocks immediately east of Seaplane Lagoon. The proposed project would have buildings generally ranging from 35 feet to 65 feet in height. The tallest buildings would be constructed in the southwestern corner of the site, at the western end of the Ralph Appezzato Memorial Parkway (RAMP)—and, consistent with the Town Center Plan, may be taller than 65 feet, subject to the Planning Board approval and Design Review, if the building exhibits exceptional architectural design and is transit supportive.

- The project would preserve and maintain views through the project area, consistent with the guidelines of the Town Center Plan's Transit Village Center Guidelines. The guidelines designate view corridors along, and of, the Seaplane Lagoon, including a public plaza a minimum of 1 acre in size that extends from Pan Am Way to the waterfront, with a minimum width of 150 feet; building setbacks along the Seaplane Lagoon ranging from 32 to 200 feet; a view corridor of no less than 40 feet between Building 77 and the Seaplane Lagoon; and a view corridor extending along the RAMP of approximately 105 feet.

- As defined in the Alameda APP EIR, the maximum allowable build-out for Alameda Point is 1,425 residential units, 250 acres of parks and open space, 812,000 square feet of retail/commercial service, 3,060,500 square feet of manufacturing/warehouse, and 1,627,500 square feet of office/ business park/institutional and density and intensity of uses can be shared among use categories

and planning areas. The proposed project would include up to 800 residential units and up to 600,000 square feet of retail, commercial, and hotel uses. In addition, approximately 13.35 acres of open space and parks would be developed. Development of the project site, as proposed, is consistent with the land use requirements, as analyzed in the APP EIR.

The Town Center Plan requires multi-family residential housing to obtain a waiver from the City's prohibition of multiple dwelling units specified in AMC 30-53, by submitting a density bonus application. The proposed development of Site A would comply with these requirements. The APP EIR was prepared for the Town Center Plan and was certified by the City Council on February 4, 2014, as described further in Section 3, consistent with the requirements for applicability of streamlining under CEQA Guidelines Section 15183(d)(2), described above.

Therefore, the proposed project is eligible for streamlined environmental review under California Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183.

3.0 ALAMEDA POINT PROJECT EIR

3.1 Background

The APP EIR evaluated the potential environmental impacts associated with the redevelopment and reuse of the 878 acres of land and approximately 1,229 acres of water at the former NAS Alameda, at the western end of the City of Alameda. The APP evaluated in the EIR includes:

- Adoption of a Master Infrastructure Plan for the replacement, reconstruction, and rehabilitation of deteriorated and substandard infrastructure, buildings, and shoreline protections;
- Rehabilitation and new construction of open space, parks, and trails for public enjoyment;
- Rehabilitation, reuse, and new construction of approximately 5.5 million square feet of commercial and workplace facilities for approximately 8,900 jobs;
- Maritime and water-related recreational uses in and adjacent to the Seaplane Lagoon, including a new ferry terminal;
- Rehabilitation and new construction of 1,425 residential units for a wide variety of household types for approximately 3,240 residents;[4] and
- Adoption of a General Plan Amendment, a Zoning Ordinance Amendment, and a precise plan that would create planning sub-districts in Alameda Point to facilitate a seamless and integrated mixed-use, transit-oriented community consistent with the existing General Plan and Reuse Plan.

The Development Program analyzed in the APP EIR is based on development assumptions outlined therein for the following four subareas defined in the APP EIR: Town Center and Waterfront; Main Street Neighborhoods; Adaptive Reuse; and Enterprise. As described in the APP EIR, the development increments may be moved from one sub-area to another to optimize development opportunities and to address site-specific conditions; and are not specifically tied to any one sub-area.

At full buildout, the APP would result in approximately 5.5 million square feet of developed space consisting of 3,060,500 square feet of manufacturing/warehouse uses; 1,627,500 square feet of office/business park/institutional uses; 812,000 square feet of retail/commercial uses; 1,425 residential units; 291 acres of parks and open space; a new ferry terminal, and 530 marina slips.

[4] Of the 1,425 residential units analyzed in the APP EIR, 1,157 would be new units, and 268 are existing single-family and multi-family housing units.

In February 2014, the Alameda City Council approved a Master Infrastructure Plan, General Plan Amendment, and Zoning Ordinance Amendment, and certified the EIR; in May 2014, the council approved the Alameda Point Transportation Demand Management Plan; and in July 2014, the council approved the Town Center Plan as part of the required entitlement process for potential development at Alameda Point.

Development of the 68-acre Site A was analyzed in the APP EIR. Site A lies within the Town Center and Waterfront Sub-district.[3] Land uses designated for the Town Center and Waterfront Sub-district would include (among others) waterfront restaurants, retail, hotels, entertainment, other visitor-serving uses, and multi-family housing. As described in the EIR, new building types include commercial block, workplace commercial, adaptive reuse, parking structures, and attached residential building types (such as work-live, stacked flats, multiplex, and row houses).

3.2 Potential Environmental Effects Identified

The APP EIR analyzed the following environmental resource topics: land use consistency and compatibility; population and housing; transportation and circulation; cultural and paleontological resources; biological resources; air quality and greenhouse gases; noise; geology, soils, and seismicity; hydrology and water quality; hazards and hazardous materials; aesthetics; public services and recreation; and utilities and service systems.

Significant and unavoidable impacts, even with implementation of mitigation measures, were identified in the APP EIR for the following environmental resource topics: transportation and circulation; cultural resources; air quality and greenhouse gases; and noise. In addition, the APP EIR identified mitigation measures that would reduce significant impacts to less-than-significant levels for the following resources: biological resources; geology, soils, and seismicity; hydrology and water quality; hazards and hazardous materials; aesthetics; and utilities and service systems.

Mitigation measures applicable to the development of Site A from the approved Mitigation Monitoring and Reporting Program for the APP EIR are listed in Attachment A. As described for each environmental resource topic in the Checklist, with implementation of these mitigation measures, the proposed project would not result in significant impacts beyond those analyzed in the APP EIR. All of the mitigation measures identified in the EIR were adopted and incorporated into the APP by Resolution No. 14891.

4.0 PROJECT DESCRIPTION

4.1 Overview

The Alameda Point Town Center and Waterfront Precise Plan (Town Center Plan) envisions Site A as a transit-oriented mixed-use project that helps realize the City of Alameda's vision for the development of Alameda Point.[4] Development of the proposed mixed-use project at Site A on Alameda Point (proposed project) would entail the redevelopment of a 68-acre portion of the former NAS Alameda. The proposed project would serve as the retail core of Alameda Point, and at full buildout, would include up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, which would occupy new buildings and repurposed existing buildings. The total number of residential units and commercial/ retail/hotel square footages are an estimated maximum; the square footage of actual constructed uses may

[3] Although the APP Draft EIR shows the Site A area being located across both the Town Center and Waterfront and the Main Street Neighborhood sub-areas, the zoning adopted for the APP corrected this to show Site A entirely within the Town Center and Waterfront Sub-district.

[4] As specified in the Town Center Plan, it is a specific plan for the implementation the City of Alameda's vision for the heart of the former NAS Alameda and fulfills the request for a Town Center Waterfront Masterplan required under AMC 30-4-24 Alameda Point District.

be slightly less, as summarized in Table 1. In addition, approximately 13.35 acres of open space and parks would be developed as part of the proposed project. New and replacement infrastructure, including utilities and streets, would be constructed within the project site.

The proposed project would be developed over three phases: as specified in the Disposition and Development Agreement, the entire proposed project may be constructed by 2035, although it may be completed prior to that depending on market conditions. The first phase would entail construction of approximately 669 residential units, approximately 96,000 square feet of retail uses, and approximately 4.97 acres of open space, including a waterfront park along Seaplane Lagoon. In addition, existing buildings outside of Phase 1, such as Building 113, Building 117, Building 118, and Building 162, may be occupied with uses consistent with the Town Center Plan during any phase. The second phase would include approximately 131 residential units; approximately 59,000 square feet of retail uses and an approximately 100,000-square-foot hotel; and approximately 4.79 acres of open space. The third phase would include 309,650 square feet of commercial uses in new construction and repurposed existing buildings, approximately 3.59 acres of open space, and a parking structure. Infrastructure improvements would be constructed along with each phase of development.

This Checklist addresses all phases of the Site A development, based on the information available at this time. City design review and approval of the subdivision map for proposed project phases may include modifications to the plans as considered and evaluated; subsequent CEQA review for consistency with the certified EIR may occur at that time, depending on the extent of those modifications. The project approvals required for Site A are listed below under Section 6.

4.2 Project Location

The project site, referred to as Site A, is an approximately 68-acre area on Alameda Point, the former NAS Alameda west of Main Street at the western end of Alameda Island, in the City of Alameda, California, as shown on Figure 1. Site A is designated to be the town center area of Alameda Point, and has approximately 1,500 lineal feet of frontage on the Seaplane Lagoon.

Site A is located along West Atlantic Avenue, which serves as a gateway to Alameda Point from Main Street, and is bounded by Main Street to the east and West Tower Avenue to the north. It includes the parcels immediately south of West Atlantic Avenue (a westward extension of RAMP) and the parcels just west of Ferry Point. The Seaplane Lagoon forms the southwestern boundary along the site.

The site is accessible from Interstate 880, which is approximately 2.5 miles to the north of the site; regional access to Site A is via State Route 260 through the Webster-Posey Tube, connecting the island of Alameda and the City of Oakland, approximately 2 miles to the northeast of the site. The Alameda Main Street public ferry terminal is 1 mile to the north of Site A.

4.3 Existing Conditions

Site A is relatively flat, with sparse vegetation, and is occupied by structures and other vestiges of the military activities that took place at NAS Alameda during its operation from 1940 to 1997. The site is predominantly paved with asphalt; it is developed with large warehouse buildings along the northern edge of the site, with other industrial and commercial buildings and structures scattered across the site. West Atlantic Avenue serves as the primary access road within the site from Main Street, with landscaped gateway areas along the avenue. Several wide streets, designed by the United States Navy (Navy) for the movement of large equipment, extend through Site A, including east/west streets Avenue F, West Trident Avenue, West Seaplane Lagoon Avenue, and West Atlantic Avenue; and north/south streets Ferry Point, Orion Street, and Hancock Street. Along Seaplane Lagoon, Site A includes a small marina with a breakwater, a landscaped public area, and a boat ramp.

Table 1
Existing and Proposed Buildings and Uses

Project Phase	Parcel Number	Acres	Existing Building Number[1] Square Feet/Height[2]	Proposed Use/ Building Type	Building Square Footage, Units, or Acres/ Parking Spaces	Building Height (feet)[3]	Number of Stories
Phase 1	1a	0.85	No existing buildings	Residential/ Townhomes	15 units/ up to 30 spaces	35	3
	6	2.83	Building 173 200/17	Residential/ Townhomes	64 units/ up to 128 spaces	40	3
	7	2.43	Building 90 4,500/17 Building 119 5,800/14 Building 527 (partial) 8,400/19	Residential/ Townhomes	60 units/up to 120 spaces	40	3
	8	1.73	Building 527 (partial) 8400/18	Residential/ Podium[4]	128 units/up to 192 spaces	50	5
	9	2.42	Building 112 (partial) 28,606/18	Residential/ Podium	182 units/up to 273 spaces	65	5
	10	4.08	**Building 67** 14,000/28 **Building 98** 8,200/18 **Building 112**[5] 9,460/18	Open Space	3.05 acres	—	—
				Retail	46,000 square feet/ 50 spaces	35	1
	11	2.58	Building 66 (partial) 28,542/36 Building 13 (partial) 39,000/28	Mixed Use	Residential: 220 units/up to 330 spaces Retail: 50,000 square feet/ 24 spaces	65[6]	7
	18	1.35	—	Open Space	1.92 acres	—	—
Phase 1 Subtotal		**16.92**	**Residential: 669 units/up to 1,073 parking spaces Retail: 96,000 square feet/74 parking spaces Open Space: 4.97 acres**				
Phase 2	1b	4.24	—	Residential/ Townhomes	27 units/up to 54 spaces	35	3
	2	1.15	—	Open Space	1.15 acres	—	—
	3	2.09	—	Residential/ Podium/surface lot	106 units/up to 159 spaces	65	5
	4	2.15	Building 162 (partial) 107,029/36	Mixed Use/ Parking	Hotel: 100,000 square feet (approximately 150 rooms)/approximately 112 parking spaces Retail: 6,000 square feet Parking Structure: up to 560 parking spaces	65[6]	6

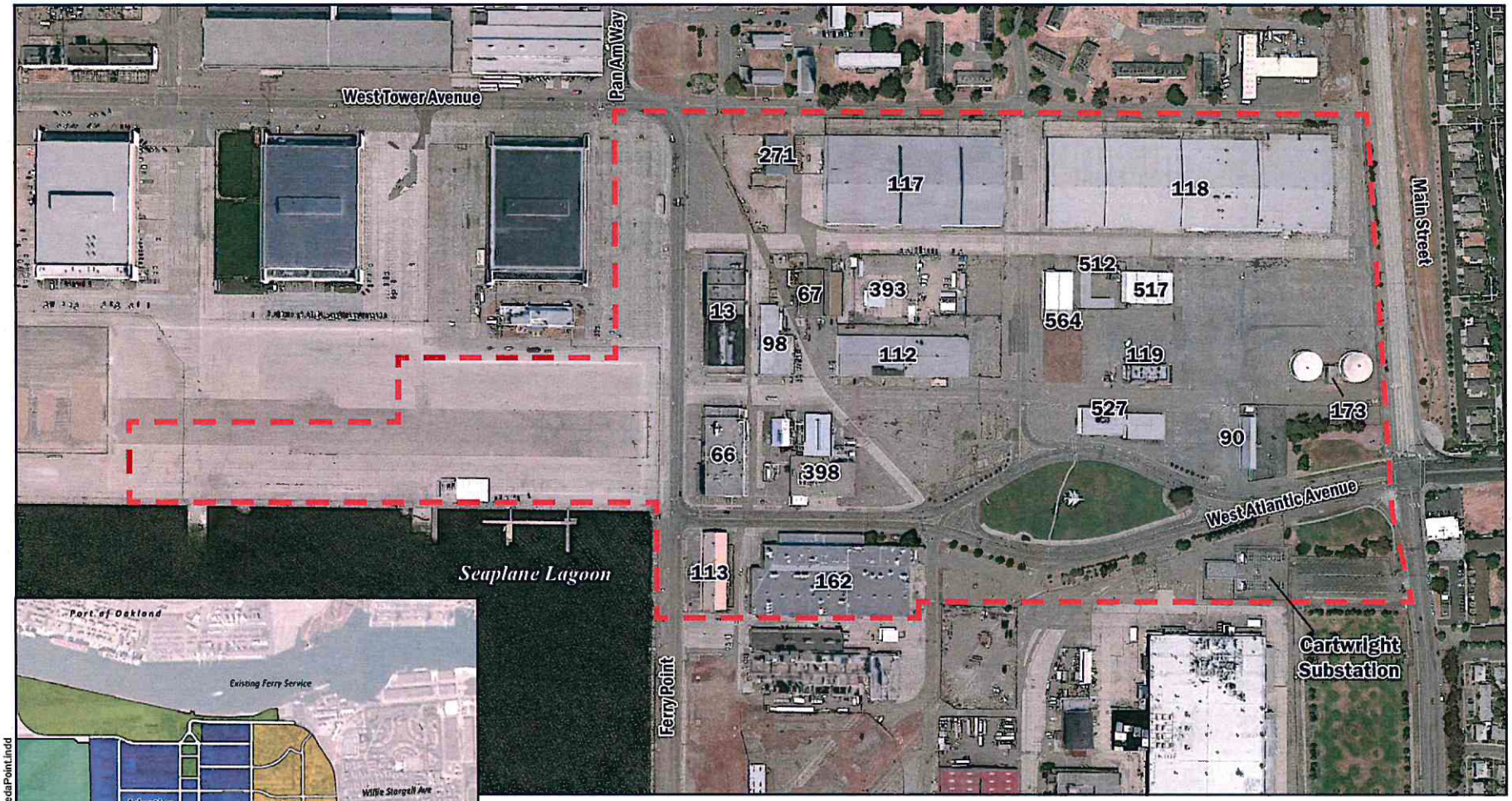
Table 1
Existing and Proposed Buildings and Uses (Continued)

Project Phase	Parcel Number	Acres	Existing Building Number[1] Square Feet/Height[2]	Proposed Use/ Building Type	Building Square Footage, Units, or Acres/ Parking Spaces	Building Height (feet)[3]	Number of Stories
Phase 2 (cont'd)	5	3.49	**Building 113** 13,115/38	Open Space	3.10 acres	—	—
	12(a)	0.60	—	Retail[8]	20,000 square feet	35	1
	12(b)	0.54	—	Open Space	0.54 acre	—	—
	13	0.40	—	Retail	13,000 square feet	50	1
Phase 2 Subtotal		**14.26**	**Residential: 133 units/up to 213 parking spaces Hotel: 100,000 square feet (up to 150 rooms)/up to 112 parking spaces Retail: 59,000 square feet Parking Structure: up to 560 parking spaces Open Space: 4.79 acres**				
Phase 3	14	0.84	—	Parking	Up to 670 parking spaces	Up to 65	Up to 7[7]
	15	7.53	**Building 118**[5] 179,834/35	Commercial	161,700/up to 243 spaces	35	1
	16	3.70	**Building 117**[5] 106,618/35	Commercial	90,950/up to 100 spaces	35	1
	17	2.73	Building 271 57,000/ 50	Commercial	57,000/up to 110 spaces	50	1
	19	3.59	—	Open Space	3.59 acres	—	—
Phase 3 Subtotal		**18.39**	**Commercial: 309,650 square feet/up to 453 spaces Parking Structure: up to 670 parking spaces Open Space: 3.59 acres**				
Total		**68**	**Residential: 800 units/up to 1,200 parking spaces[9] Hotel: 100,000 square feet (up to 150 rooms)/up to 112 parking spaces[9] Retail: 155,000 square feet/74 spaces[9] Commercial: 309,650 square feet/up to 453 spaces[9] Parking Structures and lots: up to 1,230 spaces Open Space: 13.35 acres**				

Notes:

[1] Existing buildings listed on each parcel are approximate; portions of building may fall within proposed right-of-way.
[2] Buildings shown in **BOLD** would remain/be incorporated into the proposed project.
[3] Proposed building heights are approximate.
[4] Affordable units.
[5] A portion of the existing building would remain.
[6] Town Center Plan permits heights greater than 65 feet with special consideration. Special consideration is given to projects with exceptional architectural design and those that support transit.
[7] Includes rooftop level.
[8] Retail space would be compliant with State Lands requirements.
[9] Consistent with the Town Center Plan, the project would provide parking ratios as follows: residential uses up to 1.5 spaces per unit; commercial/retail uses – maximum of 3.40 parking spaces per 1,000 square feet; and commercial/hotel uses – maximum of 0.75 parking spaces per room.

Podium = Residential units above an above-ground garage.
TBD = to be determined; unknown at this time.
— = Not applicable.



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Source: BAR Architects, 2015.

Not to Scale

SITE A EXISTING CONDITIONS

Site A of the Alameda Point Project
Alameda, California

FIGURE 1

Site A consists of 19 development units, referred to herein as parcels, subject to further mapping, as listed in Table 1. Approximately 18 buildings and structures totaling approximately 500,400 square feet occupy Site A. According to the EIR, many of the buildings on the site are vacant; others are occupied by various uses, including civic and non-profit, manufacturing, film/events, business-related storage, and marine.

Cartwright Substation is a 115/12.47-kilovolt (kV) substation at the southeastern corner of the site that provides local electric distribution to Alameda Point and portions of the surrounding areas to the east. This substation would remain in service throughout the redevelopment of Alameda Point, including Site A.

As described in the Master Infrastructure Plan (MIP), the elevation of Alameda Point ranges from 1 foot to 8 feet, with areas immediately along the Seaplane Lagoon and extending along Ferry Point that are in the 100-year tide zone, and therefore vulnerable to flooding. Areas generally between West Trident Avenue and West Atlantic Avenue are also in the 100-year tide, and are therefore also vulnerable.

As described in the EIR, Site A is a former Navy site and includes contaminants that were remediated or are in the process of being remediated. Site A is designated as a National Priorities List site. It contains, or contained, contaminated soils and groundwater associated with past industrial, manufacturing, and military activities and uses, including one landfill, an airfield, and an oil refinery. In addition, as described in the EIR, the site is underlain by a layer of sediment (referred to as the Marsh Crust) that was deposited from the late 1800s to the 1920s, and was contaminated with semi-volatile organic compounds. The City's Marsh Crust Ordinance applies to excavation on Site A.

4.4 Project Characteristics

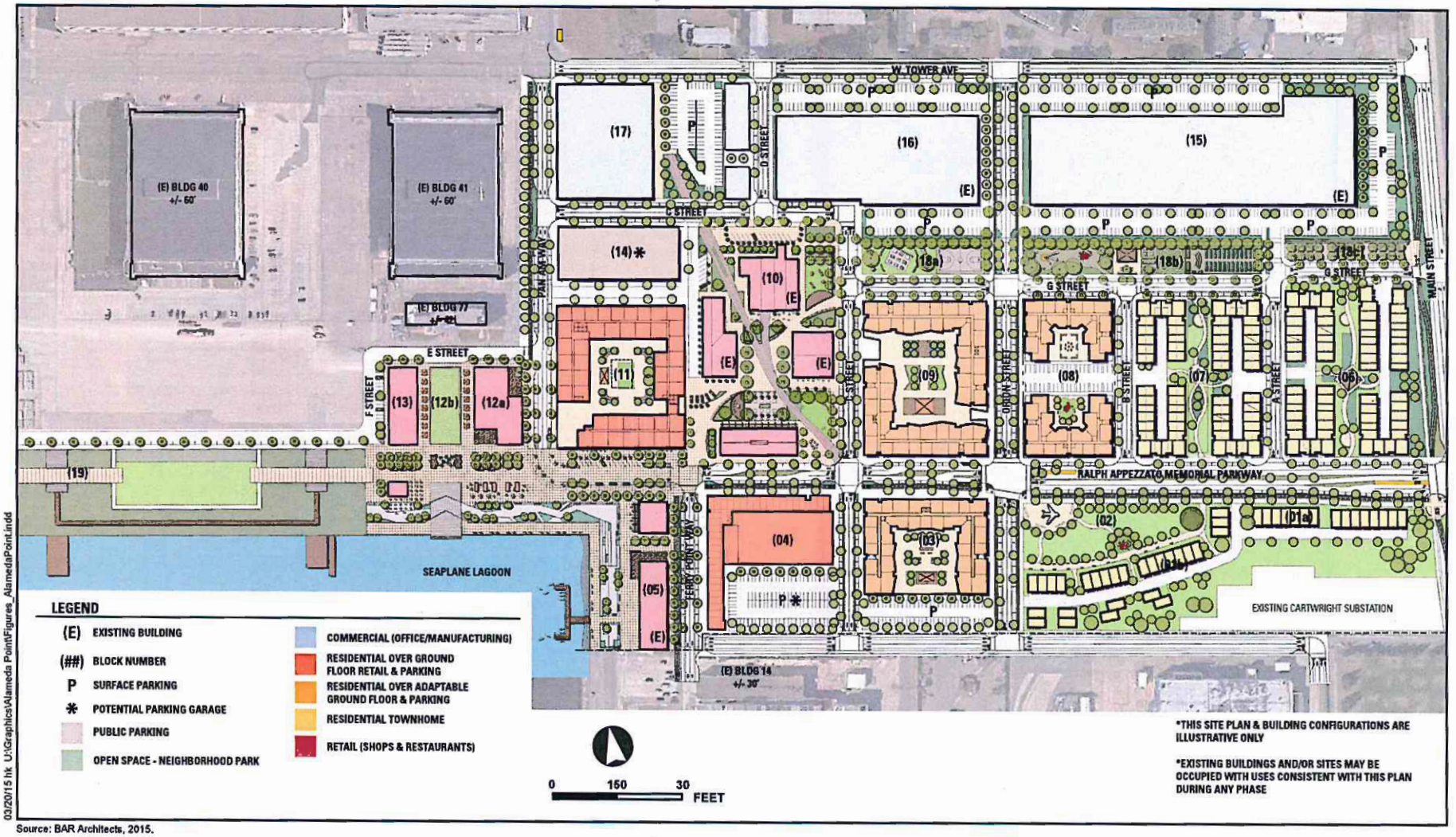
Consistent with the Town Center Plan and Chapter 3, Project Description, of the APP EIR, Site A is proposed for a mixed-use, transit-oriented, residential/commercial development, and would serve as the retail core of Alameda Point. As shown on Figure 2, at full buildout, the proposed project would include approximately 800 residential units, approximately 200,000 square feet of new retail, and up to 400,000 square feet of existing buildings to be repurposed for retail/commercial uses. As shown in Table 1, the proposed project would be developed over three phases, with the first phase consisting of approximately 669 residential units, approximately 96,000 square feet of retail uses, and approximately 4.97 acres of open space, including a waterfront park along Seaplane Lagoon.

As stated above, the proposed project would include up to 800 residential units and up to 600,000 square feet of retail, commercial, and hotel uses, which would be 625 fewer housing units and 4.9 million fewer square feet of commercial and workplace uses than analyzed in the APP EIR. Table 2 compares the estimated number of housing units and square feet of commercial uses, resident population, and jobs identified in the APP EIR to the proposed Site A development.

The proposed Site A development would result in a household population of approximately 1,816 persons, which would be approximately 56 percent of the residents estimated in the APP EIR.[5] In addition, the proposed project would result approximately 971 jobs, which would be approximately 11 percent of the jobs anticipated in the APP EIR.[6]

[5] The APP EIR anticipated 1,425 residential units with a mix of household types, resulting in approximately 3,240 residents, based on an estimated 2.27 persons per household. Using this ratio, the proposed project would result in approximately 1,816 persons.

[6] The APP EIR anticipated a total of 5.5 million square feet of commercial and workplace facilities, resulting in approximately 8,900 jobs, based on an estimated 618 square feet of commercial square footage per job. Using this ratio, the proposed project would result in approximately 971 jobs.



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Source: BAR Architects, 2015.

ILLUSTRATIVE SITE PLAN – ALL PHASES

Site A of the Alameda Point Project
Alameda, California

FIGURE 2

Table 2
Comparison of Population and Jobs for Alameda Point and Site A Project

Project	Housing Units	Resident Population	Commercial/Workplace Facilities (square feet)	Total Employment (Jobs)
APP EIR	1,425	3,240	5.5 million	8,900
Site A Project	800	1,816	0.6 million	971
Difference	625	1,424	4.9 million	7,929

This section describes the elements of the proposed project as follows: (1) proposed new buildings and repurposing of existing buildings for residential, retail, and commercial uses; (2) proposed parks and open spaces; and (3) proposed infrastructure improvements, including streetscape and circulation, and utilities.

As specified in the Disposition and Development Agreement that would be approved for the proposed project, the project sponsor would—in addition to constructing the project elements described above—provide financial contributions toward public amenities and benefits on Alameda Point, such as the construction of an initial phase of the sports complex and a new ferry terminal at Seaplane Lagoon, which have been described and analyzed in the EIR.

4.4.1 Existing Buildings to be Repurposed

The proposed project includes the reuse of approximately seven buildings on Site A. These include buildings 67, 98, 113, 117, and 118, as well as portions of 112, as shown in Table 1. Phase 1 would retain and possibly reuse building 162; however, this building would be demolished in a later phase. Currently, these buildings have a variety of uses, including light industrial uses. Buildings 67, 98, 112, and 113 would be converted to retail occupancy in Phase 1. Buildings 117 and 118 would remain in use until Phase 3, when they would be adapted based on market conditions.

4.4.2 New Buildings

Five building types would be constructed under the proposed project, as listed in Table 1 and described below.

- **Townhome.** Residential three-story townhomes would be clustered around auto-courts, with their entries facing either public rights-of-way or pedestrian walkways. Buildings may be up to three stories and 35 feet tall, and include both two- and three-bedroom units. Consistent with the Town Center Plan, certain townhomes would be provided with raised stoops and some would be flush with grade and designed with a ground-floor frontage capable of being adapted for non-residential uses.

- **Podium.** Residential podium buildings would have a ground-level parking garage below the podium level, with residential uses wrapped along the building street frontage. Residential units would be located above the podium level, with multiple unit types, including studios, and one-, two-, and three-bedroom flats. Buildings may be up to five stories and up to 65 feet in height.

- **Mixed Use.** Mixed-use buildings would have a design similar to the podium building type, and would contain a mix of uses at the ground level, such as retail; food and beverage service; parking; residential; and hotel. In this building type, either residential units or hotel rooms would

be constructed above the podium level. Parking would be below the podium level, and visually screened from the street. Buildings may be up to seven stories and 65 feet in height.

- **Commercial.** The commercial building type would have large spaces and volumes, which would be suitable for a variety of commercial and light-industrial uses, and would generally be of wood and/or metal construction. Buildings would be one story, and up to 35 feet in height.

- **Retail.** The retail building type would be primarily one-story structures, characterized by visually transparent façades (such as glass), multiple points of entry along the building, and minimum ceiling heights of 14 feet. Retail uses would vary from general merchandise; food and beverage; entertainment; and service. Streetscapes along the storefronts would be designed with pedestrian amenities.

4.4.3 Parks and Open Spaces

Site A would be developed with three distinct park-themed areas or districts; each district would have a unique character and programming intended to create accessible and walkable community open space, as described below. A portion of the Bay Trail would be constructed along the northeastern edge of the Seaplane Lagoon, along the southern edge of RAMP to Main Street, and along the Site A frontage on Main Street, generally from RAMP north to West Tower Avenue.

In addition to the public open spaces/parks described below, private open space would be developed for the residential uses.

The Waterfront Park District would include an approximately 7.23-acre park along the shoreline of the Seaplane Lagoon. Amenities would be designed for water-oriented activities and views, and would include pedestrian walks, bicycle paths, vista points, seat/rest areas, flexible plaza space for events, and access to the water.

The Urban Park District would include an approximately 3.05-acre adaptive reuse park, with spaces for retail uses such as cafés, markets, and seating; and would provide pedestrian walks, bicycle paths, and flexible open-space zones. The park would be designed to provide information about the former uses of the base, and salvaged post-industrial materials such as train tracks would be integrated into the design.

The Neighborhood Park District would provide an approximately 1.15-acre park along RAMP, the main entry road, which would retain the existing Corsair II aircraft display and existing Cypress tree along the southern edge of RAMP. In addition, an approximately 1.35-acre linear neighborhood park would be constructed along G Street. Amenities would include areas for informal picnicking, seating, bicycle paths, and areas for active uses such as a crossfit station and a tot-lot area.

4.4.4 Infrastructure Improvements

Proposed infrastructure improvements would be consistent with the MIP[9] for the APP. General improvements are described below.

Streetscape, Circulation, and Parking

Site A would be developed with a "complete streets" transportation network that would support a variety of modes of transportation, and would provide pedestrian, bicycle, and transit facilities. New roadways would be constructed, and existing roadways would be re-aligned, resulting in a grid street network on the

[9] Carlson, Barbee, Gibson, Inc., 2014. Master Infrastructure Plan, Alameda Point, Alameda, California. March 31.

site. West Atlantic Avenue would be realigned and renamed as an extension of RAMP from east of Main Street. RAMP would serve as a gateway to Site A. The project frontage along Main Street would be landscaped, and the portion of the Bay Trail along Main Street from RAMP to West Tower Avenue would be constructed. Intersection improvements would be made at RAMP and Main Street to improve signalization, and vehicular, pedestrian, and bicycle circulation.

The street system would include regional arterials, such as Main Street and RAMP; collector streets, such as Pan Am Way; and a network of local streets with connecting alleys. Sidewalks would be constructed along streets, with widths varying between 6 and 15 feet, based on street right-of-way sections. In addition, bicycle facilities—including separated bicycle paths, shared pedestrian and bicycle paths, and bicycle lanes with painted buffer strips—would be constructed throughout the site. A dedicated bus rapid transit lane would be constructed along a portion of the RAMP extension.

Utilities and Site Improvements

The MIP describes the planned backbone infrastructure, anticipated to consist primarily of new infrastructure installed to support the uses in Site A. The backbone infrastructure is the major framework of streets and utilities, generally based on the existing street grid within Site A.

The MIP outlines potential corrective geotechnical and flood protection improvement measures. In addition, the proposed utility systems described in the MIP include stormwater, wastewater, potable water, recycled water, electrical, natural gas, and telecommunication systems. Each of these systems is anticipated to connect to existing public facilities at the perimeter of Site A. The proposed electrical system would connect to the existing Cartwright Substation, which is in Site A near the intersection of West Atlantic Avenue (future RAMP) and Main Street.

Flood Protection, Sea-Level Rise Strategy, Soil Improvements, and Site Grading. Consistent with the EIR and MIP evaluated therein, the proposed project would construct flooding and sea-level rise protection. Perimeter flood protection measures would be constructed for integration with the sea-level rise adaptive management strategy for Alameda Point. Along the eastern perimeter of the Seaplane Lagoon, shoreline flood protection improvements would be installed to a minimum elevation of 7.6 feet (City Datum) along Site A, based on the MIP design criteria 100-year tide, plus 24-inch sea-level rise, plus 1-foot wind/wave run-up, plus 1-foot freeboard. Geotechnical corrective measures to address liquefaction potential and stabilize the building sites may include soil improvement techniques such as soil-cement mixed columns, drilled displacement columns, stiffened foundations, and/or piles. In addition, the site would be graded to achieve the minimum required elevations per the MIP. Portions of the site would be raised up to 3 feet above the existing ground level, requiring approximately 360,000 cubic yards of on-site grading (cut to fill), and approximately 100,000 cubic yards of soil to be imported to the site.

Stormwater. A new stormwater collection system would be constructed, consisting of pipelines, manholes, inlets, pump stations, multi-purpose basins, and outfalls. The new stormwater system would be designed to convey the 25-year design storm with 6 inches of minimum freeboard. Additionally, the system would accommodate the 100-year storm, with a maximum ponding in the streets of up to the top of curb at low points in the street profiles. A new stormwater outfall would replace an existing outfall toward the northeastern edge of the Seaplane Lagoon. This new outfall would convey stormwater runoff from Site A into the Bay, and would include tide valves to prevent tidal influences in the system. Due to high groundwater table, and the limited potential for collecting and reusing stormwater, the proposed project would implement low-impact development principles for the management and treatment of stormwater runoff. Although much of the system would be gravity-based, pumping may be necessary to convey treated flows to bioretention areas.

Potable Water Improvements. The existing water system would be replaced with a new potable water distribution system in phases consistent with the development build-out. The proposed distribution pipelines would connect to the existing East Bay Municipal Utility District (EBMUD) water facilities in Main Street. The proposed distribution system would range in size from 8 inches to potentially 16 inches in diameter. The proposed water distribution facilities would be installed in the backbone streets, providing potable and fire water to the proposed project.

Wastewater. The proposed project would replace the existing wastewater system with a new wastewater collection system that would be owned and operated by the City of Alameda. The proposed collection system would include gravity pipelines ranging in size from 8 inches to 24 inches in diameter, and lift/ pump station(s) and force main pipelines. The proposed wastewater collection facilities would be installed in the backbone streets in Site A. The proposed system would connect to EBMUD's existing Pump Station R at the Main Gate. Pump Station R conveys wastewater flows to the EBMUD treatment plant in Oakland.

Recycled Water. A network of recycled water pipelines is anticipated to be constructed in the proposed rights-of-way of major backbone streets, and would range in size from 6 to 12 inches to serve the open space and public landscaping. The recycled water facilities would be designed and constructed in accordance with EBMUD's regulations, standards, and specifications, should provisions for a permanent source be available.

Electricity. The existing overhead transmission lines in Site A would be replaced with a new underground electric distribution system from the Cartwright Substation, in phases consistent with the development build-out. The proposed electric distribution system would consist of new underground conduits, vaults, boxes, and pads that can accommodate 15-kV–rated cables, transformers, switches, and other utility distribution equipment, including its supervisory control and data acquisition communication monitoring and controls. The electrical conduits and cables would be placed in a joint utility trench along the backbone streets. This trench would also accommodate the natural gas, telephone, cable television, possible ancillary fiber optic cable systems, and streetlight facilities.

Natural Gas. A new natural-gas-distribution system would be installed throughout Site A, replacing the existing natural gas system in phases consistent with the development build-out. This system would connect to the existing 8-inch main near the intersection of West Atlantic Avenue and Main Street. The proposed gas facilities would be constructed in the backbone streets in a phased implementation.

New Telecommunications Systems. New telecommunications systems, including telephone and cable television, would be installed. Additional empty conduits would be installed to accommodate the implementation of fiber optics by other service providers. These systems would connect to the existing systems east of Site A, near Main Street. The proposed telecommunication facilities would be constructed in the backbone streets.

4.5 Phasing and Construction

Site A would be constructed in three phases, with demolition and grading preceding each phase, and utility and street infrastructure constructed prior to completion of vertical construction for each phase. Approximately 279,429 square feet of existing buildings would be demolished. Temporary improvements would be installed as needed to connect to adjacent facilities and roadways to provide access and utilities until future development occurs.

The proposed project infrastructure improvements would be phased to accommodate the scheduled build-out of the residential, retail, commercial, parks, and open space planned for each phase of development. All below-grade utility and street surface improvements that are necessary to comply with the local, state,

and federal requirements and applicable law would be completed to deliver a fully functional phase. The phasing of the infrastructure improvements may vary depending on final build-out mix and need. All local in-tract streets (streets within the parcels) necessary to provide access and utility connections would be constructed in the appropriate phase. Each phase would also require interim transitions from the permanent improvements to the existing utilities and roadway sections.

Phase 1

Phase 1 would generally involve the construction of buildings, parks, streets, and utilities between Main Street on the east and Pan Am Way on the west, and between G Street/C Street on the north and RAMP on the south. In addition, existing buildings outside of Phase 1—such as Building 113, Building 117, Building 118, and Building 162—may be occupied with uses consistent with the Town Center Plan during any phase.

Installation of underground utilities and surface street improvements would occur first at the intersection of Main Street and RAMP, and then extend toward the western connection at Pan Am Way. Phase 1 street improvements would include construction of RAMP, A, B, C, and G streets, as well as Orion Street between RAMP and G Street, and Pan AM Way in front of Parcel 11. Main Street frontage improvements described above would be constructed during Phase 1.

Phase 1 would also include improvements to the waterfront park and shore edge along the Seaplane Lagoon, from the northeastern corner to approximately 500 lineal feet to the west. The approximately 3.05-acre urban park and the approximately 1.35-acre linear neighborhood park along G Street would be constructed during this phase.

Phase 2

Phase 2 would involve the construction of buildings, parks, streets, and utilities south of RAMP, between Main Street on the east and the Seaplane Lagoon on the west, as well as between Pan Am Way and F Street. Installation of underground utilities and street surface improvements would include Orion and C streets and Ferry Point Way from RAMP to the southern edge of Site A; E Street from Pan Am Way to the west; and F Street.

Phase 2 would also include construction of the waterfront park along Seaplane Lagoon, from RAMP to the south of Site A, covering approximately 275 lineal feet; as well as construction of the approximately 0.54-acre park on Parcel 12. In addition, the approximately 1.15-acre neighborhood park space along RAMP would be constructed during this phase.

Phase 3

Phase 3 would involve the construction of buildings, parks, streets, and utilities generally north of G and C streets, and generally from Main Street to Pan Am Way. Phase 3 would also include the extension of Orion Street and Pan Am Way improvements north to West Tower Avenue, and construction of D and C streets. The final Seaplane Lagoon park improvements would be installed along the western edge of Site A on Parcel 19.

4.6 Project Approvals

4.6.1 City of Alameda

- Disposition and Development Agreement specifying the price and terms of payment for project site and development obligations.

- Development Agreement vesting the rights to develop the project site, as set forth under the terms of that agreement.
- Development Plan including a detailed site plan, with backbone and in-tract street alignments and sections, building footprints and massing, landscape concepts, and a phasing plan, pursuant to Section 30-4.13 (j) of the Alameda Municipal Code.
- Tentative and Final Maps, Design Review, and Conditional Use Permits or variances, if determined necessary, for each phase of development.
- Density bonus waiver for construction of multi-family housing, and Affordable Housing Unit Plan.
- Site Management Plan providing guidelines for development activities to be conducted in a manner to protect the health and safety of workers, residents, visitors, and the environment.
- Infrastructure Improvement Plans for the improvement of the on-site and adjacent off-site streets, open space, wastewater, stormwater, potable water, recycled water, power, natural gas, and communications facilities for each phase of development.
- Excavation permit per City of Alameda Marsh Crust Ordinance.
- A design-level geotechnical analysis to confirm that the necessary corrective measures would be prepared as part of the design process of proposed improvements.
- Transportation Demand Management Plan Compliance Strategy.
- Demolition, grading, and building permits.
- The City of Alameda Public Works Department and Alameda Municipal Power would be responsible for reviewing and approving each of their respective components of the proposed infrastructure improvements with each development.
- All proposed improvements and structures would be compliant with the avoidance and minimization measures outlined in the Biological Opinion issued by the U.S. Fish and Wildlife Service; the Declaration of Restrictions recorded on the Alameda Point property; and a Memorandum of Agreement with the Veterans' Administration for lighting mitigation measures related to protecting the least tern colony in the Veterans' Administration property. The City of Alameda would review all proposed improvements to ensure compliance.

4.6.2 Other Agencies

- Regional Water Quality Board – Section 401 water quality certification required for activities in wetlands or below the ordinarily high water line, such as for the construction of the stormwater outfall.
- U.S. Army Corps of Engineers – Improvements in the waters of the United States require a Section 404 permit, such as for construction of the stormwater outfalls or any shoreline flood protection measures below the ordinary high water line.
- Bay Conservation and Development Commission – Permit for improvements or proposed structures in the Bay or within 100 feet of the Bay shoreline.

- Bay Area Quality Management District – Permit for asbestos abatement activities.
- EBMUD – Review and approval of proposed water, wastewater, and recycled water infrastructure improvements.
- Pacific Gas and Electric Company – Review and approval of proposed electrical and natural gas infrastructure improvements.

5.0 EVALUATION OF ENVIRONMENTAL EFFECTS

This Checklist compares the potential environmental impacts that may result from implementation of the proposed project to the effects previously identified for the APP's Development Program (including Site A), to determine whether the proposed project's environmental impacts were adequately addressed in the APP EIR per CEQA Guidelines Sections 15162 and 15183, as described under Section 2.0, above.

The checkboxes in the Checklist indicate whether the proposed project would result in environmental impacts, as described below:

- **Equal or Less Severity of Impact than Previously Identified in APP EIR** – The severity of the specific impact of the proposed project would be the same as or less than the severity of the specific impact described in the APP EIR.

- **Substantial Increase in Severity of Previously Identified Significant Impact in APP EIR** – The proposed project's specific impact would be substantially greater than the specific impact described in the APP EIR.

- **New Significant Impact** – The proposed project would result in a new significant impact that was not previously identified in the APP EIR.

Where the severity of the impacts of the proposed project would be the same as or less than the severity of the impacts described in the APP EIR, the checkbox for Equal or Less Severity of Impact Previously Identified in APP EIR is checked. Where the checkbox for Substantial Increase in Severity of Previously Identified Significant Impact in APP EIR or New Significant Impact is checked, there are significant impacts that are:

- Peculiar to project or project site (CEQA Guidelines Section 15183[b][3]);

- Not analyzed as significant impacts in the previous EIR, including off-site and cumulative impacts (CEQA Guidelines Section 15183[b][2]);

- Due to substantial changes in the project (CEQA Guidelines Section 15162[a][1]);

- Due to substantial changes in circumstances under which the project will be undertaken (CEQA Guidelines Section 15162[a][2]); or

- Due to substantial new information not known at the time the EIR was certified (CEQA Guidelines Sections 15162[a][3] and 15183[b][4]).

As described under Section 3.2, above, the APP EIR analyzed the following environmental resource topics, which are present in the Checklist below in the order that they are presented in the EIR, as follows: land use consistency and compatibility; population and housing; transportation and circulation; cultural and paleontological resources; biological resources; air quality and greenhouse gases; noise; geology, soils, and seismicity; hydrology and water quality; hazards and hazardous materials; aesthetics; public services and recreation; and utilities and service systems. The first section under each resource topic in the Checklist provides a summary of the potential environmental impacts that may result from the APP, as evaluated in the APP EIR. The second section describes the proposed project and its consistency with the EIR, identifies applicable mitigation measures, and discusses the adequacy of the EIR analysis. For the purposes of this Checklist, it is assumed that the proposed project will be required to comply with all applicable mitigation measures identified in the APP EIR and adopted and incorporated into the APP, as described in the Checklist.

This Checklist hereby incorporates by reference the APP EIR discussion and analysis of all potential environmental impact topics; only those environmental topics that could have a potential project-specific environmental impact are included. The EIR significance criteria have been consolidated and abbreviated in this Checklist for administrative purposes; a complete list of the significance criteria can be found in the APP EIR.

1. **Land Use Consistency and Compatibility** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Physically divide an established community;	☒	☐	☐
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the General Plan, specific plans, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; or	☒	☐	☐
c. Conflict with any applicable habitat conservation plan or natural community conservation plan.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP would have less-than-significant project-level and cumulative land use impacts caused by the physical division of an established community; conflicts with applicable land use plans, policies, or regulations of an agency with jurisdiction over the project (including, but not limited to, the General Plan and zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; or conflicts with applicable Habitat Conservation Plans or Natural Community Conservation Plans. Therefore, no mitigation measures related to potential land use impacts were required.

The Town Center Plan created seven sub-districts, each of which are subject to form-based development standards, such as permitted building types and heights, and orientation and use regulations for the property, including permitted and conditional permitted uses.

Development of Site A

Land uses designated for the Town Center and Waterfront Sub-district include waterfront restaurants, retail, hotels, entertainment, other visitor-serving uses, and multi-family housing. As described in the APP EIR, new building types include commercial block, workplace commercial, adaptive reuse, parking structures, and attached residential building types (such as work-live, stacked flats, multiplex, and row houses). The proposed project would serve as the retail core of Alameda Point, and at full buildout, would include up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, which would occupy new buildings and repurposed existing buildings. In addition, approximately 13.35 acres of open space and parks would be developed as part of the proposed project. New and replacement utilities and infrastructure and new streets and streetscape improvements would be constructed on the project site. The project would improve connections interior to Site A, and between

the site and surrounding areas, by constructing additional streets and pathways, and multi-modal amenities such as bikeways and pedestrian improvements.

The project would be constructed over three phases. Existing buildings outside of Phase 1, such as Building 113, Building 117, Building 118, and Building 162, may be occupied with uses consistent with the Town Center Plan during any phase. Development of Site A would conform to the requirements of the General Plan Amendment, the Zoning Ordinance Amendment, and the land use and development guidelines included in the Town Center Plan, which were analyzed in the APP EIR.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of the less-than-significant land use consistency and compatibility impacts identified in the APP EIR, nor would it result in new significant land use consistency and compatibility impacts that were not identified in the APP EIR.

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2. Population and Housing Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure);	☒	☐	☐
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere; or	☒	☐	☐
c. Displace substantial numbers of existing people, necessitating the construction of replacement housing elsewhere.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP would have less-than-significant project-level and cumulative population and housing impacts related to direct or indirect inducement of substantial population or housing growth; displacement of substantial population or housing; and additional population, housing, or employment growth, or displacement of existing residents or housing units, on a regional level. Therefore, no mitigation measures related to potential land use impacts were required.

Housing and development as analyzed in the EIR would include approximately 1,425 residential units, of which 1,157 would be new units and 268 are existing single-family and multi-family housing units, resulting in approximately 3,240 persons. The EIR also analyzed approximately 5.5 million square feet of employment-generating uses in existing and newly constructed buildings, which would generate jobs for approximately 8,900 employees. Most of these jobs would be filled by people already living in the area, or by the new residents of the new housing units; these jobs would not induce an unanticipated influx of new labor into the region.

Development of Site A

The development of Site A would include approximately 800 residential units, and 600,000 square feet of commercial/retail/hotel uses, which is less than the total 1,425 residential units and approximately 5.5 million square feet of commercial facilities studied in the APP EIR. Additionally, as shown in Table 2, the population growth associated with development of Site A would be approximately 1,816 persons (56 percent of total) and an estimated 971 jobs (11 percent of total), less than the approximately 3,240 residents and 8,900 jobs analyzed in the APP EIR. Therefore, the amount of growth proposed for Site A was anticipated in the Town Center Plan, and is well within the growth evaluated in the EIR. In addition, there is no housing currently in Site A; therefore, the project would not result in the displacement of housing. Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of the less-than-significant population and housing impacts identified in the APP EIR, nor would it result in new significant population and housing impacts that were not identified in the APP EIR.

3. **Transportation and Circulation** Would the project result in:[1]	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation, including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit;	☒	☐	☐
b. Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the congestion management agency for designated roads or highways;	☒	☐	☐
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks;	☒	☐	☐
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment);	☒	☐	☐

3. **Transportation and Circulation** Would the project result in:[1]	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
e. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities; or	☒	☐	☐
f. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.	☒	☐	☐

[1] The APP EIR also included an analysis of potential transportation and circulation impacts based on criteria recommended by the City of Alameda Transportation Commission, the City of Oakland CEQA thresholds (for intersections in Oakland), Caltrans (for freeway segments and ramps), and the Alameda County Transportation Commission (for Congestion Management Program roadway segments). Although these specific criteria are not listed here, the discussion below reflects the results of this analysis. Please refer to the APP EIR for these specific criteria.

Findings of the APP EIR

The APP EIR also determined that the APP could result in significant project-level and cumulative transportation and circulation impacts at local study locations in the cities of Alameda and Oakland. During construction, the APP EIR determined that development facilitated by the APP would generate temporary increases in traffic volumes on area roadways, resulting in a significant impact. Implementation of **Mitigation Measure 4.C-1** (Construction Management Plan) would reduce this impact to a less-than-significant level. The APP, at full buildout, would generate approximately 33,429 daily vehicle trips, about 2,928 weekday morning (a.m.) peak-hour trips, and 3,294 weekday evening (p.m.) peak-hour trips. Even with the implementation of **Mitigation Measures 4.C-2a** through **4.C-2o** (TDM Program, Monitoring, and measures to implement physical improvements), and **Mitigation Measures 4.C-5a** through **4.C-5ziv** (TDM Program, Monitoring, Fund Fair Share Contribution to Transportation Improvements, and measures to implement physical improvements),[8] the EIR determined that the redevelopment and reuse of NAS Alameda would result in significant and unavoidable project-level and cumulative impacts at local study locations due to an increase in traffic. In addition, project-level and cumulative transportation-related increases in peak-hour traffic volumes could potentially result in additional collisions involving pedestrians at the Oakland Chinatown intersections closest to the portals of the Webster and Posey tubes. This impact would be significant and unavoidable, even with implementation of **Mitigation Measure 4.C-9** (Chinatown Pedestrians).

The APP EIR determined that the APP would have negligible changes in density (vehicles per lane) and a minimal change in level of service on the freeway mainline or freeway ramps under project and/or cumulative conditions. The APP could result in an increase in traffic congestion on local streets that could affect emergency response times, but—in accordance with the existing City requirements, standards, and regulations—all development projects and transportation improvements would be reviewed by local emergency services providers (including the police and fire departments) for consistency with their standards and provision of adequate emergency access. Overall, the APP EIR

[8] See APP EIR for a complete list of these measures.

determined that impacts to freeway facilities and emergency vehicle access would be less than significant, and no mitigation would be required.

Development of Site A

Site A would be developed with a "complete streets" transportation network that would support a variety of modes of transportation, and would provide pedestrian, bicycle, and transit facilities, consistent with the MIP. New roadways would be constructed, and existing roadways would be re-aligned, resulting in a grid street network on the site, as described under Project Description, above. The street system would include regional arterials, such as Main Street and RAMP; collector streets, such as Pan Am Way; and a network of local streets with connecting alleys. Sidewalks would be constructed along streets, with widths varying between 6 and 15 feet, based on street right-of-way sections. A dedicated bus rapid transit lane would be constructed along portions of the RAMP extension.

The development of Site A would include approximately 800 residential units, and 600,000 square feet of commercial/retail/hotel uses, which is less than the total 1,425 residential units and approximately 5.5 million square feet of commercial facilities studied in the APP EIR. Additionally, as shown in Table 2, the population growth associated with development of Site A would be approximately 1,816 persons (56 percent of total) and an estimated 971 jobs (11 percent of total), less than the approximately 3,240 residents and 8,900 jobs analyzed in the APP EIR. Therefore, the amount of growth proposed for Site A was anticipated in the Town Center Plan, and is well within the growth evaluated in the EIR. Additionally, the proposed land uses and densities would be consistent with the project evaluated in the APP EIR.

Because the proposed project contributes only a portion of the residents (56 percent of total) and jobs (11 percent of total) analyzed in the APP EIR, the proposed project would not generate more weekday peak hour vehicle trips than studied in the APP EIR, and would not result in a substantial increase in the severity of the significant impacts previously identified in the APP EIR; therefore, project-generated trips were adequately covered in the previous analysis. Because the proposed project contributes to future traffic levels along affected roadways, the project sponsor would be required to adhere to specific mitigation measures from the APP EIR Mitigation and Monitoring Report Program, which are noted in Attachment A. Implementation of specific mitigation measures (and other requirements to minimize transportation impacts) would be coordinated between the project sponsor and the City of Alameda, as appropriate. Such measures shall include funding a fair share to the total costs of identifiable transportation improvements, and the implementation of a Transportation Demand Management (TDM) program pursuant to APP EIR findings and relevant project approvals. Additionally, the TDM Plan was approved by the City Council on May 20, 2014.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant transportation and circulation impacts identified in the APP EIR, nor would it result in new significant transportation and circulation impacts that were not identified in the APP EIR.

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4. **Cultural and Paleontological Resources** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Cause a substantial adverse change in the significance of a historical resource, as defined in Section 15064.5;	☒	☐	☐
b. Cause a substantial adverse change in the significance of a unique archaeological resource, pursuant to Section 15064.5;	☒	☐	☐
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or	☒	☐	☐
d. Disturb any human remains, including those interred outside of formal cemeteries.	☒	☐	☐

Findings of the APP EIR

Alameda Point contains the NAS Alameda Historic District, which covers approximately 406.5 acres. The NAS Alameda Historic District contains 100 contributors, including 99 contributing buildings and structures, and contributing historic cultural landscape features. Portions of the NAS Alameda Historic District overlap with the Town Center and Waterfront Sub-district. The EIR determined that the APP could result in significant impacts to the NAS Alameda Historic District, and identified **Mitigation Measure 4.D-1a** (Historic Preservation Ordinance), **Mitigation Measure 4.D-1b** (Guidelines), **Mitigation Measure 4.D-1c** (Removal Mitigation Plans), and **Mitigation Measure 4.D-5** (Implement Mitigation Measure 4.D-1), all of which would reduce significant impacts; however, even with the implementation of these mitigation measures, impacts could remain significant and unavoidable.

No archaeological resources have been recorded on Alameda Point, and the area has a low potential to contain buried prehistoric or historic-era sites. In addition, there are no known fossil sites in the project area, and the underlying geologic units have a low potential to yield significant paleontological resources. There is no indication that the area has been used for burial purposes in the recent or distant past, and it is unlikely that human remains would be encountered in the project area. The EIR determined that impacts resulting from inadvertent discovery of archaeological resources, paleontological resources, or human remains would be less than significant with implementation of **Mitigation Measure 4.D-2** (Archaeological Resources), **Mitigation Measure 4.D-3** (Paleontological Resources), **Mitigation Measure 4.D-4** (Human Remains), **Mitigation Measures 4.D-5** (Implement Mitigation Measure 4.D-1), and **Mitigation Measure 4.D-6** (Implement Mitigation Measures 4.D-2, 4.D-3, and 4.D-4).

Development of Site A

The APP EIR included an analysis of the potential effects to historic resources resulting from the development of new buildings in close proximity to the NAS Alameda Historic District or within the District, including the development of Site A. The portion of Site A that is west of Ferry Point Way is in the NAS Alameda Historic District. Within the Historic District, the proposed project would construct open-space improvements along the Seaplane Lagoon, as well as retail buildings with heights of up to 35 feet. These buildings would be consistent with the height limits designated in the NAS Alameda Historic District Hanger sub-area and the Historic District Infill Guidelines described in the Town Center

Plan. The project would maintain the character-defining views and street alignment through the project area, further described in Aesthetics, below.

Outside of the NAS Alameda Historic District, the proposed project would reuse approximately seven buildings on Site A, as described under Section 4.1, and shown in Table 1, above; and would demolish several other buildings. As described in the APP EIR, none of these buildings are considered a historic resource for the purposes of CEQA. Development in the Historic District, including modification of existing historic resources or the construction of new buildings, will require compliance with **Mitigation Measures 4.D-1a** and **4.D-1b**, as applicable.

Based on the records search performed as part of the APP EIR cultural resources analysis (which included a 0.5-mile radius around the project area), there are no known archaeological or paleontological resources in the project area (including Site A), and no indication that the project area has been used for burial purposes. However, the development of Site A would be required to implement **Mitigation Measures 4.D-2, 4.D-3, 4.D-4, 4.D-5,** and **4.D-6** to mitigate potential effects related to inadvertent discovery of cultural resources.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of the significant cultural and paleontological resources impacts identified in the APP EIR, nor would it result in new significant cultural and paleontological resources impacts that were not identified in the APP EIR.

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5. Biological Resources Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;	☒	☐	☐
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;	☒	☐	☐
c. Have a substantial adverse effect on federally protected wetlands (as defined by Section 404 of the Clean Water Act) or on Waters of the State protected wetlands, through direct removal, filling, hydrological interruption, or other means;	☒	☐	☐

5. **Biological Resources** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
d. Interfere with the movement of any 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;	☒	☐	☐
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or	☒	☐	☐
f. Conflict with any adopted local, regional, or State Habitat Conservation Plan.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP could result in significant project-level and cumulative biological resource impacts on special-status wildlife, sensitive natural communities, riparian habitat, jurisdictional waters, and migratory and breeding wildlife; and conflict with policies and ordinances protecting biological resources. The EIR included mitigation measures that would reduce these impacts to a less-than-significant level.

The EIR identified numerous impacts to special-status fish and marine mammals from construction of the proposed marina and ferry terminal, as well as other in-water construction, and identified **Mitigation Measure 4.E-1a** (Sound Attenuation Monitoring Plan), **Mitigation Measure 4.E-1b** (NMFS and CDFW Consultation), **Mitigation Measure 4.E-1c** (Additional Noise Attenuation Measures), and **Mitigation Measure 4.E-1d** (Dock Lighting) to reduce these impacts to less-than-significant levels. **Mitigation Measure 4.E-1e** (Northwest Territories Sensitive Resources Measures) applies to the development of the Bay Trail and a proposed regional park. Development of the APP, including Site A, could impact potential bat roosting sites in vacant or underused buildings, other manmade structures, and trees in or near the project site. Compliance with **Mitigation Measure 4.E-1f** (Bat Pre-Construction Survey) and **Mitigation Measure 4.E-1g** (Bat Maternity Colony Measures) would ensure that the proposed project has a less-than-significant impact on special-status wildlife. **Mitigation Measure 4.E-1h** (Monarch Butterflies) provides for monarch butterfly roost protection, typically groves of mature conifer and eucalyptus trees.

The EIR identified potential impacts to sensitive natural communities and jurisdictional waters—including federally protected wetlands, "other waters," and navigable waters—due to marina and ferry terminal and other in-water construction. **Mitigation Measure 4.E-2a** (Native Oysters and Eelgrass), **Mitigation Measure 4.E-2b** (Boater Education), and **Mitigation Measure 4.E-2c** (Invasive Species Control Plan) apply to the marina and ferry terminal construction; **Mitigation Measure 4.E-3a** (Wetlands), **Mitigation Measure 4.E-3b** (BMPs for Wetlands), and **Mitigation Measure 4.E-3c** (Wetland Mitigation and Monitoring Plan) apply to work in the vicinity of jurisdictional waters.

The APP could 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; **Mitigation Measure 4.E-4a** (Marine Craft Access Corridors) would apply to marine activities. The APP EIR determined that the project has the potential to induce bird collisions with lighted buildings and other

structures, and would be required to implement **Mitigation Measure 4.E-4b** (Bird Strike Mitigation); this measure requires design features that reduce the risk of avian collisions, and also requires the avoidance and minimization of increases in ambient night lighting. In addition, the APP would have to implement **Mitigation Measure 4.E-4c** (Breeding Birds) and **Mitigation Measure 4.E-4d** (Burrowing Owl) to avoid impacts on nesting birds and burrowing owls. General increases in ambient noise levels due to buildout would be less than significant; however, construction activities could generate noise that would substantially exceed ambient levels, and impact nesting birds. Implementation of **Mitigation Measure 4.E-4e** (Noise Mitigation Measures for Breeding Birds) would reduce this impact to a less-than-significant level. Open refuse containers would be prohibited throughout the project area through implementation of **Mitigation Measure 4.E-4f** (Open Refuse Containers); this would minimize the potential for increased predation on migratory and breeding birds. **Mitigation Measures 4.E-5, 4.E-6,** and **4.E-7** require the implementation of the above measures to reduce conflicts with policies and ordinances, and to reduce cumulative impacts.

Development of Site A

Site A is generally developed and landscaped; it is not within the Northwest Territories or on the Federal Property, and is not within close proximity of the California least tern nesting colony. As described in Section 2.2, above, the land uses, building types, heights, and massing for the Site A development would be consistent with the Town Center Plan evaluated in the APP EIR, as well as the open spaces and view corridors. Elements of the proposed project may include in-water construction along the Seaplane Lagoon for the construction of park and levee facilities, which was evaluated in the APP EIR.

Therefore, development of Site A would require the implementation of **Mitigation Measure 4.E-1a,** for activities that involve pile driving in the Seaplane Lagoon; **Mitigation Measures 4.E-1b, 4.E-1c, 4.E-1d,** and **4.E-2c,** for in-water construction activities Seaplane Lagoon or San Francisco Bay; and **Mitigation Measures 4.E-1f** and **4.E-1g,** for demolition of buildings or removal of trees. **Mitigation Measures 4.E-3a, 4.E-3b,** and **4.E-3c** are required for work near jurisdictional waters. In addition, **Mitigation Measures 4.E-4b, 4.E-4c,** and **4.E-4f** related to bird strikes, breeding birds, and refuse containers would apply to the project. **Mitigation Measures 4.E-5, 4.E-6,** and **4.E-7** would also apply to the project.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of the less-than-significant biological resources impacts identified in the APP EIR, nor would it result in new significant biological impacts that were not identified in the APP EIR.

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6. **Air Quality and Greenhouse Gases** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Conflict with or obstruct implementation of the applicable air quality plan;	☒	☐	☐
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation;	☒	☐	☐

6. **Air Quality and Greenhouse Gases** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors);	☒	☐	☐
d. Expose sensitive receptors to substantial pollutant concentrations;	☒	☐	☐
e. Create objectionable odors affecting a substantial number of people;	☒	☐	☐
f. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or	☒	☐	☐
g. Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the redevelopment and reuse of NAS Alameda could result in significant air quality impacts due to construction activities (including demolition, excavation, and other construction activities), and to the generation of fugitive dust, toxic air contaminants (TACs), and air emissions from construction vehicles. Therefore, all construction activities, including the development of Site A, would require implementation of **Mitigation Measure 4.F-1a** (Fugitive Dust), **Mitigation Measure 4.F-1b** (Construction Exhaust), **Mitigation Measure 4.F-1c** (Demolition Controls), **Mitigation Measure 4.F-1d** (Toxic Air Contaminants and $PM_{2.5}$), and **Mitigation Measure 4.F-1e** (Delayed Occupancy). The EIR further determined that although localized emissions of fugitive dust and TACs would be reduced to less-than-significant levels with mitigation, project-level and cumulative construction air quality impacts from regional ozone precursors (reactive organic gas [ROG] and oxides of nitrogen) would remain significant and unavoidable even with the implementation of these measures, due to uncertainty of the scheduling and phasing of development at Alameda Point and the potential for the overlap of project construction activities.

The EIR also determined that the development of NAS Alameda could result in significant operational air quality impacts due to an increase in emissions sources—including on-site area and energy sources (e.g., natural gas combustion for space and water heating, landscape maintenance, and use of consumer products such as hairsprays, deodorants, and cleaning products), and exhaust emissions from on-road vehicle traffic associated with the proposed land uses on the project site. Therefore, all development at Alameda Point will be required to comply with **Mitigation Measure 4.F-2** (Greenhouse Gas Reduction Measures), which includes design requirements (including Green Building Code standards) to minimize the generation of ROG, particulate matter less than or equal to 10 microns in diameter, and particulate

matter less than or equal to 2.5 microns in diameter; and also requires the preparation of a TDM program, and participation by all sponsors of development at Alameda Point. However, to be conservative the APP EIR determined that the potential increase in traffic-generated air emissions would be a significant and unavoidable project-level and cumulative impact.

The EIR identified **Mitigation Measure 4.F-4** (Implement Mitigation Measures 4.F-1a, 4.F-1b, and 4.F-1e), **Mitigation Measure 4.F-7a** (Implement Mitigation Measure 4.F-2), **Mitigation Measure 4.F-7b** (Fuel-Efficient Vehicles), and **Mitigation Measure 4.F-8** (Implement Mitigation Measures 4.F-2 and 4.F-7b) to address other significant air quality impacts. The EIR determined that all remaining air quality impacts (including the exposure of sensitive receptors to carbon monoxide concentrations, the creation of objectionable odors, or the obstruction of the applicable air quality plan) would be less than significant.

Development of Site A

Based on the APP EIR Figure 4.F-1, sensitive receptors are located to the east of Site A/east of Main Street, and north of Site A/north of West Tower Street. There are currently no sensitive receptors in Site A; however, with phased development, sensitive receptors would occupy portions of Site A.

Buildout of the proposed Site A project would result in up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, consisting of 200,000 square feet of new buildings and up to 400,000 square feet of existing buildings to be repurposed. The land uses, densities, and general location of these uses would be consistent with the project evaluated in the APP EIR. In addition, the amount of development proposed for Site A would be less than the total project analyzed in the APP EIR (5.5 million square feet of commercial/retail/industrial uses, and 1,425 residential units). As described in the qualitative air quality and GHG assessment prepared for the proposed project, total buildout of Site A overall, as well as for each of the three proposed phases of development individually, the proposed project would not result in a greater amount of development (in terms of building square footage) or a greater rate of construction when compared to the project analyzed in the APP EIR (see Attachment B). In addition, the proposed project would not locate new sensitive receptors substantially closer to TAC emission sources or odor sources compared to the APP full project buildout scenario analyzed in the APP EIR; and would not result in greater TAC sources and odor sources, or locate these sources closer to existing sensitive receptors when compared to the project evaluated in the APP EIR.

Therefore, the emissions associated with the construction and operation of Site A were adequately described in the APP EIR. Development of Site A would require implementation of **Mitigation Measures 4.F-1a** through **1-e, 4.F-2, 4.F-4, 4.F-7a,** and **4.F-8**. The City of Alameda is responsible for implementing **Mitigation Measure 4.F-7b**.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant air quality or greenhouse gas (GHG) impacts identified in the APP EIR, nor would it result in new significant air quality or GHG impacts that were not identified in the APP EIR.

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7. **Noise** Would the project result in:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan, noise ordinance, or applicable standards of other agencies; • An increase in noise exposure of 4 or more dB if the resulting noise level would exceed that described as normally acceptable for the affected land use, as indicated in Table 8-1 (Table 4.G-3 above). • Any increase of 6 dB or more, due to the potential for adverse community response. • When evaluating noise impacts associated with new residential development, exposure to traffic noise in outdoor yard spaces shall not be considered a significant impact. *(Policy 8.7.h)*;	☒	☐	☐
b. Exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels;	☒	☐	☐
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project;	☒	☐	☐
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project;	☒	☐	☐
e. Exposure of people residing or working in the area around the project site to excessive noise levels (for a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport); or	☒	☐	☐
f. Exposure of people residing or working in the area around the project site to excessive noise levels (for a project within the vicinity of a private airstrip).	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP could result in significant project-level and cumulative noise impacts. Even with implementation of **Mitigation Measure 4.G-1a** (Construction Hours), **Mitigation Measure 4.G-1b** (Construction Noise Measures), **Mitigation Measure 4.G-1c** (Pile-Driving Noise Attenuation Measures), and **Mitigation Measure 4.G-1d** (Complaint Tracking), the EIR

determined that the redevelopment and reuse of NAS Alameda would result in significant and unavoidable project-level impacts due to construction noise.

Impacts related to groundborne construction vibration, groundborne construction noise, non-transportation-related operations, and the placement of noise-sensitive residential uses in noisy environments would be reduced to less-than-significant levels with implementation of **Mitigation Measure 4.G-2** (Implement Mitigation Measures 4.G-1a through 4.G-1d), **Mitigation Measure 4.G-4** (Noise Ordinance), and **Mitigation Measure 4.G-5** (Noise Study and Design Measures).

In addition, project-level and cumulative transportation-related operations noise impacts would be significant and unavoidable, even with implementation of **Mitigation Measure 4.G-3** (Implement Mitigation Measure 4.C-2a) and **Mitigation Measure 4.G-6** (Implement Mitigation Measures 4.G-3 and 4.G-5).

Development of Site A

Existing noise-sensitive uses (such as residences and schools) are present north of Site A, near Pearl Harbor Road and West Essex Drive, as well as east of Main Street outside the APP area. Other existing noise-sensitive uses near Site A include the Alameda Point Multi-Purpose Field and City View Skate Park, both north of Site A. As described in the APP EIR, these noise-sensitive uses could be negatively impacted by construction activities at Site A. Therefore, the construction activities at Site A would be required to implement the above-described construction mitigation measures, including **Mitigation Measures 4.G-1a** through **4.G-1d** and **4.G-2** (if pile driving is required).

The development of Site A would result in an increase in transportation- and non-transportation-generated noise sources over existing conditions. The potential increase in noise associated with an increase in traffic volumes caused by the development of Site A was accounted for in the noise analysis included in the APP EIR. In addition, the analysis for the increase in non-transportation-generated noise included assumptions for the types of development proposed for Site A. Therefore, the development of Site A would be required to implement **Mitigation Measures 4.G-3** and **4.G-6** to reduce transportation-related noise levels, and **Mitigation Measure 4.G-4** to minimize noise from stationary sources.

Existing and proposed noise sources, including loading docks, traffic, and the sports complex were accounted for in the APP EIR and would be as analyzed therein. Long-term noise measurements in the vicinity of the area proposed for development in Site A indicate that the existing ambient noise environment at Site A is greater than 60 A-weighted decibels (dBA), community noise equivalent level. An exterior noise level of 60 dBA or greater would result in potentially incompatible interior noise levels for new sensitive receptors. Therefore, per **Mitigation Measure 4.G-5**, a detailed noise study to determine applicable design measures to achieve acceptable interior noise levels at new residences would be required.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant noise impacts identified in the APP EIR, nor would it result in new significant noise impacts that were not identified in the APP EIR.

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8. **Geology, Soils, and Seismicity** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Expose people or structures to potential substantial adverse effects, including risk of loss, injury or death involving: i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault; ii) Strong seismic ground-shaking; iii) Seismic-related ground failure, including liquefaction; and/or iv) Landslides.	☒	☐	☐
b. Result in substantial soil erosion or the loss of topsoil;	☒	☐	☐
c. 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 collapse;	☒	☐	☐
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code creating substantial risks to life or property; or	☒	☐	☐
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP could have significant project-level and cumulative impacts on geology, soils, and seismicity, due to seismic conditions (including structural damage, seismically induced ground failure, liquefaction, lateral spreading, and earthquake-induced settlement and landslides) and the presence of unstable, compressible, and/or expansive soils. The APP EIR included **Mitigation Measure 4.H-1** (Geotechnical Investigation), **Mitigation Measure 4.H-2** (Geotechnical Mitigation), **Mitigation Measure 4.H-3** (Slope Stability Plan), **Mitigation Measure 4.H-4** (Settlement Mitigation), and **Mitigation Measure 4.H-5** (Expansive Soils Assessment), requiring the completion of a site-specific, design-level geotechnical investigation for all development on the project site. The mitigation measures also described the scope of the geotechnical investigation, and a requirement for the development of appropriate engineering techniques to reduce potentially adverse geologic effects. Implementation of these required mitigation measures would reduce the significant impacts to less-than-significant levels.

Development of Site A

Site A is relatively flat, with very little topographical relief, and is generally not susceptible to landslides. It is not within 50 feet of the northern shoreline, and is not considered to have static slope stability issues. However, Site A is underlain by artificial fill and Bay Mud, which is generally susceptible to subsidence or settlement. Subsidence related to consolidation of Bay Mud beneath fill and foundation settlement, and

directly related to site-specific structural building loads, could affect structures proposed as part of the development of Site A. In addition, the area is in an area of high seismic activity. The proposed project would develop Site A with land uses, building types, building heights, and densities consistent with the project evaluated in the APP EIR. **Mitigation Measures 4.H-1, 4.H-2, 4.H-4,** and **4.H-5** would apply to Site A, and a design-level geotechnical investigation and related mitigations and recommendations would be required.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant geology, soils, or seismicity impacts identified in the APP EIR, nor would it result in new significant geology, soils, or seismicity impacts that were not identified in the APP EIR.

9. **Hydrology and Water Quality** Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade water quality;	☒	☐	☐
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level;	☒	☐	☐
c. Substantially alter the existing drainage pattern of the site or area through the alteration of the course of a stream or river, or by other means, in a manner that would result in substantial erosion or siltation on- or off-site or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off- site;	☒	☐	☐
d. Create or substantially contribute to runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;	☒	☐	☐
e. Place housing or other improvements within a 100-year flood hazard zone as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard map or impede or redirect flood flows;	☒	☐	☐
f. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam; or	☒	☐	☐
g. Expose people or structures to a significant risk of loss, injury or death involving inundation by seiche, tsunami, or mudflow.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP would have less-than-significant project-level and cumulative hydrology and water quality impacts associated with dewatering during construction, fertilizer use on landscaped areas, placing housing and other structures in areas subject to flooding, and flooding as a result of sea-level rise, with incorporation of **Mitigation Measure 4.I-1** (Water Quality Measures), **Mitigation Measure 4.I-2** (Integrated Pest Management), **Mitigation Measure 4.I-6** (Flood Protection Measures), and **Mitigation Measure 4.I-8** (Sea-Level Protection), described below.

Other potential hydrology and water quality impacts would be less than significant, and would not require mitigation. The APP could result in on-land and in-water construction activities that would be subject to San Francisco Bay Regional Water Quality Control Board (RWQCB) requirements; which, as part of the General Construction Permit, would include preparation and execution of a Storm Water Pollution Prevention Plan that would outline construction stormwater quality management practices, likely based on the Alameda County Clean Water Program Stormwater Quality Management Plan. For in-water construction, a project sponsor would be required to obtain permits from the U.S. Army Corps of Engineers, RWQCB, San Francisco Bay Conservation and Development Commission, and the City of Alameda, which would include measures to protect water quality during construction. Development projects would be required to implement stormwater management measures on site, as well as install a new stormwater system throughout the project site to collect and convey stormwater flows through new outfall structures, thereby minimizing the impact related to increased runoff.

Development of Site A

As described in the MIP, the elevation on Alameda Point ranges from 1 foot to 8 feet, with areas immediately along the Seaplane Lagoon and extending along Ferry Point within Site A that are in the 100-year tide zone, and therefore vulnerable to flooding. Areas generally between West Trident Avenue and West Atlantic Avenue are also in the 100-year tide, plus 24-inch sea-rise zone, and are therefore also vulnerable. The Site A project includes flood and sea-level rise protection improvements that are consistent with the requirements established in the MIP, described under Project Description, above, which would provide protection for up to 24 inches of future sea-level rise. This level of protection would exceed the level of protection required per the APP EIR, for 18 inches of future sea-level rise. These improvements, along with other components of the project, such as docks and stormwater outfalls, would involve in-water construction.

The proposed project would also involve construction of new and repurposed buildings, which would provide up to 800 residential units and 600,000 square feet of commercial uses; new and replacement infrastructure, including utilities and streets; and approximately 13.35 acres of open space. These activities, including the in-water construction described above, are within the scope of the project evaluated in the APP EIR.

The new utilities, including storm drains, flood, and sea-level–rise protection, implementation of Low-Impact Development in compliance with Provision C.3 of the NPDES, and the net increase in impervious surfaces, would reduce impacts to water quality. In addition, **Mitigation Measure 4.I-1** and **Mitigation Measure 4.I-2** would apply to the project; the City of Alameda is responsible for implementing **Mitigation Measure 4.I-8**.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant hydrology and

water quality impacts identified in the APP EIR, nor would it result in new significant hydrology and water quality impacts that were not identified in the APP EIR.

10. Hazards and Hazardous Materials Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;	☒	☐	☐
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;	☒	☐	☐
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school;	☒	☐	☐
d. Be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment;	☒	☐	☐
e. Be located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area;	☒	☐	☐
f. Result in a safety hazard for people residing or working in the project site vicinity for a project within the vicinity of a private airstrip;	☒	☐	☐
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; or	☒	☐	☐
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.	☒	☐	☐

Findings of the APP EIR

The Navy has been undertaking "necessary measures to meet the requirements and notifications for hazardous substances, petroleum products, and other regulated materials necessary for an environmentally suitable transfer of the site to the City of Alameda." These measures have included a process to "identify, analyze, and clean up any releases of hazardous materials and wastes associated with past Navy operations." These measures and activities will continue after transfer of the former NAS Alameda to the City of Alameda, until regulatory closure is received.

However, because of the long history of industrial and naval uses of the site, the EIR determined that potentially significant impacts would result from the demolition of existing structures (due to the potential for the structures to contain hazardous building materials) and new construction (due to the disturbance of contaminated soils and groundwater). Therefore, construction activities would require compliance with **Mitigation Measure 4.J-1a** (Hazardous Building Material Assessment), **Mitigation Measure 4.J-1b** (Health and Safety Plan), **Mitigation Measure 4.J-1c** (LBP Removal Plan), **Mitigation Measure 4.J-1d** (Asbestos Abatement Plan), **Mitigation Measure 4.J-1e** (PCB Abatement), **Mitigation Measure 4.J-2** (Site Management Plan), and **Mitigation Measure 4.J-7** (Land-Use Restriction Tracking Program). Included in these measures are requirements for the completion of a hazardous building material assessment, and implementation of recommendations included therein prior to the start of demolition activities; preparation of a Site Management Plan by the City of Alameda for incorporation into construction specifications; and a requirement that the City of Alameda include closed and open Installation Restoration (IR) Comprehensive Environmental Response, Compensation, and Liability Act sites that have land-use controls within its Land-Use Restriction Tracking Program. The EIR determined that implementation of these mitigation measures would reduce all significant hazards and hazardous materials impacts to a less-than-significant level.

Development of Site A

As described in the project description, a Finding of Suitability to Transfer (FOST) for the project site was completed on February 13, 2013; it covers a large portion of Alameda Point, and addresses areas of the former base outside of the FOST area, including some of the parcels in Site A. As designated under the Department of Defense's IR Program (an initiative to identify, investigate, and clean up hazardous waste sites on former military bases), Site A includes all or portions of IR 3 (Abandoned Fuel Storage Area), IR 4 (Building 360 [Aircraft Engine Facility]), IR 11 (Building 14 [Engine Test Cell]), IR 17 (Seaplane Lagoon), IR 21 (Building 162 [Ship Fitting and Engine Repair]), and IR 35 (Areas of Concern in Transfer parcel EDC-5). In addition, a few areas along the Seaplane Lagoon in Site A are suspected to be radiologically contaminated, with open status and unrestricted release status.

Most of Site A is subject to the City of Alameda's Marsh Crust Ordinance (City of Alameda General Ordinance No. 2824), which requires notification and permit requirements for excavations that may encounter a layer of deposits that commonly contain petroleum-related substances. The Marsh Crust Ordinance applies to excavations deeper than 5 feet in some areas of Site A, and deeper than mean high tide in other areas of Site A.

Site disturbance could disturb or release contaminated soil and/or groundwater, exposing construction workers, the public or the environment to hazardous materials. Numerous requirements described in the APP EIR for protecting people and the environment, including a Site Management Plan, that must be approved by the U.S. Environmental Protection Agency, California Department of Toxic Substances Control, and the RWQCB, and included in construction specifications, would address impacts.

As described in the APP EIR, with the continued remediation efforts currently being conducted by the Navy and any that would be assumed by the City as overseen by the California Department of Toxic

Substances Control or the RWQCB—combined with the City's tracking system, continued compliance with deed restrictions, Site Management Plans, mitigation measures, and other permit requirements (including adherence to the Marsh Crust Ordinance)—the potential for residual contamination to significantly impact residents, employees, or the general public would be minimized, and is considered less than significant with mitigation. In addition, the proposed land uses and densities for Site A are consistent with the project evaluated in the APP EIR. **Mitigation Measures 4.J-1a** through **4.J-1e, 4.J-2,** and **4.J-7** would apply to Site A.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant Hazards or Hazardous Materials impacts identified in the APP EIR, nor would it result in new significant Hazards or Hazardous Materials impacts that were not identified in the APP EIR.

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11. Aesthetics Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Have a substantial adverse effect on a scenic vista;	☒	☐	☐
b. Substantially damage scenic resources within a state scenic highway;	☒	☐	☐
c. Substantially degrade the existing visual character or quality of the site and its surroundings; or	☒	☐	☐
d. Create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP would have less-than-significant project-level and cumulative impacts on visual quality related to effects on scenic vistas, scenic resources, or the existing visual character of the project site. In addition, the EIR determined that development of the APP, which could result in potentially significant new sources of light and glare, would be reduced to less-than-significant levels by implementation of **Mitigation Measure 4.K-4** (Lighting Mitigation), requiring that all lighting installations be designed and installed to be fully shielded (full cutoff), and to minimize glare and obtrusive light by limiting outdoor lighting.

Views of the project area are not sensitive, nor are there any officially designated scenic highways in or near the project site. The EIR determined that buildout of Alameda Point would create a generally beneficial aesthetic impact compared to existing conditions, by renovating or removing many vacant deteriorating buildings, eliminating open expanses of pavement, creating a greater continuity of land use, and introducing new public views and park and recreation areas to new residents and employees.

Development of Site A

As described under Section 2.2, above, the proposed project would be consistent with the uses and densities of development envisioned in the Town Center Plan, including the established building height limit of up to 65 feet for the Town Center and Waterfront Sub-district. Furthermore, all development under the proposed project would be subject to Design Review pursuant to the City of Alameda's General Plan polices and Design Review Ordinance, Sections 30-36 and 30-37. According to the APP EIR, implementation of the planning and design controls included in the APP, and as required by Sections 30-36 and 30-37, would provide for the improvement of on-site aesthetics, and would also ensure that the project would not substantially obscure on-site views of the Bay, or alter views of the Historic District from existing scenic corridors. The proposed project would preserve and maintain views, including of Seaplane Lagoon, consistent with the guidelines of the Town Center Plan's Transit Village Center Guidelines, by providing: a public plaza a minimum of 1 acre in size that extends from Pan Am Way to the waterfront, with a minimum width of 150 feet; building setbacks along the Seaplane Lagoon ranging from 32 to 200 feet; a view corridor along the centerline of Building 77 that extends to Seaplane Lagoon and is approximately 120 feet in width, with a minimum uninterrupted width of 40 feet; and a view corridor extending along the RAMP right-of-way ranging from 83 to 105 feet. **Mitigation Measure 4.K-4** would apply to the proposed project.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant aesthetics impacts identified in the APP EIR, nor would it result in new significant aesthetics impacts that were not identified in the APP EIR.

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12. Public Services and Recreation Would the project:	**Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR**	**Substantial Increase in Severity of Previously Identified Significant Impact in EIR**	**New Significant Impact**
a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services: • Fire protection; • Police protection; • Schools; • Parks; and • Other public facilities.	☒	☐	☐

12. Public Services and Recreation Would the project:	Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR	Substantial Increase in Severity of Previously Identified Significant Impact in EIR	New Significant Impact
b. Increase the use of existing neighborhood or regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated;	☒	☐	☐
c. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that the APP would have less-than-significant project-level and cumulative public services and recreation impacts related to physical deterioration of recreation facilities caused or accelerated by their increased use; potential adverse physical effects on the environment from construction or expansion of recreation facilities; and potential substantial adverse physical impacts from construction of governmental facilities, such as those related to fire protection, police protection, schools, and parks. Therefore, no mitigation measures related to potential public services and recreation impacts were required.

Development of Site A

The development of Site A could result in increased demand for police services, fire services, and schools, due to an increase in population within the City of Alameda boundaries. As described in the APP EIR, the project sponsor would be required by the City of Alameda's Fiscal Neutrality Policy to fund the proportional share of the cost of additional fire and emergency medical services, police services, and related infrastructure, as well as pay development fees to the Alameda Unified School District to mitigate potential impacts from an increase in students. The project would also have to comply with applicable code requirements, including the California Building Code, California Fire Code, Alameda Fire Code, and Municipal Code Chapter 27-26 – Police and Fire Requirements.

Development of Site A would include construction of approximately 13.35 park and open-space areas. In addition, as described in the APP EIR, the project sponsor would be required to pay the City of Alameda's Development Fees (Municipal Code Chapter 27-4), to mitigate the impact of any additional use of City of Alameda-owned new and existing parks.

The development of Site A with up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, which is less than the total 1,425 residential units and approximately 5.5 million square feet of commercial facilities that were anticipated in the APP EIR, resulting in approximately 1,816 persons and an estimated 971 jobs, would result in well under the amount of daytime, permanent, and school populations anticipated for APP in the APP EIR.

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of the less-than-significant public services and recreation impacts identified in the APP EIR, nor would it result in new significant public services and recreation impacts that were not identified in the APP EIR.

13. Utilities and Service Systems Would the project:	Equal or Less Severity of Impact than Previously Identified in Alameda Point Project EIR	Substantial Increase in Severity of Previously Identified Significant Impact in EIR	New Significant Impact
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board;	☒	☐	☐
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;	☒	☐	☐
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;	☒	☐	☐
d. Have insufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed;	☒	☐	☐
e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments;	☒	☐	☐
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs; or	☒	☐	☐
g. Not comply with federal, state, and local statutes and regulations related to solid waste.	☒	☐	☐

Findings of the APP EIR

The APP EIR determined that, with implementation of **Mitigation Measure 4.M-5** (Solid Waste Management Plan), the APP would have less-than-significant project-level and cumulative utilities and service systems impacts related to wastewater treatment requirements of the San Francisco Bay RWQCB; construction or expansion of wastewater or stormwater drainage facilities; water supplies, wastewater treatment capacity, or landfill capacity; and regulations related to solid waste.

EBMUD prepared a water supply assessment for the APP, and determined that the increased demand of 1.9 million gallons of water per day associated with the project is accounted for in EBMUD's 2040 water demand projection. In addition, EBMUD's Municipal Wastewater Treatment Plant has enough excess dry weather flow capacity to accommodate the development analyzed in the EIR; however, it has inadequate wet weather capacity. The APP would replace the existing on-site wastewater collection

system, including sewer lines, which would substantially reduce inflow and infiltration entering the system during wet weather conditions, and would help provide adequate wet weather capacity. As described in the APP EIR Project Description, development projects would be required to contribute to the funding of infrastructure improvements through the Alameda Point Infrastructure Fee Program, which has been codified in a Development Impact Fee Ordinance for Alameda Point (Ord. No. 3098 N.S., 7-15-2014).

The APP EIR estimated that the redevelopment of NAS Alameda would generate 416,666 cubic yards of debris from the deconstruction and demolition of existing buildings. Adequate landfill capacity exists to accept this waste. However, development projects would be required to implement **Mitigation Measure 4.M-5**.

Development of Site A

The proposed Site A development would include up to 800 residential units and 600,000 square feet of retail, commercial, and hotel uses, which is less than the total 1,425 residential units and approximately 5.5 million square feet of commercial facilities that were in the APP EIR, resulting in approximately 1,816 persons and an estimated 971 jobs. In addition, it would construct new and replacement infrastructure, including stormwater, water, wastewater, recycled water, electrical, natural gas, and telecommunications systems improvements. The increased demand for water supplies, increased demand for wastewater and landfill capacity, and increased demand for electrical and other utilities for the development of Site A is well under the amount of demand for services analyzed in the APP EIR. In addition, approximately 279,429 square feet of existing buildings would be demolished on Site A, which is well within the 4.5 million square feet of demolition anticipated in the APP EIR. Development of Site A would require implementation of **Mitigation Measure 4.M-5.**

Based on an examination of the analysis, findings, and conclusions of the APP EIR, and on the discussion above, development of Site A would not substantially increase the severity of significant utilities and service systems impacts identified in the APP EIR, nor would it result in new significant utilities and service systems impacts that were not identified in the APP EIR.

ATTACHMENT A:
SITE A MITIGATION MONITORING AND REPORTING PROGRAM

The following table is a Mitigation Monitoring and Reporting Program (MMRP) for Site A, which was excerpted from the adopted MMRP for the Alameda Point Project (APP). The Site A MMRP contains all of the previously adopted APP mitigation measures that are applicable to the Site A project, and serves as a stand-alone MMRP for Site A. Implementation of the mitigation measures in the Site A MMRP, which are also listed in the preceding Environmental Checklist, will be required to avoid or substantially reduce the severity of the impacts identified in the APP EIR.

The Site A MMRP identifies the monitoring and reporting requirements for each mitigation measure; the timing of mitigation implementation; and the agency or agencies with responsibility for monitoring and verifying the implementation of the mitigation measure. All applicants for specific development projects on Site A will need to implement all required mitigation measures during project construction or project implementation, as applicable. Confirmation of mitigation implementation will be determined in accordance with the Site A MMRP.

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MITIGATION MEASURES APPLICABLE TO PROPOSED SITE A DEVELOPMENT IN ALAMEDA POINT

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
C. Transportation and Circulation					
Mitigation Measure 4.C-1 (Construction Management Plan): The City shall require that project applicant(s) and construction contractor(s) develop a Construction Management Plan for review and approval by the Public Works Department prior to issuance of any permits. The Plan shall include at least the following items and requirements to reduce traffic congestion during construction: 1. A set of comprehensive traffic control measures shall be developed, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. 2. The Construction Management Plan shall identify haul routes for movement of construction vehicles that would minimize impacts on motor vehicle, bicycle, and pedestrian traffic, circulation, and safety, and specifically to minimize impacts, to the greatest extent possible, to streets in and around the Alameda Point project site. The haul routes shall be approved by the City. 3. The Construction Management Plan shall provide for notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures would occur. 4. The Construction Management Plan shall provide for monitoring surface streets used for haul routes so that any damage and debris attributable to truck hauling can be identified and corrected by the project applicant.	Project applicant and its contractor(s) obtain approval of Construction Management Plan and implement the plan during construction.	City of Alameda Public Works Department	Public Works Department must review and approve Construction Management Plan	Prior to issuance of building or grading permit(s); inspect during construction	
Mitigation Measure 4.C-2a (TDM Program): Prior to issuance of building permits for each development project at Alameda Point, the City of Alameda shall prepare, and shall require that the sponsor of the development project participate in implementation of, a Transportation Demand Management (TDM) program/plan for Alameda Point aimed at meeting the General Plan peak-hour trip reduction goals of 10 percent for residential development and 30 percent for commercial development.	Project applicant shall implement the Transportation Demand Management (TDM) program/plan prepared by the City of Alameda.	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	Although it is the City of Alameda's responsibility to implement this measure, all Alameda Point project applicants will be required to participate in the Transportation Demand Management (TDM) program developed by the City.
Mitigation Measure 4.C-2b (Monitoring): Prior to issuance of the first building permits for any development project at Alameda Point, the City of Alameda shall adopt a Transportation Network Monitoring and Improvement Program to: 1) determine the cost of the transportation network improvements identified in this EIR; 2) identify appropriate means and formulas to collect fair share financial contributions from Alameda Point development; 3) monitor conditions at the locations that will be impacted by the redevelopment of Alameda Point; 4) monitor traffic generated by Alameda Point; and 5) establish the appropriate time to implement any necessary secondary physical improvements required in this EIR to minimize or eliminate significant transportation impacts prior to the impacts occurring at affected locations where a secondary impact mitigation is recommended.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2c, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	It is the City of Alameda's responsibility to implement this measure prior to issuance of a building permit for the first development project at Alameda Point. All Alameda Point project applicants will subsequently be required to pay the fair-share financial contribution identified during the implementation of Mitigation Measure 4.C-2b.
Mitigation Measure 4.C-2c (Otis/Fernside): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when and if required to avoid the impact or reduce its severity, shall implement the following improvements: Remove the right turn island for the westbound approach on Otis Drive, add a dedicated right turn lane with approximately 50 feet of storage length, and move the westbound stop-bar upstream approximately 20 feet to accommodate the right turn lane storage length. Restripe Fernside Boulevard with two receiving lanes. Optimize signal timing.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2c, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to intersection of Fernside Boulevard/ Otis Drive** Although it is the City of Alameda's responsibility to implement this measure, all Alameda Point project applicants may be required to pay a fair-share financial contribution for this improvement, which will be determined during the City's implementation of Mitigation Measure 4.C-2b.
Mitigation Measure 4.C-2d (Jackson/Sixth): The City of Alameda shall implement Mitigation Measures 4.C-2a (TDM Program).	Project applicant shall implement TDM program	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program	Prior to issuance of building permit(s)	**Applies to intersection of Jackson/Sixth Streets** See Mitigation Measure 4.C-2a.
Mitigation Measure 4.C-2e (Brush/11th): The City of Alameda shall implement Mitigation Measures 4.C-2a (TDM Program).	Project applicant shall implement TDM program	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	**Applies to intersection of Brush/11th Streets** See Mitigation Measure 4.C-2a.
Mitigation Measure 4.C-2f (23rd/Seventh): The City of Alameda shall implement Mitigation Measures 4.C-2a (TDM Program) and 4.C-2b (Monitoring).	Project applicant shall implement TDM program	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	**Applies to intersection of 23rd Street and Seventh Street** See Mitigation Measures 4.C-2a and 4.C-2b.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.C-2g (Main/Pacific Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall implement the following physical improvements: change the signal timing to a two-phase timing plan (i.e., northbound and southbound move concurrently; then eastbound and westbound move concurrently); and optimize cycle length.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2g, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to intersection of Main Street and Pacific Avenue** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2h (Webster/Appezzato Parkway Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall optimize the signal timing during the p.m. peak hour.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of signal optimization, as stated in Mitigation Measure 4.C-2h, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvement at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvement at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvement, if necessary	**Applies to intersection of Webster Street and Appezzato Parkway** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2i (Park/Otis Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall optimize the signal timing during the a.m. and p.m. and peak hours.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of signal optimization, as stated in Mitigation Measure 4.C-2i, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvement at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvement at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvement, if necessary	**Applies to intersection of Park Street and Otis Drive** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2j (Broadway/Tilden Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall optimize the signal timing during the a.m. and p.m. peak hours.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of signal optimization, as stated in Mitigation Measure 4.C-2j, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvement at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvement at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvement, if necessary	**Applies to intersection of Broadway and Tilden Way** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2k (High/Fernside Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall optimize the signal timing during the p.m. peak hour.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of signal optimization, as stated in Mitigation Measure 4.C-2k, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvement at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvement at appropriate time.	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvement, if necessary	**Applies to intersection of High Street and Fernside Boulevard** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2l (Atlantic/Constitution Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall implement the following physical improvements: modify the phasing sequence and optimize the signal timing.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2l, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to intersection of Atlantic Avenue and Constitution Way** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2m (Stargell Avenue Bike): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall construct a Class I or Class II bicycle facility between Main Street and Webster Street.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2m, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvement at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvement at appropriate time	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to Stargell Avenue** See Mitigation Measures 4.C-2a and 4.C-2b.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.C-2n (Main Street Bike): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall implement the following physical improvements: construct a Class II bicycle lane or improve the existing Class I bicycle path on the west side of the street between Appezzato Parkway and Pacific Avenue to current City standards; provide connectivity to existing Class I bicycle path on the east and west sides of the street north of Appezzato Parkway. Appropriate intersection treatments for connectivity may include striping, signage, and/or bicycle boxes at the intersection of Main Street and Appezzato Parkway; and if Mitigation Measure 4.C-4c (described below) is implemented, provide connectivity to that bicycle facilities on west side of the street north of the Main Street-Pacific Street intersection.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2n, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to Main Street** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-2o (Central Avenue Bike): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, shall use its best efforts to implement the following physical improvements: construct a Class II bicycle lane or improve the existing Class I bicycle path on the west (south) side of the street between the Main Street-Pacific Street intersection and Lincoln Avenue to current City standards; extend a Class I bicycle path to Third Street; and restripe and sign the street segment between Third Street and Fourth Street to provide Class II bicycle lanes between Lincoln Avenue and Fourth Street.	City of Alameda shall require Project applicant to fund a fair-share of the total cost of the improvements, as stated in Mitigation Measure 4.C-2o, and, if determined necessary after implementation of Mitigation Measures 4.C-2a and 4.C-2b, the City shall be responsible for ensuring implementation of the improvements at the appropriate time.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and improvements at appropriate time	Prior to issuance of building permit(s) for collection of funds for fair-share of total cost and prior to impact occurring for implementation of the improvements, if necessary	**Applies to Central Avenue** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5a (Park/Clement): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following physical improvements: Add northbound left turn pocket along Park Street; Optimize the signal offsets and splits; and Complete the Clement Avenue extension, which would reduce the demand for left turn movements onto Park Street from eastbound traffic on Clement Avenue.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5a) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds. The northbound left-turn pocket along Park Street will be completed by ACTC as part of the I-880/23rd/29th Street project.	Prior to issuance of building permit(s)	**Applies to intersection of Park/Clement** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5b (Park/Encinal): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvement: Optimize offsets and splits.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5b) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Park/Clement** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5c: (Broadway/Otis): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement, the following improvement: Optimize the signal timing during both peak hours.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5c) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Broadway/Otis** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5d: (Tilden/Blanding/Fernside): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvement: Optimize the offsets and splits.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5d) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Tilden/Blanding/Fernside** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5e (High/Fernside): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Adjust the signal cycle phasing during the a.m. and p.m. peak hours such that the southbound left turn from High Street is a permitted rather than protected movement; and Optimize signal timing.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5e) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of High/Fernside** See Mitigation Measures 4.C-2a and 4.C-2b.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.C-5f (High/Otis): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Optimize the signal timing at High and Otis for both peak hours, and Install traffic calming strategies on Bayview Drive to include improvements, such as: restriping Bayview Drive to create narrower driving lanes to reduce speeding, installing a cross walk and caution sign at the location of the public coastal access easement, and/or construction of sidewalk bulb-outs to improve pedestrian safety at the intersections of Bayview/Court Street and Bayview/Broadway.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5f) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of High/Otis** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5g (Island Drive/Otis Drive and Doolittle Drive): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvement: Optimize signal timing during both peak hours.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5g) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Island Drive/Otis Drive and Doolittle Drive** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5h (Fernside Boulevard and Otis Drive): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and implement Mitigation Measure 4.C-2c (Otis/Fernside), and fund a fair share contribution to add a westbound right-turn overlap phase from Fernside Boulevard.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a, 4.C-2b, and 4.C-2c, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5h) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, Mitigation Measure 4.C-2c (if necessary), and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Fernside Boulevard/Otis Drive** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5i (Park/Blanding). The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Change east-west signal phasing to protected phasing; and Optimize signal timing during both peak hours.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5i) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to intersection of Park/Blanding** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5j (Challenger/Atlantic): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, a fairshare to contribution optimize signal timing during the p.m. peak hour.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5j) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to intersection of Challenger/Atlantic** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5k (Park/Lincoln): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, the City shall fund a fairshare to optimize signal timing during the p.m. peak hour.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5k) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to intersection of Park/Lincoln** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5l (Jackson/Sixth): The City of Alameda shall implement TDM (Mitigation Measure 4.C-2a).	Project applicant shall implement TDM program.	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program	Prior to issuance of building permit(s)	**Applies to intersection of Jackson/Sixth** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5m (Webster/Eighth): The City of Alameda shall implement TDM (Mitigation Measure 4.C-2a).	Project applicant shall implement TDM program.	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program	Prior to issuance of building permit(s)	**Applies to intersection of Webster/Eighth** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5n (Broadway/Fifth): The City of Alameda shall implement TDM (Mitigation Measure 4.C-2a).	Project applicant shall implement TDM program.	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	**Applies to intersection of Broadway/Fifth** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5o (Brush/12th): The City of Alameda shall implement TDM (Mitigation Measure 4.C-2a).	Project applicant shall implement TDM program.	City of Alameda Community Development Department	City of Alameda City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	**Applies to intersection of Brush/12th** See Mitigation Measures 4.C-2a and 4.C-2b.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.C-5p (High/Oakport): The City of Alameda shall implement TDM and Monitoring (Mitigation Measure 4.C-2a and 4.C-2b) and work with the City of Oakland to optimize the signal timing to allow for more green time for northbound traffic.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5p) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of High/Oakport** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5q (High/Coliseum): The City of Alameda shall implement TDM and Monitoring (Mitigation Measure 4.C-2a and 4.C-2b) and work with the City of Oakland to optimize the signal timing.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5q) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of High/Coliseum** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5r (29th/Ford): The City of Alameda shall implement TDM (Mitigation Measure 4.C-2a).	Project applicant shall implement TDM program.	City of Alameda Community Development Department	City of Alameda Community Development Department shall require implementation of TDM program.	Prior to issuance of building permit(s)	**Applies to intersection of 29th/Ford** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5s (23rd Ave./Seventh St.): The City of Alameda shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and work with the City of Oakland to modify the northbound to provide a separate left – turn lane and a shared through-right-turn lane, and optimize the signal.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5s) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to intersection of 23rd Ave./Seventh St.** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5t (Main/Pacific Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fairshare contribution to change signal timing to two-phase timing plan (i.e., northbound and southbound move concurrently; then eastbound and westbound move concurrently) and optimize cycle length.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5t) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Main/Pacific** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5u (Webster/Appezzato Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to optimize signal timing.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvement (as stated in Mitigation Measure 4.C-5u) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of Webster/Appezzato** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5v (High/Fernside Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and Mitigation Measure 4.C-5e (optimize signal timing during the p.m. peak hour).	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a, 4.C-2b, and 4.C-5e.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to intersection of High/Fernside** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5w (Appezzato/Constitution Pedestrian): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Modify phasing sequence; and Optimize the signal timing.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5w) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to intersection of Appezzato/Constitution** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5x (Park Street Transit): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Provide transit signal priority at intersections along this corridor; and Optimize splits at the Park Street and Blanding Avenue intersection during a.m. and p.m. peak hours.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5x) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds.	Prior to issuance of building permit(s)	**Applies to Park Street** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5y (Appezzato Parkway Transit): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the following improvements: Install transit signal priority at intersections along this corridor; Optimize cycle length at the Appezzato Parkway and Webster Street intersection during a.m. and p.m. peak hours and provide signal priority; and Establish exclusive transit lanes or queue jump lanes from Alameda Point to Webster Street.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5y) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to Appezzato Parkway** See Mitigation Measures 4.C-2a and 4.C-2b.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.C-5z (Stargell Avenue Transit): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, implement the following improvements: Provide westbound queue jump lanes on Willie Stargell Avenue at Main Street or construct exclusive transit lanes on Willie Stargell Avenue; Install transit signal priority at intersections along this corridor; and Optimize cycle length at the Main Street and Willie Stargell Avenue intersection during a.m. and p.m. peak hours.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5z) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to Stargell Avenue** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-5zi (Stargell Avenue Bike): The City shall implement Mitigation Measure 4.C-2m (Stargell Avenue bike path).	See Mitigation Measure 4.C-2m, above.				
Mitigation Measure 4.C-5zii: The City shall implement Mitigation Measure 4.C-2n (Main Street bicycle improvements).	See Mitigation Measure 4.C-2n, above.				
Mitigation Measure 4.C-5ziii (Central Avenue Bike): The City shall implement Mitigation Measure 4.C-2o (Central Avenue bicycle improvements).	See Mitigation Measure 4.C-2o, above.				
Mitigation Measure 4.C-5ziv (Oak Street Bike): The City shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and, when required to avoid the impact or reduce its severity, fund a fair share contribution to implement the completion of a bicycle boulevard with appropriate signage and striping along Oak Street from Blanding Avenue to Encinal Avenue to advise motorists and bicyclists to share the street.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and fund a fair-share of the portion of the cost of the improvements (as stated in Mitigation Measure 4.C-5ziv) attributable to the project.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and collection of fair-share of funds	Prior to issuance of building permit(s)	**Applies to Oak Street** See Mitigation Measures 4.C-2a and 4.C-2b.
Mitigation Measure 4.C-9 (Chinatown Pedestrians): The City of Alameda shall implement TDM and Monitoring (Mitigation Measures 4.C-2a and 4.C-2b) and shall continue to work with the City of Oakland, the ACTC, and Caltrans, to evaluate and implement measures to reduce or divert the volume of traffic that travels through Oakland Chinatown to and from Alameda Point and other City of Alameda destinations.	City of Alameda shall require Project applicant to implement Mitigation Measures 4.C-2a and 4.C-2b, and coordinate with the City of Oakland, the ACTC, and Caltrans to evaluate and then implement measures that reduce/divert volume of traffic that travels through Oakland Chinatown to and from Alameda Point and other City of Alameda destinations.	City of Alameda Community Development Department	City of Alameda Community Development Department shall monitor to ensure implementation of TDM Program, Monitoring, and continue coordination with the City of Oakland, the ACTC, and Caltrans.	Prior to issuance of building permit(s)	See Mitigation Measures 4.C-2a and 4.C-2b.
D. Cultural and Paleontological Resources					
Mitigation Measure 4.D-1a (Historic Preservation Ordinance): The City shall implement the requirements of the Historic Preservation Ordinance, which requires a certificate of approval by the HAB for modifications to contributors and resources within the Historic District. As part of the certificate of approval process, project sponsors shall provide: 1) An analysis of the proposal's conformity with the *Guide to Preserving the Character of the Naval Air Station Alameda Historic District* as adopted and amended by the City Council; 2) An analysis of the proposal's conformity with general management and design guidelines contained within the NAS Alameda Cultural Landscape Report (JRP, 2012), including application of the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*. These include special treatments organized by functional area for such topics as spatial organization, topography, vegetation, views and vistas, circulation, as well as structures, furnishings and objects; and 3) An analysis of impacts to the integrity of the Historic District, as a whole, and an analysis of alternatives to avoid potential impacts on the Historic District as a whole, and on an individual resource	Project applicant shall conduct analyses listed to comply with the Historic Preservation Ordinance.	City of Alameda Community Development Department	City of Alameda's Historical Advisory Board (HAB) shall verify completion of analyses.	During the certificate of approval process	Water-Connected Projects: In addition to all projects located in the Historic District, this mitigation measure also applies to projects located adjacent to Seaplane Lagoon.
Mitigation Measure 4.D-1b (Guidelines): Prior to approval of new buildings within the NAS Alameda Historic District, the City shall complete and adopt Guidelines for New Infill Development within the Historic District. All new building will be reviewed for conformance with the guidelines.	City shall complete and adopt Guidelines for New Infill Development Project applicant shall conform to the City's adopted Guidelines	City of Alameda Community Development Department	Review new buildings for conformance with Guidelines	Prior to approval of new buildings within the NAS Alameda Historic District	Water-Connected Projects: In addition to all projects located in the Historic District, this mitigation measure also applies to projects located adjacent to Seaplane Lagoon. The first proposed development in the Historic District will trigger the City's preparation and adoption of Guidelines for New Infill Development within the Historic District, which will apply to that development and all subsequent development within the Historic District.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.D-2 (Archaeological Resources): If cultural resources are encountered, all activity within 100 feet of the find shall halt until it can be evaluated by a qualified archaeologist and a Native American representative. Prehistoric archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. If the archaeologist and Native American representative determine that the resources may be significant, they shall notify the City of Alameda and shall develop an appropriate treatment plan for the resources. The archaeologist shall consult with Native American monitors or other appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in nature. In considering any suggested measures proposed by the archaeologist and Native American representative in order to mitigate impacts to cultural resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project area while mitigation for cultural resources is being carried out. Pursuant to CEQA Guidelines Section 15126(b), *Mitigation Measures Related to Impacts on Historical Resources*, the City of Alameda will, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered for a project involving an archaeological site: A. Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site. B. Preservation in place may be accomplished by, but is not limited to, the following: 1. Planning construction to avoid archaeological sites; 2. Incorporation of sites within parks, greenspace, or other open space; 3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site. 4. Deeding the site into a permanent conservation easement. C. When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation. D. Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.	Project applicant and its contractor(s) shall halt work and notify archaeologist and Native American representative if materials are discovered. Archaeologist and Native American representative shall conduct independent review and prepare treatment plan, if necessary. Project applicant or its contractor(s) shall implement treatment plan and mitigate impacts pursuant to CEQA Guidelines.	City of Alameda Community Development Department	If resources are encountered, verify work is suspended and review and approve the treatment and monitoring plan if archaeological materials are discovered	If resources encountered, review of treatment and monitoring plan prior to continuation of construction	
Mitigation Measure 4.D-3 (Paleontological Resources): If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing construction activities, all such activities within 100 feet of the find shall be halted until a qualified paleontologist can assess the significance of the find and, if necessary, develop appropriate salvage measures in consultation with the City of Alameda and in conformance with Society of Vertebrate Paleontology Guidelines (SVP, 1995; SVP, 1996).	Project applicant and its contractor(s) shall halt construction within 100 feet of paleontological resources Project applicant shall retain a paleontologist to assess significance of resources and develop salvage measures, if necessary Project applicant shall incorporate measures upon continuation of construction	City of Alameda Community Development Department	Consult paleontologist in development of appropriate salvage measures for any paleontological resources found	If resources encountered, review of treatment and monitoring plan prior to continuation of construction	
Mitigation Measure 4.D-4 (Human Remains): In the event of discovery or recognition of any human remains during construction activities, such activities within 100 feet of the find shall cease. The Alameda County Coroner shall be contacted immediately. If the remains are determined to be Native American, and no investigation of the cause of death is required, the Native American Heritage Commission (NAHC) will be contacted within 24 hours. The NAHC will identify and contact the person or persons it believes to be the "most likely descendant (MLD)" of the deceased Native American, who in turn would make recommendations for the appropriate means of treating the human remains and any grave goods.	Project applicant and its contractor(s) shall halt work and notify coroner and City of Alameda Community Development Department if remains are discovered NAHC shall assign most likely descendant Project applicant and its contractor(s) shall hire archaeologist and cease work if site is a Native American Cemetery	City of Alameda Community Development Department; NAHC; County Coroner	Contact City, NAHC, or County Coroner if human remains are encountered	Ongoing	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.D-5: Implement Mitigation Measure 4.D-1.	See Mitigation Measure 4.D-1.				
Mitigation Measure 4.D-6: Implement Mitigation Measures 4.D-2, -3, and -4.	See Mitigation Measures 4.D-2, 4.D-3, and 4.D-4.				
E. Biological Resources					
Mitigation Measure 4.E-1a (Sound Attenuation Monitoring Plan): Prior to the start of marina or ferry terminal construction, the City shall require a NMFS-approved sound attenuation monitoring plan to protect fish and marine mammals, if pile driving is planned for the Seaplane Lagoon. 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): • 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	Project applicant shall create a NMFS-approved sound attenuation monitoring plan. Project applicant shall implement plan and record monitoring results.	City of Alameda Community Development Department	Verify completion of plan and monitor throughout construction. Ensure that monitoring results get submitted to NMFS.	Prior to start of marina or ferry terminal construction	*Although this mitigation measure applies primarily to marina or ferry terminal projects, it would also apply to any project that entails pile driving within Seaplane Lagoon.
Mitigation Measure 4.E-1b (NMFS and CDFW Consultation): 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 (IHA) for marine mammals would be needed for dredging or pile driving activities. The 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.	Project applicant shall consult with NMFS if project requires in-water work. Project applicant shall consult with CDFW regarding potential need for an ITP. Project applicant shall submit copies of any IHA and/or ITP to the City or confirm that they are not required.	City of Alameda Community Development Department; NMFS; CDFW	Confirm consultation with NMFS and CDFW.	During the project permitting phase, prior to construction.	Although it is anticipated that this mitigation measure would apply only to marina or ferry terminal projects, it would also apply to any other proposal that would require pile driving and/or construction of docks within Seaplane Lagoon or San Francisco Bay.
Mitigation Measure 4.E-1c (Additional Noise Attenuation Measures): As part of the NMFS-approved sound attenuation monitoring plan required for pile driving in the Seaplane Lagoon in Mitigation Measure 4.E-1a, the City shall ensure that the project applicant implements the following actions in addition to those listed in Mitigation Measure 4.E-1a 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 marine mammals an opportunity to vacate the area • Maintain sound levels below 90 dBA in air 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	Project applicant shall implement the listed actions to reduce the effects of underwater noise transmission. Project applicant shall hire a NMFS-approved biological monitor to conduct daily surveys.	City of Alameda Community Development Department, NMFS	NMFS will review and the sound attenuation monitoring plan and approve the biological monitor that would conduct daily surveys before and during impact hammer pile driving work. City will ensure implementation of the listed actions and daily surveys described in Measure 4.E-1c along with those listed in Measure 4.E-1a.	Prior to construction	Although it is anticipated that this mitigation measure would apply only to marina or ferry terminal projects, it would also apply to any other proposal that would require pile driving and/or construction of docks within Seaplane Lagoon or San Francisco Bay.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.E-1d (Dock Lighting): 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.	Project applicant shall include dock lighting measures in construction plans and specifications.	City of Alameda Community Development Department	Review construction plans and specifications to ensure it includes dock lighting requirements. Inspect light fixtures to ensure lighting meets requirements stated in Measure 4.E-1d.	Prior to construction and after construction.	Although it is anticipated that this mitigation measure would apply only to marina or ferry terminal projects, it would also apply to any other proposal that would require construction of docks within Seaplane Lagoon or San Francisco Bay.
Mitigation Measure 4.E-1f: (Bat Pre-Construction Survey) Potential direct and indirect disturbances to bats shall be identified by locating colonies, and instituting protective measures prior to construction. No more than two weeks in advance of tree removal, demolition of buildings onsite, or initiation of construction within 100 feet of trees or structures providing potential bat roosting sites, a qualified bat biologist (e.g., a biologist holding a CDFW collection permit and a Memorandum of Understanding with CDFW allowing the biologist to handle and collect bats) shall conduct pre-construction surveys for bat roosts. No activities that could disturb active roosts shall proceed prior to the completed surveys.	Project applicant will obtain a qualified biologist to conduct pre-construction surveys for bat roosts. Qualified biologist will conduct pre-construction bat surveys two weeks prior to tree removal and building demolition work and shall develop protective measures.	City of Alameda Community Development Department	Review construction specifications to ensure inclusion of protective measures for active bat roosts. Monitor to ensure completion of pre-construction survey.	Prior to issuance of demolition or tree removal permit	This mitigation measure applies to any project requiring removal of trees and/or demolition of buildings.
Mitigation Measure 4.E-1g: (Bat Maternity Colony Measures) If a maternity colony is located within the project site during pre-construction surveys, the project shall be redesigned to avoid impacts if feasible, and a no-disturbance buffer acceptable in size to the CDFW shall be created around the roost. Bat roosts (maternity or otherwise) initiated during construction are generally presumed to be unaffected by increased noise, vibration, or human activity, and no buffer is necessary as long as roost sites are not directly altered or destroyed. However, the "take" of individuals is still prohibited at any time. • If there is a maternity colony present and the project cannot be redesigned to avoid removal of the tree or structure inhabited by the bats, demolition of that tree or structure shall not commence until after young are flying (i.e., after July 31, confirmed by a qualified bat biologist) or before maternity colonies form the following year (i.e., prior to March 1). • If a non-maternity roost must be removed as part of the project, the non-maternity roost shall be evicted prior to building/tree removal by a qualified biologist, using methods such as making holes in the roost to alter the air-flow or creating one-way funnel exits for the bats. • If significant (e.g., maternity roosts or large non-maternity roost sites) bat roosting habitat is destroyed during building/tree 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.	Project applicant and its contractor(s) shall incorporate measures in the construction specifications to reduce impacts to maternity colonies. During pre-construction surveys, Project applicant and/or its contractor(s) will redesign the project if maternity colony is located within the project site.	City of Alameda Community Development Department; CDFW	Monitor to ensure adequate measures are taken to avoid impacts to maternity colonies.	Prior to issuance of demolition or tree removal permit	This mitigation measure applies to any project requiring removal of trees and/or demolition of buildings.
Mitigation Measure 4.E-2c: (Invasive Species Control Plan) 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 piers 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 state agencies. 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 *Undaria* and *Sargasso* • 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.	Project applicant shall develop and implement a Marine invasive Species Control Plan during construction of in-water work. Project applicant will prepare a post-construction report and submit to the City, USCG, and RWQCB.	City of Alameda Community Development; USCG; RWQCB and other relevant state agencies	Review and approve Marine Invasive Species Control Plan. Ensure the provisions of the approved plan are implemented, including preparation of a post-construction.	Prior to issuance of building permit(s) and during construction	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.E-3a: (Wetlands) Prior to issuance of final grading or building permits that include work within or in the vicinity of jurisdictional waters, the City shall confirm that the project applicant has obtained all necessary wetland permits and shall further ensure that the project applicant implements measures to avoid or minimize adverse effects on jurisdictional waters and sensitive natural communities. Specifically: • The existing wetlands in the Northwest Territories shall be preserved and incorporated into compatible open space uses to the maximum extent feasible. • Wetlands to be avoided shall be protected by setbacks throughout project construction. Based on recommendations in the *Baylands Ecosystem Habitat Goals* (Goals Project, 1999) a minimum 300-foot wetland buffer shall be incorporated into project design wherever possible to protect water quality and the wildlife that use the wetlands. Where existing uses preclude the establishment of a 300-foot or larger buffer-, the largest buffer possible shall be established. Buffer width should be determined by considering the quality of the wetlands, actual or potential wildlife use, existing and proposed future uses, amount and type of vegetation within the buffer, and angle and direction of slope in proximity to the wetland (McElfish et al., 2008). Open space uses shall incorporate these buffers in the siting of recreational trails and development of facilities to ensure the wetlands and the wildlife that use them are adequately buffered from recreational uses. • During project construction, areas to be avoided and provided with setbacks pursuant to the provisions described above shall be further protected by best management practices (BMPs), as described in Mitigation Measure 4.E-3b, below. Such measures shall include the installation of silt fencing, straw wattles, or other appropriate erosion and sediment control methods or devices along roads and at the 100-foot setback limits. To minimize impacts on wetlands and other waters, equipment such as backhoes and cranes used for installation of rip-rap or other shore stabilization measures along the Bay shoreline shall operate from dry land where possible. Any construction operations within Bay waters shall be barge-mounted or use other water-based equipment such as scows, derrick barges, and tugs.	Project applicant shall obtain all necessary wetland permits. Project applicant shall implement measures to avoid or minimize adverse effects on jurisdictional waters and sensitive natural communities. Project applicant will implement measures to avoid or minimize adverse effects on jurisdictional waters and sensitive natural communities as identified in Mitigation Measure 4.E-3a.	City of Alameda Community Development Department	Confirm all necessary wetland permits have been obtained. Ensure implementation of measures to avoid sensitive natural communities.	Prior to issuance of final grading or building permit(s) and during construction.	
Mitigation Measure 4.E-3b: (BMPs for Wetlands) Standard BMPs shall be employed to avoid degradation of aquatic habitat and wetlands by maintaining water quality and controlling erosion and sedimentation during construction as required by compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities (see also Section 4.H, *Hydrology and Water Quality*, of this EIR, which addresses impacts on water quality). BMPs shall include, but not be limited to, the following: (1) installing silt fencing between wetlands and aquatic habitat and construction-related activities, (2) locating fueling stations away from potentially jurisdictional features, and (3) otherwise isolating construction work areas from any identified jurisdictional features. In addition, BMPs to avoid impacts on water quality resulting from dredging or other activities within open waters that are identified in the *Long-term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region* (LTMS) (Corps, 2001) shall be implemented. These BMPs include silt fencing and gunderbooms or other appropriate methods for keeping dredged materials or other sediments from leaving a project site.	Project applicant shall comply with the NPDES General Permit for Construction through implementation of BMPs described in Mitigation Measure 4.E-3b.	City of Alameda Community Development Department	Ensure that Project applicant implements applicable BMPs and complies with NPDES General Permit.	During construction	Although implementation of this mitigation measure is particularly critical for projects located adjacent to or in proximity to wetlands or surface waters, all construction projects will be required to comply with the Regional Water Quality Control Board's NPDES General Construction Permit, and will be required to implement appropriate BMPs.
Mitigation Measure 4.E-3c: (Wetland Mitigation and Monitoring Plan) Where disturbance to jurisdictional waters cannot be avoided, compensation shall be provided at a minimum 1:1 ratio for temporary impacts and permanent loss. Actual compensatory mitigation ratios will be specified in project permits issued by the Corps, RWQCB, and BCDC. Where applicable, compensation shall be detailed on a project-specific basis and shall include development of an onsite wetland mitigation and monitoring plan, which shall be developed prior to the start of the first phase of development or in coordination with permit applications and/or conditions. Alternatively, offsite mitigation may be pursued through an approved mitigation bank, although this option may result in a higher mitigation ratio. At a minimum, such plans shall include: • Baseline information, including a summary of findings for the most recent wetland delineation applicable to the project site; • Anticipated habitat enhancements to be achieved through compensatory actions, including mitigation site location (onsite enhancement or offsite habitat creation) and hydrology;	Project applicant shall develop a mitigation plan to compensate disturbance to jurisdictional waters at a minimum 1:1 ratio by either (1) developing an onsite wetland mitigation monitoring plan or (2) pursue offsite mitigation options. Ensure that mitigation plan incorporates items described in Measure 4.E-3c.	City of Alameda Community Development Department; Corps; RWQCB; BCDC	Review of construction specifications to ensure it includes wetland replaced or restored at a minimum 1:1 ratio for temporary and permanent loss. Review compensation plan to ensure incorporation of items described in Mitigation Measure 4.E-3c.	Prior to issuance of grading permit	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
• Performance and success criteria for wetland creation or enhancement including, but not limited to, the following:[1] – At least 70 percent survival of installed plants for each of the first three years following planting. – Performance criteria for vegetation percent cover in Years 1-4 as follows: at least 10 percent cover of installed plants in Year 1; at least 20 percent cover in Year 2; at least 30 percent cover in Year 3; at least 40 percent cover in Year 4. – Performance criteria for hydrology in Years 1-5 as follows: Fourteen or more consecutive days of flooding, ponding, or a water table 12 inches or less below the soil surface during the growing season at a minimum frequency of three of the five monitoring years; OR establishment of a prevalence of wetland obligate plant species. – Invasive plant species that threaten the success of created or enhanced wetlands should not contribute relative cover greater than 35 percent in Year 1, 20 percent in Years 2 and 3, 15 percent in Year 4, and 10 percent in Year 5. – If necessary, supplemental water shall be provided by a water truck for the first two years following installation. Any supplemental water must be removed or turned off for a minimum of two consecutive years prior to the end of the monitoring period, and the wetland must meet all other criteria during this period. At the end of the five-year monitoring period, the wetland must be self-sufficient and capable of persistence without supplemental water. – At least 75 percent cover by hydrophytic vegetation at the end of the five-year monitoring period. In addition, wetland hydrology and hydric soils must be present and defined as follows: ▪ *Hydrophytic vegetation* – A plant community occurring in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present. ▪ *Wetland hydrology* – Identified by indicators such as sediment deposits, water stains on vegetation, and oxidized rhizospheres along living roots in the upper 12 inches of the soil, or satisfaction of the hydrology performance criteria listed above. ▪ *Hydric soils* – Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions, which are often characterized by features such as redox concentrations, which form by the reduction, translocation, and/or oxidation of iron and manganese oxides. Hydric soils may lack hydric indicators for a number of reasons. In such cases, the same standard used to determine wetland hydrology when indicators are lacking can be used. – Five years after any wetland creation, a wetland delineation shall be performed to determine whether created wetlands are developing according to the success criteria outlined in the project permits. If they are not, remedial measures such as re-planting and or re-design and construction of the created wetland shall be taken to ensure that the Project's mitigation obligations are met. • If permanent and temporary impacts on jurisdictional waters cannot be compensated onsite through the restoration or enhancement of wetland features incorporated within proposed open space areas, the specific project applicant shall provide additional compensatory mitigation for these habitat losses. Potential options include the creation of additional wetland acreage onsite or the purchase of offsite mitigation. Offsite compensatory mitigation would be required to fulfill the performance standards described above.					

[1] Vegetation-related criteria listed here apply only mitigation required for impacts to vegetated wetlands and would not be required for mitigation required for impacts to unvegetated wetlands.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.E-4b: (Bird Strike Mitigation) 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. 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, – 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 to the exterior glass walls, at a distance of less than 3 feet from the glass. Such close proximity will obscure habitat reflections and will minimize fatal collisions by reducing birds' flight momentum. ***Lighting.*** In addition to implementation of the City/VA Lighting MOA, the project applicant shall similarly 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 Alameda Point to reduce night lighting impacts on species other than feast terns: • 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.	Project applicant shall retain a qualified biologist to review and approve design of buildings for potential impacts on birds related to bird strike, lighting, and placement of rooftop antennae and other rooftop elements. Project applicant shall provide educational materials to building tenants and occupants, hotel guests, and residents encouraging them to minimize light transmission from windows. Project applicant or City shall document activities undertaken per this mitigation measure. Project applicant or City shall maintain records that include 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.	City of Alameda Community Development Department; CDFW; USFWS	Review submittal and documentation of measures and features incorporated to address potential impacts on birds. Ensure that education materials get distributed to building tenants, occupants, hotel guests, and residents appropriately. Ensure proper documentation of activities prescribed by Measure 4.E-4b.	Prior to issuance of building permit(s)	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
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 and occupants, hotel guests, 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. ***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.					
Mitigation Measure 4.E-4c: (Breeding Birds) The City shall require project applicants to conduct pre-construction breeding bird surveys for projects proposed in areas containing, or likely to contain, habitat for nesting birds as a condition of approval for any development-related permit. Specific measures to avoid and minimize impacts on nesting birds include, but are not limited to, those described below. • To avoid and minimize potential impacts on nesting raptors and other birds, preconstruction surveys shall be performed not more than one week prior to initiating vegetation removal and/or construction activities during the breeding season (i.e., February 1 through August 31) • To avoid and minimize potential impacts on nesting raptors and other birds, a no-disturbance buffer zone shall be established around active nests during the breeding season until the young have fledged and are self-sufficient, when no further mitigation would be required • Typically, the size of individual buffers ranges from a minimum of 250 feet for raptors to a minimum of 50 feet for other birds but can be adjusted based on an evaluation of the site by a qualified biologist in cooperation with the USFWS and/or CDFW • Birds that establish nests after construction starts are assumed to be habituated to and tolerant of the indirect impacts resulting from construction noise and human activity. However, direct take of nests, eggs, and nestlings is still prohibited and a buffer must be established to avoid nest destruction. • If construction ceases for a period of more than two weeks, or vegetation removal is required after a period of more than two weeks has elapsed from the preconstruction surveys, then new nesting bird surveys must be conducted.	Project applicant shall conduct pre-construction breeding bird surveys. Project applicant shall implement identified avoidance and minimization measures for nesting bird impacts.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of nesting bird avoidance and minimization measures. Monitor to ensure implementation of avoidance and minimization measures during construction.	Prior to issuance of building permit(s) and during construction	Although this mitigation measure is particularly critical for projects located in the Northwest Territories and the Federal Property, it is applicable to any project on a site that has trees, shrubs, buildings, or other structures, all of which can provide nesting habitat for birds.
Mitigation Measure 4.E-4f: (Open Refuse Containers) The City shall prohibit open refuse containers that contain food waste throughout the project area. This prohibition shall be incorporated into the terms and conditions of all City approvals for future development at Alameda Point.	The City will prohibit placement of open refuse containers that contain food waste.	City of Alameda Community Development Department	City to ensure that measure is implemented.	After construction is complete.	
Mitigation Measure 4.E-5: The City of Alameda shall implement Mitigation Measures 4.E-1a through 4.E-1h (avoid and minimize impacts on special-status wildlife), Mitigation Measures 4.E-2a through 4.E-2c (avoid and minimize impacts to sensitive natural communities), Mitigation Measures 4.E-3a through 4.E-3c (avoid and minimize impacts to jurisdictional waters), and Mitigation Measures 4.E-4a through 4.E-4f (avoid and minimize impacts to migratory and breeding wildlife).	See Mitigation Measures 4.E-1a through 4.E-1h, 4.E-2a through 4.E-2c, 4.E-3a through 4.E-3c, and 4.E-4a through 4.E-4f.				
Mitigation Measure 4.E-6: The City of Alameda shall implement Mitigation Measures 4.E-1a through 4.E-1h (avoid and minimize impacts on special-status wildlife), Mitigation Measures 4.E-2a through 4.E-2c (avoid and minimize impacts to sensitive natural communities), Mitigation Measures 4.E-3a through 4.E-3c (avoid and minimize impacts to jurisdictional waters), and Mitigation Measures 4.E-4a through 4.E-4f (avoid and minimize impacts to migratory and breeding wildlife).	See Mitigation Measures 4.E-1a through 4.E-1h, 4.E-2a through 4.E-2c, 4.E-3a through 4.E-3c, and 4.E-4a through 4.E-4f.				
Mitigation Measure 4.E-7: The City of Alameda shall implement Mitigation Measures 4.E-1a through 4.E-1h (avoid and minimize impacts on special-status wildlife), Mitigation Measures 4.E-2a through 4.E-2c (avoid and minimize impacts to sensitive natural communities), Mitigation Measures 4.E-3a through 4.E-3c (avoid and minimize impacts to jurisdictional waters), and Mitigation Measures 4.E-4a through 4.E-4f (avoid and minimize impacts to migratory and breeding wildlife).	See Mitigation Measures 4.E-1a through 4.E-1h, 4.E-2a through 4.E-2c, 4.E-3a through 4.E-3c, and 4.E-4a through 4.E-4f.				

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
F. Air Quality and Greenhouse Gases					
Mitigation Measure 4.F-1a: (Fugitive Dust) The following BAAQMD Best Management Practices for fugitive dust control will be required for all construction activities within the project area. These measures will reduce fugitive dust emissions primarily during soil movement, grading and demolition activities, but also during vehicle and equipment movement on unpaved project sites: ***Basic Controls that Apply to All Construction Sites*** 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 2. All haul trucks transporting soil, sand, or other loose material off site shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 mph. 5. All streets, 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. 6. 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 CCR). Clear signage shall be provided for construction workers at all access points. 7. 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. 8. A publicly visible sign shall be posted with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.	Project applicant shall incorporate the BAAQMD BMPs for fugitive dust control in construction specifications. Project applicant shall implement BMPs during construction.	City of Alameda Community Development Department	Review construction specifications for inclusion of BAAQMD BMPs. Monitor to ensure that BMPs are implemented during construction.	Prior to issuance of building permit(s) and on-going during construction.	
Mitigation Measure 4.F-1.b: (Construction Exhaust) The following control measures for construction emissions will be required for all construction activities within the project area: • 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. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points. • The Project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NO_x reduction and 45 percent PM reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. (The Level 3 Verified Diesel Emissions Control (VDEC) required under Mitigation Measure 4.F-1d would also comply with this measure.) • Require that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NO_x and PM. • Require all contractors to use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines	Project applicant shall incorporate control measures for construction emissions in construction specifications. Project applicant shall implement control measures during construction.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of control measures for construction emissions. Monitor to ensure that construction exhaust measures are implemented during construction.	Prior to issuance of building permit(s) and during construction.	
Mitigation Measure 4.F-1c: (Demolition Controls) Demolition and disposal of any asbestos containing building material shall be conducted in accordance with the procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of BAAQMD's regulations.	Project applicant shall incorporate BAAQMD's Regulation 11, Rule 2 procedures in construction specifications. Project applicant shall implement measures as outlined in Regulation 11, Rule 2 of BAAQMD's regulations.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of BAAQMD's measures for the demolition and disposal of asbestos. Ensure Project applicant complies with Regulation 11, Rule 2 procedures of BAAQMD's regulations.	Prior to and during construction.	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.F-1d: (Toxic Air Contaminants and PM2.5) The project sponsors shall ensure that construction contract specifications include a requirement that all off-road 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.	Project applicant shall incorporate toxic air contaminants and PM2.5 measure in construction contract specifications. Project applicant will use off-road construction equipment with a Level 3 Verified Diesel Emissions Control.	City of Alameda Community Development Department	Review construction specifications to ensure that toxic air contaminants and PM2.5 measure is incorporated. Ensure that Project applicant uses off-road construction equipment with a Level 3 Verified Diesel Emissions Control.	Prior to and during construction.	
Mitigation Measure 4.F-1.e: (Delayed Occupancy) Health risks from construction-related emissions to new residences proposed under the project shall be minimized by delaying issuance of occupancy permits for new residential until after the completion of construction activities at adjacent buildings upwind in prevailing west and northwest winds during individual development phases of the project.	Project applicant shall delay occupancy until after completion of construction activities at adjacent buildings.	City of Alameda Community Development Department	Ensure that occupancy is delayed until after completion of construction activities at adjacent buildings.	Prior to issuance of occupancy permit(s)	* This mitigation measure applies only to residential projects.
Mitigation Measure 4.F-2: (Greenhouse Gas Reduction Measures) The following measures shall be incorporated into the project design for properties within the project area: • Implement a Transportation Demand Management (TDM) program, as described in detail in Mitigation Measure 4.C.1a in Section 4.C, Transportation. • Require only natural gas hearths in residential units as a condition of final building permit; • Require smart meters and programmable thermostats; • Meet Green Building Code standards in all new construction; • Install solar water heaters for all uses as feasible; • Use recycled water when available; • Install low-flow fixtures (faucets, toilets, showers); • Use water efficient irrigation systems; and • Institute recycling and composting services.	Project applicant shall incorporate measures into project design documents.	City of Alameda Community Development Department	Ensure that project design documents incorporate measures identified in Mitigation Measure 4.F-2.	During design phase.	
Mitigation Measure 4.F-4: Implement Mitigation Measures 4.F-1a, 4.F-1b, and 4.F-1e.	See Mitigation Measures 4.F-1a, 4.F-1b, and 4.F-1e.				
Mitigation Measure 4.F-7a: Implement Mitigation Measure 4.F-2.	See Mitigation Measure 4.F-2.				
Mitigation Measure 4.F-7b: (Fuel-Efficient Vehicles) The City shall promote use of clean fuel-efficient vehicles through preferential parking, installation of charging stations, and low emission electric vehicle carsharing programs to reduce the need to have a car or second car vehicles in the TDM Program.	City shall require implementation of measures identified in Measure 4.F-7b.	City of Alameda Community Development Department			
Mitigation Measure 4.F-8: Implement Mitigation Measures 4.F-2 and 4.F-7b.	See Mitigation Measures 4.F-2 and 4.F-7b.				
G. Noise					
Mitigation Measure 4.G-1a: (Construction Hours) The City will require construction contractors to limit standard construction activities hours to be in compliance with the Noise Ordinance. Pile driving activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday. No pile driving shall be allowed on weekends and National holidays.	Project applicant and its contractor(s) to include noise limitations in construction specifications. Project applicant and its contractor(s) to comply with the Noise Ordinance and ensure that pile driving activities greater than 90 dBA are limited between 8:00 a.m. and 4:00 p.m. Monday through Friday.	City of Alameda Community Development Department	Review construction specifications to ensure measure is incorporated; inspection to ensure conformance.	Prior to issuance of grading or building permit(s); inspection during construction	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.G-1b: (Construction Noise Measures) To reduce daytime noise impacts due to construction, the City will require construction contractors to implement the following measures: • Equipment and trucks used for project construction will utilize the best available noise control techniques, such as improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible. Impact tools (i.e., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust will be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves will be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures will be used, such as drills rather than impact equipment, whenever feasible. • Stationary noise sources will be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. • Haul routes that affect the fewest number of people will be selected.	Project applicant and its contractor(s) shall use best available noise-control techniques described and locate stationary noise sources as far from adjacent receptors as possible.	City of Alameda Community Development Department	Require use of noise-control techniques in building permit; inspect construction site to confirm adherence to those requirements.	Prior to issuance of grading building permit(s); inspect during construction	
Mitigation Measure 4.G-1c: (Pile Driving Noise Attenuation Measures) Pile driving activities within 300 feet of sensitive receptors will require additional noise attenuation measures. Prior to commencing construction, a plan for such measures will be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures will include as many of the following control strategies as feasible: • Erect temporary plywood noise barriers if they would block the line of sight between sensitive receptors and construction activities, particularly for existing residences in the northern area of the project site and for residences across Main Street; • Implement "quiet" pile driving technology (such as pre-drilling of piles or use of sonic pile drivers), where feasible, in consideration of geotechnical and structural requirements and conditions; and • Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site.	Project applicant and its contractor(s) shall prepare plan and submit to City; implement during construction.	City of Alameda Community Development Department	Review noise-attenuation plan and incorporate plan into building permit; inspect site during construction to confirm adherence to plan.	Prior to issuance of grading or building permit(s); inspect site during construction	
Mitigation Measure 4.G-1d: (Complaint Tracking) Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant will submit to the City a list of measures to respond to and track complaints pertaining to construction noise. These measures will include: • Signs will be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a contact number with the City of Alameda in the event of noise complaints. The project applicant will designate an onsite complaint and enforcement manager to track and respond to noise complaints; and • Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity.	Project applicant and its contractor(s) shall post construction information and track complaints pertaining to construction noise	City of Alameda Community Development Department	Review construction specifications to ensure conformance; inspection to ensure conformance	Prior to issuance of building permit(s)	
Mitigation Measure 4.G-2: Implement Mitigation Measures 4.G-1a through 4.G-1d.	See Mitigation Measures 4.G-1a through 4.G-1d.				
Mitigation Measure 4.G-3: To reduce automobile trips and associated automobile noise impacts, implement Mitigation Measure 4.C2a (TDM Program).	See Mitigation Measure 4.C-2a.				
Mitigation Measure 4.G-4: (Noise Ordinance) During individual project phase design preparation, the City will require a project applicant to comply with the Noise Ordinance and General Plan standards. These measures implement noise control measures to ensure that all non-transportation source operations comply with City standards and will include, but not be limited to, the following: • The proposed land uses will be designed so that onsite mechanical equipment (e.g., HVAC units, compressors, generators) and area-source operations (e.g., loading docks, parking lots, and recreational-use areas) are located as far as possible and/or shielded from nearby noise sensitive land uses to meet City noise standards. • Onsite landscape maintenance equipment will be equipped with properly operating exhaust mufflers and engine shrouds, in accordance with manufacturers' specifications. • The following activities will be limited to the hours of 7:00 a.m. to 10:00 p.m. unless site-specific analysis confirms that noise impacts to sensitive receptors would be less-than-significant: – Truck deliveries; – Operations of motor powered landscape maintenance equipment; and – Outdoor use of amplified sound systems.	Project applicant and its contractor(s) shall incorporate operational noise control measures in project design phase documents.	City of Alameda Community Development Department	City shall ensure that design phase documents of individual projects incorporate operational noise control measures.	During design phase and prior to issuance of building permit(s)	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.G-5: (Noise Study and Design Measures) The City will require project sponsors for residential development to submit a detailed noise study, prepared by a qualified noise consultant, to determine design measures necessary to achieve acceptable interior noise levels at the proposed new residences. The study will be submitted to the City for review and approval. Design measures such as the following could be required, depending on the specific findings of the noise study: double-paned glass windows facing noise sources; solid-core doors; increased sound insulation of exterior walls (such as through staggered-or double-studs, multiple layers of gypsum board, and incorporation of resilient channels); weather-tight seals for doors and windows; or mechanical ventilation such as an air conditioning system.	Project applicant shall obtain a qualified noise consultant to prepare a noise study. Noise consultant will prepare a noise study and determine design measures necessary to achieve acceptable interior noise levels at new residences.	City of Alameda Community Development Department	City shall review and approve noise study and ensure that design measures would meet acceptable interior noise level standards.	Prior to construction.	*This mitigation measure applies only to residential projects.
Mitigation Measure 4.G-6: Implement Mitigation Measures 4.G-3 and 4.G-5.	See Mitigation Measures 4.G-3 and 4.G-5.				
H. Geology, Soils, and Seismicity					
Mitigation Measure 4.H-1: (Geotechnical Investigation) Prior to approval of a building permit, a site specific, design-level geotechnical investigation shall be prepared for all proposed development on the project site. The investigation shall include detailed characterization of the distribution and compositions of subsurface materials and an assessment of their potential behavior during violent seismic ground-shaking. The analysis shall recommend site preparation and design parameters that would be necessary to avoid or substantially reduce structural damage under anticipated peak ground accelerations in accordance with seismic design requirements within the most current version of the California Building Code and Alameda Municipal Code. The investigation and recommendations shall be in conformance with all applicable city ordinances and policies and consistent with the design requirements of the calculated Seismic Design Category for each site in accordance with the California Building Code. The geotechnical report shall be prepared by a California-registered geotechnical engineer and approved by the City, and all recommendations contained in the report shall be included in the final design of the project. Mitigation Measure 4.H-1 would ensure that the proposed project would be designed to withstand strong seismic ground-shaking, and that the occupants of the proposed development are informed of safety procedures to follow in the event of an earthquake.	Project applicant shall obtain a California-registered geotechnical engineer to conduct design-level geotechnical investigation. Geotechnical engineer shall conduct geotechnical investigation, prepare a report and develop recommendations in accordance to Measure 4.H-1. Engineer shall ensure that recommendations conform to city ordinances and policies.	Project applicant and City of Alameda Community Development Department	City shall review and approve geotechnical report.	Prior to approval of building permit(s)	
Mitigation Measure 4.H-2: (Geotechnical Mitigation) Prior to issuance of a building permit, earthwork, foundation and structural design for proposed development under the project shall be conducted in accordance with all recommendations contained in the required geotechnical investigation (Mitigation Measure 4.H-1a). The investigation must include an assessment of all potentially foreseeable seismically-induced ground failures, including liquefaction, sand boils, lateral spreading and rapid settlement. Mitigation strategies must be designed for the site-specific conditions of the project and must be reviewed for compliance with the guidelines of CGS Special Publication 117A prior to incorporation into the project. Examples of possible strategies include edge containment structures (berms, diked sea walls, retaining structures, compacted soil zones), removal or treatment of liquefiable soils, soil modification, modification of site geometry, lowering the groundwater table, in-situ ground densification, deep foundations, reinforced shallow foundations, and structural design that can accommodate predicted displacements.	Project applicant shall ensure that geotechnical investigation includes assessment of all potentially foreseeable seismically-induced ground failures, including liquefaction, sand boils, lateral spreading and rapid settlement. Project applicant shall ensure that mitigation strategies are developed consistent with the guidelines of CGS Special Publication 117A.	Project applicant and City of Alameda Community Development Department	Ensure that geotechnical report addresses seismically-induced ground failures listed in the measure. Review and ensure that mitigation strategies are developed consistent with the guidelines of CGS Special Publication 117A.	Review mitigation strategies prior to incorporation into the project. Prior to issuance of building permit(s).	
Mitigation Measure 4.H-4: (Settlement Mitigation) The required geotechnical report for each development project (Mitigation Measure 4.H-1a) shall determine the susceptibility of the project site to settlement and prescribe appropriate engineering techniques for reducing its effects. Where settlement and/or differential settlement is predicted, mitigation measures—such as lightweight fill, geofoam, surcharging, wick drains, deep foundations, structural slabs, hinged slabs, flexible utility connections, and utility hangers—shall be used. These measures shall be evaluated and the most effective, feasible, and economical measures shall be recommended. Engineering recommendations shall be included in the project engineering and design plans, and be reviewed and approved by a registered geotechnical engineer. All construction activities and design criteria shall comply with applicable codes and requirements of the most recent California Building Code, and applicable City construction and grading ordinances.	Project applicant shall ensure that geotechnical investigation assesses the susceptibility of the site to settlement, prescribes engineering techniques for reducing its effects, and includes recommended mitigation measures. Project applicant will include recommendations in project engineering and design plans. Applicant will comply with all applicable codes and requirements during construction.	City of Alameda Community Development Department and registered geotechnical engineer.	Ensure that geotechnical report evaluates susceptibility of the site to settlement and that recommendations and mitigation measures are included. Registered geotechnical engineer will review and approve engineering recommendations. City will ensure that construction activities and design criteria comply with applicable codes and requirements.	During the design and construction phases.	
Mitigation Measure 4.H-5: (Expansive Soils Assessment) Prior to issuance of a building permit, subsurface earthwork (e.g., placement of engineered fill), shall be conducted in accordance with all recommendations contained in the required geotechnical investigation (Mitigation Measure 4.H-1). The geotechnical report must include an assessment of all potentially expansive soils that could adversely affect proposed improvements. Geotechnical strategies must be designed for the site-specific conditions of the project and must be reviewed for compliance with the requirements of the most recent California Building Code as well as any additional City of Alameda requirements.	Project applicant will ensure that geotechnical report includes assessment of expansive soils and strategies consistent with most recent California Building Code as well as any additional City of Alameda requirements.	City of Alameda Community Development Department	City will review and approve strategies/recommendations outlined in geotechnical report.	Prior to issuance of building permit(s)	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
I. Hydrology and Water Quality					
Mitigation Measure 4.I-1: (Water Quality Measures) The City shall ensure that project applicants for projects at Alameda Point implement the following measures as part associated with the extracted water during project construction: • The RWQCB could require compliance with certain provisions in the permit such as treatment of the flows prior to discharge. The project applicant shall discharge the extracted water to the sanitary sewer or storm drain system with authorization of and required permits from the applicable regulatory agencies, in this case the City of Alameda. • The project applicant shall comply with applicable permit conditions associated with the treatment of groundwater prior to discharge. • If necessary a dewatering collection and disposal method shall be prepared and implemented for the project.	Project applicant will incorporate water quality measures in the construction specifications. Project applicant will obtain and comply with necessary permits from RWQCB and City of Alameda for any activities requiring discharge of extracted water to the sanitary sewer or storm drain system.	City of Alameda Community Development Department, RWQCB	RWQCB and City will review permit application for activities involving discharge or extracted water necessary during construction activities. Upon approval, City will monitor to ensure compliance with permit conditions.	Prior to construction	
Mitigation Measure 4.I-2: (Integrated Pest Management) The City shall ensure that future project applicants implement Integrated Pest Management measures to reduce fertilizer and pesticide contamination of receiving waters, as follows: • Prepare and Implement an Integrated Pest Management Plan (IPM) for all common landscaped areas. The IPM shall be prepared by a qualified professional and shall recommend methods of pest prevention and turf grass management that use pesticides as a last resort in pest control. Types and rates of fertilizer and pesticide application shall be specified. • The IPM shall specify methods of avoiding runoff of pesticides and nitrates into receiving storm drains and surface waters or leaching into the shallow groundwater table. Pesticides shall be used only in response to a persistent pest problem that cannot be resolved by non-pesticide measures. Preventative chemical use shall not be employed. • The IPM shall fully integrate considerations for cultural and biological resources into the IPM with an emphasis toward reducing pesticide application.	The Project applicant will incorporate Integrated Pest Management measures into construction specifications. The Project applicant will implement Integrated Pest Management measures including an integrated pest management plan.	City of Alameda Community Development Department	City will ensure that the Integrated Pest Management measures are included in the construction specifications. City will monitor and ensure that Project applicant implements pest management measures.	Prior to construction and after construction.	
Mitigation Measure 4.I-8: (Sea-Level Protection) 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. • 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 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.	City will incorporate measures into construction plans and specifications. City will implement measures as stated in Measure 4.I-8.	City of Alameda Community Development Department	City shall ensure that structural design and adaptive measures are incorporated in construction plans and specifications. City will monitor to ensure implementation of measures.	Prior to construction.	*Although implementation of this mitigation measure is the responsibility of the City of Alameda, it should be implemented prior to construction of the first new development project at Alameda Point.
J. Hazards and Hazardous Materials					
Mitigation Measure 4.J-1a: (Hazardous Building Material Assessment) Prior to issuance of any demolition permit, the project applicant shall submit to the City a hazardous building material assessment prepared by qualified licensed contractors for each structure intended for demolition indicating whether LBP or lead-based coatings, ACMs, and/or PCB-containing equipment are present.	Project applicant will obtain a qualified licensed contractor to prepare and submit a hazardous building material assessment. Qualified contractor will prepare and submit hazardous building material assessment for the Project applicant and City's review.	City of Alameda Community Development Department	City will review the hazardous building material assessment.	Prior to issuance of demolition permit(s).	*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.
Mitigation Measure 4.J-1b: (Health and Safety Plan) If the assessment required by Mitigation Measure 4.J-1a indicates the presence of LBP, ACMs, and/or PCBs, the project applicant shall create and implement a health and safety plan to protect demolition and construction workers and the public from risks associated with such hazardous materials during demolition or renovation of affected structures.	Project applicant will prepare and implement a health and safety plan if Measure 4.J-1 indicates the presence of LBP, ACMs, and/or PCBs.	City of Alameda Community Development Department	City will review health and safety plan. City will monitor to ensure that the health and safety plan is implemented.	Prior to and during construction.	*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.J-1c: (LBP Removal Plan) If the assessment required by Mitigation Measure 4.J-1a finds presence of LBP, the project applicant shall develop and implement a LBP 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 offsite migration of paint chip debris. • Remove all peeling and stratified LBP 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 LBP on all equipment to be cut and/or removed during the demolition. • Provide onsite personnel and area air monitoring during all removal activities to ensure that workers and the environment are adequately protected by the control measures used. • 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.	Project applicant will prepare and implement a LBP removal plan if LBP is found present.	City of Alameda Community Development Department	City will review LBP removal plan. City will monitor to ensure that LBP removal plan is implemented.	Prior to construction and during construction.	*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.
Mitigation Measure 4.J-1d: (Asbestos Abatement Plan) If the assessment required by Mitigation Measure 4.J-1a finds asbestos, the project applicant shall prepare an asbestos abatement plan and shall ensure that asbestos abatement is 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.	If asbestos is found upon implementation of Mitigation Measure 4.J-1a, Project applicant will prepare an asbestos abatement plan. Project applicant will obtain a state-certified asbestos consultant to prepare the asbestos plan. State-certified asbestos consultant will ensure that all ACMs are removed and appropriately disposed of.	City of Alameda Community Development Department	City will review and shall approve the asbestos abatement plan. Ensure that abatement of known or suspected ACMs are removed by a state certified asbestos contractor.	Prior to building demolition activities, and during demolition work.	*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.
Mitigation Measure 4.J-1e: (PCB Abatement) If the assessment required by Mitigation Measure 4.J-1a finds PCBs, the project applicant shall ensure that PCB abatement is conducted prior to building demolition or renovation. PCBs shall be removed by a qualified contractor and transported in accordance with Caltrans requirements.	If PCBs are found upon implementation of Mitigation Measure 4.J-1a, Project applicant will obtain a qualified contractor to implement PCB abatement. Qualified contractor will remove PCBs and will transport in accordance with Caltrans requirements.	City of Alameda Community Development Department	City will ensure that PCB abatement measure is incorporated in construction plans and specifications. City will monitor and ensure that PCB abatement measures are implemented.	Prior to and during building demolition or renovation work.	*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.
Mitigation Measure 4.J-2: (Site Management Plan) Prior to issuance of a building or grading permit for any ground breaking activities within the project site, the City shall prepare a Site Management Plan (SMP) that is approved by US EPA, DTSC, and the Water Board for incorporation into construction specifications. Any additional or remaining remediation on identified parcels from the City's tracking system shall be completed as directed by the responsible agency, U.S. EPA, DTSC, or Water Board, in accordance with the deed restrictions and requirements as well as any Covenants(s) to Restrict Use of Property (CRUP), prior to commencement of construction activities. Where necessary, additional remediation shall be accomplished by the project applicant prior to issuance of any building or grading permits in accordance with all requirements set by the overseeing agency (i.e., U.S. EPA, DTSC, or Water Board). The SMP shall be present on site at all times and readily available to site workers. The SMP shall specify protocols and requirements for excavation, stockpiling, and transport of soil and for disturbance of groundwater as well as a contingency plan to respond to the discovery of previously unknown areas of contamination (e.g., discolored soils, strong petroleum odors, an underground storage tank unearthed during normal construction activities, etc.). At a minimum the SMP shall include the following components:	City and Project applicant shall prepare a Site Management Plan (SMP) for U.S. EPA, DTSC, or State Water Resources Control Board's (Water Board) approval. City and Project applicant shall implement additional or remaining remediation efforts from the City's tracking system and as directed by the U.S. EPA, DTSC, or Water Board. City will implement measures contained in the approved SMP.	City of Alameda Community Development Department and U.S. EPA, DTSC, or Water Board.	The City, U.S. EPA, DTSC, or Water Board will review SMP and ensure SMP is incorporated into construction specifications. City and the overseeing agency will ensure that Project applicant implements additional remediation requirements based on those established by overseeing agency as well as any Covenants to Restrict Use of Property (CRUP). The City and the overseeing agency will ensure that the SMP is present on site at all	Prior to issuance of a building or grading permit	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
1. *Soil management requirements.* Protocols for stockpiling, sampling, and transporting soil generated from onsite activities. The soil management requirements must include: • Soil stockpiling requirements such as placement of cover, application of moisture, erection of containment structures, and implementation of security measures. Additional measures related to BAAQMD dust control requirements as they apply to contamination shall also be included, as needed (see also Air Quality section). • Protocols for assessing suitability of soil for onsite reuse through representative laboratory analysis of soils as approved by U.S. EPA, DTSC, or Water Board, taking into account the site-specific health-based remediation goals, other applicable health-based standards, and the proposed location, circumstances, and conditions for the intended soil reuse. • Requirements for offsite transportation and disposal of soil not determined to be suitable for onsite reuse. Any soil identified for offsite disposal must be packaged, handled, and transported in compliance with all applicable state, federal, and the disposal facility's requirements for waste handling, transportation and disposal. • Protocols for adherence to the City of Alameda's Marsh Crust Ordinance. • Measures to be taken for areas of IR Site 13 where refinery wastes and asphaltic residues known as tarry refinery waste might be encountered. Measures shall include requirements for the storage, handling and disposal/recycling of any suspected tarry refinery waste that may be encountered. • Radiological screening protocols for the radiological sites identified by the Navy as approved by the U.S. EPA, where necessary. 2. *Groundwater management requirements.* Protocols for conducting dewatering activities and sampling and analysis requirements for groundwater extracted during dewatering activities. The sampling and analysis requirements shall specify which groundwater contaminants must be analyzed or how they will be determined. The results of the groundwater sampling and analysis shall be used to determine which of the following reuse or disposal options is appropriate for such groundwater: • Onsite reuse (e.g., as dust control); • Discharge under the general permit for stormwater discharge for construction sites; • Treatment (as necessary) before discharge to the sanitary sewer system under applicable East Bay MUD waste discharge criteria; • Treatment (as necessary) before discharge under a site-specific NPDES permit; • Offsite transport to an approved offsite facility. For each of the options listed, the SMP shall specify the particular criteria or protocol that would be considered appropriate for reuse or disposal options. The thresholds used must, at a minimum, be consistent with the applicable requirements of the Water Board and East Bay MUD. 3. *Unknown contaminant/hazard contingency plan.* Procedures for implementing a contingency plan, including appropriate notification, site worker protections, and site control procedures, in the event unanticipated potential subsurface hazards or hazardous material releases are discovered during construction. Control procedures shall include: • Protocols for identifying potential contamination though visual or olfactory observation; • Protocols on what to do in the event an underground storage tank is encountered; • Emergency contact procedures; • Procedures for notifying regulatory agencies and other appropriate parties; • Site control and security procedures; • Sampling and analysis protocols; and 4. Interim removal work plan preparation and implementation procedures.					
Mitigation Measure 4.J-7: (Land Use Restriction Tracking Program) The City shall include closed and open IR CERCLA sites that have land-use controls within its Land-use Restriction Tracking Program for identification and disclosure of any past cleanup efforts and current status of any remaining contamination, if any. Additional control measures such as vapor barriers and venting may be required as a condition of approval in areas where soil gas emissions have been identified. Prior to transfer of title for any parcel, the City shall require that the SMP as approved by US EPA, DTSC, and the Water Board be incorporated into intrusive site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.	City will include closed and open Installed Restoration (IR) CERCLA sites that have land-use controls within its Land-use Restrictions Tracking Program. City will ensure that the SMP (as approved by U.S. EPA, DTSC, and Water Board) be incorporated into intrusive site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.	City of Alameda Community Development Department	City shall ensure that its Land-use Restrictions Tracking Program includes open and closed IR CERCLA sites.	Prior to transfer of title for any parcel.	*This mitigation measure will only apply to sites that have land use controls due to existing or past site contamination. The City will identify restricted sites to project applicants.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
K. Aesthetics					
Mitigation Measure 4.K-4: (Lighting Mitigation) All lighting installations shall be designed and installed to be fully shielded (full cutoff) and to minimize glare and obtrusive light by limiting outdoor lighting that is misdirected, excessive, or unnecessary, unless expressly exempted below. The location and design of all exterior lighting shall be shown on any site plan submitted to the City of Alameda for approval. The following lighting is exempt from these requirements: 1. Lighting in swimming pools and other water features. 2. Exit signs and other illumination required by building codes. 3. Lighting for stairs and ramps, as required by the building code. 4. Signs that are regulated by the City sign code. 5. Holiday and temporary lighting (less than thirty days use in any one year). Low-voltage landscape lighting, but such lighting should be shielded in such a way as to eliminate glare and light trespass.	Project applicant and its contractor(s) shall prepare landscape plans that adhere to all specifications in Mitigation Measure 4.K-4.	City of Alameda Community Development Department	Verify that the design features and recommendations listed in the mitigation measure are incorporated into the design review application for the project.	Prior to approval of building permit(s)	
M. Utilities and Services Systems					
Mitigation Measure 4.M-5: (Solid Waste Management Plan) The City shall develop a solid waste management plan for the Alameda Point project consistent with Alameda's demolition and debris ordinance. Plans for managing construction debris from specific reuse and development projects that require separation of waste types and recycling, and provide for reuse of materials onsite for the reuse and development areas, shall be developed by the project sponsor. The solid waste management plan shall be prepared in coordination with City staff, the project sponsor(s), and demolition subcontractors, and shall be approved by City staff prior to issuance of a demolition permit. The City and sponsors of projects shall work with organizations able to provide funding and technical assistance for managing and financing deconstruction, demolition, and recycling and reuse programs, should those programs exist at the time of site clearance.	Project applicant(s) shall develop a solid waste management plan through coordination with City staff and demolition subcontractors. City and Project applicant(s) shall work with organizations that would provide funding and technical assistance for managing and financing deconstruction, demolition and recycling and reuse programs.	City of Alameda Community Development Department	City of Alameda Community Development Department shall review plan.	Plan shall be developed prior to issuance of demolition permit.	* Although implementation of this mitigation measure is the responsibility of the City of Alameda, it should be implemented prior to issuance of a demolition permit to the first new development project at Alameda Point that requires demolition of existing buildings or other structures, including pavements. All projects will be required to comply with the solid waste management plan prepared by the City.

ATTACHMENT B:
QUALITATIVE AIR QUALITY AND GREENHOUSE GAS EMISSIONS

COMPARISON OF SITE A DEVELOPMENT AND THE ALAMEDA POINT PROJECT ANALYZED IN THE ALAMEDA POINT PROJECT ENVIRONMENTAL IMPACT REPORT

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Technical Memorandum

To	Jennifer Ott, Chief Operating Officer – Alameda Point	Page	1
Subject	Qualitative Air Quality and Greenhouse Gas Emissions Comparison of Site A Development and the Alameda Point Project Analyzed in the Alameda Point Project Environmental Impact Report		
From	Hannah Young, Project Manager David Joe, Air Quality Engineer		
Date	April 14, 2015		

This memorandum provides a qualitative review of the proposed Site A development in comparison with the Alameda Point project (APP), which was analyzed in the APP Environmental Impact Report (EIR).

The APP EIR evaluated the potential environmental impacts associated with the redevelopment and reuse of the 878 acres of land and approximately 1,229 acres of water at the former Naval Air Station Alameda, at the western end of the City of Alameda.[1,2] Among other project components, the APP EIR evaluated the rehabilitation, reuse, and new construction of approximately 5.5 million square feet of commercial and workplace facilities for approximately 8,900 jobs, as well as the rehabilitation and new construction of 1,425 residential units for a wide variety of household types for approximately 3,240 residents. The analysis in the APP EIR included the development of the 68-acre Site A.

This memorandum reviews the air quality and greenhouse gas (GHG) impacts identified in the APP EIR, and compares the development assumptions from the APP EIR with those for the proposed Site A. Based on this review and comparison, development of Site A would not substantially increase the severity of identified significant air quality or GHG impacts, nor would it be anticipated to result in new significant air quality or GHG impacts that were not identified in the EIR. This discussion is based on the assumption that, upon full buildout of the APP, the total APP—including the number of residential units and the commercial/industrial square footages—would not be greater than the project analyzed in the APP EIR.

Each of the impacts described in APP EIR Chapter 4.F, Air Quality and Greenhouse Gases is listed below, along with their significance determinations, and the development assumptions from the APP EIR and for Site A are compared, as applicable. In general, the proposed Site A development would not substantially increase the severity of identified significant air quality or GHG impacts, for the following reasons:

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1 ESA, 2013. Draft Alameda Point Project EIR and Response to Comments on the Draft Environmental Impact Report, SCH No. 2013012043. Draft September 2013 and Final December 2013.

2 Skidmore, Owings & Merrill, LLP, et al., 2014. Alameda Point Town Center and Waterfront Precise Plan. Final Report, July.

- The proposed Site A development would not result in a greater amount of development (in terms of building square footage) or a greater rate of construction when compared to the APP full project buildout scenario analyzed in the APP EIR. In addition, the amount of development anticipated under each of the three phases of the proposed project, and the rate of construction of each of these phases, would not be greater than the analysis in the APP EIR (see discussion under Impacts 4.F-1, 4.F-2, 4.F-3, 4.F-4, 4.F-5, 4.F-7, 4.F-8, 4.F-10, and 4.F-11, below).

- The proposed Site A development would not result in greater toxic air contaminant (TAC) sources and odor sources, and would not locate these sources closer to existing sensitive receptors when compared to the APP full project buildout scenario analyzed in the APP EIR (see discussion under Impacts 4.F-3, 4.F-4, 4.F-5, 4.F-6, and 4.F-9, below).

- The proposed Site A development would not locate new sensitive receptors that are substantially closer to TAC emission sources or odor sources compared to the APP full project buildout scenario analyzed in the APP EIR (see discussion under Impacts 4.F-4 and 4.F-9, below).

Impact 4.F-1: Development facilitated by proposed project could potentially result in air quality impacts due to construction activities. (Significant and Unavoidable)

The proposed Site A development would not result in more intense construction activities than those analyzed in the APP EIR. The EIR estimated construction emissions assuming a development scenario of 150 dwelling units and 205,000 square feet of industrial and commercial uses per year (total of 355,000 square feet of buildings per year).[3,4] The analysis also assumed that approximately 80,000 cubic yards of soil would be imported per year, and 225,000 square feet of existing buildings would be demolished per year. Buildout of the proposed Site A project would result in up to 800 residential units and up to 600,000 square feet of retail, commercial, and hotel uses, consisting of 200,000 square feet of new buildings, and up to 400,000 square feet of existing buildings to be repurposed. The total number of residential units and commercial/retail/hotel square footages are an estimated maximum; the square footage of actual constructed uses may be slightly less. Based on the maximum 20-year development duration, the proposed Site A project would be expected to have an average development rate of 40 dwelling units and 38,200 square feet of industrial and commercial uses per year (total of 70,000 square feet of buildings per year);[5] and would involve approximately 5,000 cubic yards of soil import per year and demolition of 13,971 square feet of existing buildings per year. Evaluated as a whole, the build-out development scenario for Site A is less intense than the project analyzed in the EIR.

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[3] ESA, 2013. Alameda Point Project Environmental Impact Report. SCH No. 2013012043. Certified February 4, 2014.

[4] ESA, 2013. Draft Alameda Point Project EIR, SCH No. 2013012043 – Appendix I: Air Quality and Greenhouse Gases. Draft September 2013 and Final December 2013.

[5] This estimate is based on the assumption used in the Alameda Point Project EIR analysis of 1,000 square feet per dwelling unit.

However, the proposed project would likely be developed and constructed in three distinct phases, with varying numbers of residential units and amounts of commercial/retail square footage in each phase. Phase 1 would result in the most intensive construction and the greatest number of units; and Phases 2 and 3 would result in less development, as explained below. Under Phase 1, anticipated from 2016 through 2019 (3-year duration), Phase 1 buildout would result in 669 residential units and 96,000 square feet of retail. This construction scenario would result in 223 dwelling units and approximately 32,000 square feet of industrial and commercial uses per year (total of 255,000 square feet of buildings per year), and would involve importing approximately 33,300 cubic yards of soil per year[6] and demolition of approximately 38,467 square feet of existing buildings per year.

Under Phase 2, anticipated to occur from 2021 through 2023 (3-year duration), total buildout would result in 133 residential units, 100,000 square feet of hotel uses (up to 150 rooms), 59,000 square feet of retail, and a parking structure with up to 560 spaces. This construction scenario would result in 44 dwelling units and approximately 127,677 square feet of industrial and commercial uses per year (total of 172,000 square feet of buildings per year), and would involve demolition of approximately 35,676 square feet of existing buildings per year.

Under Phase 3, anticipated to occur from 2026 through 2029 (3-year duration), total buildout would result in 309,650 square feet of commercial uses and a parking structure with up to 670 spaces. This scenario would result in construction of approximately 192,550 square feet of industrial and commercial uses per year (total of 192,550 square feet of buildings per year), and would involve demolition of approximately 19,000 square feet of existing buildings per year.

Hence, pursuant to the proposed Site A development phasing plan, the rate of development of Site A in each phase is less intense than the scenario analyzed in the APP EIR.

Based on these assumptions, the EIR adequately accounted for construction emissions impacts from the proposed Site A project. As described in the EIR, construction activities would result in a significant impact that would be partially mitigated by the mitigation measures identified in the EIR: Mitigation Measure 4.F-1a (Fugitive Dust), Mitigation Measure 4.F-1b (Construction Exhaust), Mitigation Measure 4.F-1c (Demolition Controls), Mitigation Measure 4.F-1d (Toxic Air Contaminants and $PM_{2.5}$), and Mitigation Measure 4.F-1e (Delayed Occupancy). After implementation of all feasible mitigation measures, some residual impacts would remain, and the impact will remain significant and unavoidable. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-2: Development facilitated by the proposed project could potentially generate operational emissions that would result in a considerable net increase of criteria pollutants and precursors for which the air basin is in nonattainment under an applicable federal or state ambient air quality standard. (Significant and Unavoidable)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. The EIR analyzed operational emissions from full APP buildout in 2035. Operational emissions such as energy, area, and mobile sources are based on measures of operational activity, which are approximately proportional to the number of dwelling units, building square footage, population, and employment. The APP EIR estimated that

[6] The anticipated import of soil for development of Site A is conservatively assumed to occur entirely during Phase 1.

buildout of the APP would result in approximately 5.5 million square feet of developed space consisting of: 3,060,500 square feet of manufacturing/warehouse uses; 1,627,500 square feet of office/business park/institutional uses; 812,000 square feet of retail/commercial uses; 1,425 residential units; 291 acres of parks and open space; and 530 marina slips. The APP would include a total household population of approximately 3,240 persons and about 8,909 jobs; and would generate approximately 33,429 daily vehicle trips, of which approximately 2,928 would be weekday morning (a.m.) peak-hour trips and 3,294 would be weekday evening (p.m.) peak-hour trips.[7]

The proposed Site A development would result in 800 residential dwelling units, 200,000 square feet of new retail, and up to 400,000 square feet of existing buildings to be repurposed for retail/ commercial uses. Buildout of Site A would result in a total household population of 1,816 and approximately 971 jobs. The proposed Site A development at buildout would not exceed the amount of development at buildout of the APP analyzed in the EIR, nor would it result in more trips than anticipated in the EIR. Therefore, the proposed Site A project would not result in more intense operational emissions than the scenario analyzed in the EIR. Based on these assumptions, the EIR adequately accounted for operational emissions impacts from the proposed Site A project.

Operational activities would result in significant impacts that would be partially mitigated by Mitigation Measure 4.F-2 (Greenhouse Gas Reduction Measures). However, after implementation of all feasible mitigation measures, some residual impacts would remain and the impact will remain significant and unavoidable. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-3: Operation of the development facilitated by the proposed project could potentially expose sensitive receptors to substantial concentrations of toxic air contaminants or respirable particulate matter ($PM_{2.5}$). (Less than Significant)

The proposed Site A development would not result in substantially greater or different sources of TACs or emissions of particulate matter less than or equal to 2.5 microns in diameter ($PM_{2.5}$) than the project analyzed in the APP EIR. The EIR analyzed localized health impacts from diesel particulate matter (DPM) and $PM_{2.5}$ from full project buildout in 2035. The DPM and $PM_{2.5}$ project sources considered included increased motor vehicle traffic on surface streets from project operations. These mobile source emissions are based on measures of operational activity, which are approximately proportional to number of dwelling units, building square footage, population, and employment. As discussed in Impact 4.F-2, the proposed Site A development at full buildout would not exceed the amount of development analyzed in the APP EIR full buildout scenario. Therefore, the proposed Site A project would not result in higher potential exposure of sensitive receptors to DPM and $PM_{2.5}$ than the scenario analyzed in the EIR. Impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-4: Development facilitated by the proposed project could potentially expose persons (new receptors) to substantial levels of TACs, which may lead to adverse health. (Less than Significant with Mitigation)

The proposed Site A development would not result in substantially different new receptors, and would not result in substantially greater or different sources of TACs compared to the project analyzed in the

[7] ESA, 2013. Alameda Point Project Environmental Impact Report. SCH No. 2013012043. Certified February 4, 2014. Table 4.C-3, page 4.C-23.

APP EIR. The EIR analyzed health impacts on new receptors (from APP project buildout) from local sources, including project construction. Consistent with the EIR, the proposed Site A project would locate new receptors in the project area. As discussed in Impact 4.F-1, construction of the proposed Site A development would not be more intense than that analyzed in the APP EIR, and TAC emissions would also not be more intense than those analyzed in the APP EIR. Therefore, the proposed Site A project would not result in higher potential exposure of new sensitive receptors to TACs compared to the scenario analyzed in the EIR. Based on these assumptions, the EIR adequately accounted for potential exposure of new sensitive receptors at Site A to TACs. As identified in the EIR, impacts would be significant, but incorporation of Mitigation Measure 4.F-4 (Implement Mitigation Measures 4.F-1a, 4.F-1b, and 4.F-1e) would reduce impacts to less-than-significant levels. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-5: Development facilitated by the proposed project could potentially expose sensitive receptors to substantial carbon monoxide concentrations. (Less than Significant)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. The EIR stated that the project would not exceed the Bay Area Air Quality Management District (BAAQMD) carbon monoxide hotspot screening criteria for traffic volumes, and would be consistent with the Alameda County Congestion Management Agency standards. As discussed in Impact 4.F-2, the proposed Site A project would result in less operational activity and generate less traffic volume than the APP EIR scenario, and would comply with applicable congestion management standards. Therefore, the proposed Site A project would not result in higher potential exposure of sensitive receptors to carbon monoxide hotspots compared to the scenario analyzed in the EIR. The EIR adequately accounted for potential exposure of sensitive receptors to substantial carbon monoxide concentrations. As identified in the EIR, the impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-6: Development facilitated by the proposed project could potentially create objectionable odors affecting a substantial number of people. (Less than Significant)

The proposed Site A development would not result in greater or substantially different residential, industrial, and commercial development (including potential odor sources) than the project analyzed in the APP EIR. Regarding odor sources, the proposed Site A project would not differ substantially from the EIR project analyzed. The EIR adequately accounted for the potential of the proposed Site A project to create objectionable odors affecting a substantial number of people. As identified in the EIR, the impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-7: Development facilitated by the proposed project could potentially conflict with or obstruct implementation of the applicable air quality plan. (Significant)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. As discussed in Impact 4.F-2, the proposed Site A development at full buildout would not exceed the amount of development analyzed in the APP EIR full buildout scenario. The proposed Site A project would be similar to the project analyzed in the EIR with regard to support of the primary goals of the 2010 Clean Air Plan, consistency with Clean Air Plan control measures, and potential disruption of applicable control measures. The EIR adequately

accounted for the proposed Site A project's potential to conflict with or obstruct implementation of the applicable air quality plan. As identified in the EIR, impacts would be significant, but implementation of Mitigation Measure 4.F-7a (Implement Mitigation Measure 4.F-2), Mitigation Measure 4.F-7b (Fuel-Efficient Vehicles) would reduce impacts to less-than-significant levels. The Site A development would not substantially increase the severity of this impact or create new impacts.

Cumulative Impacts

Impact 4.F-8: Development facilitated by the proposed, when combined with past, present, and other reasonably foreseeable development in the vicinity, could potentially result in cumulative criteria air pollutant air quality impacts. (Significant and Unavoidable)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. As discussed in Impact 4.F-2, the proposed Site A development at full buildout would not exceed the amount of development analyzed in the APP EIR full buildout scenario. The EIR adequately accounted for cumulative criteria air pollutant impacts for the proposed Site A project. Significant impacts would be partially mitigated by Mitigation Measure 4.F-8 (Implement Mitigation Measures 4.F-2 and 4.F-7b). However, as described in the EIR, after implementation of all feasible mitigation measures, some residual impacts would remain and the impact will remain significant and unavoidable. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-9: Development facilitated by the proposed project could cumulatively expose persons to substantial levels of TACs, which may lead to adverse health effects. (Less than Significant)

The proposed Site A development would not result in substantially different new receptors, and would not result in substantially greater or different sources of TACs compared to the project analyzed in the APP EIR. As discussed in Impact 4.F-4, the proposed Site A development would locate new receptors within the APP project area analyzed in the APP EIR, and would not result in substantially more intense construction activities that could generate TAC emissions. The EIR adequately accounted for the potential cumulative exposure of new sensitive receptors at Site A to TACs. Cumulative impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-10: Development facilitated by the proposed project could potentially generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment. (Less than Significant)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. The APP EIR considered the following activities in analyzing the project's potential to contribute to the generation of GHG emissions: construction activities; solid waste disposal; gas, electricity, and water use; motor vehicle use; and stationary sources. As discussed in Impact 4.F-1 and Impact 4.F-2, the construction activities for the proposed Site A development and operations at full buildout would not exceed the amount of development analyzed in the APP EIR construction and full buildout operations scenario. The land use types would be similar to those analyzed and described in the EIR, and the project would not result in a substantial difference of the GHG efficiency for the APP EIR. Based on the assumptions listed below, the EIR adequately accounted for the GHG emissions of the proposed Site A project.

As described in the EIR, impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

Impact 4.F-11: Development facilitated by the proposed project could potentially conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases. (Less than Significant)

The proposed Site A development would not result in more residential, industrial, and commercial development than the project analyzed in the APP EIR. As discussed in Impact 4.F-1 and Impact 4.F-2, the construction activities for the proposed Site A development and operations at full buildout would not exceed the amount of development analyzed in the APP EIR construction and full buildout operations scenario. The EIR adequately accounted for the proposed Site A project's potential to conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. The project analyzed in the EIR would be consistent with GHG reduction initiatives in the 2008 Local Action Plan for Climate Protection and, as discussed in Impact 4.F-10, would not exceed the BAAQMD GHG efficiency threshold. As described in the EIR, impacts would be less than significant. The Site A development would not substantially increase the severity of this impact or create new impacts.

EXHIBIT E

FORM OF DDA MEMORANDUM

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
No fee for recording pursuant to
Government Code Section 27383

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of _____, 20___, by and between the City of Alameda (the "City"), and Alameda Point Partners, LLC, a Delaware limited liability company (the "Developer"). This Memorandum confirms that the City and the Developer entered into that certain Disposition and Development Agreement, dated as of _____, 20___ (the "DDA"). The DDA sets forth certain rights and obligations of the City and the Developer with respect to conveyance, development, operation, maintenance and transfer of ownership interests in that certain real property in Alameda, California, described in the attached Attachment No. 1. Such rights and obligations as set forth in the DDA constitute covenants running with the land and are binding upon the City, the Developer, and their respective permitted successors in interest under the DDA.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Disposition and Development Agreement this _____, 20___.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED

ATTACHMENT NO. 1 TO DDA MEMORANDUM

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT F

MILESTONE SCHEDULE

This Milestone Schedule summarizes the schedule for various activities under the Disposition and Development Agreement (the "Agreement") to which this exhibit is attached. This Milestone Schedule shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Milestone Schedule to other provisions of the Agreement and shall not be deemed to have any substantive effect. Times for performance are subject to extensions as set forth in Section 1.3 of the Agreement.

Whenever this Milestone Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

As provided in Section 1.4 of this Agreement, this Milestone Schedule may be modified by Operating Memoranda executed in accordance with Section 18.16 of this Agreement.

ACTION	**DATE**
1. **Deposit**. The Developer shall deliver the Deposit to the City. [§2.1]	5 days from Effective Date
2. **Phase 0**. Developer presents to the City Council for its approval the Phase 0 Activities Plan [§9.2]	No later than 45 days from Effective Date
3. **Phase 0.** Commence Phase 0 Activities Plan [§9.2]	60 days after approval of the Phase 0 Activities Plan by the City Council
PHASE 1	
4. **Submission – Phase Update to Financing Plan**. The Developer shall prepare and submit the Phase Update to the Financing Plan for Phase 1 for City approval. [§3.1(a)]	At least 90 days prior to the Phase 1 Outside Phase Closing Date [September 12, 2016]
5. **Approval – Phase Update -Financing Plan**. The City shall approve or disapprove the Phase Update to the Financing Plan for Phase 1. [§3.2]	Within 30 days of submission
6. **Submission – Public Financing Plan.** The Developers shall prepare and submit to the City the Public Financing Plan [§3.2(c)]	At least 90 days prior to the Phase 1 Outside Phase Closing Date [September 12, 2016]

ACTION	DATE
7. **Approval – Public Financing Plan**. The City shall approve or disapprove the Public Financing Plan. [§3.2]	Within 30 days of submission.
8. **Navy Conveyance –Storm Drain Line**. The Developer shall notify the City of its intent to remove the Storm Drain Line [§8.15]	No later than November 1, 2015
9(a). **Navy Conveyance** 9(b).. **State Lands Exchange**. The City shall facilitate closing of the exchange of Tidelands property within the Phase 1 property. [§10.4]	May 2, 2016 June 28, 2016
10. **Application – Supplemental Approvals.** The Developer shall apply for the first Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 1 of the Project. [§5.4(a)]	November 30, 2015
11. **Receipt – Supplemental Approvals.** The Developer shall obtain all of the Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 1 of the Project, and shall provide evidence of the same to the City [§5.4(c)]	November 11, 2016
12. **Application – Additional Approvals - Horizontal**. The Developer shall submit evidence to the City that it has submitted an application for a main line extension including a fully executed water services agreement with East Bay Municipal Utility District and payment of any fees required by such agreement. [§5.4(b)]	May 16, 2016
13. **Receipt – Additional Approvals-Horizontal**. The Developer shall obtain the Additional Approvals -Horizontal for Phase 1 of the Project and shall provide the city with evidence of the same [§5.4(c)]]	September 29, 2017
14. **Submission – Phase Construction Contract (Horizontal)**. The Developer shall submit the Construction Contract for the Backbone Infrastructure of Phase 1 of the Project for City approval. [§5.5]	At least 45 days prior to the Phase 1 Outside Phase Closing Date [October 31, 2016]

ACTION	DATE
15. **Approval – Phase Construction Contract (Horizontal)**. The City shall approve or disapprove the construction contract for the horizontal component of Phase 1 of the Project. [§5.5]	15 business days from Submission – Phase Construction Contract (Horizontal)
16. **Submission – Public Improvement Agreement and Completion Assurances To City**. The Developer and the City shall have entered into a Public Improvement Agreement for the Backbone Infrastructure for Phase 1 of the Project and Developer shall have provided the Completion Assurance required by the Public Improvement Agreement. [§5.6]	At least thirty (30) days prior to the Phase 1 Outside Phase Closing Date [November 12, 2016]
17. **Submission – Evidence of Funds Availability**. The Developer shall submit the specified evidence of funds availability for Phase 1. [§4.3(a)(7)]	At least thirty (30) days prior to the Phase 1 Outside Phase Closing Date [November 12, 2016]
18. **Submission – Evidence of Insurance**. The Developer shall provide evidence of compliance with insurance requirements for Phase 1. [Art. 16]	At least thirty (30) days prior to the Phase 1 Outside Phase Closing Date [November 12, 2016]
19. **Closing**. The parties shall complete the Closing for Phase 1. [§5.3]	December 12, 2016
20. **Commencement of Construction Phase 1 Infrastructure)**. The Developer shall commence construction of the Infrastructure of Phase 1 of the Project. [§5.1]	Within thirty (30) days of the Phase 1 Closing
21. **Completion of Construction (Horizontal)**. The Developer shall complete construction of Phase 1 Infrastructure Phase of the Project. [§5.1]	Within 30 months of Commencement of Phase 1 Infrastructure Phase
22. **Submission – Sub-Phase Update to Financing Plan**. The Developer shall prepare and submit the Phase Update to the Financing Plan for Phase 1 for City approval. [§3.1(b)]	At least sixty (60) days prior to the earlier of (i) transfer of the Sub-Phase to an unaffiliated buyer or (ii) issuance of the first building permit for the Sub-Phase.
23. **Approval – Sub-Phase Update to Financing Plan**. The City shall approve or disapprove the Phase Update to the Financing Plan for Phase 1. [§3.2]	Within 30 days of submission

ACTION	DATE
24. **Apply – Additional Approvals – Vertical.** Developer shall apply for first Additional Approvals- Vertical for the first Sub-Phase of the Phase 1 Vertical Improvements. [§6.3(a)]	October 18, 2016
25. **Receipt –Additional Approvals- Vertical.** Developer shall obtain the Additional Approvals – Vertical necessary for the completion of the all of Phase 1 Vertical Improvements and provide the City of evidence of such approvals [§6.3(b)]	August 20, 2018
26. Submission – Vertical Improvement Construction Contract. The Developer shall submit the Vertical Improvement Construction Contract for the Phase 1 Vertical Improvements or Sub-Phase thereof for City approval. [§6.4]	At least 45 days prior to the commencement of construction of any Sub-Phase
27. Approval – Vertical Improvement Construction Contract. The City shall approve or disapprove the construction contract for the Vertical Improvements or Sub-Phase of Vertical Improvements of Phase 1 of the Project. [§6.4]	Within 15 business days of Submission.
28. Submission – Vertical Improvement Completion Assurances. The Developer shall submit the Vertical Improvement Completion Assurances for the Vertical Improvements or Sub-Phase of Phase 1 for City Approval [§6.5]	At least 45 days prior to the commencement of construction of any Sub-Phase
29. Approval – Vertical Improvement Completion Assurances. The City shall approve or disapprove the Vertical Improvement Completion Assurances. [§6.5]	Within 15 business days of submission
30. **Commencement of Construction (Vertical)**. The Developer shall commence construction of the vertical component of Phase 1 of the Project. [§6.1]	September 19, 2017
31. **Completion of Construction (Vertical)**. The Developer shall complete construction of the vertical component of Phase 1 of the Project. [§6.1]	28 months from Commencement of Construction (Vertical) [November 11, 2019]
32. **Issuance of Estoppel Certificate of Completion (Horizontal and Vertical)**. The City shall issue an Estoppel Certificate of Completion for Phase 1 of the Project. [§10.7]	90 days from certificates of occupancy for any Sub-Phase
PHASE 2	
33. **Submission – Phase Update to Financing Plan**. The Developer shall prepare and submit	At least 90 days prior to the Phase 2 Outside Phase Closing Date [May 28, 2022]]

ACTION	DATE
the Phase Update to the Financing Plan for Phase 2 for City approval. [§3.1(a)]	
34. **Approval – Phase Update -Financing Plan.** The City shall approve or disapprove the Phase Update to the Financing Plan for Phase 2. [§3.2]	Within 30 days of submission
35. **Navy Conveyance** –The City shall facilitate conveyance of all of Phase 2 property from the Navy to the City.[§8.15]	February 23, 2022
36. **State Lands Exchange**. The City shall facilitate closing of the exchange of Tidelands property within the Phase 2 property. [§10.4]	April 21, 2022
37. **Application – Supplemental Approvals.** The Developer shall apply for the first Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 2 of the Project. [§5.4(a)]	October 20, 2021
38. **Receipt – Supplemental Approvals**. The Developer shall obtain all of the Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 2 of the Project, and shall provide evidence of the same to the City [§5.4(c)]	July 26, 2022
39. **Application – Additional Approvals - Horizontal**. The Developer shall submit evidence to the City that it has submitted an application for a main line extension including a fully executed water services agreement with East Bay Municipal Utility District and payment of any fees required by such agreement. [§5.4(b)]	March 9, 2022
40. **Receipt – Additional Approvals-Horizontal**. The Developer shall obtain the Additional Approvals -Horizontal for Phase 2 of the Project and shall provide the city with evidence of the same [§5.4(c)]]	July 25, 2023
41. **Submission – Phase Construction Contract (Horizontal).** The Developer shall submit the Construction Contract for the Backbone Infrastructure of Phase 2 of the Project for City approval. [§5.5]	At least 45 days prior to the Phase 2 Outside Phase Closing Date [July 10, 2022]

ACTION	DATE
42. **Approval – Phase Construction Contract (Horizontal).** The City shall approve or disapprove the construction contract for the horizontal component of Phase 2 of the Project. [§5.5]	15 business days from Submission – Phase Construction Contract (Horizontal)
43. **Submission – Public Improvement Agreement and Completion Assurances To City**. The Developer and the City shall have entered into a Public Improvement Agreement for the Backbone Infrastructure for Phase 2 of the Project and Developer shall have provided the Completion Assurance required by the Public Improvement Agreement . [§5.6]	At least thirty (30) days prior to the Phase 2 Outside Phase Closing Date [July 25, 2022]
44. **Submission – Evidence of Funds Availability**. The Developer shall submit the specified evidence of funds availability for Phase 2. [§4.3(a)(7)]	At least thirty (30) days prior to the Phase 2 Outside Phase Closing Date [July 25, 2022]
45. **Submission – Evidence of Insurance.** The Developer shall provide evidence of compliance with insurance requirements for Phase 2. [Art. 16]	At least thirty (30) days prior to the Phase 2 Outside Phase Closing Date [July 25, 2022]
46. **Closing**. The parties shall complete the Closing for Phase 2. [§5.3]	August 24, 2022
47. **Commencement of Construction Phase 1 Infrastructure).** The Developer shall commence construction of the Infrastructure of Phase 2 of the Project. [§5.1]	Within thirty (30) days of the Phase 2 Closing
48. **Completion of Construction (Horizontal).** The Developer shall complete construction of Phase 2 Infrastructure Phase of the Project. [§5.1]	Within 30 months of Commencement of Phase 2 Infrastructure Phase
49. **Submission – Sub-Phase Update to Financing Plan**. The Developer shall prepare and submit the Phase Update to the Financing Plan for Phase 2 for City approval. [§3.1(b)]	At least sixty (60) days prior to the earlier of (i) transfer of the Sub-Phase to an unaffiliated buyer or (ii) issuance of the first building permit for the Sub-Phase.
50. **Approval – Sub-Phase Update to Financing Plan**. The City shall approve or disapprove the Sub-Phase Update to the Financing Plan for Phase 2. [§3.2]	Within 30 days of submission

ACTION	DATE
51. **Apply – Additional Approvals – Vertical.** Developer shall apply for first Additional Approvals- Vertical for the first Sub-Phase of Phase 2 Vertical Improvements. [§6.3(a)]	June 30, 2022
52. **Receipt –Additional Approvals- Vertical.** Developer shall obtain the Additional Approvals – Vertical for the construction of the Phase 2 Vertical Improvements thereof and provide the City of evidence of such approvals [§6.3(b)]	May 1, 2024
53. **Submission – Vertical Improvement Construction Contract**. The Developer shall submit the Vertical Improvement Construction Contract for the Phase 2 Vertical Improvements or Sub-Phase thereof for City approval. [§6.4]	At least 45 days prior to the commencement of construction of any Sub-Phase
54. **Approval – Vertical Improvement Construction Contract**. The City shall approve or disapprove the construction contract for the Vertical Improvements or Sub-Phase of Vertical Improvements of Phase 2 of the Project. [§6.4]	Within 15 business days of Submission.
55. **Submission – Vertical Improvement Completion Assurances**. The Developer shall submit the Vertical Improvement Completion Assurances for the Vertical Improvements or Sub-Phase of Phase 2 for City Approval [§6.5]	At least 45 days prior to the commencement of construction of any Sub-Phase
56. **Approval – Vertical Improvement Completion Assurances.** The City shall approve or disapprove the Vertical Improvement Completion Assurances. [§6.5]	Within 15 business days of submission
57. **Commencement of Construction (Vertical)**. The Developer shall commence construction of the vertical component of Phase 2 of the Project. [§6.1]	June 1, 2023
58. **Completion of Construction (Vertical).** The Developer shall complete construction of the vertical component of Phase 2 of the Project. [§6.1]	28 months from Commencement of Construction (Vertical)
59. **Issuance of Estoppel Certificate of Completion (Horizontal and Vertical)**. The City shall issue an Estoppel Certificate of Completion for Phase 2 of the Project. [§10.7]	90 days from certificates of occupancy for any Sub-Phase
PHASE 3	
60. **Submission – Phase Update to Financing Plan**. The Developer shall prepare and submit	At least 90 days prior to the Phase 3 Outside Phase Closing Date [December29, 2026]

ACTION	DATE
the Phase Update to the Financing Plan for Phase 3 for City approval. [§3.1(a)]	
61. **Approval – Phase Update -Financing Plan**. The City shall approve or disapprove the Phase Update to the Financing Plan for Phase 3. [§3.2]	Within 30 days of submission
62. **Navy Conveyance** –The City shall facilitate conveyance of all of Phase 3 property from the Navy to the City.[§8.15]	September 28, 2026
63. **State Lands Exchange**. The City shall facilitate closing of the exchange of Tidelands property within the Phase 3 property. [§10.4]	November 24, 2026
64. **Application – Supplemental Approvals**. The Developer shall apply for the first Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 3 of the Project. [§5.4(a)]	May 25, 2026
65. **Receipt – Supplemental Approvals**. The Developer shall obtain all of the Supplemental Approvals necessary to construct the Backbone Infrastructure for Phase 3 of the Project, and shall provide evidence of the same to the City [§5.4(c)]	February 26, 2027
66. **Application – Additional Approvals - Horizontal**. The Developer shall submit evidence to the City that it has submitted an application for a main line extension including a fully executed water services agreement with East Bay Municipal Utility District and payment of any fees required by such agreement. [§5.4(b)]	October 12, 2026
67. **Receipt – Additional Approvals-Horizontal**. The Developer shall obtain the Additional Approvals -Horizontal for Phase 3 of the Project and shall provide the city with evidence of the same [§5.4(c)]]	February 25, 2028
68. **Submission – Phase Construction Contract (Horizontal)**. The Developer shall submit the Construction Contract for the Backbone Infrastructure of Phase 3 of the Project for City approval. [§5.5]	At least 45 days prior to the Phase 3 Outside Phase Closing Date [February 12, 2027]

ACTION	DATE
69. **Approval – Phase Construction Contract (Horizontal).** The City shall approve or disapprove the construction contract for the horizontal component of Phase 3 of the Project. [§5.5]	15 business days from Submission – Phase Construction Contract (Horizontal)
70. **Submission – Public Improvement Agreement and Completion Assurances To City.** The Developer and the City shall have entered into a Public Improvement Agreement for the Backbone Infrastructure for Phase 3 of the Project and Developer shall have provided the Completion Assurance required by the Public Improvement Agreement. [§5.6]	At least thirty (30) days prior to the Phase 3 Outside Phase Closing Date [February 28, 2027]
71. **Submission – Evidence of Funds Availability.** The Developer shall submit the specified evidence of funds availability for Phase 3. [§4.3(a)(7)]	At least thirty (30) days prior to the Phase 3 Outside Phase Closing Date [February 28, 2027]
72. **Submission – Evidence of Insurance.** The Developer shall provide evidence of compliance with insurance requirements for Phase 3. [Art. 16]	At least thirty (30) days prior to the Phase 3 Outside Phase Closing Date [February 28, 2027]
73. **Closing.** The parties shall complete the Closing for Phase 3. [§5.3]	March 29, 2027
74. **Commencement of Construction Phase 1 Infrastructure).** The Developer shall commence construction of the Infrastructure of Phase 3 of the Project. [§5.1]	Within thirty (30) days of the Phase 3 Closing
75. **Completion of Construction (Horizontal).** The Developer shall complete construction of Phase 3 Infrastructure Phase of the Project. [§5.1]	Within 30 months of Commencement of Phase 3Infrastructure Phase
76. **Submission – Sub-Phase Update to Financing Plan.** The Developer shall prepare and submit the Phase Update to the Financing Plan for Phase 3 for City approval. [§3.1(b)]	At least sixty (60) days prior to the earlier of (i) transfer of the Sub-Phase to an unaffiliated buyer or (ii) issuance of the first building permit for the Sub-Phase.
77. **Approval – Sub-Phase Update to Financing Plan.** The City shall approve or disapprove the Sub-Phase Update to the Financing Plan for Phase 3. [§3.2]	Within 30 days of submission

ACTION	DATE
78. **Apply – Additional Approvals – Vertical.** Developer shall apply for first Additional Approvals- Vertical for the first Sub-Phase of Phase 3 Vertical Improvements. [§6.3(a)]	February 2, 2027
79. **Receipt –Additional Approvals- Vertical.** Developer shall obtain the Additional Approvals – Vertical for the construction of Phase 3 Vertical Improvements and provide the City of evidence of such approvals [§6.3(b)]	December 4, 2028
80. **Submission – Vertical Improvement Construction Contract**. The Developer shall submit the Vertical Improvement Construction Contract for the Phase 3 Vertical Improvements or Sub-Phase thereof for City approval. [§6.4]	At least 45 days prior to the commencement of construction of any Sub-Phase
81. **Approval – Vertical Improvement Construction Contract**. The City shall approve or disapprove the construction contract for the Vertical Improvements or Sub-Phase of Vertical Improvements of Phase 3 of the Project. [§6.4]	Within 15 business days of Submission.
82. **Submission – Vertical Improvement Completion Assurances**. The Developer shall submit the Vertical Improvement Completion Assurances for the Vertical Improvements or Sub-Phase of Phase 3 for City Approval [§6.5]	At least 45 days prior to the commencement of construction of any Sub-Phase
83. **Approval – Vertical Improvement Completion Assurances.** The City shall approve or disapprove the Vertical Improvement Completion Assurances. [§6.5]	Within 15 business days of submission
84. **Commencement of Construction (Vertical)**. The Developer shall commence construction of the vertical component of Phase 3 of the Project. [§6.1]	January 4, 2028
85. **Completion of Construction (Vertical)**. The Developer shall complete construction of the vertical component of Phase 3 of the Project. [§6.1]	28 months from Commencement of Construction (Vertical)]
86. **Issuance of Estoppel Certificate of Completion (Horizontal and Vertical)**. The City shall issue an Estoppel Certificate of Completion for Phase 3of the Project. [§10.7]	90 days from certificates of occupancy for a Sub-Phase

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EXHIBIT G

INFRASTRUCTURE PACKAGE

ALAMEDA POINT SITE A INFRASTRUCTURE PACKAGE

EXHIBIT 1: SITE A – DEMOLITION BY PHASE

EXHIBIT 2: NORTHERN BULKHEAD WALL REPAIR CONCEPTUAL DESIGN

EXHIBIT 3: ALAMEDA POINT – BACKBONE ROADWAY INFRASTRUCTURE PHASING

EXHIBIT 4: SITE A – PHASING

EXHIBIT 5: ALAMEDA POINT – UTILITY PHASING (GAS)

EXHIBIT 6: ALAMEDA POINT – UTILITY PHASING (ELECTRICAL DISTRIBUTION)

EXHIBIT 7: ALAMEDA POINT – UTILITY PHASING (WATER)

EXHIBIT 8: ALAMEDA POINT – UTILITY PHASING (RECYCLED WATER)

EXHIBIT 9: ALAMEDA POINT – UTILITY PHASING (STORM DRAIN)

EXHIBIT 10: ALAMEDA POINT – UTILITY PHASING (SANITARY SEWER)

EXHIBIT 11: ALAMEDA POINT – UTILITY PHASING (TEL/DATA)

EXHIBIT 12: SITE A – PARK & OPEN SPACE PHASING

Proposed infrastructure improvements would be consistent with the MIP[1] for the development of Site A. The proposed infrastructure improvements are generally described below. In addition, see the attached illustrative figures that depict the proposed infrastructure improvements. The descriptions and figures are preliminary and subject to change through the Tentative Map process and once detailed designs are completed.

In addition to the proposed improvements described below, the necessary improvements would be installed to maintain access and utility service to the existing tenants and areas within Alameda Point until the development of Site A is complete consistent with the MIP.

Streetscape, Circulation, and Parking

Site A would be developed with a "complete streets" transportation network that would support a variety of modes of transportation, and would provide pedestrian, bicycle, and transit facilities. New roadways would be constructed, and existing roadways would be re-aligned, resulting in a grid street network on the site. West Atlantic Avenue would be realigned and renamed as an extension of RAMP from east of Main Street. RAMP would serve as a gateway to Site A. The project frontage along Main Street would be landscaped, and the portion of the Bay Trail along Main Street from RAMP to West Tower Avenue would be constructed. Intersection improvements would be made at RAMP and Main Street to improve signalization, and vehicular, pedestrian, and bicycle circulation.

The street system would include regional arterials, such as Main Street and RAMP; collector streets, such as Pan Am Way; and a network of local streets with connecting alleys. Sidewalks would be constructed along streets, with widths varying between 6 and 15 feet, based on street right-of-way sections. In addition, bicycle facilities—including separated bicycle paths, shared pedestrian and bicycle paths, and bicycle lanes with painted buffer strips—would be constructed throughout the site. A dedicated bus rapid transit lane would be constructed along a portion of the RAMP extension.

Transportation Demand Management Measures

Site A would implement capital facilities in support of the Site A Transportation Demand Management (TDM) Strategy consistent with the Alameda Point TDM Plan. These capital facilities will include construction of surface parking lots within Site A consistent with the Development Plan, installation of parking meters within Site A, a bike share station and loaner bikes, among other facilities necessary to implement the TDM Compliance Strategy.

Utilities and Site Improvements

The MIP describes the planned backbone infrastructure, anticipated to consist of new infrastructure installed to support the uses in Site A. The backbone infrastructure is the major framework of streets and utilities, generally based on the existing street grid within Site A.

The MIP outlines potential corrective geotechnical and flood protection improvement measures. In addition, the proposed utility systems described in the MIP include stormwater, wastewater, potable water, recycled water, electrical, natural gas, and telecommunication systems. Each of these systems is anticipated to connect to existing reliable public facilities at the perimeter of Site A. The proposed electrical system would connect to the existing Cartwright Substation, which is in Site A near the intersection of West Atlantic Avenue (future RAMP) and Main Street.

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[1] Carlson, Barbee, Gibson, Inc., 2014. Master Infrastructure Plan, Alameda Point, Alameda, California. March 31.

Flood Protection, Sea-Level Rise Strategy, Soil Improvements, and Site Grading. Consistent with the EIR and MIP evaluated therein, the proposed project would construct flooding and sea-level rise protection. Perimeter flood protection measures would be constructed for integration with the sea-level rise adaptive management strategy for Alameda Point. Along the northern and eastern perimeter of the Seaplane Lagoon, shoreline flood protection improvements would be installed to a minimum elevation of 7.6 feet (City Datum) along Site A, based on the MIP design criteria 100-year tide, plus 24-inch sea-level rise, plus 1-foot wind/wave run-up, plus 1-foot freeboard. The existing seawall along the northern perimeter of the Seaplane Lagoon would be retrofitted along Site A. Geotechnical corrective measures to address liquefaction potential and stabilize the building sites may include soil improvement techniques such as soil-cement mixed columns, drilled displacement columns, stiffened foundations, and/or piles. In addition, the site would be graded to achieve the minimum required elevations per the MIP. Portions of the site would be raised up to 3 feet above the existing ground level. The existing buildings to be repurposed will remain at their current finished floor elevations.

Natural Gas. A new natural-gas-distribution system would be installed throughout Site A, replacing the existing natural gas system in phases consistent with the development build-out. This system would connect to the existing 8-inch main near the intersection of West Atlantic Avenue and Main Street. The proposed gas facilities would be constructed in the backbone streets in a phased implementation The new natural gas distribution system would be designed and constructed in accordance with Pacific Gas and Electric's regulations, standards, and specifications.

Electricity. The existing overhead transmission lines in Site A would be replaced with a new underground electric distribution system from the Cartwright Substation, in phases consistent with the development build-out. The proposed electric distribution system would consist of new underground conduits, vaults, boxes, and pads that can accommodate 15-kV–rated cables, transformers, switches, and other utility distribution equipment, including its supervisory control and data acquisition communication monitoring and controls. The electrical conduits and cables would be placed in a joint utility trench along the backbone streets. This trench would also accommodate the natural gas, telephone, cable television, possible ancillary fiber optic cable systems, and streetlight facilities. The new underground electric distribution system and joint utility trench would be designed and constructed in accordance with Alameda Municipal Power's regulations, standards, and specifications.

Potable Water Improvements. The existing water system would be replaced with a new potable water distribution system in phases consistent with the development build-out. The proposed distribution pipelines would connect to the existing East Bay Municipal Utility District (EBMUD) water facilities in Main Street. The proposed distribution system would range in size from 8 inches to potentially 16 inches in diameter. The proposed water distribution facilities would be installed in the backbone streets, providing potable and fire water to the proposed project.

Recycled Water. A network of recycled water pipelines is anticipated to be constructed in the proposed rights-of-way of major backbone streets, and would range in size from 6 to 12 inches to serve the open space and public landscaping. The recycled water facilities would be designed and constructed in accordance with EBMUD's regulations, standards, and specifications, should provisions for a permanent source be available.

Stormwater. A new stormwater collection system would be constructed, consisting of pipelines, manholes, inlets, pump stations, trash capture devices, and outfalls. The new stormwater system would be designed to convey the 25-year design storm with 6 inches of minimum freeboard. Additionally, the system would accommodate the 100-year storm, with a maximum ponding in the streets of up to the top of curb at low points in the street profiles. A new stormwater outfall would replace an existing outfall toward the northeastern edge of the Seaplane Lagoon. This new outfall would convey stormwater runoff

from Site A into the Bay, and would include tide valves to prevent tidal influences in the system as well as a trash capture device to prevent the discharge of trash to the Bay. Due to high groundwater table, and the limited potential for collecting and reusing stormwater, the proposed project would implement low-impact development principles for the management and treatment of stormwater runoff. Although much of the system would be gravity-based, pumping may be necessary to convey treated flows to bioretention areas.

Wastewater. The proposed project would replace the existing wastewater system with a new wastewater collection system that would be owned and operated by the City of Alameda. The proposed collection system would include gravity pipelines ranging in size from 8 inches to 24 inches in diameter, and lift/ pump station(s) and force main pipelines. The proposed wastewater collection facilities would be installed in the backbone streets in Site A and extending to connect to EBMUD's existing Pump Station R at the Main Gate. Pump Station R conveys wastewater flows to the EBMUD treatment plant in Oakland.

New Telecommunications Systems. New telecommunications systems, including telephone and cable television, would be installed. Additional empty conduits would be installed to accommodate the implementation of fiber optics by other service providers. These systems would connect to the existing systems east of Site A, near Main Street.

Parks and Open Space

Site A would be developed with three distinct park-themed areas or districts; each district would have a unique character and programming intended to create accessible and walkable community open space, as described below. A portion of the Bay Trail would be constructed along the northeastern edge of the Seaplane Lagoon, along the southern edge of RAMP to Main Street, and along the Site A frontage on Main Street, generally from RAMP north to West Tower Avenue. In addition to the public open spaces/ parks described below, private open space would be developed for the residential uses.

The Waterfront Park District would include an approximately 7.23-acre park along the shoreline of the Seaplane Lagoon. Amenities would be designed for water-oriented activities and views, and would include pedestrian walks, bicycle paths, vista points, seat/rest areas, flexible plaza space for events, and access to the water.

The Urban Park District would include an approximately 3.05-acre adaptive reuse park, with spaces for retail uses such as cafés, markets, and seating; and would provide pedestrian walks, bicycle paths, and flexible open-space zones. The park would be designed to provide information about the former uses of the base, and salvaged post-industrial materials such as train tracks would be integrated into the design.

The Neighborhood Park District would provide an approximately 1.15-acre park along RAMP, the main entry road, which would retain the existing Corsair II aircraft display and existing Cypress tree along the southern edge of RAMP. In addition, an approximately 1.35-acre linear neighborhood park would be constructed along G Street. Amenities would include areas for informal picnicking, seating, bicycle paths, and areas for active uses such as a crossfit station and a tot-lot area.

Phasing and Construction

Site A would be constructed in three phases, with demolition, grading and flood protection improvements preceding each phase, and utility and street infrastructure constructed prior to completion of vertical construction for each phase. Refer to Exhibits 1 through 12 for diagrams depicting the conceptual phasing of site preparation, utilities, and parks. Temporary improvements would be installed as needed to connect to adjacent facilities and roadways to provide access and utilities to the existing tenants within Alameda Point until future development occurs.

The proposed project infrastructure improvements would be phased to accommodate the scheduled build-out of the residential, retail, commercial, parks, and open space planned for each phase of development. All below-grade utility and street surface improvements that are necessary to comply with the local, state, and federal requirements and applicable law would be completed to deliver a fully functional phase. The phasing of the infrastructure improvements may vary depending on final build-out mix and need. All local in-tract streets (streets within the parcels) necessary to provide access and utility connections would be constructed in the appropriate phase. Each phase would also require interim connections and transitions from the permanent improvements to the existing utilities and roadway sections.

Phase 1

Phase 1 would generally involve the construction of buildings, parks, streets, and utilities between Main Street on the east and Pan Am Way on the west, and between G Street/C Street on the north and RAMP on the south. In addition, existing buildings outside of Phase 1—such as Building 113, Building 117, Building 118, and Building 162—may be occupied with uses consistent with the Town Center Plan during any phase.

Installation of underground utilities and surface street improvements would occur first at the intersection of Main Street and RAMP, and then extend toward the western connection at Pan Am Way. Phase 1 street improvements would include construction of RAMP, A, B, C, and G streets, as well as Orion Street between RAMP and G Street, and Pan AM Way in front of Parcel 11. Main Street frontage improvements, including landscaped parkways and Bay Trail improvements adjacent to the Phase 1 areas described above, would be constructed during Phase 1.

Phase 1 would include the installation of the proposed wastewater system extending to EBMUD's existing Pump Station R located near the Main Gate.

Phase 1 would also include flood protection improvements within and improvements to the waterfront park and shore edge along the Seaplane Lagoon, from the northeastern corner to approximately 500 lineal feet to the west. The approximately 3.05-acre urban park and the approximately 1.35-acre linear neighborhood park along G Street would be constructed during this phase.

Phase 2

Phase 2 would involve the construction of buildings, parks, streets, and utilities south of RAMP, between Main Street on the east and the Seaplane Lagoon on the west, as well as between Pan Am Way and F Street. Installation of underground utilities and street surface improvements would include Orion and C streets and Ferry Point Way from RAMP to the southern edge of Site A; E Street from Pan Am Way to the west; and F Street.

Phase 2 would also include construction of the flood protection improvements and waterfront park along Seaplane Lagoon, from RAMP to the south of Site A, covering approximately 275 lineal feet; as well as construction of the approximately 0.54-acre park on Parcel 12. In addition, the approximately 1.15-acre neighborhood park space along RAMP would be constructed during this phase.

Phase 3

Phase 3 would involve the construction of buildings, parks, streets, and utilities generally north of G and C streets, and generally from Main Street to Pan Am Way. Phase 3 would also include the extension of Orion Street and Pan Am Way improvements north to West Tower Avenue, and construction of D and C streets. The final Seaplane Lagoon flood protection and park improvements would be installed along the western edge of Site A on Parcel 19.

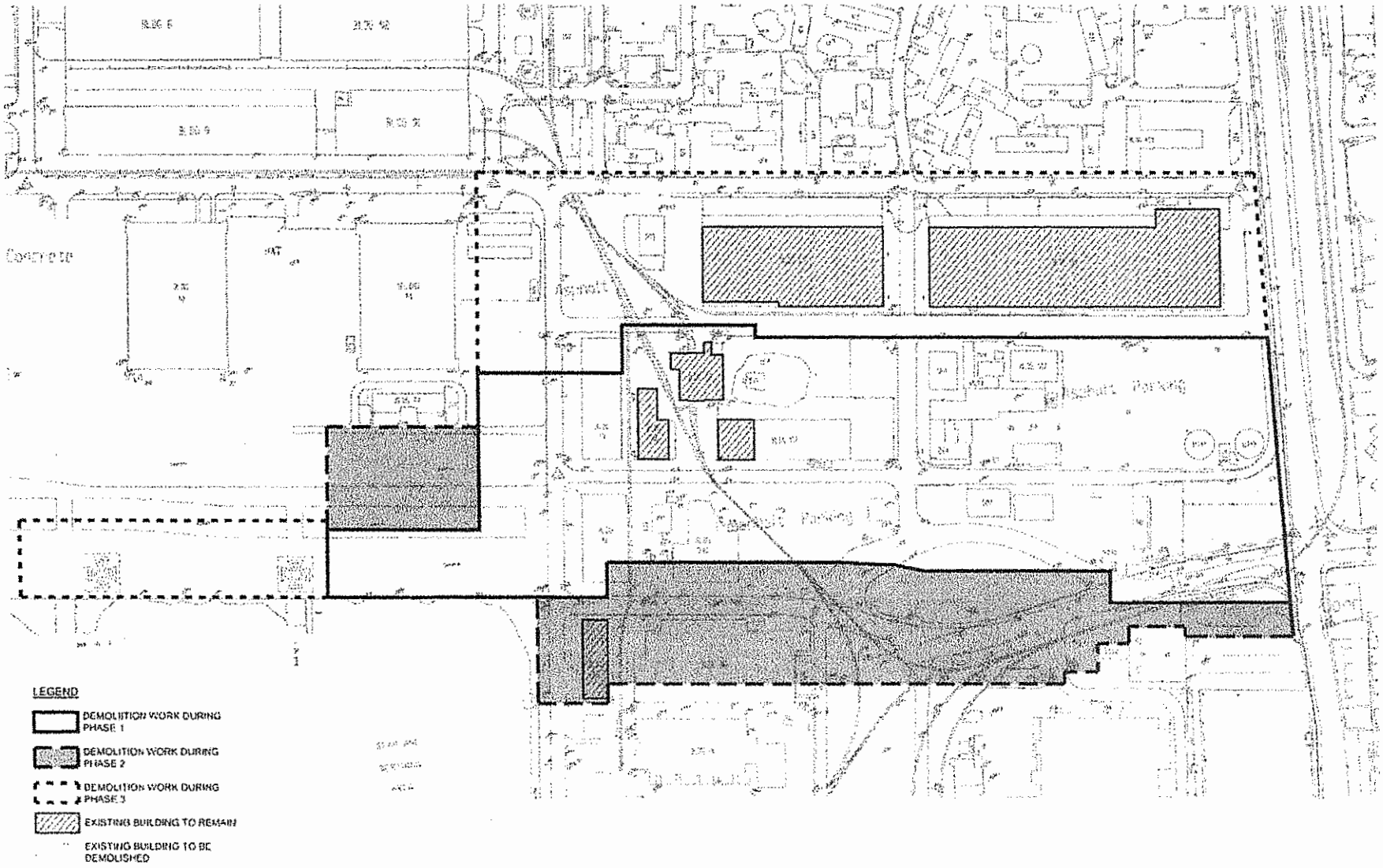


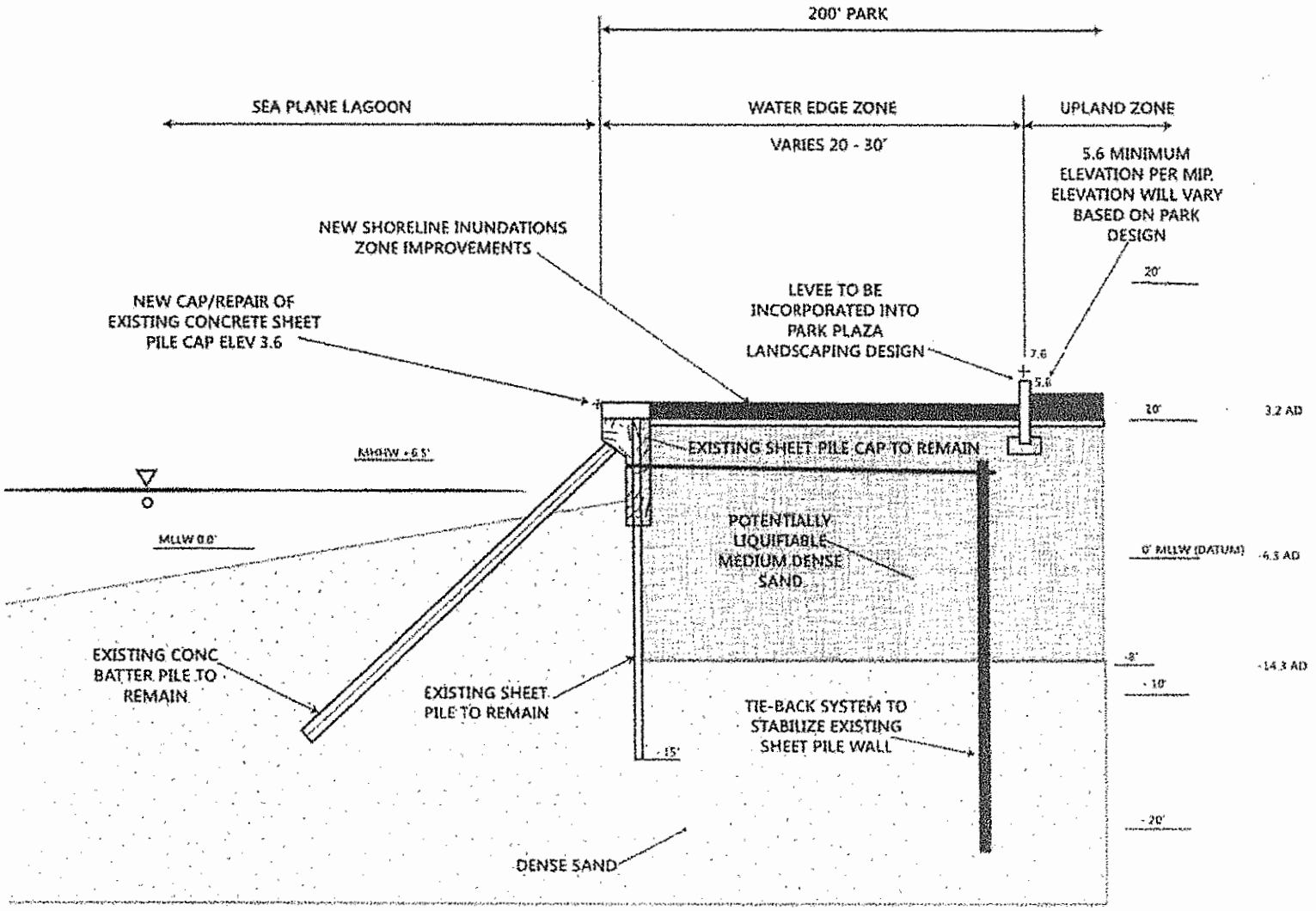
EXHIBIT 1

SITE A - DEMOLITION BY PHASE

04/29/2015

THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

NOT TO SCALE

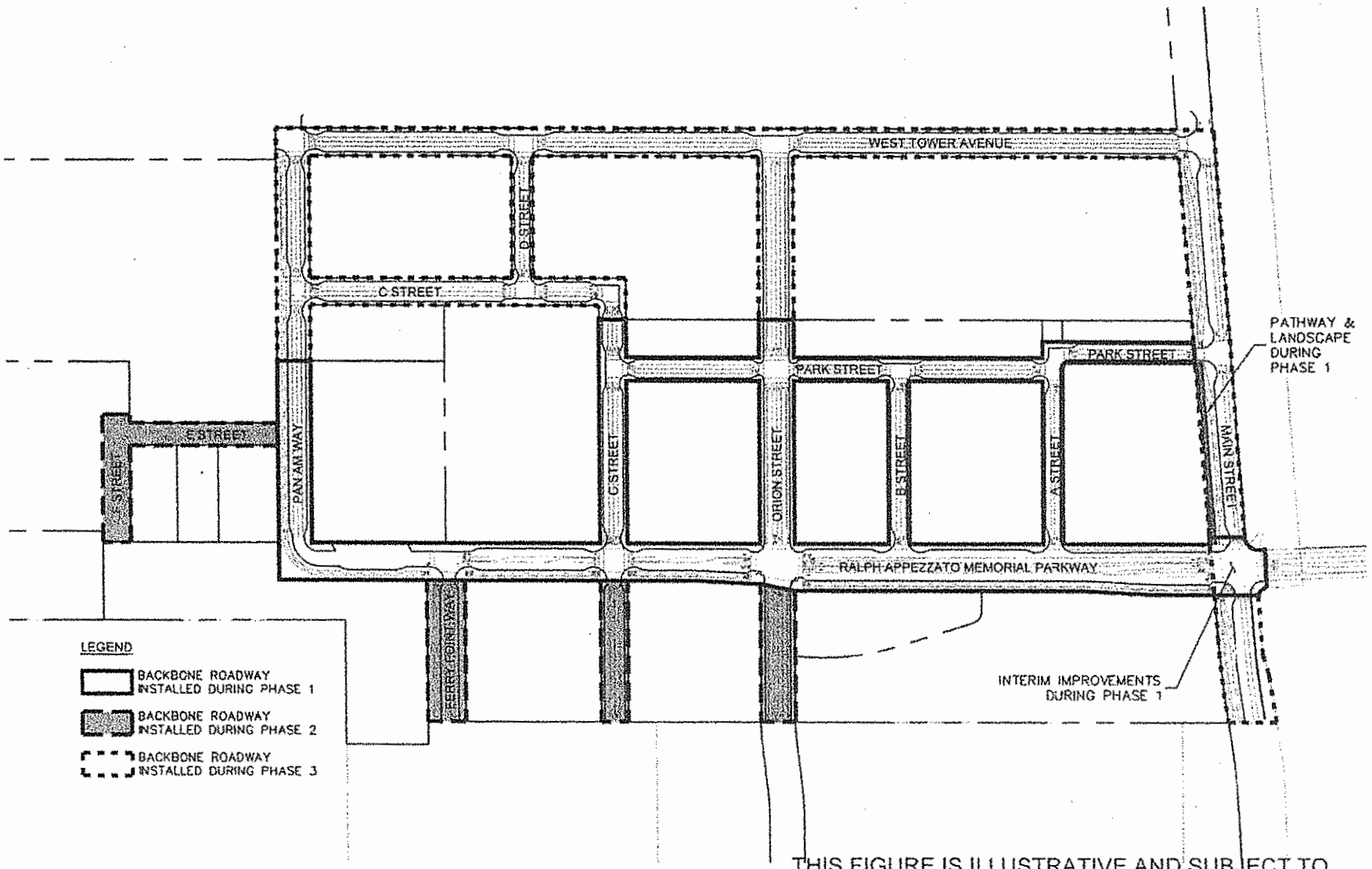


NORTH BULKHEAD WALL REPAIR CONCEPTUAL DESIGN

EXHIBIT 2

THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

CONCEPTUAL GRADING, SEA LEVEL RISE & SHORELINE PROTECTION STRATEGY



THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 3

ALAMEDA POINT - BACKBONE ROADWAY INFRASTRUCTURE PHASING

04/29/2015

NOT TO SCALE

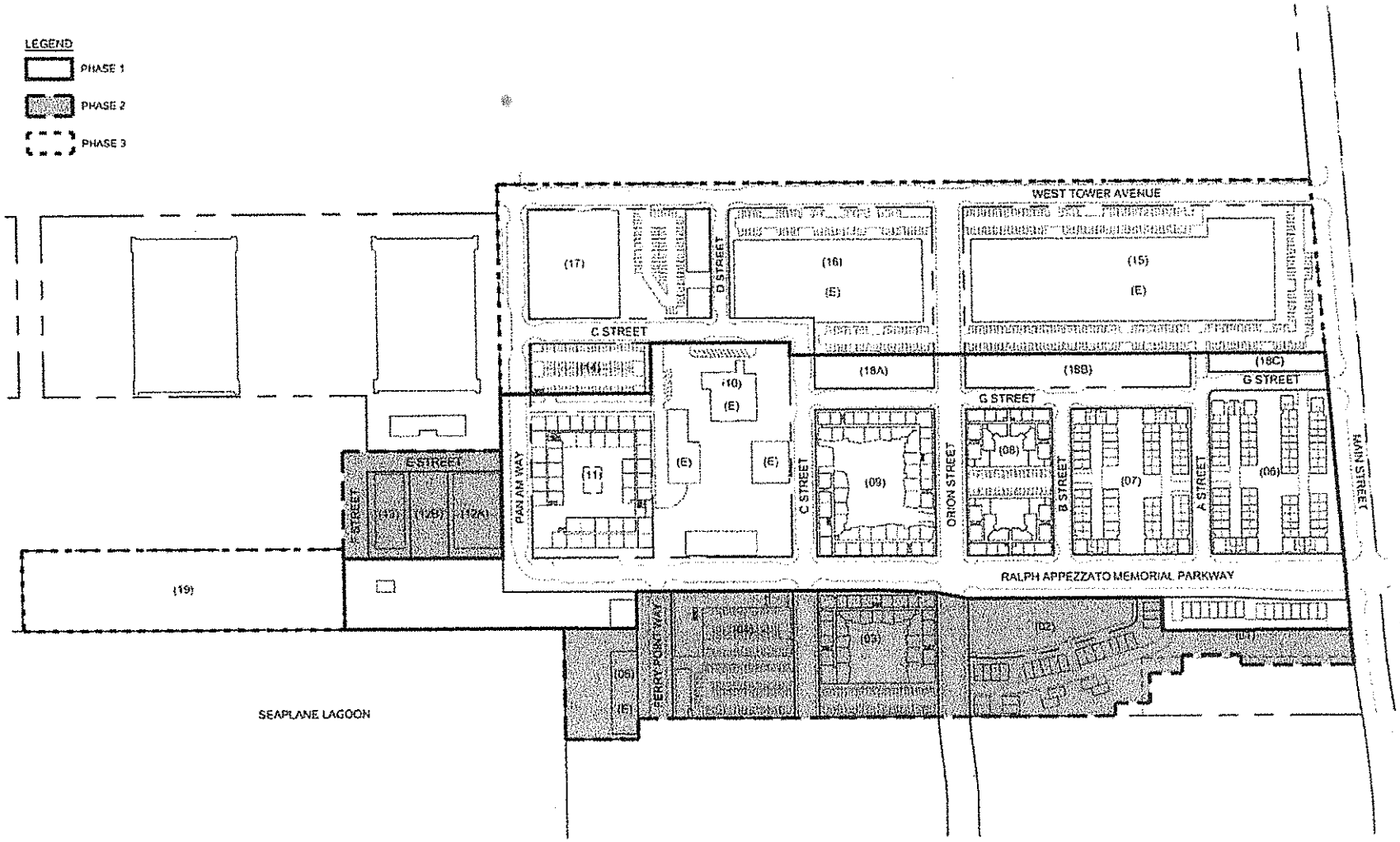
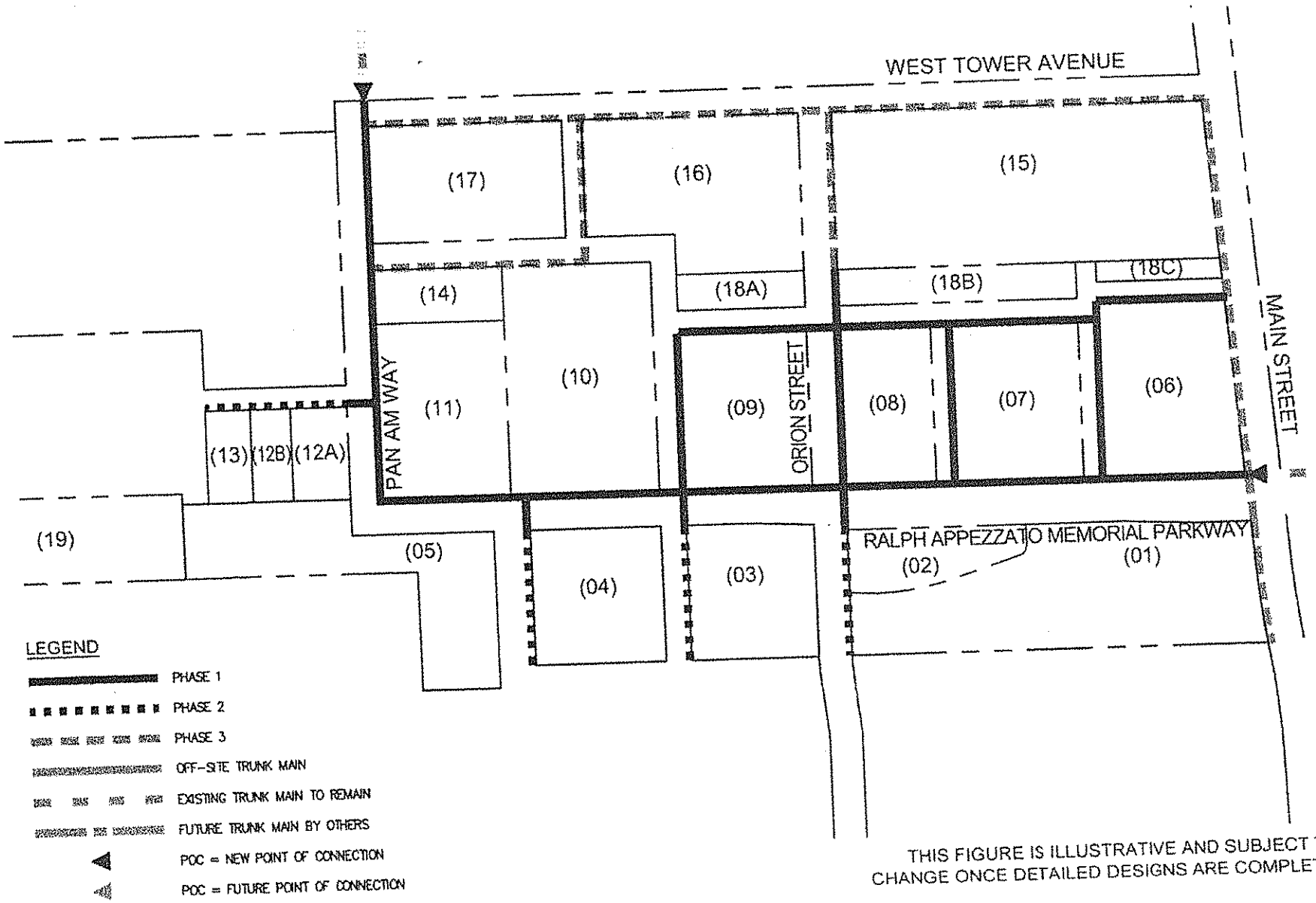


EXHIBIT 4
SITE A - PHASING

04/29/2015

THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

NOT TO SCALE

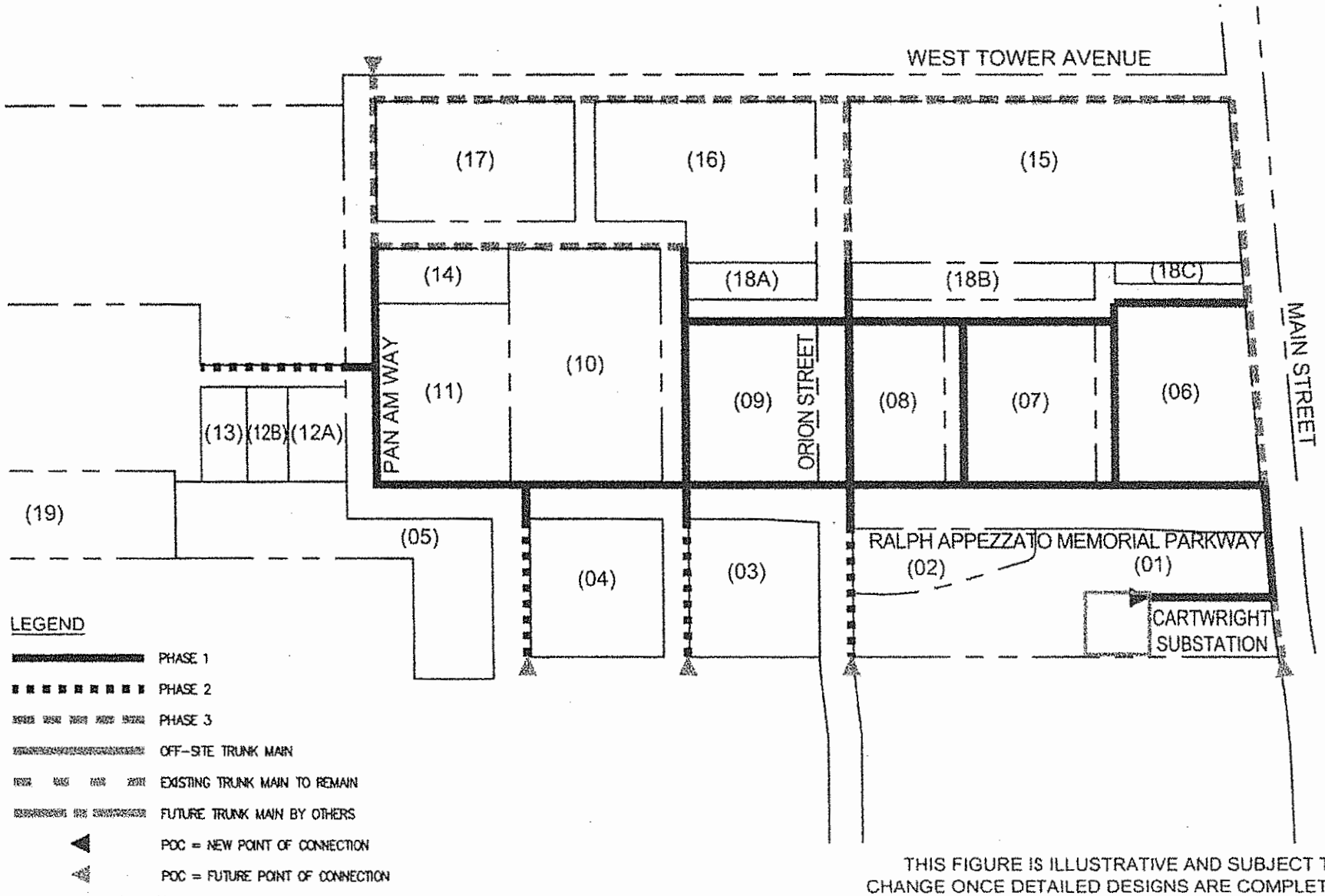


THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 5
ALAMEDA POINT - UTILITY PHASING (GAS)

04/29/2015

NOT TO SCALE



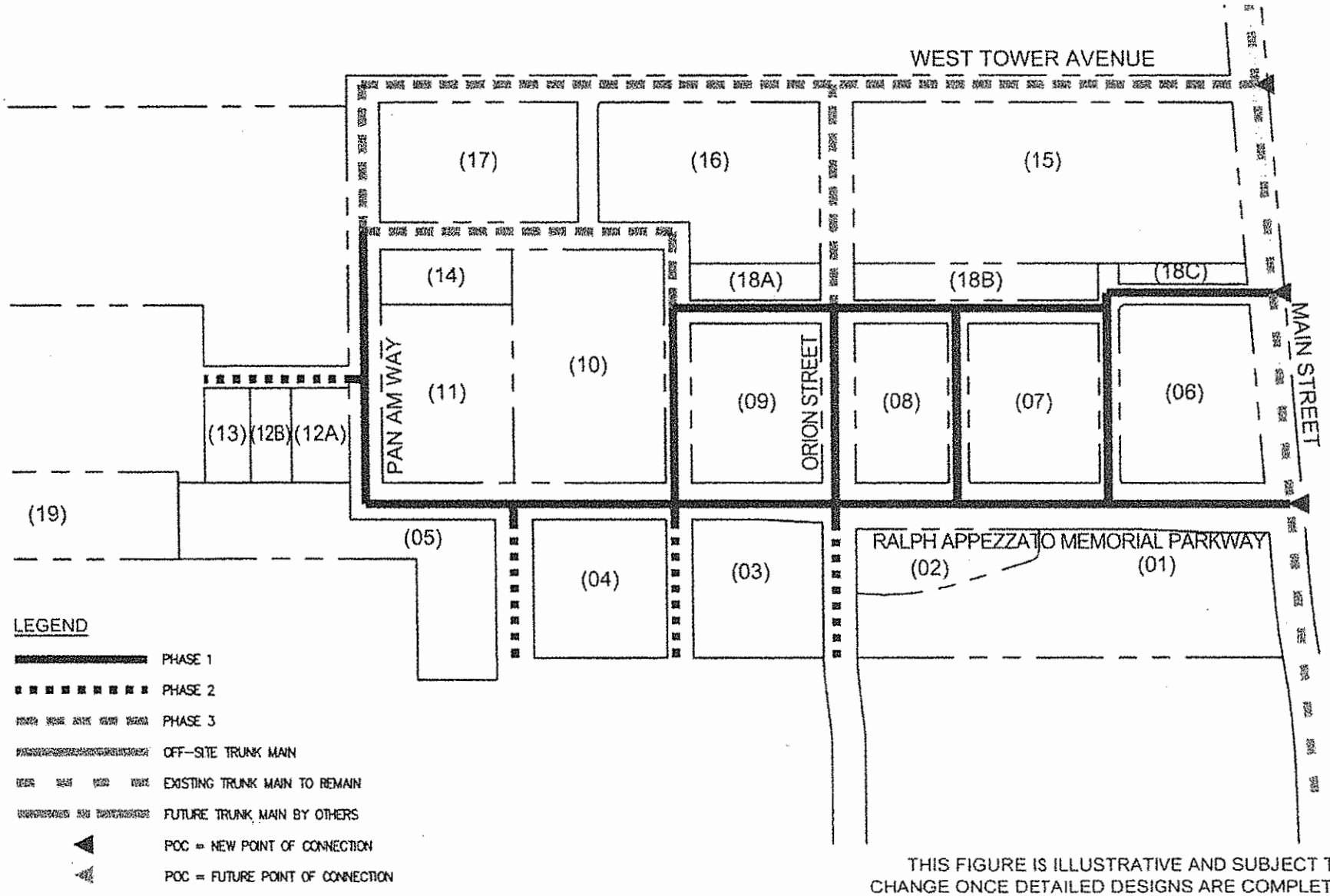
THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 6

ALAMEDA POINT - UTILITY PHASING (ELECTRICAL DISTRIBUTION)

04/29/2015

NOT TO SCALE



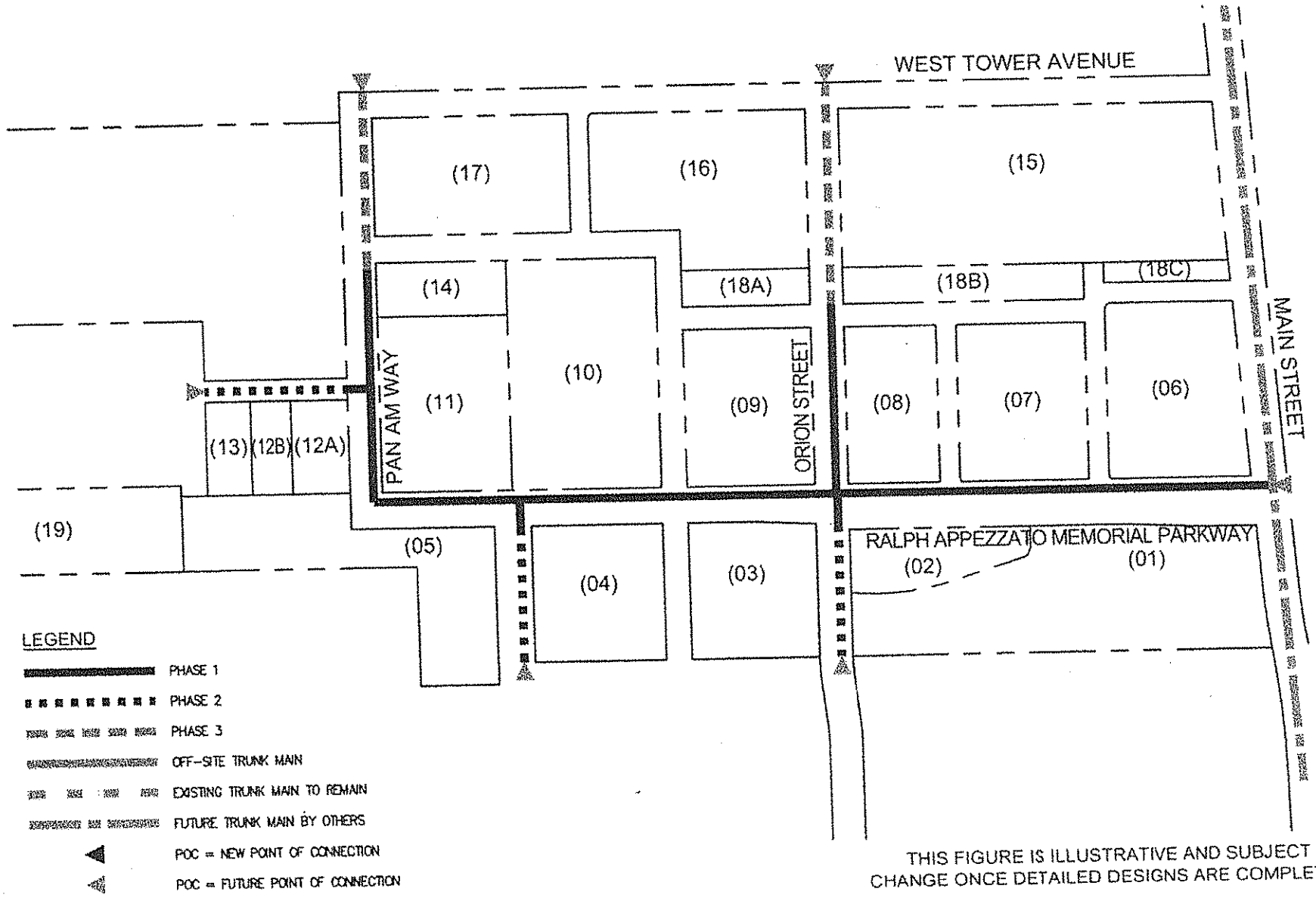
THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 7

ALAMEDA POINT - UTILITY PHASING (WATER)

04/29/2015

NOT TO SCALE

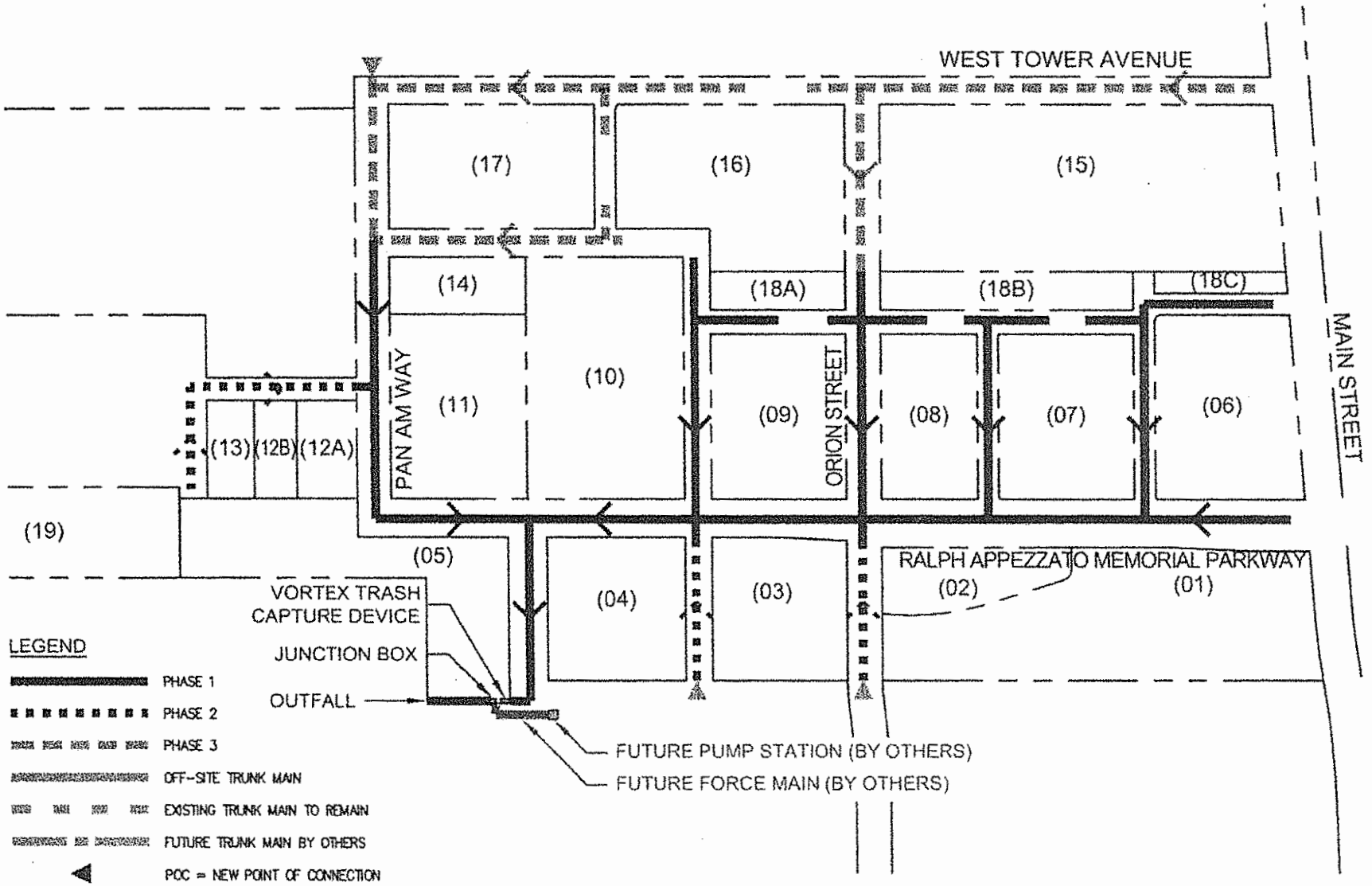


THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 8
ALAMEDA POINT - UTILITY PHASING (RECYCLED WATER)

04/29/2015

NOT TO SCALE



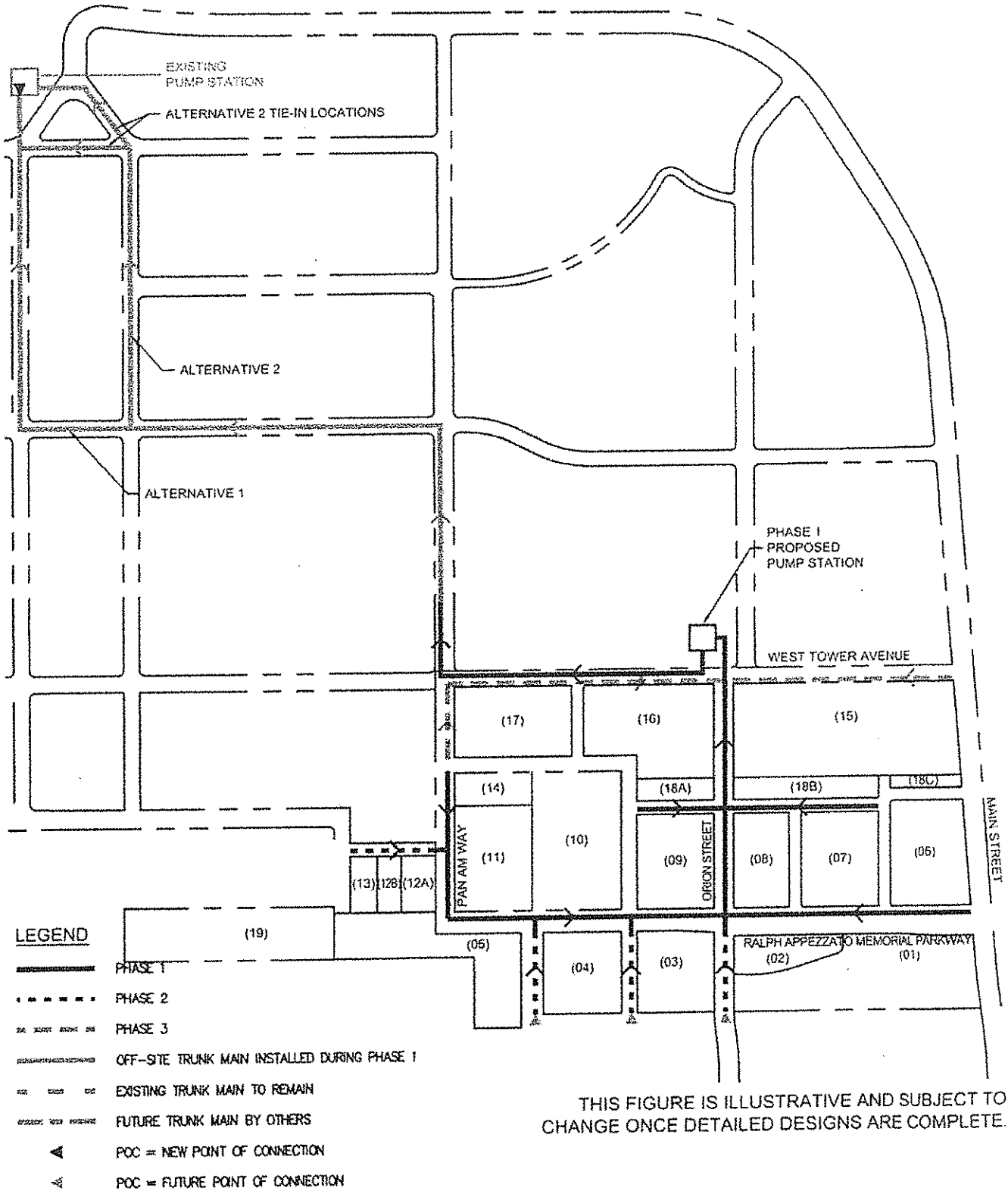
THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 9

ALAMEDA POINT - UTILITY PHASING (STORM DRAIN)

04/29/2015

NOT TO SCALE



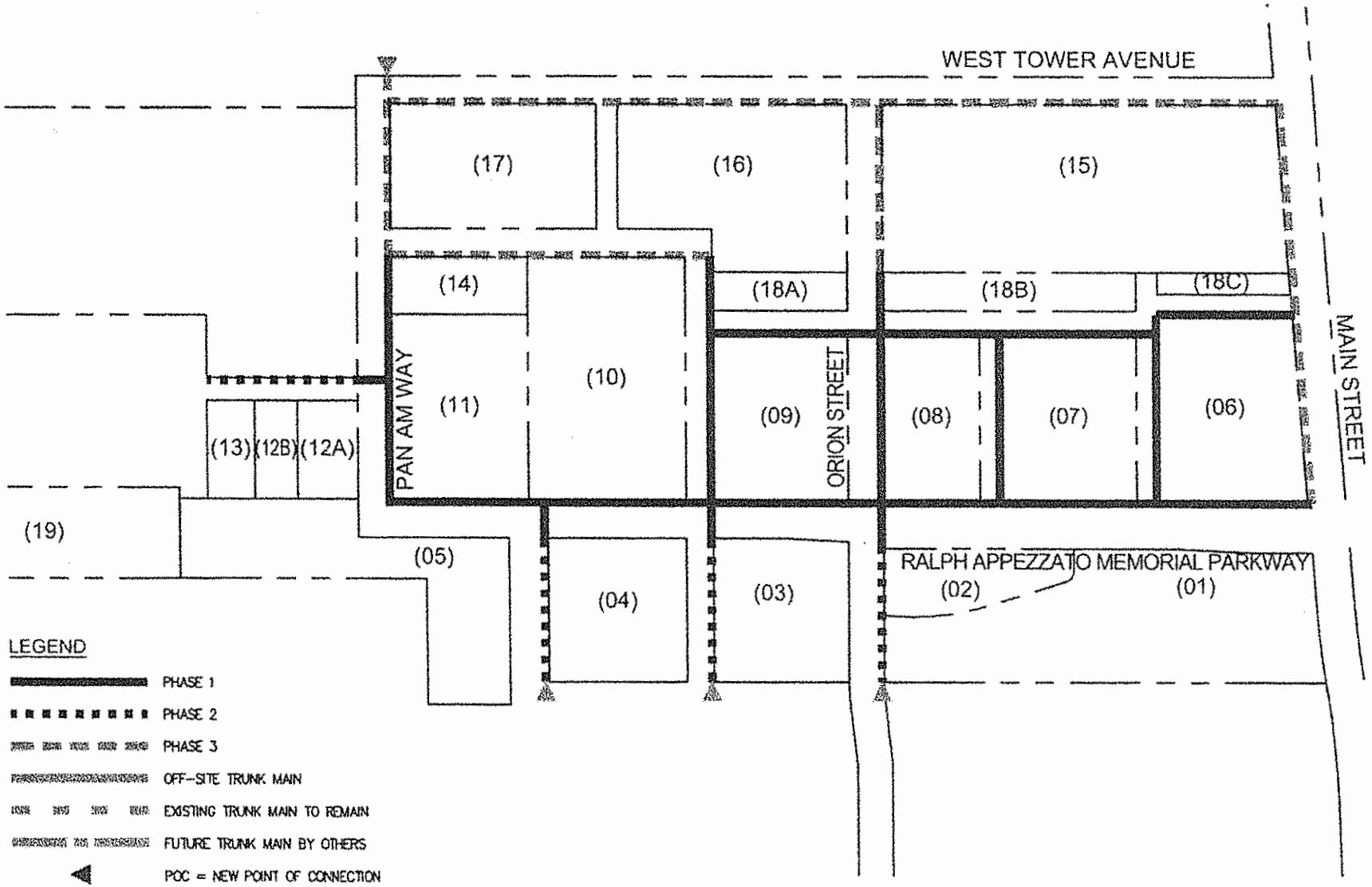
THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 10

ALAMEDA POINT - UTILITY PHASING (SANITARY SEWER)

04/29/2015

NOT TO SCALE



THIS FIGURE IS ILLUSTRATIVE AND SUBJECT TO CHANGE ONCE DETAILED DESIGNS ARE COMPLETE.

EXHIBIT 11

ALAMEDA POINT - UTILITY PHASING (TEL/DATA)

04/29/2015

NOT TO SCALE

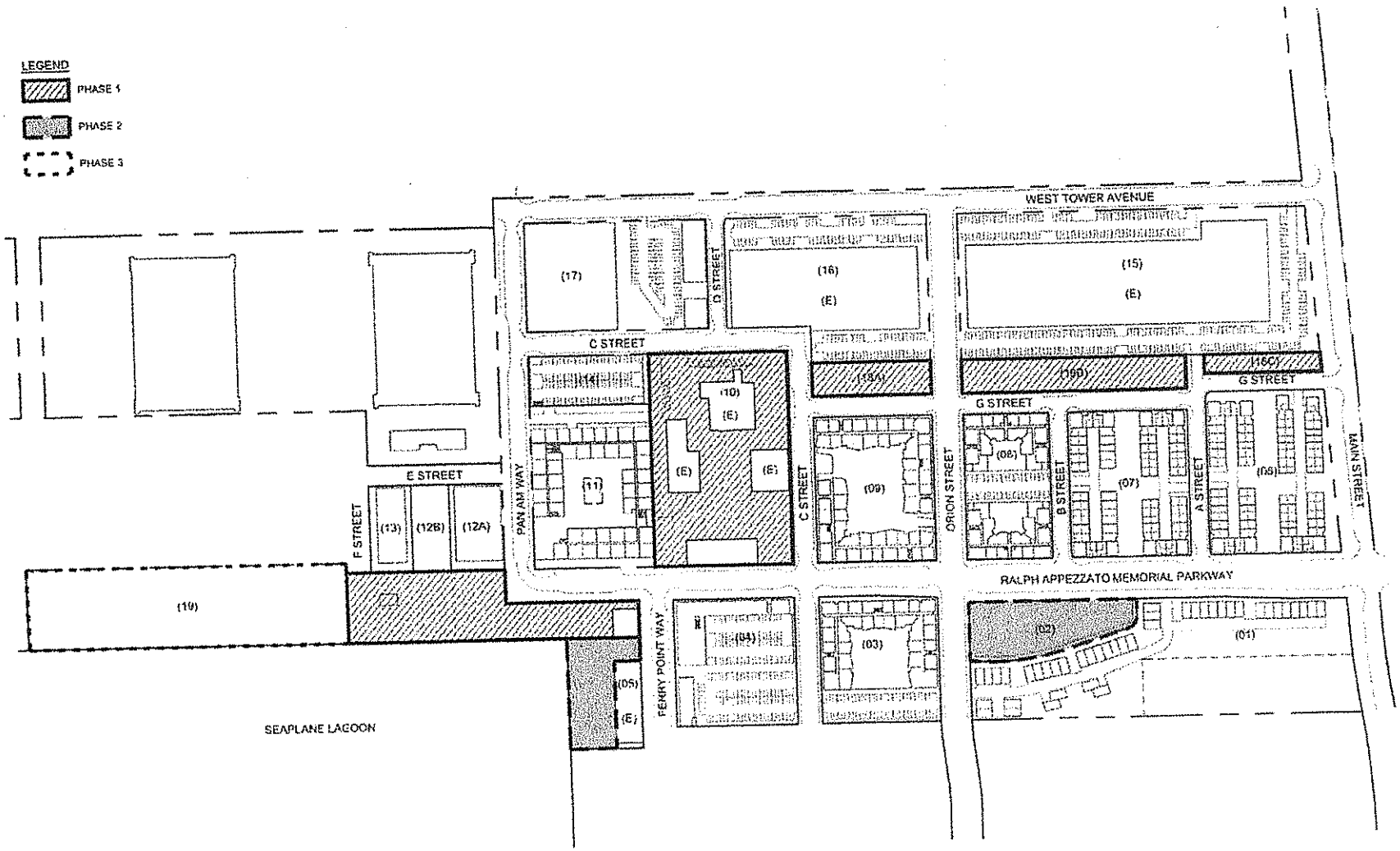


EXHIBIT 12

SITE A - PARK & OPEN SPACE PHASING

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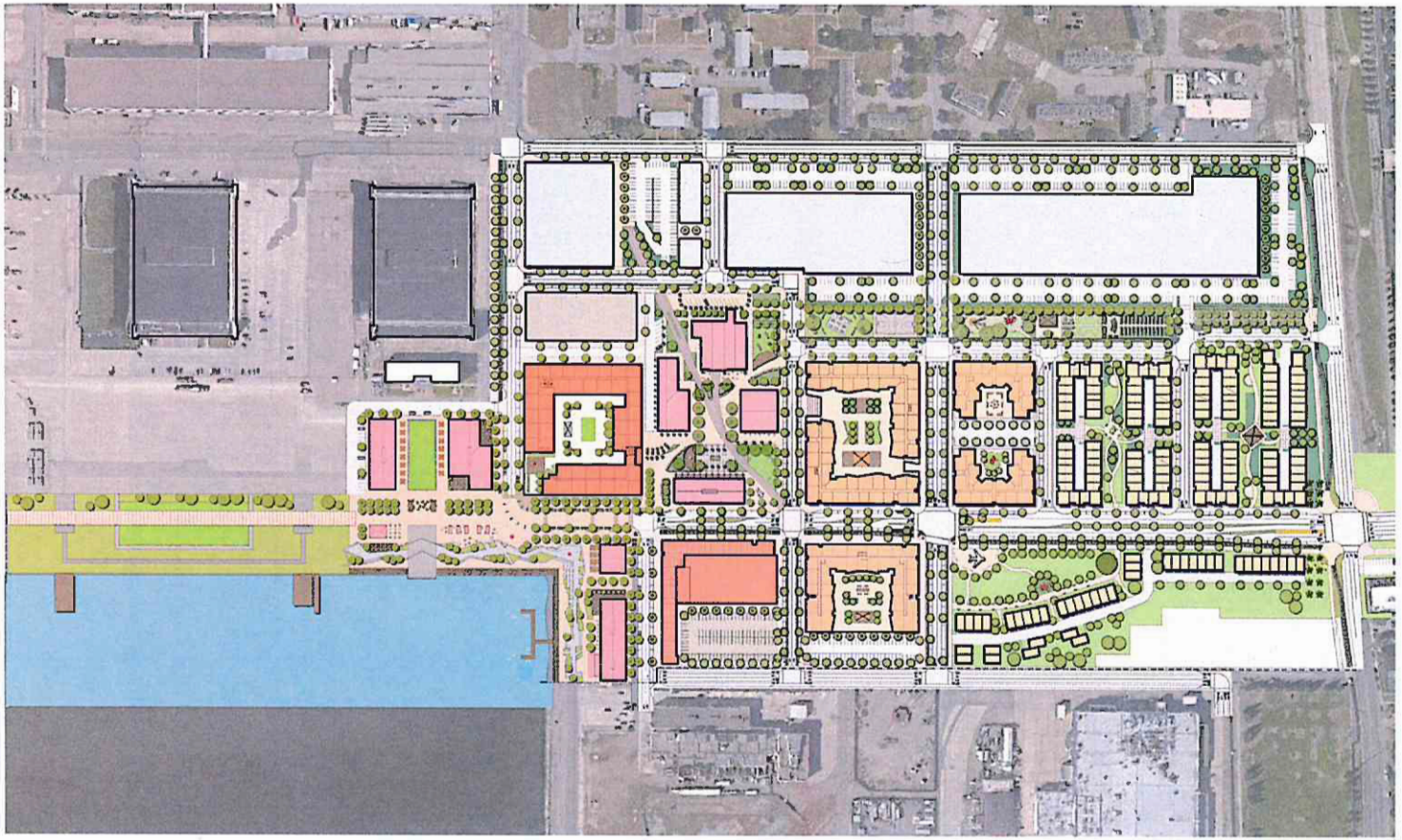
NOT TO SCALE

EXHIBIT H

DEVELOPMENT PLAN



ALAMEDA POINT - SITE A - DEVELOPMENT PLAN

Project Sponsor: Alameda Point Partners

Prepared by: BAR Architects, April Philips Design Workshop, BKF Engineers

May 11, 2015

SITE A DEVELOPMENT PLAN TABLE OF CONTENTS

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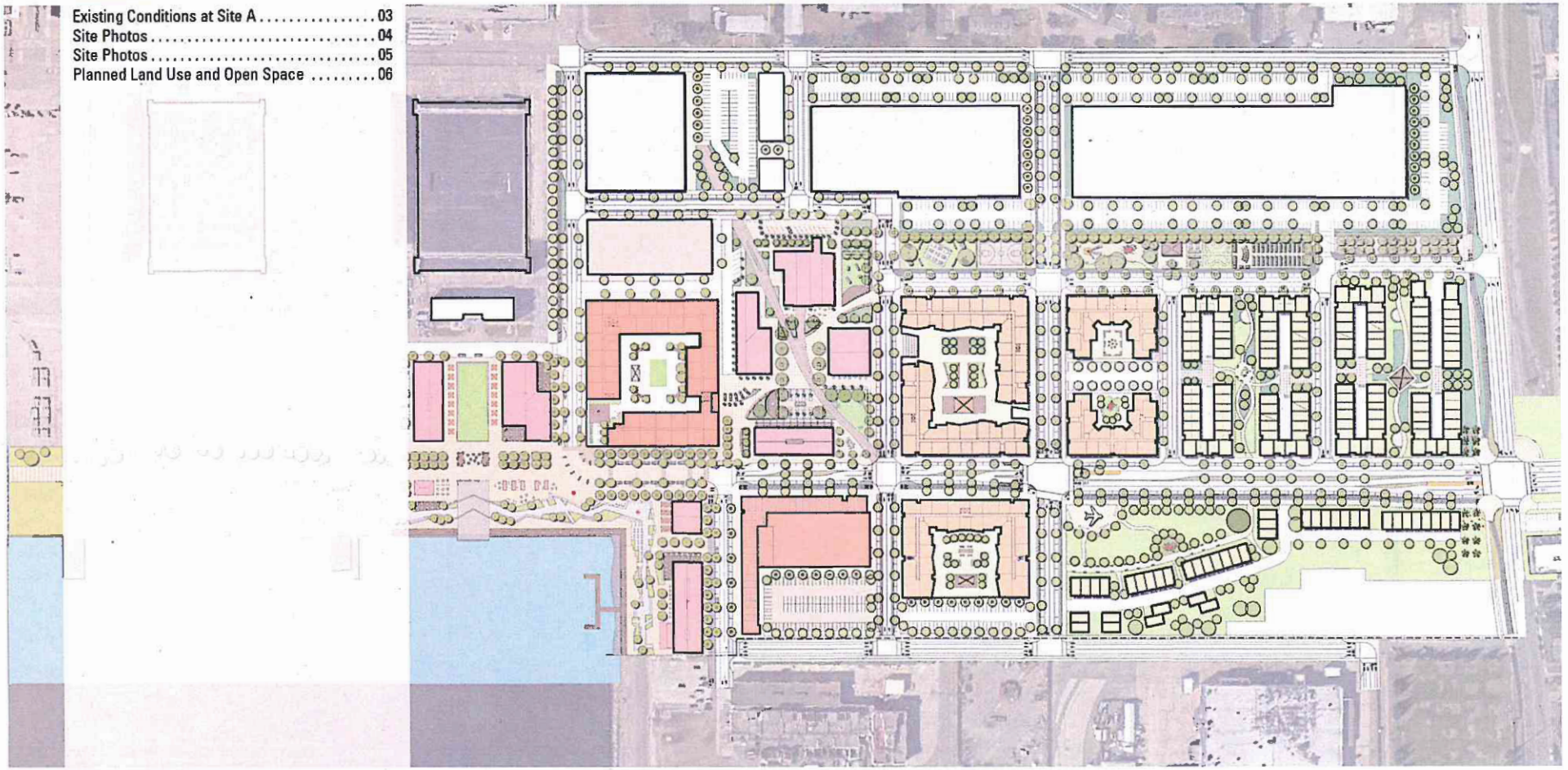
CONTEXT



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BKF ignition architecture MBH arch TRICON Tableau EDEN HOUSING e-blu SRM ERNST Madison Marquette LANGAN KH Kwan Henmi FIELD PAOLI

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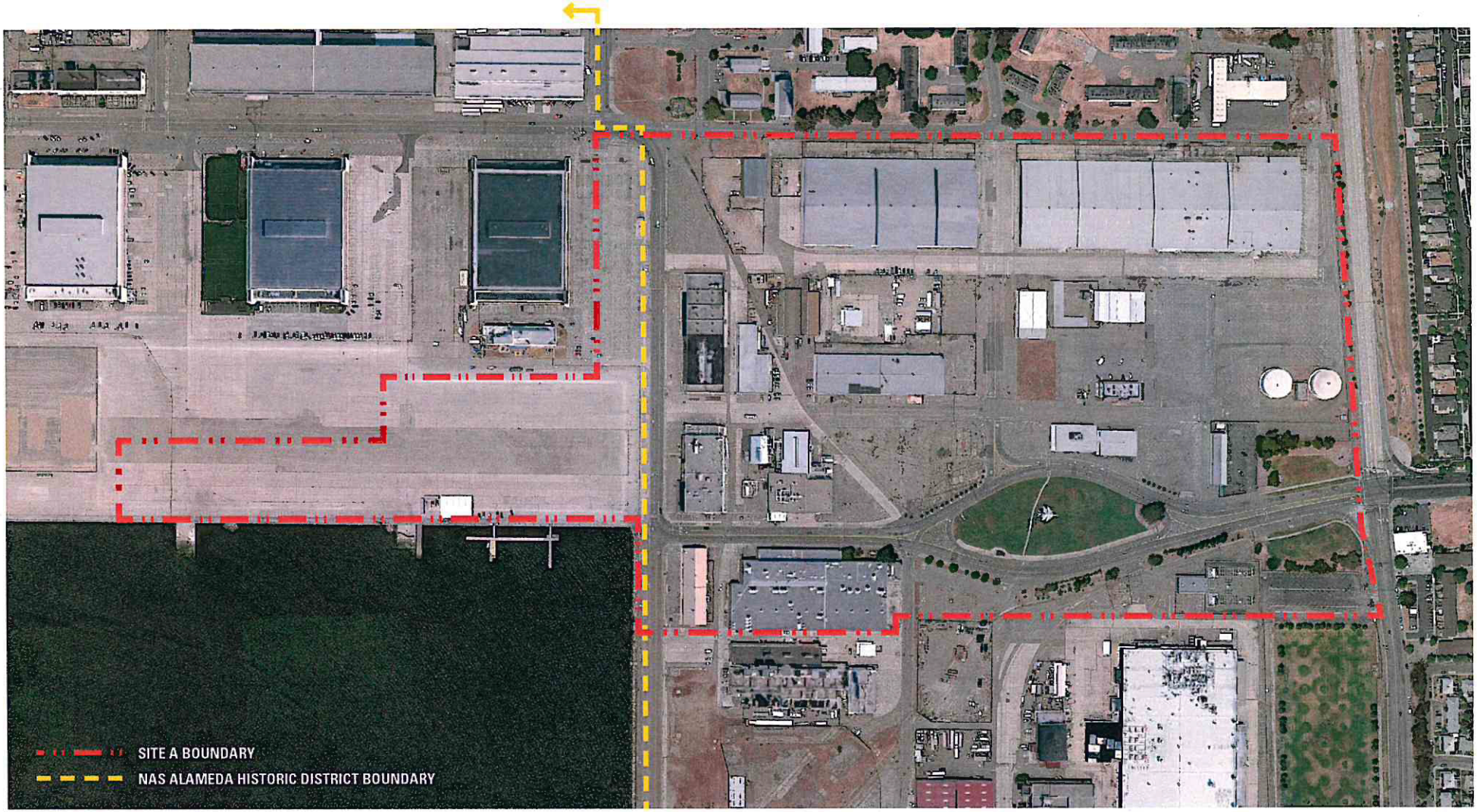

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EXISTING CONDITIONS AT SITE "A"

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EXISTING BUILDING 77 (LEFT) AND 41 (RIGHT)

EXISTING BUILDING 77

EXISTING BUILDING 40 (BLADIUM)

EXISTING BUILDING 113

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MAIN ENTRY AT RAMP & MAIN STREET

VIEW OF SAN FRANCISCO ACROSS TAXIWAY

EXISTING CORSAIR II DISPLAY

EXISTING CYPRESS TREE

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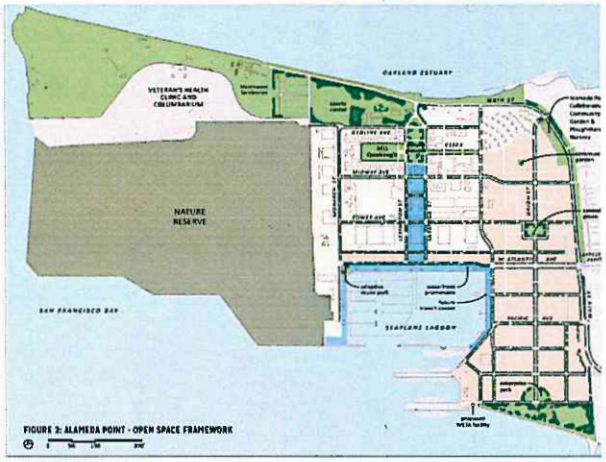
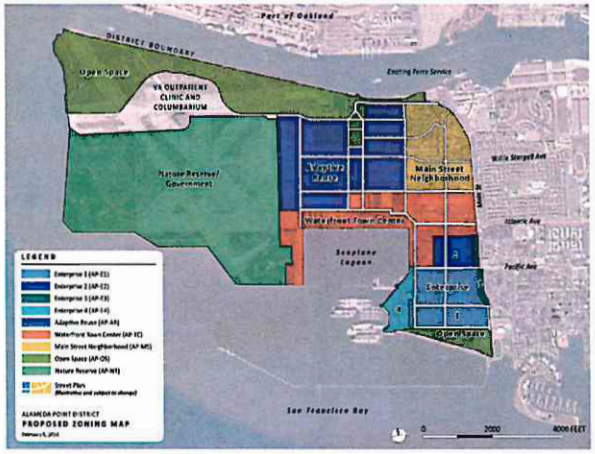


ALAMEDA POINT PLANNING GUIDE - OPEN SPACE FRAMEWORK

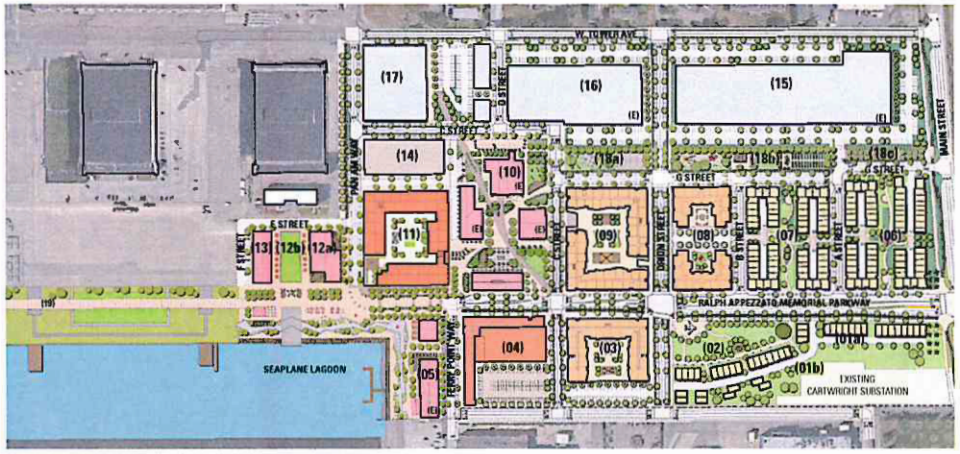
* DRAWING FROM 9/12/2013 ALAMEDA POINT PLANNING GUIDE

PRECISE PLAN - TOWN CENTER AREA



ALAMEDA POINT - ZONING MAP

* DRAWING FROM www.alamedaca.gov



ILLUSTRATIVE SITE PLAN - ALL PHASES

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PLANNED LAND USE AND OPEN SPACE

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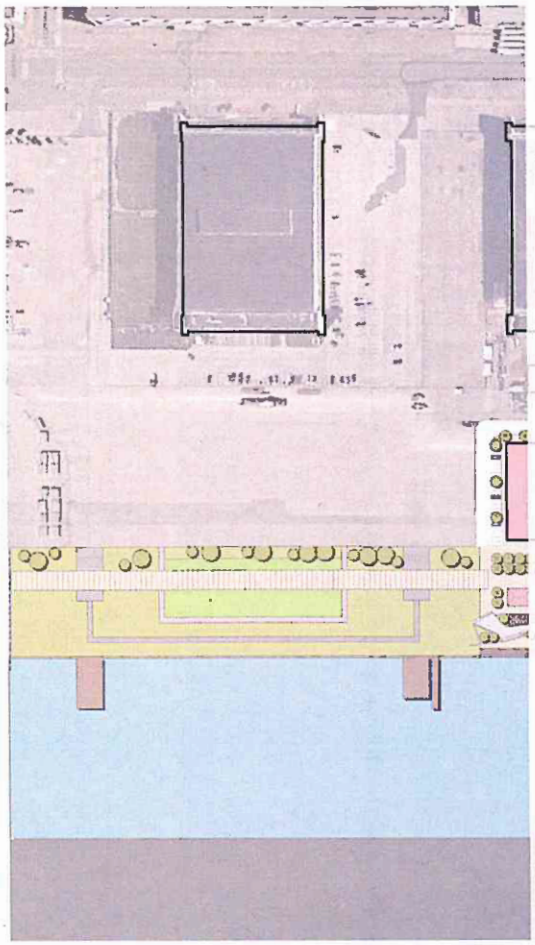
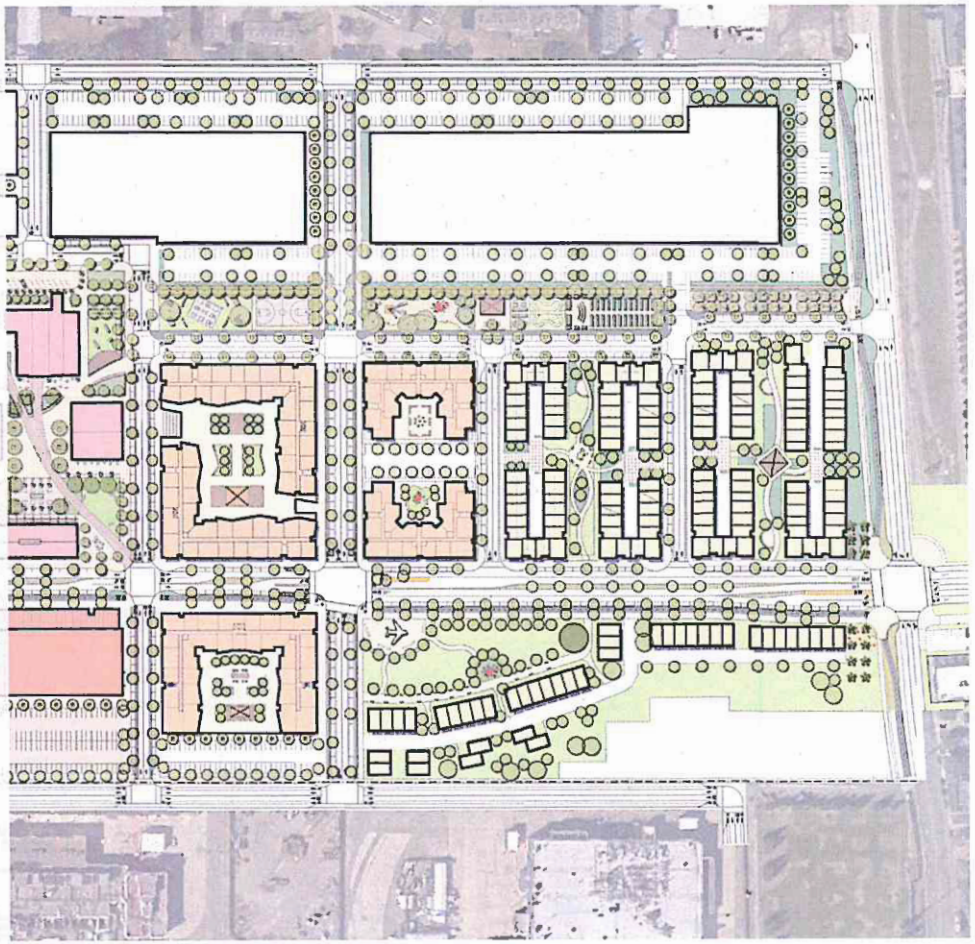
LAND USE & DEVELOPMENT





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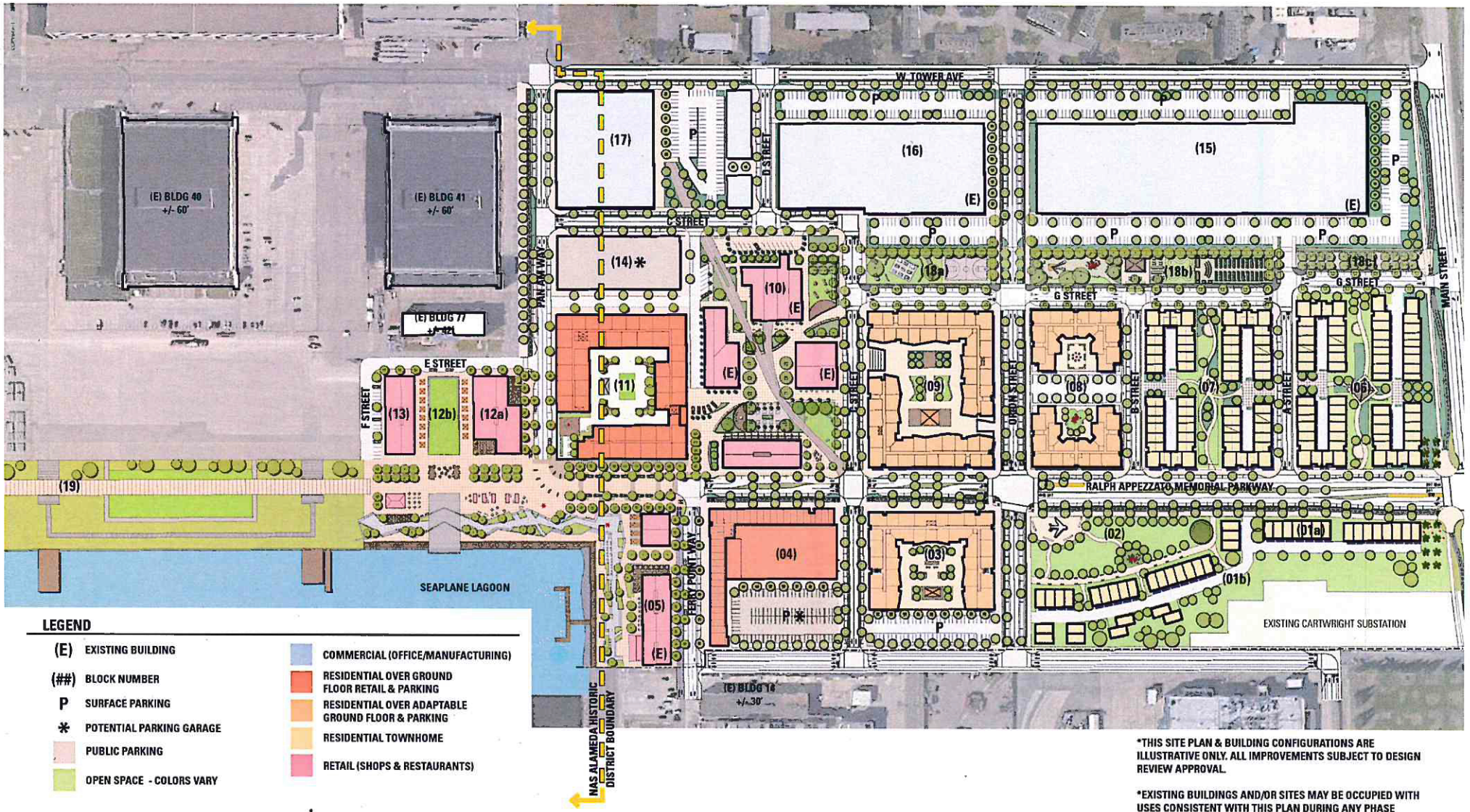

LEGEND

- (E) EXISTING BUILDING
- (##) BLOCK NUMBER
- P SURFACE PARKING
- * POTENTIAL PARKING GARAGE
- PUBLIC PARKING
- OPEN SPACE - COLORS VARY
- COMMERCIAL (OFFICE/MANUFACTURING)
- RESIDENTIAL OVER GROUND FLOOR RETAIL & PARKING
- RESIDENTIAL OVER ADAPTABLE GROUND FLOOR & PARKING
- RESIDENTIAL TOWNHOME
- RETAIL (SHOPS & RESTAURANTS)

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

*EXISTING BUILDINGS AND/OR SITES MAY BE OCCUPIED WITH USES CONSISTENT WITH THIS PLAN DURING ANY PHASE

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ILLUSTRATIVE SITE PLAN - ALL PHASES

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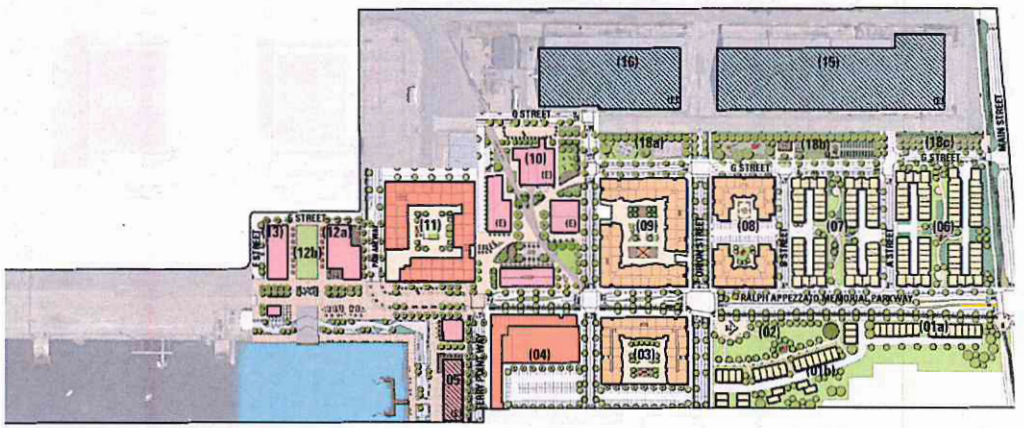
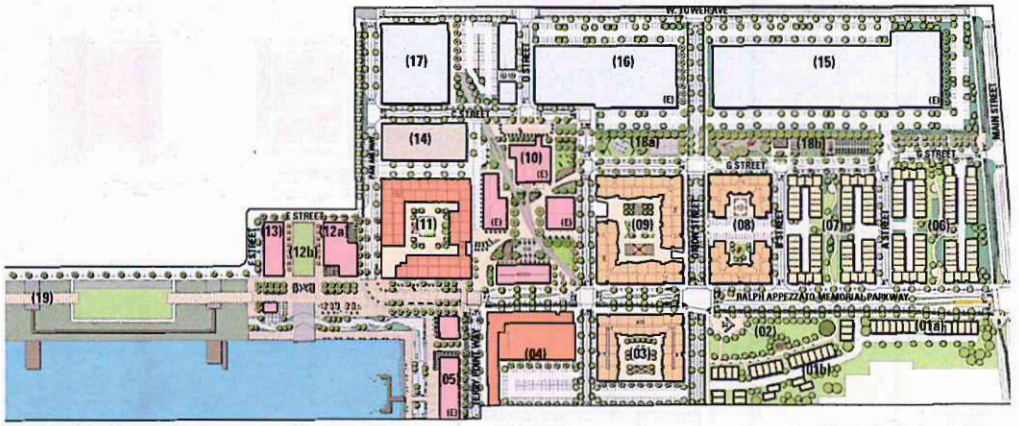
0 50 100 200 300

ILLUSTRATIVE SITE PLAN - PHASE 1



ILLUSTRATIVE SITE PLAN - PHASE 2



ILLUSTRATIVE SITE PLAN - PHASE 3

LEGEND

- (E) EXISTING BUILDING
- (##) BLOCK NUMBER
- EXISTING BUILDINGS AND/OR SITES MAY BE OCCUPIED WITH USES CONSISTENT WITH THIS PLAN DURING ANY PHASE
- PUBLIC PARKING
- OPEN SPACE - NEIGHBORHOOD PARK
- COMMERCIAL (OFFICE/MANUFACTURING)
- RESIDENTIAL OVER GROUND FLOOR RETAIL & PARKING
- RESIDENTIAL OVER ADAPTABLE GROUND FLOOR & PARKING
- RESIDENTIAL TOWNHOME
- RETAIL (SHOPS & RESTAURANTS)

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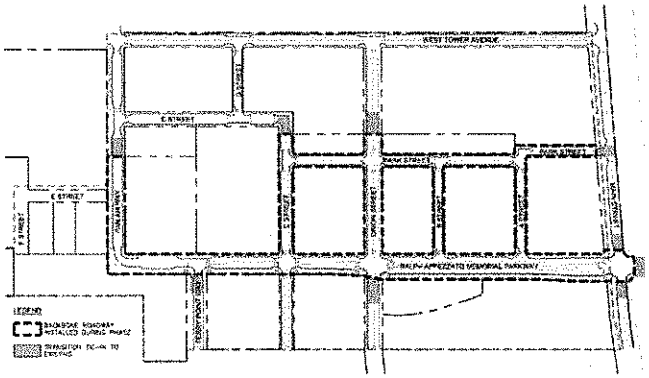
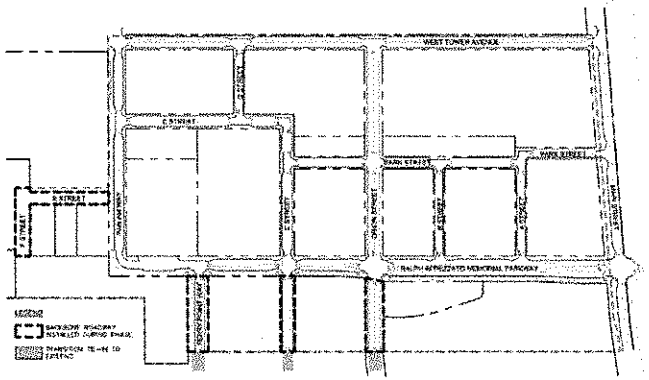


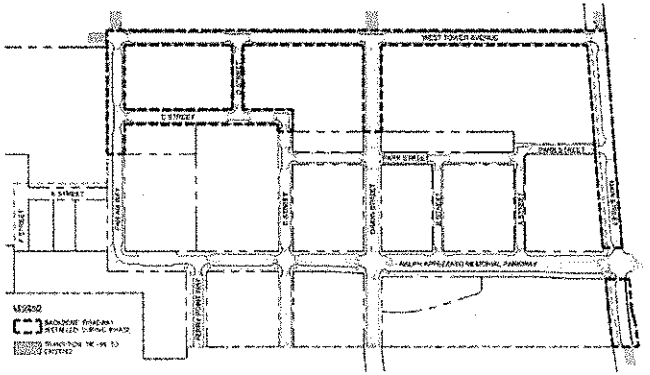
PHASE 1 BACKBONE ROADWAY INFRASTRUCTURE

04/14/2015 1 OF 3 NOT TO SCALE



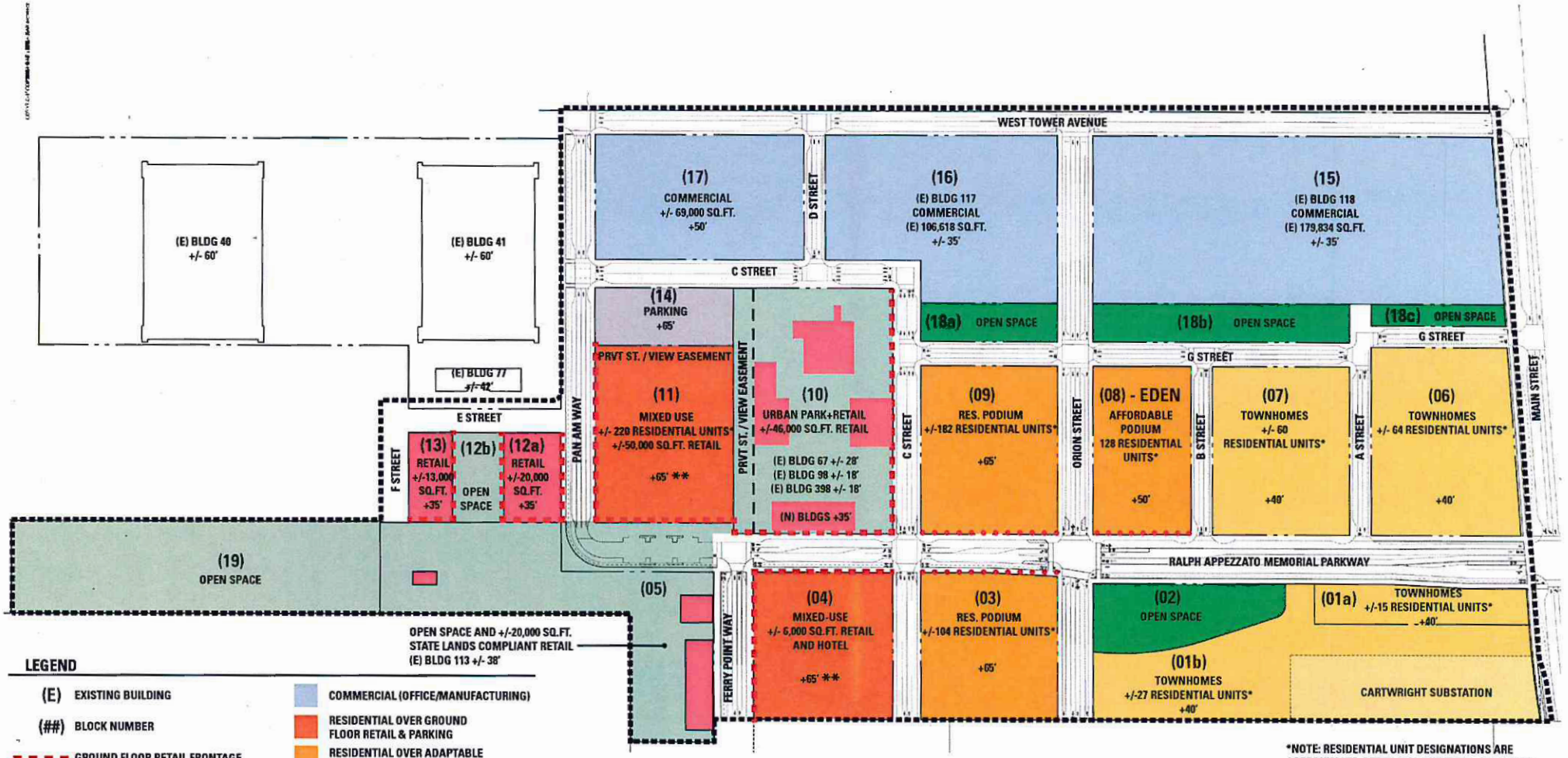
PHASE 2 BACKBONE ROADWAY INFRASTRUCTURE

04/14/2015 2 OF 3 NOT TO SCALE



PHASE 3 BACKBONE ROADWAY INFRASTRUCTURE

04/14/2015 3 OF 3 NOT TO SCALE



*NOTE: RESIDENTIAL UNIT DESIGNATIONS ARE APPROXIMATE, PER BLOCK, BUT TOTAL SHALL NOT EXCEED 800 RESIDENTIAL UNITS ACROSS "SITE A"

** PER PRECISE PLAN, HEIGHT MAY EXCEED 65' WITH SPECIAL CONSIDERATION, IF THE FOLLOWING FINDING CAN BE MADE: THE BUILDING EXHIBITS EXCEPTIONAL ARCHITECTURAL DESIGN AND IS TRANSIT SUPPORTIVE

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LAND USE DIAGRAM

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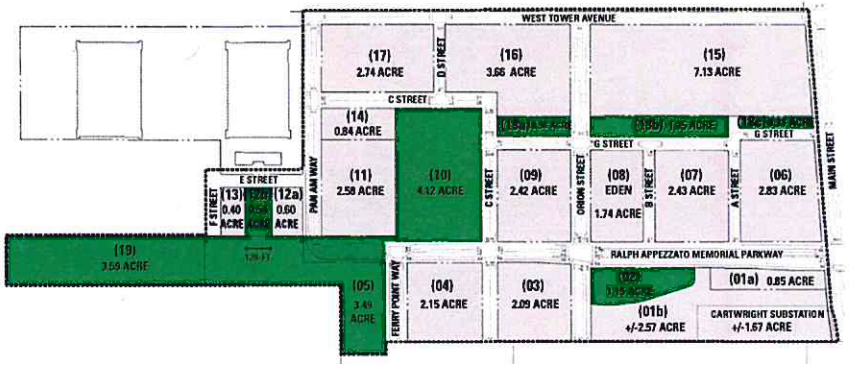
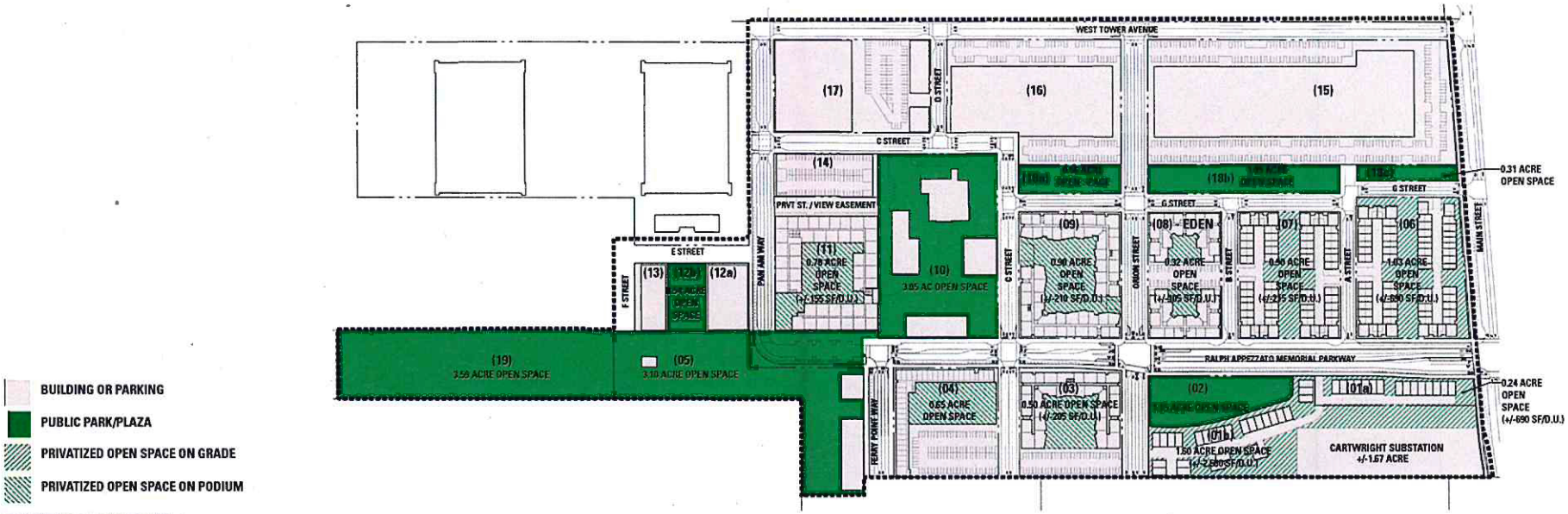
PARCEL ACREAGE

- +/- 14.80 ACRES PUBLIC PARK/PLAZA
- +/- 16.33 ACRES STREET R.O.W.
- +/- 36.7 ACRES PRIVATE

+/- 67.8 SITE A



PARCEL DIAGRAM



- BUILDING OR PARKING
- PUBLIC PARK/PLAZA
- PRIVATIZED OPEN SPACE ON GRADE
- PRIVATIZED OPEN SPACE ON PODIUM

OPEN SPACE DIAGRAM

ALAMEDA POINT | ALAMEDA, CA

OPEN SPACE & PARCEL DIAGRAMS

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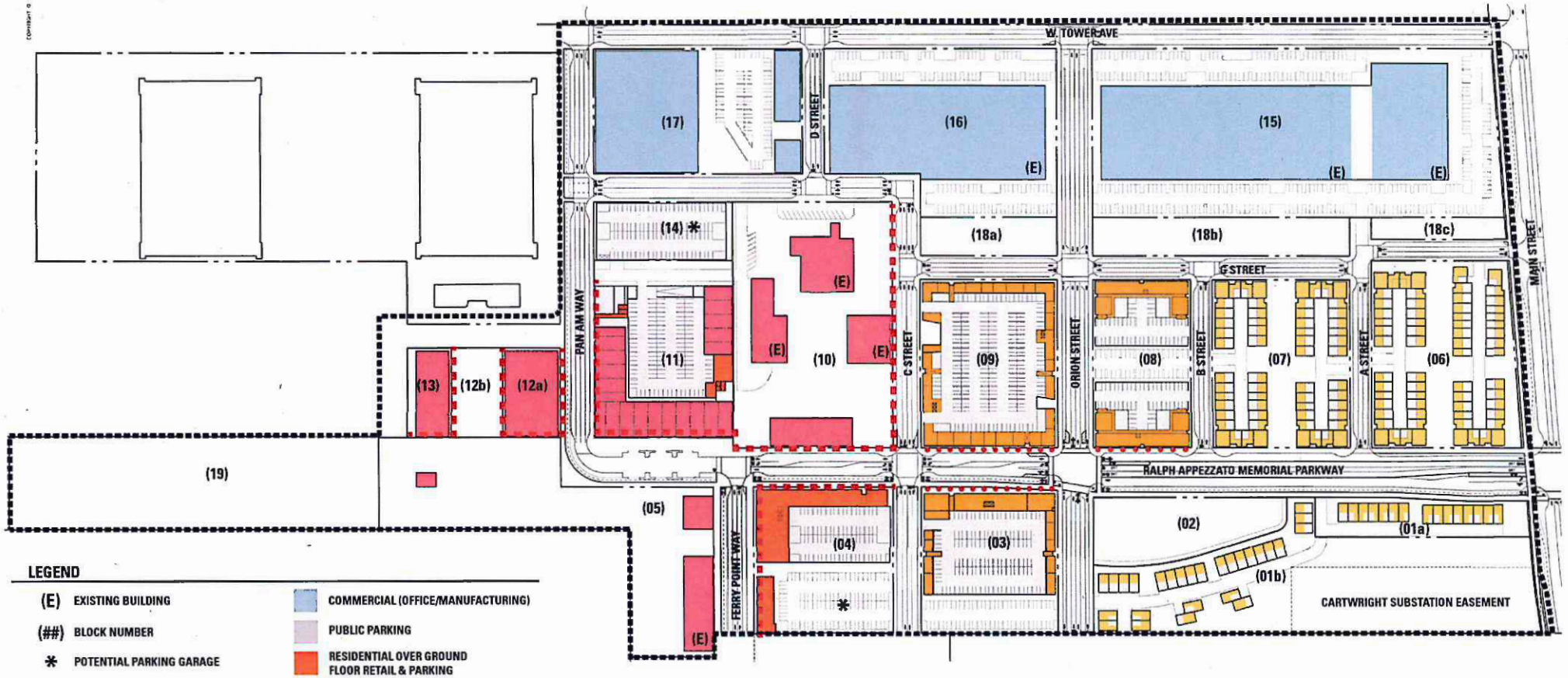

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GROUND FLOOR PLAN

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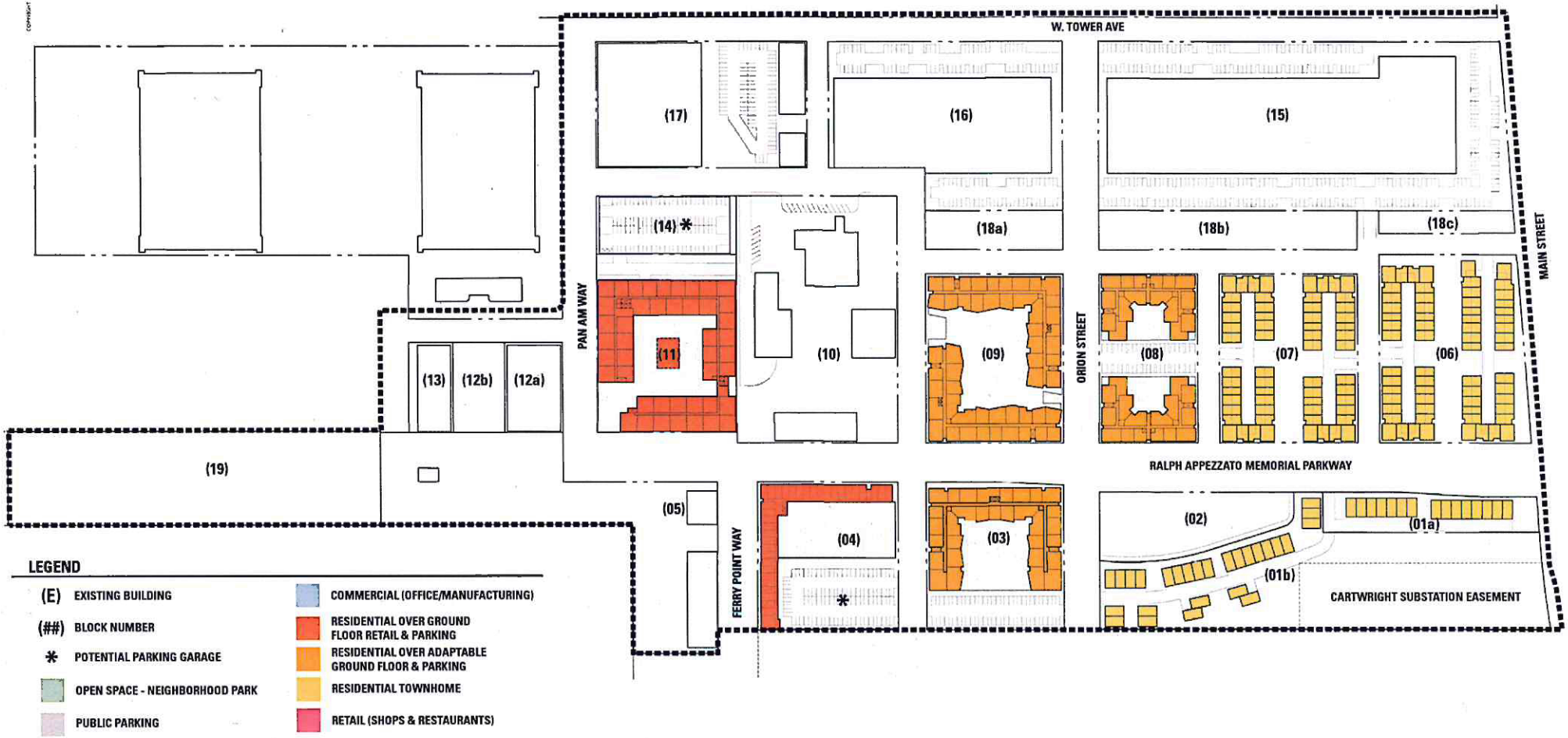

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TYPICAL UPPER LEVEL PLAN

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ALAMEDA POINT SITE A – UNIVERSAL DESIGN AND AGING IN PLACE:

HE GENERAL PLAN HOUSING ELEMENT IDENTIFIES THE NEED FOR HOUSING FOR PEOPLE WITH DISABILITIES AND SENIORS, WHO WISH O "AGE IN PLACE". THE GOAL OF UNIVERSAL DESIGN IS TO BE ACCESSIBLE, FLEXIBLE, SIMPLE, AND EQUITABLE. THE SITE PLANNING AND UILDING DESIGN AT ALAMEDA POINT SITE A ADDRESSES THESE KEY CONCEPTS IN SEVERAL WAYS. THE PLAN INCLUDES SMALL WALK-ABLE BLOCK SIZES, OPTIONS FOR PARKING, A VARIETY OF LANDSCAPED SPACES, AND WIDE SIDEWALKS. ASSORTED UNIT TYPES WITH NTEGRATED UNIVERSAL DESIGN FEATURES WILL APPEAL TO A WIDE RANGE OF RESIDENTS. PARCELS 03, 08, 09, AND 11 PROVIDE SINGLE-TORY RESIDENTIAL UNITS, WHICH SIGNIFICANTLY BOOSTS PROVISION FOR UNIVERSAL DESIGN.

LL SINGLE-STORY (RESIDENTIAL FLAT) UNITS INCLUDE THE FOLLOWING UNIVERSAL DESIGN ELEMENTS:

- ACCESSIBLE ROUTE OF TRAVEL FROM A PUBLIC SIDEWALK TO THE UNIT'S PRIMARY ENTRANCE.
- ACCESSIBLE ROUTE OF TRAVEL FROM THE ACCESSIBLE PARKING STALLS TO THE UNIT'S PRIMARY ENTRANCE. ACCESSIBLE PARKING STALLS ARE LOCATED CONVENIENTLY NEAR ELEVATOR LOBBIES, THUS ENSURING CONVENIENT ACCESS TO ONE'S DWELLING UNIT.
- MINIMUM 32" CLEAR PRIMARY ENTRY DOORWAY AND A "NO STEP ENTRY" (1/2" OR LESS THRESHOLD) WITH DUAL PEEPHOLE AND DOORBELL.
- ALL EXTERIOR/INTERIOR DOORS SHALL MEET CALIFORNIA BUILDING CODE CHAPTER 11A. CODE-REQUIRED MANEUVERING CLEARANCES, HARDWARE, THRESHOLDS, AND STRIKE SIDE CLEARANCES.
- AN ACCESSIBLE ROUTE OF TRAVEL WITH A MINIMUM 42" WIDE HALLWAY TO ALL BEDROOMS, LIVING ROOM, KITCHEN, AND BATHROOMS.
- LIGHT SWITCHES, ELECTRICAL RECEPTACLES, AND ENVIRONMENTAL CONTROLS ARE MOUNTED AT ACCESSIBLE HEIGHTS.
- ROCKER LIGHT SWITCHES THROUGHOUT UNIT.
- MINIMUM REQUIRED WORK/FLOOR CLEARANCE OF 30"X48" IN FRONT OF STOVE, REFRIGERATOR, DISHWASHER, SINK, AND OVEN.
- COUNTERTOPS WITH A 30" WIDE WORKSPACE AND/OR ONE OR MORE 15" BREADBOARDS INSTALLED BETWEEN 28-32" HIGH.
- UNDER-CABINET LIGHTING.
- AT LEAST ONE FULL BATHROOM ON ACCESSIBLE ROUTE OF TRAVEL.
- STANDARD BATHTUB AND TOILET WITH GRAB BAR REINFORCEMENT.
- BATHROOM SHALL BE PROVIDED WITH REMOVABLE BASE CABINET AT LAVATORY.
- ACCESSIBLE MEDICINE CABINET AND INTEGRAL MIRROR, LOWER TOWEL RACKS AND ROBE HOOKS, AND ACCESSIBLE TOILET TISSUE HOLDER.
- ALL RESIDENTIAL AMENITY SPACES AND COMMON OUTDOOR SPACES ARE LOCATED ALONG THE ACCESSIBLE PATH OF TRAVEL THROUGH THE BUILDING.

0% OF ALL TOWNHOME UNITS WILL BE PROVIDED WITH ACCESSIBLE GROUND FLOOR LEVELS WHICH CAN BE CONFIGURED TO ACCOMMODATE A BEDROOM, BATHROOM AND KITCHENETTE ON AN ACCESSIBLE ROUTE OF TRAVEL FROM THE EXTERIOR. ADDITIONALLY, LL TOWNHOME UNITS INCLUDE THE FOLLOWING UNIVERSAL DESIGN ELEMENTS:

- ACCESSIBLE ROUTE OF TRAVEL FROM THE PARKING STALL INTO THE UNIT.
- AN ACCESSIBLE ROUTE OF TRAVEL WITH A MINIMUM 42" WIDE HALLWAY THROUGHOUT THE ACCESSIBLE ENTRY LEVEL.
- A MINIMUM OF ONE POWDERROOM AT THE ENTRY LEVEL, AND ALONG THE ACCESSIBLE ROUTE OF TRAVEL. THE POWDERROOM SHALL BE PROVIDED WITH GRAB-BAR REINFORCEMENTS, REQUIRED TOILET AND LAVATORY CLEAR APPROACH, ACCESSIBLE TOILET TISSUE HOLDER, AND A REMOVABLE BASE CABINET AT THE LAVATORY.
- CODE-REQUIRED MANEUVERING CLEARANCES, HARDWARE, THRESHOLDS, AND STRIKE SIDE CLEARANCES SHALL BE PROVIDED FOR INTERIOR AND EXTERIOR DOORS AT THE ENTRY LEVEL.

LL PARKS COMMERCIAL AREAS AND PLAZA'S INCLUDE THE FOLLOWING UNIVERSAL DESIGN ELEMENTS:

- ACCESSIBLE ROUTE OF TRAVEL CONNECTING PROGRAMMATIC ELEMENTS AND POINTS OF INTEREST.
- ACCESSIBLE SEATING IS PROVIDED THROUGHOUT PUBLIC SPACE.
- ACCESSIBLE PARKING STALLS FOR RETAIL ARE PROVIDED BOTH ON AND OFF-STREET AND LOCATED NEAR THE INTERSECTION OF RALPH APPEZZATO PARKWAY AND PAN AM WAY. THESE SAME STALLS PROVIDE ACCESS TO KEY POINTS OF ENTRY INTO THE URBAN PLAZA AND WATERFRONT PROMENADE.
- THE PARKS AND PLAZAS AT SITE A ARE DESIGNED TO ALLOW FOR MAXIMUM ACCESS. ACCESSIBLE ROUTES ARE LOCATED THROUGHOUT THE PLAZAS AND CONNECT POINTS OF INTEREST, PROGRAMMED SPACES, AND SEATING AREAS WITH THE ACCESSIBLE PARKING STALLS.

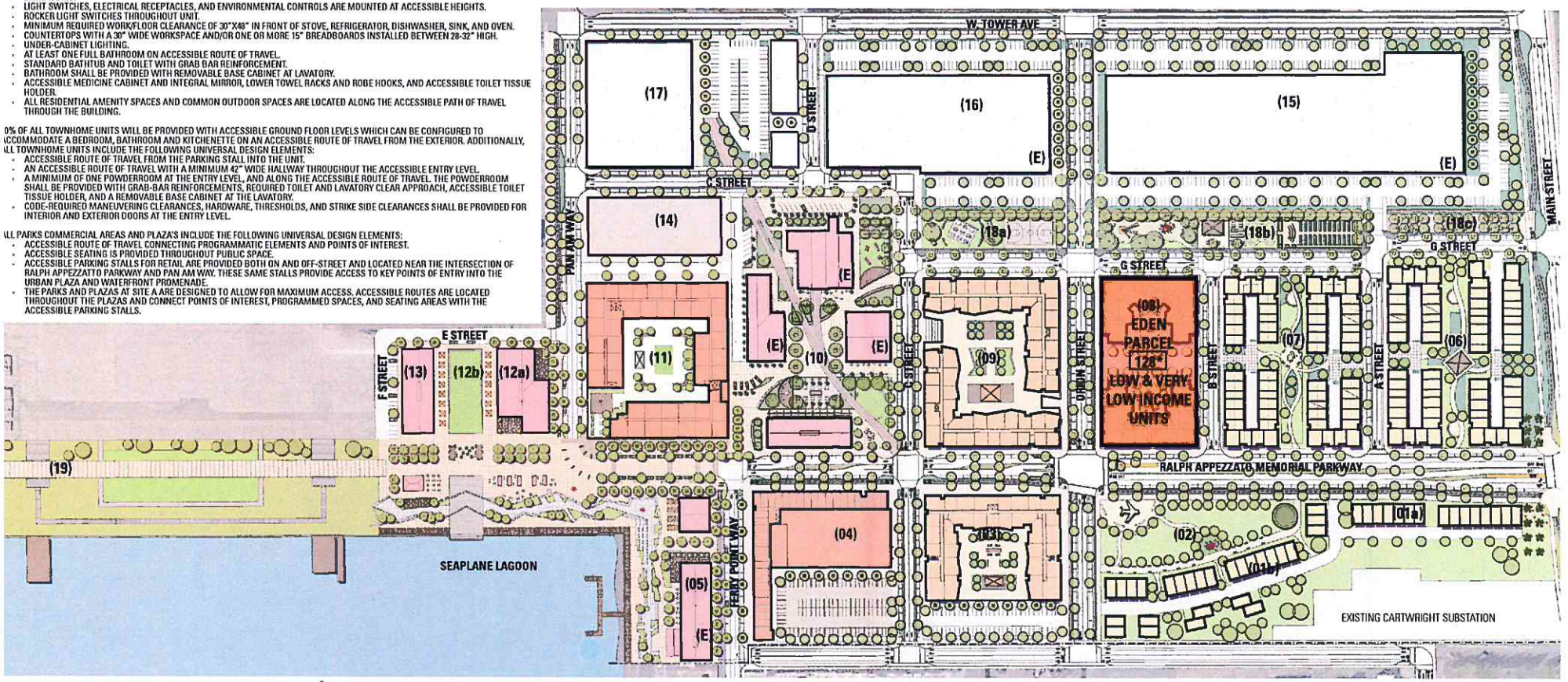
LEGEND

- (E) EXISTING BUILDING
- (##) BLOCK NUMBER
- PUBLIC PARKING
- OPEN SPACE - NEIGHBORHOOD PARK
- COMMERCIAL (OFFICE/MANUFACTURING)
- RESIDENTIAL OVER GROUND FLOOR RETAIL & PARKING
- RESIDENTIAL OVER ADAPTABLE GROUND FLOOR & PARKING
- RESIDENTIAL TOWNHOME
- RETAIL (SHOPS & RESTAURANTS)

***ALL MODERATE-INCOME AFFORDABLE HOUSING UNITS (I.E., 72 UNITS) WILL BE INTERSPERSED THROUGHOUT THE MARKET-RATE HOUSING (PARCELS 1, 3, 6, 7, 9 OR 11) AND MAY BE VARIED UNIT AND PRODUCT-TYPE MIX AND OWNERSHIP TYPE (I.E., RENTAL/FOR SALE).**

INCOME TYPE	NUMBER OF UNITS	PARCEL LOCATION
LOW & VERY LOW	128	08
MODERATE	72	01, 03, 06, 07, 09, OR 11
TOTAL:	200	

***THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.**



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AFFORDABLE HOUSING PLAN AND UNIVERSAL DESIGN

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ARCHITECTURAL CHARACTER IMAGES - TOWN HOMES

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ARCHITECTURAL CHARACTER IMAGES - MIXED USE & STACKED FLATS

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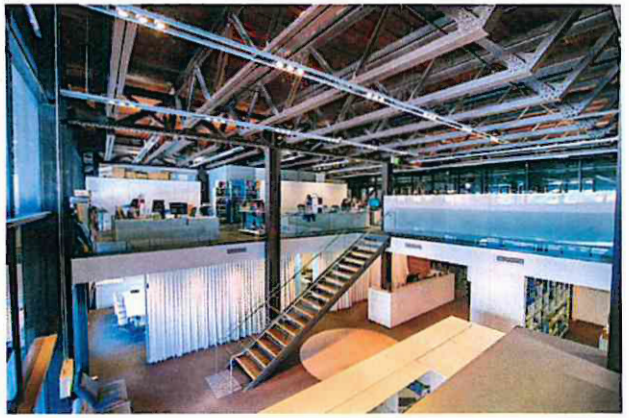

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ARCHITECTURAL CHARACTER IMAGES - COMMERCIAL & FREESTANDING RETAIL

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AERIAL MASSING VIEW LOOKING WEST

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AERIAL MASSING VIEW LOOKING EAST

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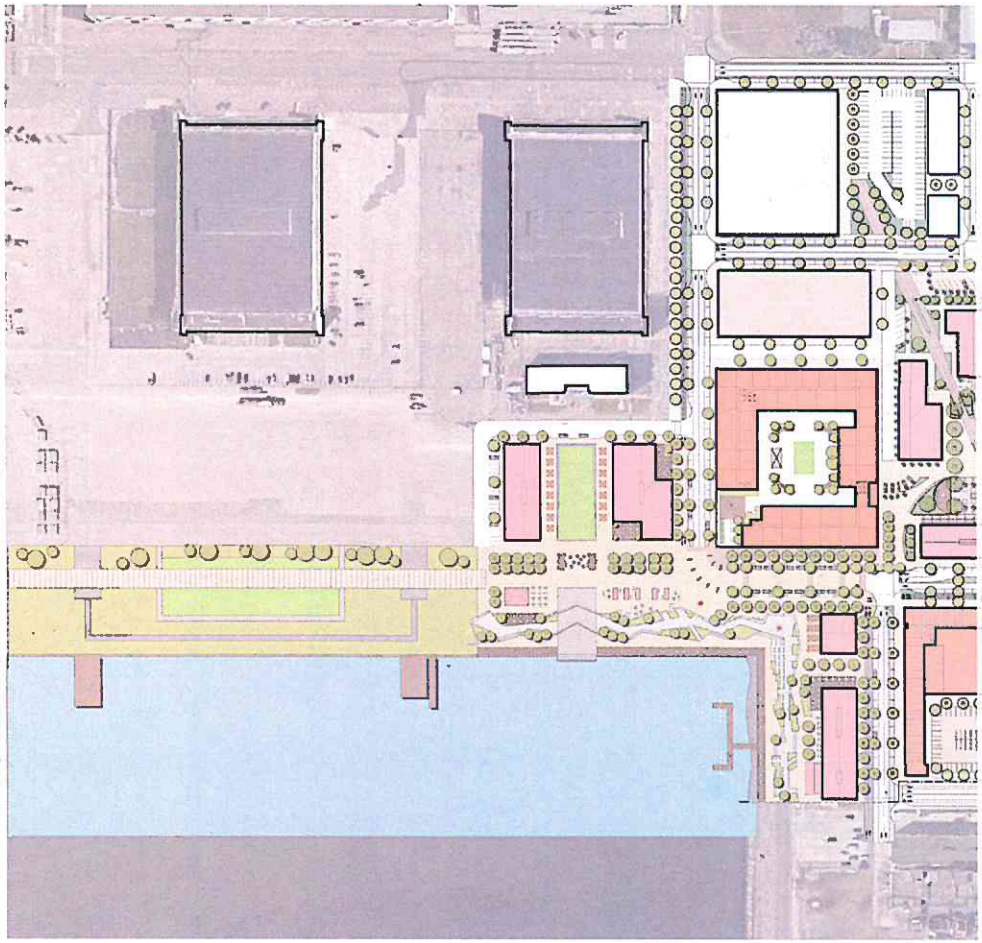
TRANSPORTATION & CIRCULATION



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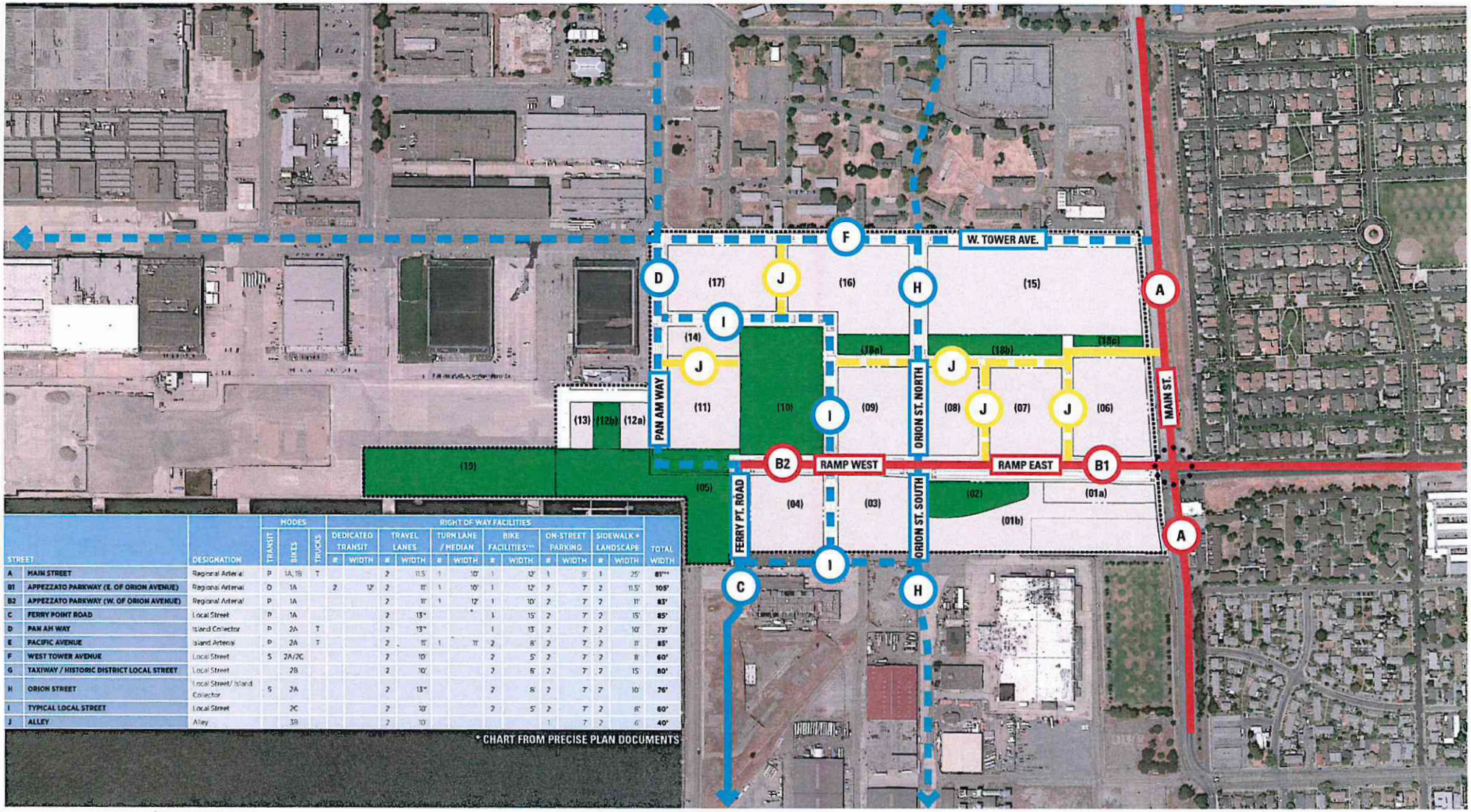

STREET		DESIGNATION	MODES			RIGHT OF WAY FACILITIES												TOTAL WIDTH
			TRANSIT	BIKES	TRUCKS	DEDICATED TRANSIT #	DEDICATED TRANSIT WIDTH	TRAVEL LANES #	TRAVEL LANES WIDTH	TURN LANE / MEDIAN #	TURN LANE / MEDIAN WIDTH	BIKE FACILITIES*** #	BIKE FACILITIES*** WIDTH	ON-STREET PARKING #	ON-STREET PARKING WIDTH	SIDEWALK + LANDSCAPE #	SIDEWALK + LANDSCAPE WIDTH	
A	MAIN STREET	Regional Arterial	P	1A, 1B	T			2	11.5'	1	10'	1	12'	1	9'	1	25'	81'**
B1	APPEZZATO PARKWAY (E. OF ORION AVENUE)	Regional Arterial	D	1A		2	12'	2	11'	1	16'	1	12'	2	7'	2	11.5'	105'
B2	APPEZZATO PARKWAY (W. OF ORION AVENUE)	Regional Arterial	P	1A				2	11'	1	12'	1	10'	2	7'	2	11'	83'
C	FERRY POINT ROAD	Local Street	P	1A				2	13'*		*	1	15'	2	7'	2	15'	85'
D	PAN AM WAY	Island Collector	P	2A	T			2	13'*			1	13'	2	7'	2	10'	73'
E	PACIFIC AVENUE	Island Arterial	P	2A	T			2	11'	1	11'	2	8'	2	7'	2	11'	85'
F	WEST TOWER AVENUE	Local Street	S	2A/2C				2	10'			2	5'	2	7'	2	8	60'
G	TAXIWAY / HISTORIC DISTRICT LOCAL STREET	Local Street		2B				2	10'			2	6'	2	7'	2	15'	80'
H	ORION STREET	Local Street/ Island Collector	S	2A				2	13'*			2	8'	2	7'	2	10'	76'
I	TYPICAL LOCAL STREET	Local Street		2C				2	10'			2	5'	2	7'	2	8'	60'
J	ALLEY	Alley		3R				2	10'					1	7'	2	6'	40'

* CHART FROM PRECISE PLAN DOCUMENTS

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PROPOSED STREET CLASSIFICATION PLAN - OVER EXISTING CONDITIONS

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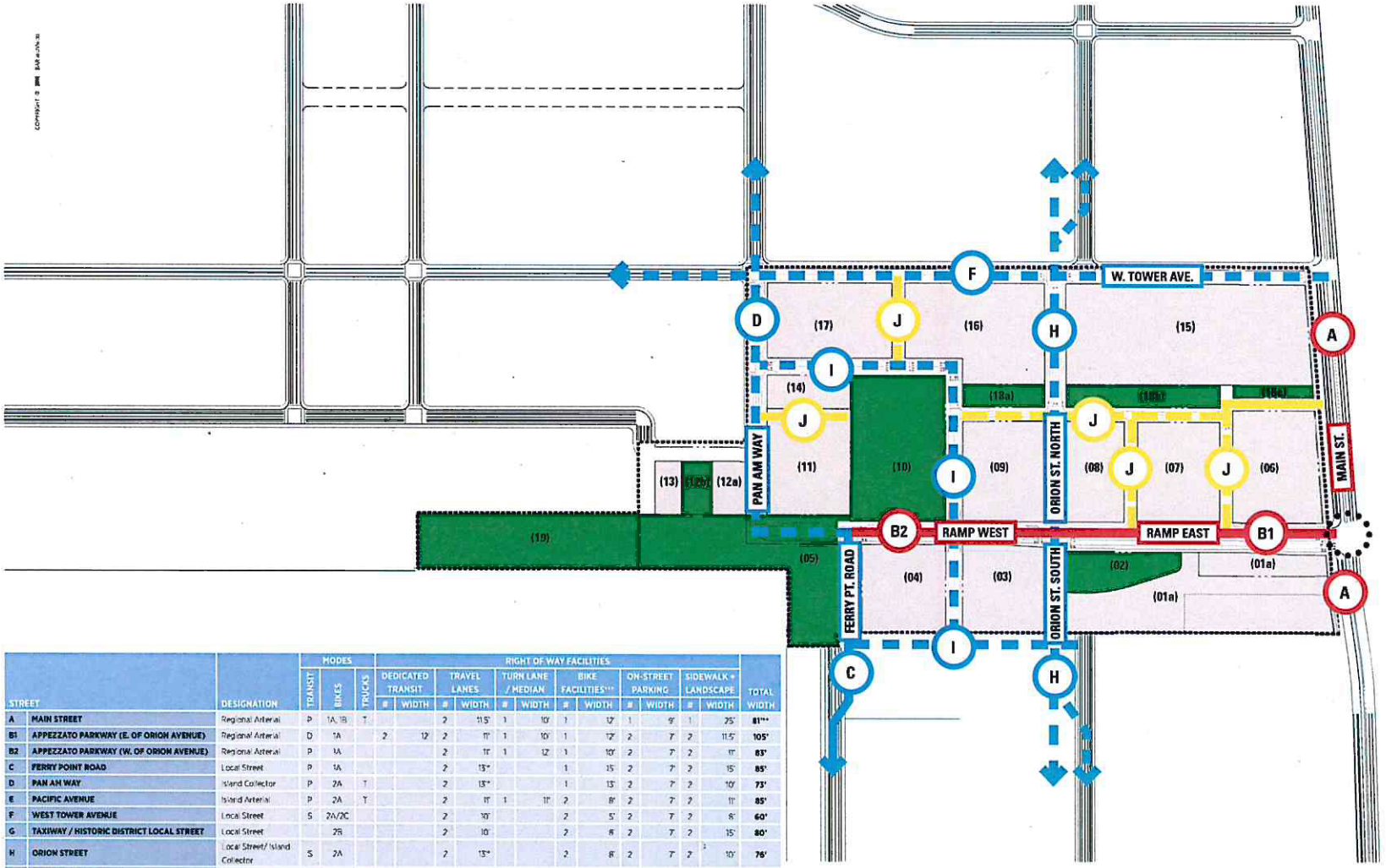

STREET		DESIGNATION	MODES			RIGHT OF WAY FACILITIES												TOTAL WIDTH
			TRANSIT	BIKES	TRUCKS	DEDICATED TRANSIT		TRAVEL LANES		TURN LANE / MEDIAN		BIKE FACILITIES***		ON-STREET PARKING		SIDEWALK + LANDSCAPE		
						#	WIDTH	#	WIDTH	#	WIDTH	#	WIDTH	#	WIDTH	#	WIDTH	
A	MAIN STREET	Regional Arterial	P	1A, 1B	T			2	11.5'	1	10'	1	12'	1	9'	1	25'	81'**
B1	APPEZZATO PARKWAY (E. OF ORION AVENUE)	Regional Arterial	D	1A		2	12'	2	11'	1	10'	1	12'	2	7'	2	11.5'	105'
B2	APPEZZATO PARKWAY (W. OF ORION AVENUE)	Regional Arterial	P	1A				2	11'	1	12'	1	10'	2	7'	2	11'	83'
C	FERRY POINT ROAD	Local Street	P	1A				2	13'*			1	15'	2	7'	2	15'	85'
D	PAN AM WAY	Island Collector	P	2A	T			2	13'*			1	13'	2	7'	2	10'	73'
E	PACIFIC AVENUE	Island Arterial	P	2A	T			2	11'	1	11'	2	8'	2	7'	2	11'	85'
F	WEST TOWER AVENUE	Local Street	S	2A/2C				2	10'			2	5'	2	7'	2	6'	60'
G	TAXIWAY / HISTORIC DISTRICT LOCAL STREET	Local Street		2S				2	10'			2	8'	2	7'	2	15'	80'
H	ORION STREET	Local Street/ Island Collector	S	2A				2	13'*			2	8'	2	7'	2	10'	76'
I	TYPICAL LOCAL STREET	Local Street		2C				2	10'			2	5'	2	7'	2	8'	60'
J	ALLEY	Alley		3B				2	10'					1	7'	2	6'	40'

* CHART FROM PRECISE PLAN DOCUMENTS

* BACKGROUND IMAGE FROM MASTER INFRASTRUCTURE PLAN

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PROPOSED STREET CLASSIFICATION PLAN - OVER M.I.P. PLAN

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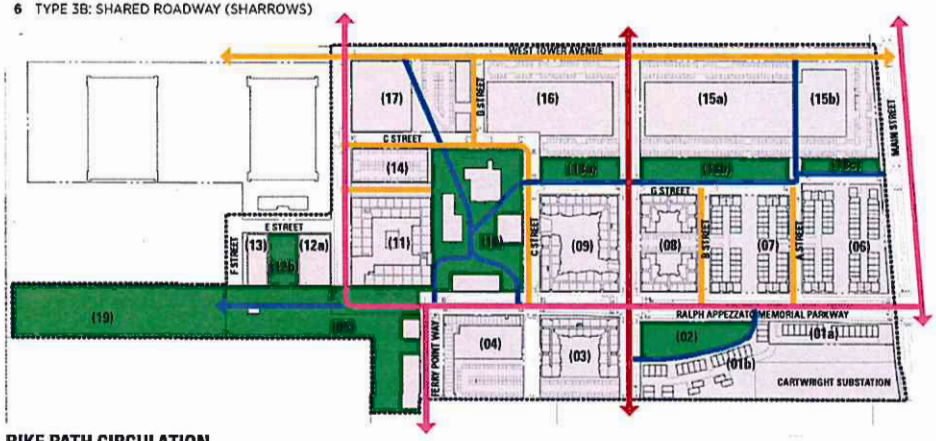
1 TYPE 1A: SEPARATED BIKE TRAIL
2 TYPE 1B: SHARED PEDESTRIAN / BIKE TRAIL
3 TYPE 2A: BIKE LANES WITH PHYSICAL BARRIER
4 TYPE 2B: BIKE LANES WITH PAINTED BUFFER
5 TYPE 2C: BIKE LANES WITH STRIPE ONLY
6 TYPE 3B: SHARED ROADWAY (SHARROWS)

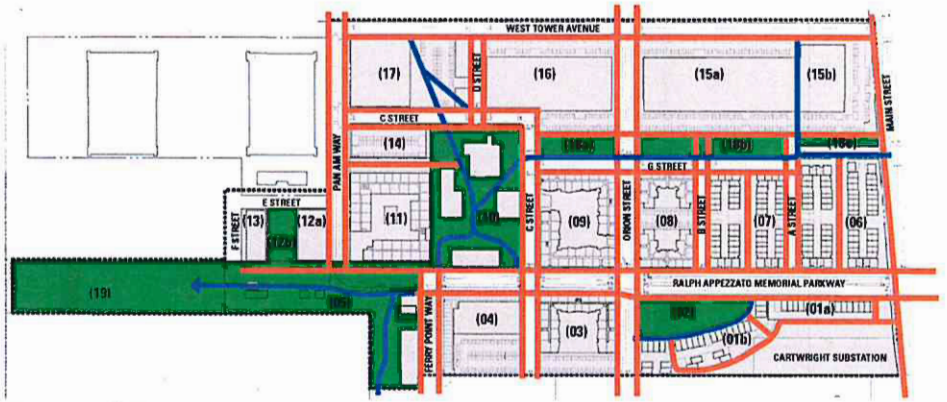
*IMAGES FROM JULY ALAMEDA PRECISE PLAN

NAKED STREET REFERENCE IMAGES



BIKE PATH CIRCULATION

- SEPARATED BIKE TRAIL (TYPE 1A)
- SHARED PEDESTRIAN / BIKE TRAIL (TYPE 1B)
- BIKE LANES WITH PHYSICAL BARRIERS (TYPE 2A)
- BIKE LANES WITH PAINTED BUFFER, SHARROWS OR STRIPE ONLY (TYPE 2B, 2C, & 3B)



PUBLIC PEDESTRIAN CIRCULATION

- SIDEWALK - PEDESTRIAN ONLY
- SHARED PEDESTRIAN / BIKE TRAIL

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BIKE PATH AND PUBLIC PEDESTRIAN CIRCULATION DIAGRAMS

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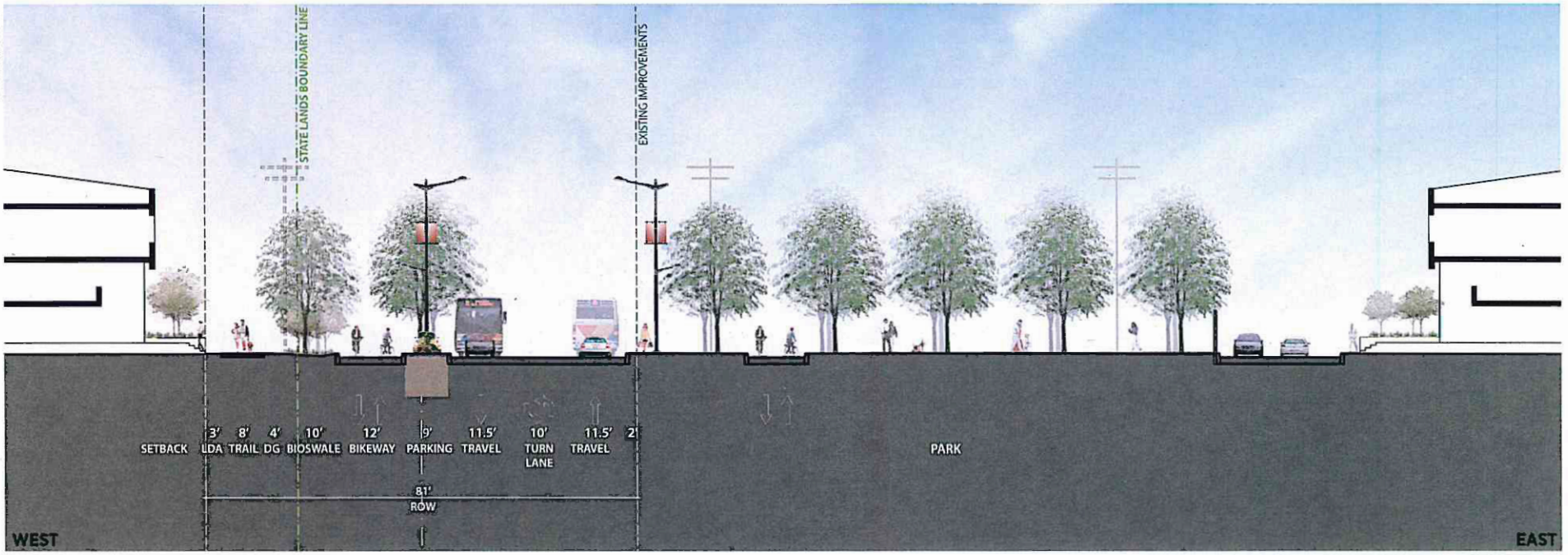
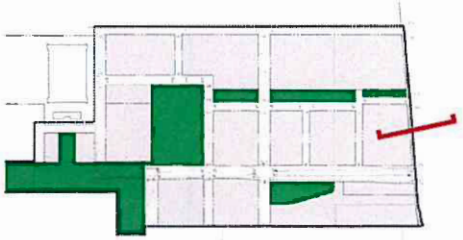


MAIN STREET R.O.W. SECTION

* SECTION FROM PRECISE PLAN DOCUMENTS

0' 15' 30' 45'



KEY PLAN

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RIGHT OF WAY SECTIONS

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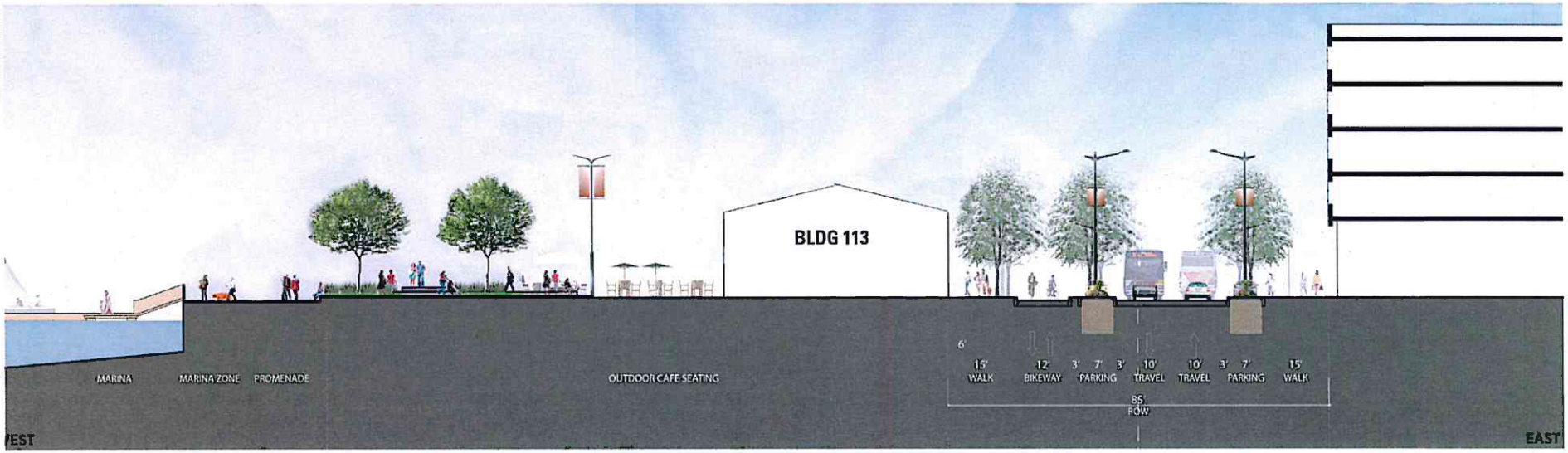
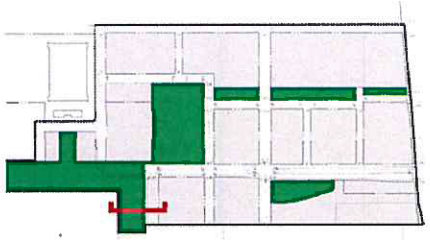


ALAMEDA POINT PARTNERS - FERRY POINT R.O.W. STREET SECTION - AT BUILDING 113 - PHASE TWO

AERIAL VIEW OF PROMENADE BETWEEN BUILDING 113 AND SEAPLANE LAGOON



KEY PLAN

* SECTION ADAPTED FROM PRECISE PLAN DOCUMENTS

RIGHT OF WAY SECTIONS

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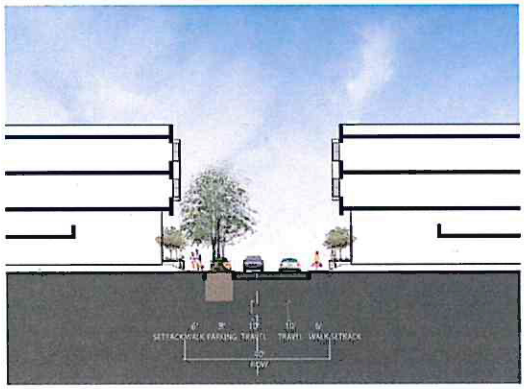
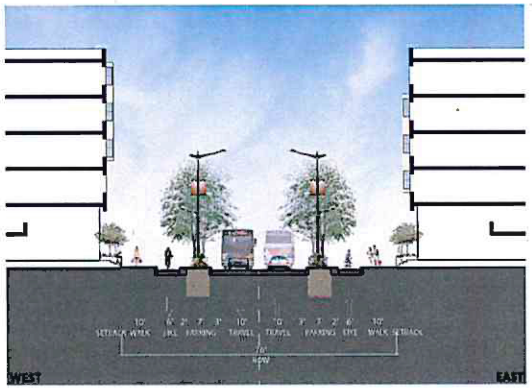


A. ALLEY R.O.W. SECTION

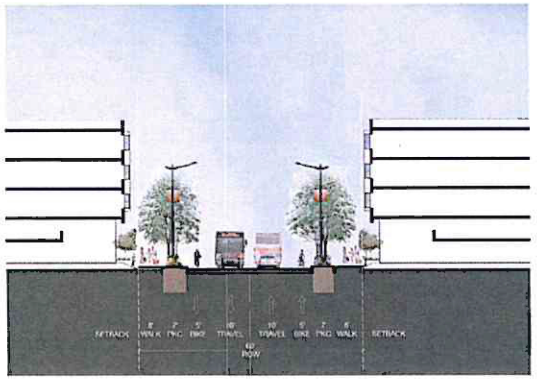
*NOTE: WHERE ADJACENT BUILDING HEIGHT EXCEEDS 30' PROVIDE 13-FT TRAVEL LANES , STRIPPED AS 10-FT WITH 3-FT BUFFERS



B. ORION STREET (NORTH) R.O.W. SECTION

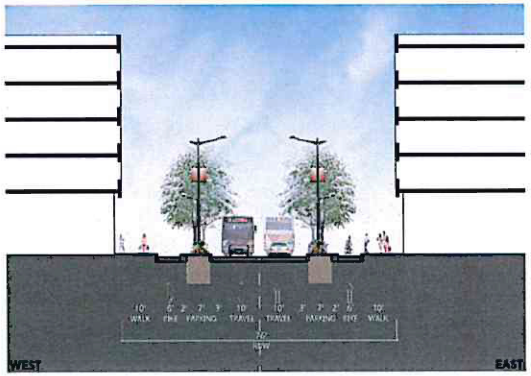
*NOTE: PROVIDE 13-FT TRAVEL LANES , STRIPPED AS 10-FT WITH 3-FT BUFFERS

C. PAN AM WAY R.O.W. SECTION



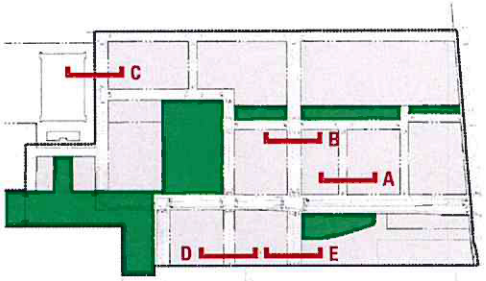
D. TYPICAL LOCAL STREET R.O.W. SECTION

* CONSISTENT WITH TABLE ON PRECISE PLAN PAGE 67



E. ORION STREET (SOUTH) R.O.W. SECTION

*NOTE: PROVIDE 13-FT TRAVEL LANES , STRIPPED AS 10-FT WITH 3-FT BUFFERS



KEY PLAN

* SECTION FROM PRECISE PLAN DOCUMENTS

RIGHT OF WAY SECTIONS

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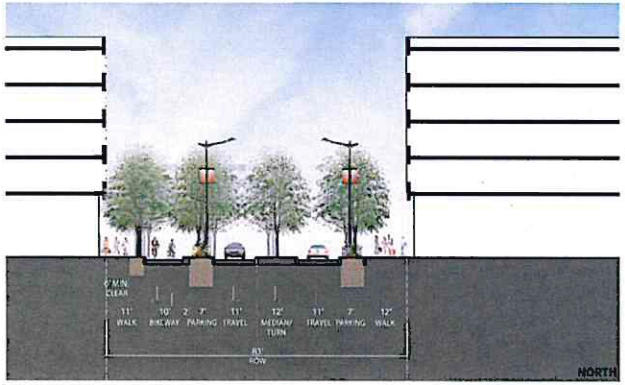
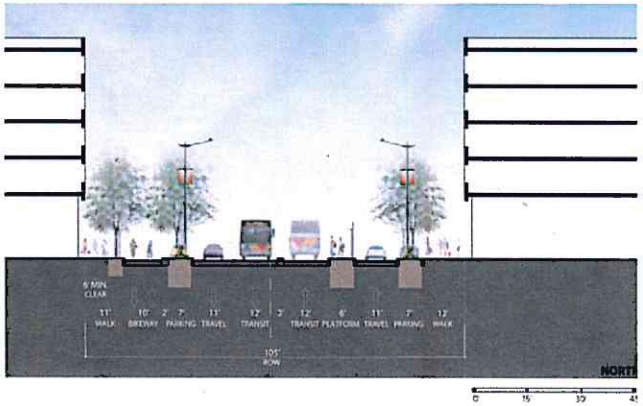


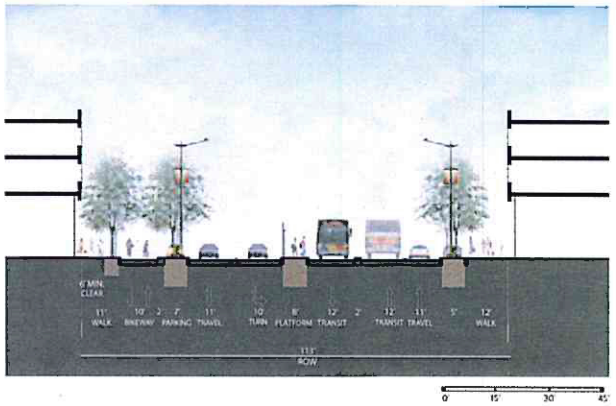
C. RALPH APPEZZATO MEMORIAL PARKWAY - WEST 83' R.O.W. SECTION

SECTION FROM PRECISE PLAN DOCUMENTS



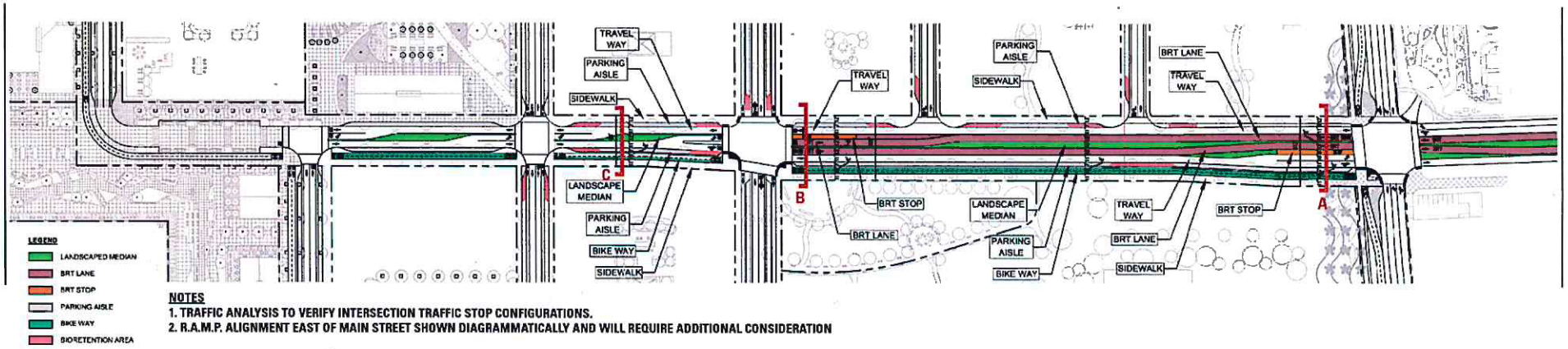
B. RALPH APPEZZATO MEMORIAL PARKWAY - EAST 105' R.O.W. SECTION

SECTION REVISED FROM PRECISE PLAN DOCUMENTS



A. RALPH APPEZZATO MEMORIAL PARKWAY EAST 113' R.O.W. SECTION AT MAIN STREET

SECTION REVISED FROM PRECISE PLAN DOCUMENTS



NOTES

1. TRAFFIC ANALYSIS TO VERIFY INTERSECTION TRAFFIC STOP CONFIGURATIONS.
2. R.A.M.P. ALIGNMENT EAST OF MAIN STREET SHOWN DIAGRAMMATICALLY AND WILL REQUIRE ADDITIONAL CONSIDERATION

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R.A.M.P. PLAN & SECTIONS

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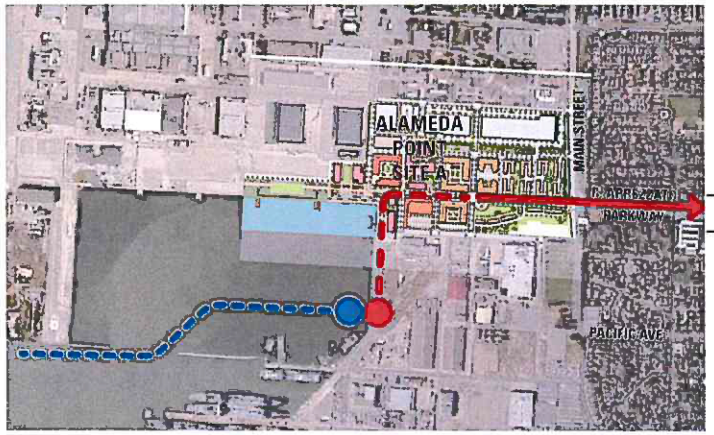

TRANSIT PLAN - VACINITY MAP

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TRANSIT PLAN

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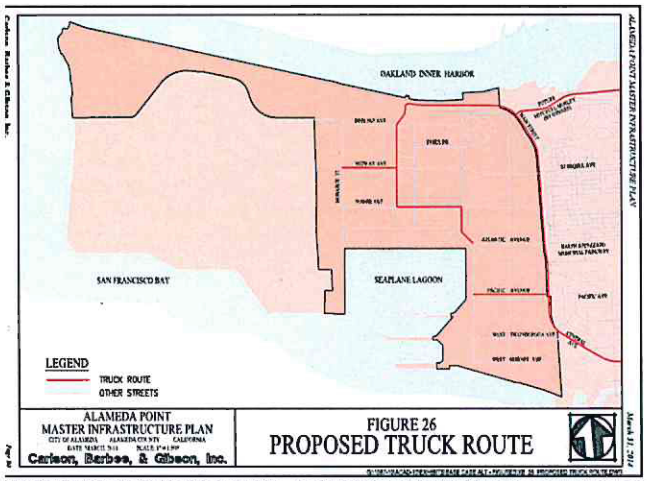

MASTER INFRASTRUCTURE PLAN - PROPOSED TRUCK ROUTES FOR REFERENCE ONLY

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PROPOSED VEHICULAR ACCESS

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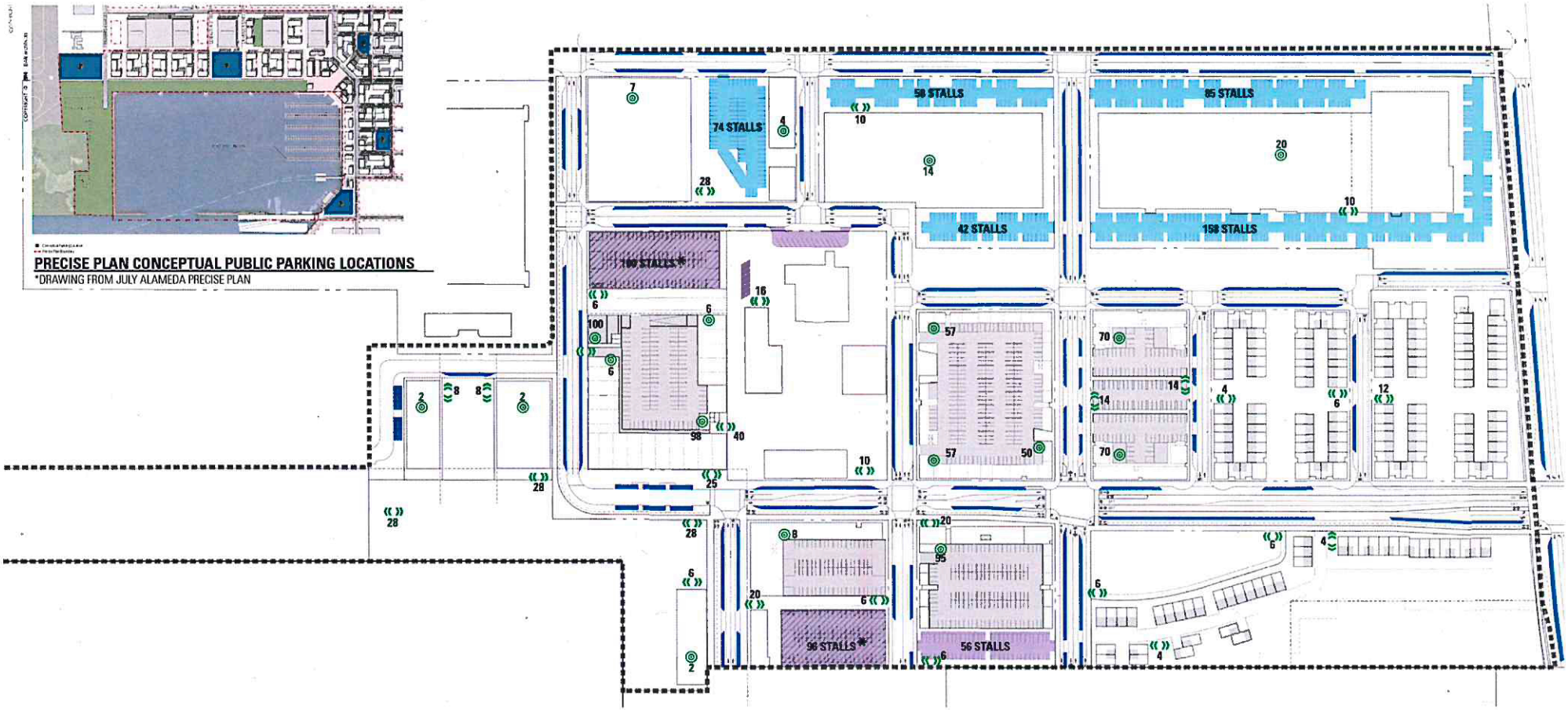

PRECISE PLAN CONCEPTUAL PUBLIC PARKING LOCATIONS

*DRAWING FROM JULY ALAMEDA PRECISE PLAN

- PRIVATE - RESIDENTIAL PARKING
- PUBLIC - ON-STREET PARKING (+/-385 STALLS)
- PUBLIC - RETAIL PARKING - LOCATION OF POSSIBLE FUTURE PARKING STRUCTURE - STALL COUNT PROVIDED ASSUMES SURFACE LOT ONLY
- PUBLIC - SURFACE PARKING LOT - RETAIL (294 STALLS)
- PRIVATE - SURFACE PARKING LOT - COMMERCIAL (416 STALLS)
- CODE REQUIRED "LONG TERM BIKE PARKING" WITH STALL COUNT
- CODE REQUIRED "SHORT TERM BIKE PARKING" WITH STALL COUNT

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PUBLIC PARKING / BIKE PARKING PLAN

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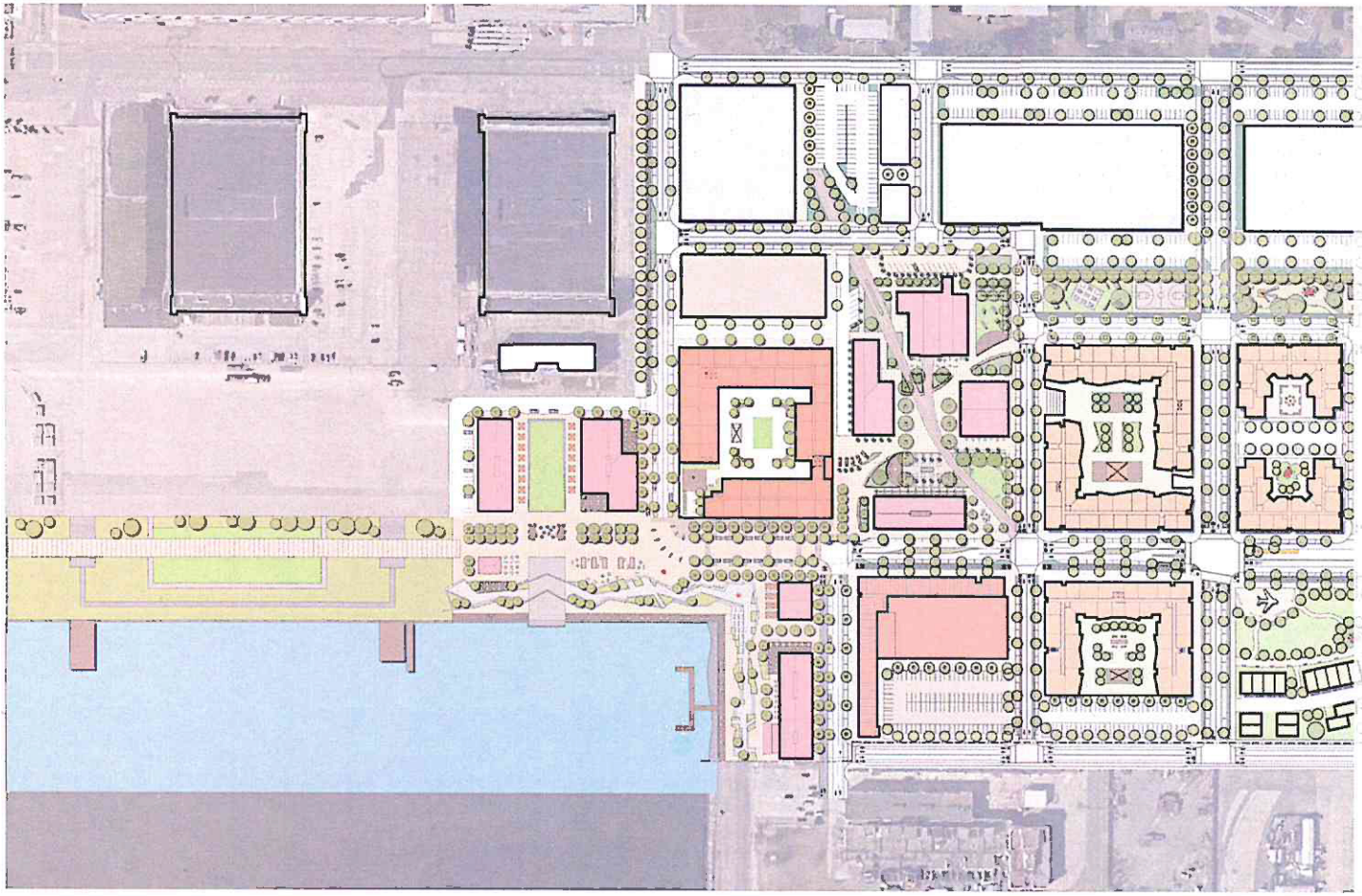
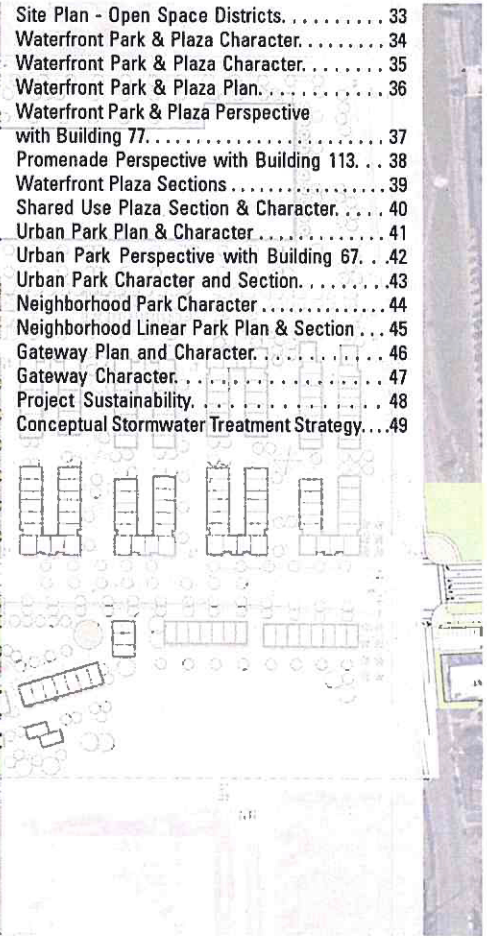


OPEN SPACE



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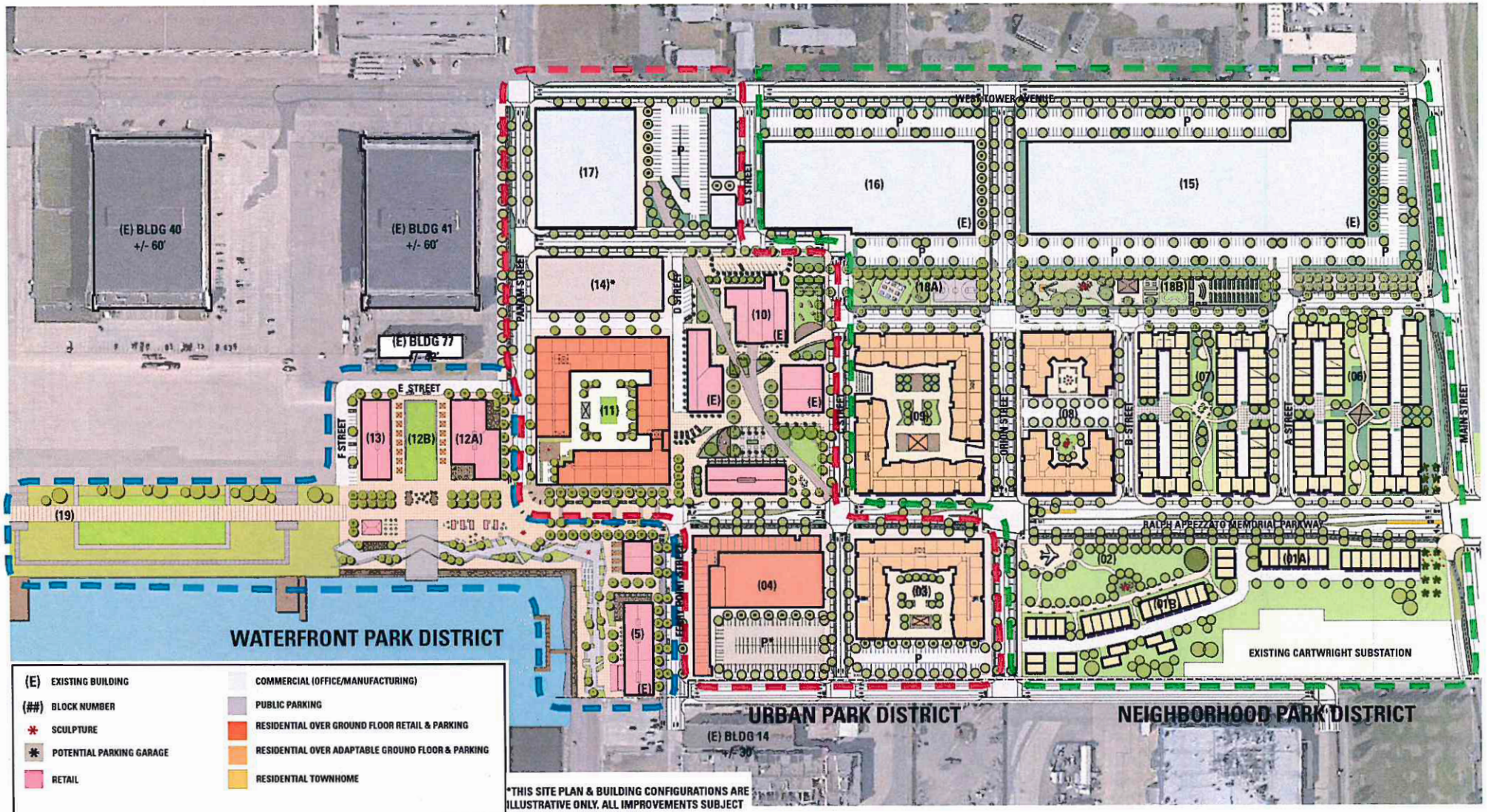

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

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SITE PLAN - OPEN SPACE DISTRICTS

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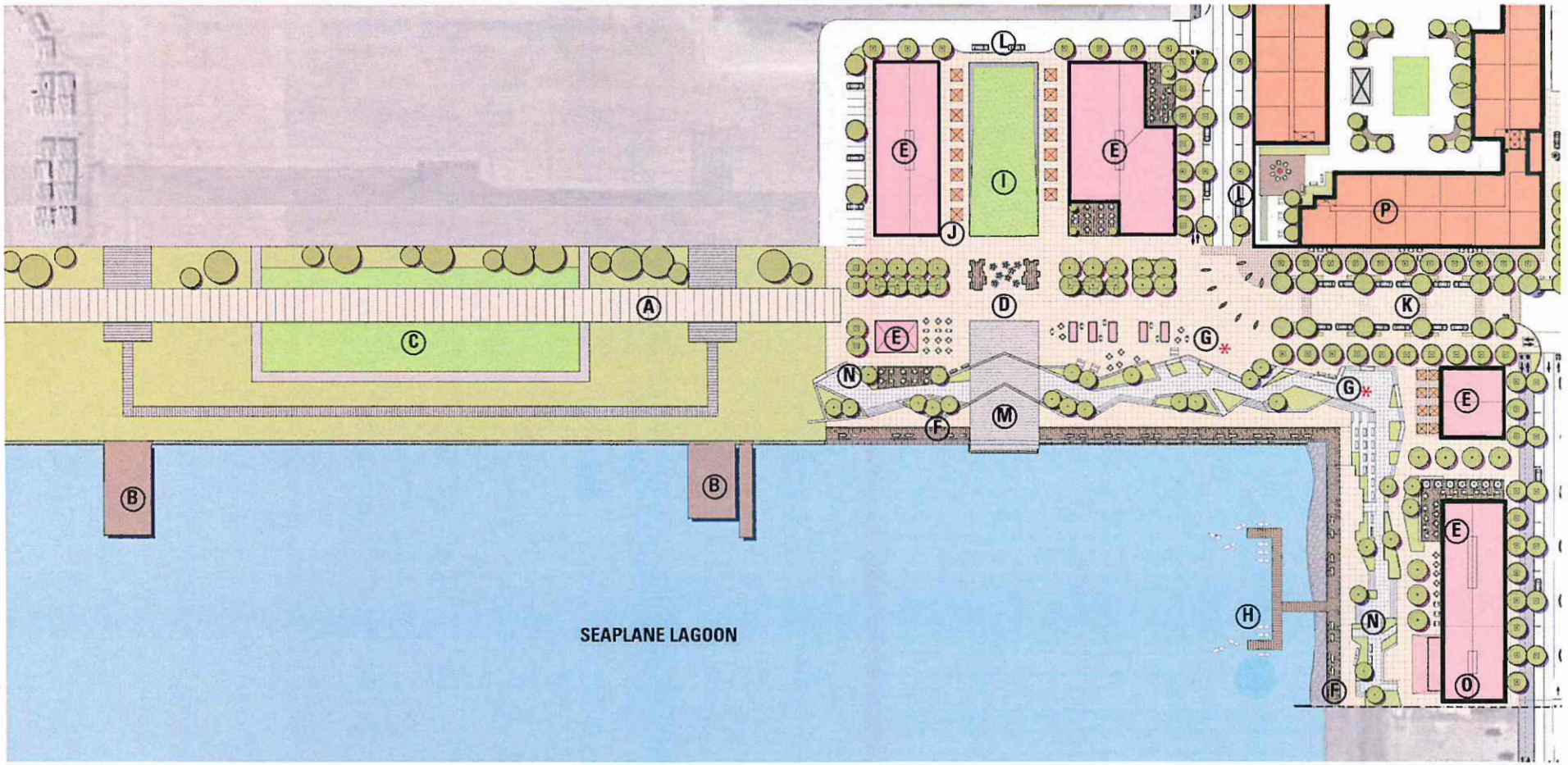

A	PARK PROMENADE	E	RETAIL	I	SLOPED EVENT LAWN	M	HISTORIC VIEW CORRIDOR AND WATER ACCESS
B	HISTORIC SEAPLANE RAMPS	F	WATERFRONT PROMENADE	J	POTENTIAL MARKET AREA	N	WATER FRONT VIEWING TERRACE
C	POTENTIAL RECREATION AREA	G	SCULPTURE (*)	K	SHARED USE PLAZA	O	PROPOSED SMALL CRAFT RENTAL FACILITY
D	WATERFRONT PLAZA	H	FLOATING SMALL CRAFT/KAYAK LAUNCH	L	DROP OFF ZONE	P	RESIDENTIAL OVER GROUND FLOOR RETAIL & PARKING

10 25 50 100 200

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WATERFRONT PARK & PLAZA PLAN

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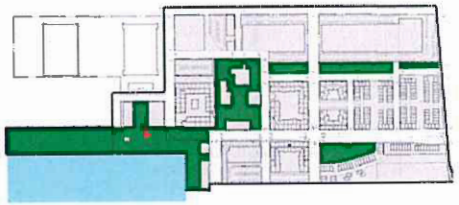
EXISTING CONDITIONS - BUILDING 77



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WATERFRONT PARK & PLAZA PERSPECTIVE WITH BUILDING 77

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EXISTING CONDITIONS - BUILDING 113

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PROMENADE PERSPECTIVE WITH BUILDING 113

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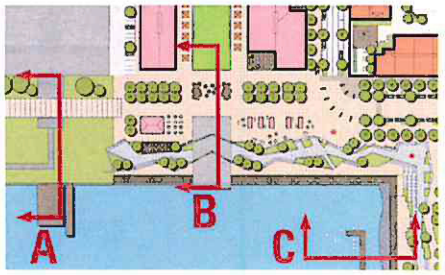
SECTION A AT WATERFRONT PARK

SECTION B AT WATERFRONT PLAZA

SECTION C AT WATERFRONT ACCESS



KEY PLAN

*SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY.
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WATERFRONT PLAZA SECTIONS

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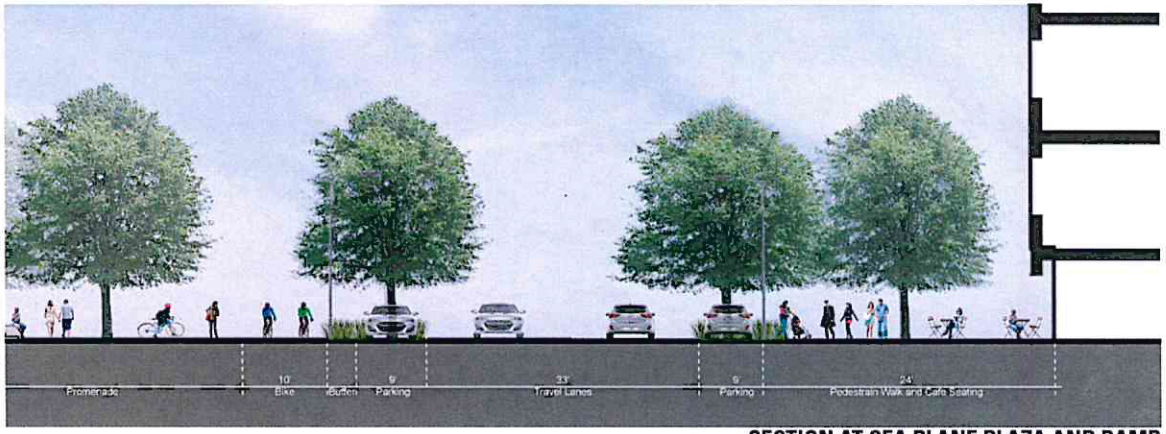
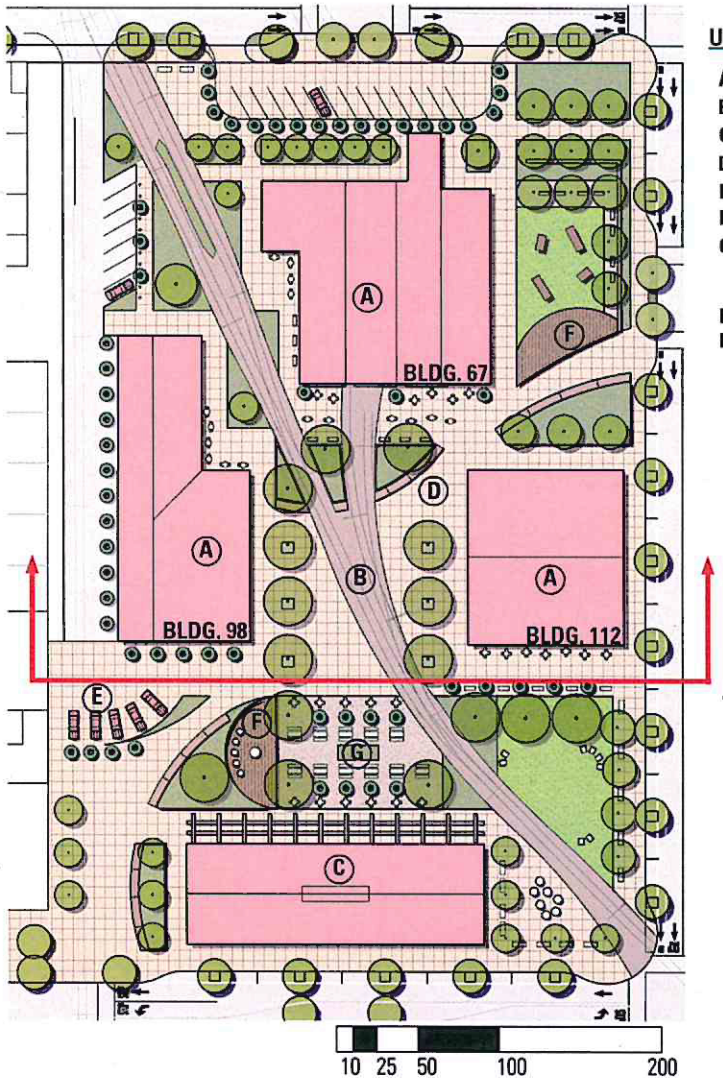


SECTION AT SEA PLANE PLAZA AND RAMP

KEY PLAN

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.



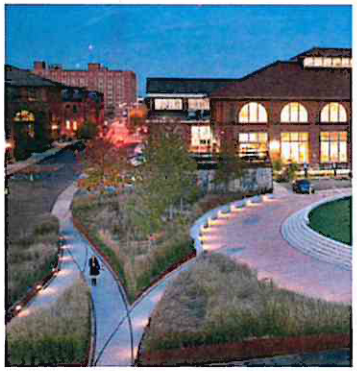
URBAN PARK LEGEND

- A RETROFITTED EXISTING BUILDING
- B TRACKS IN PAVING AND PLANTING
- C CAFE/RETAIL/MAKER FOCUS
- D CENTRAL PLAZA
- E MEWS
- F WOOD DECK
- G BEER GARDEN

POSSIBLE PROGRAMS ELEMENTS INCLUDE:

- CAFE
- FAMILY PLAY AREA
- DINING/OUTDOOR EATING VENUES
- ART/SCULPTURE
- INTIMATE AND LARGER GATHERING OPPORTUNITIES

EXISTING BUILDING PHOTOS



PROPOSED CHARACTER

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

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URBAN PARK PLAN & CHARACTER

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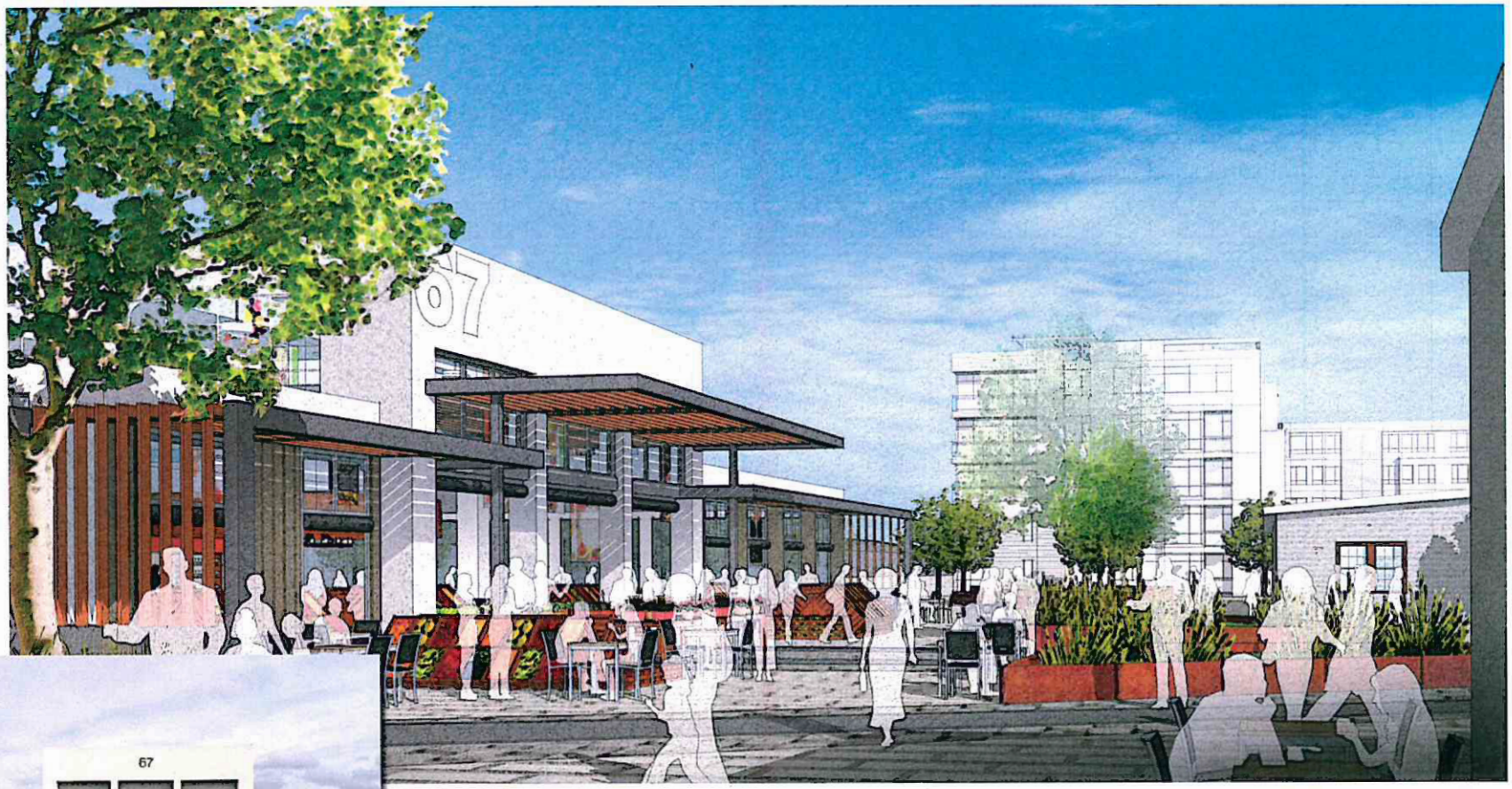
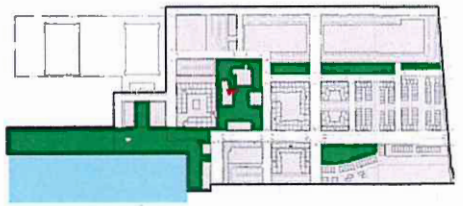


EXISTING CONDITIONS - BUILDING 67



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URBAN PARK PERSPECTIVE WITH BUILDING 67

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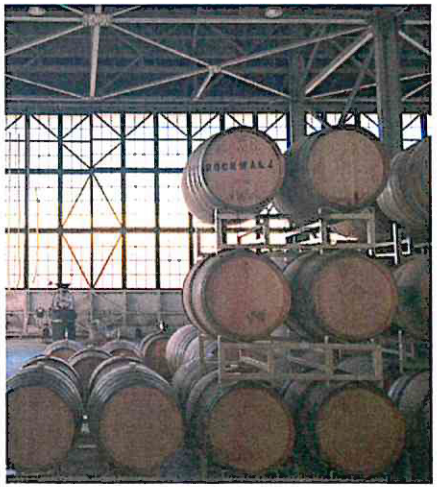

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URBAN PARK CHARACTER & SECTION

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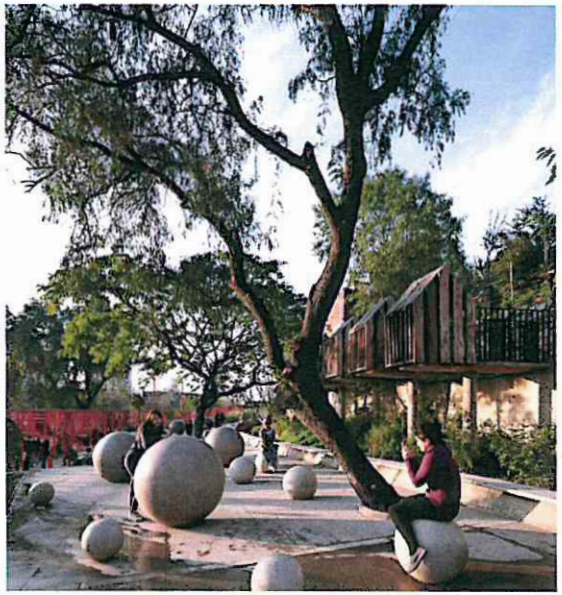



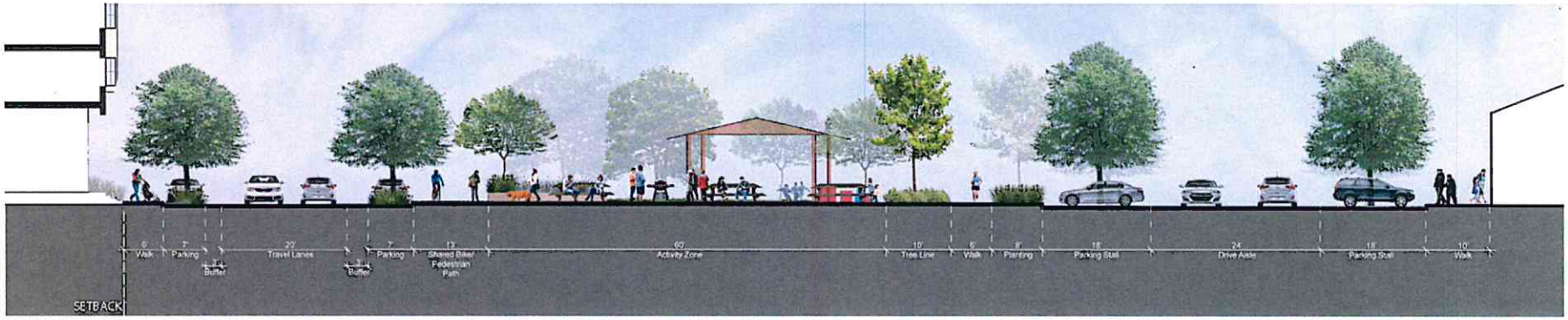

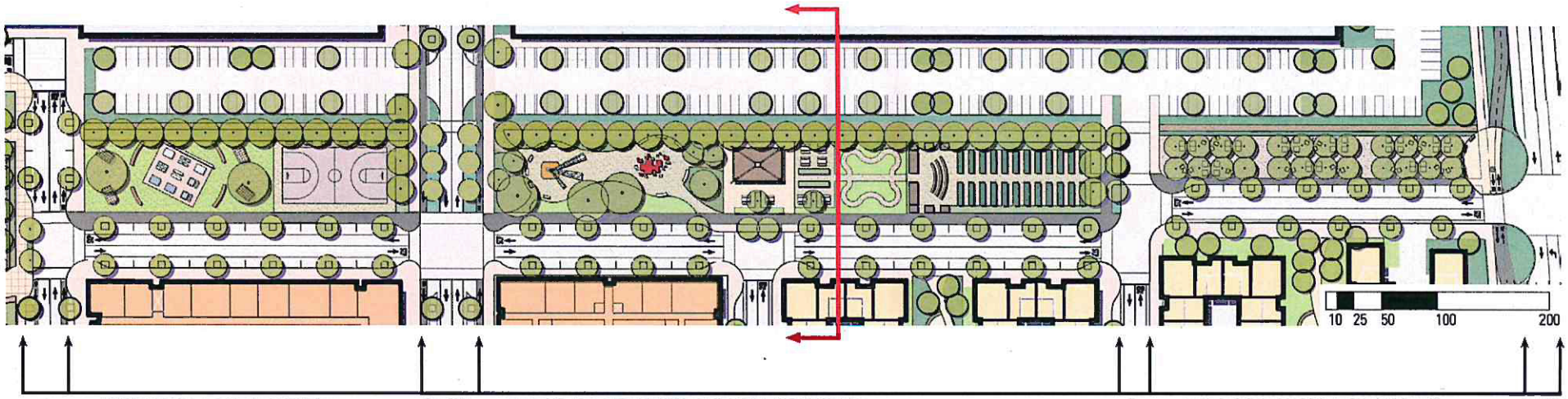

C STREET

WEST BLOCK: ACTIVE RECREATION

POSSIBLE PROGRAMS ELEMENTS INCLUDE:

- FITNESS STATION
- HAMMOCKS
- BASKETBALL COURT

ORION

CENTRAL BLOCK: FAMILY & COMMUNITY ACTIVITIES

POSSIBLE PROGRAMS ELEMENTS INCLUDE:

- DISCOVERY PLAY ZONE
- BARBECUE SHELTER & PICNIC AREA
- SITTING GARDEN WITH NATIVE PLANTS
- OUTDOOR CLASSROOM & UTILITY SHEDS
- COMMUNITY GARDEN

B STREET

EAST BLOCK: LEISURE ZONE & ENTRY

POSSIBLE PROGRAMS ELEMENTS INCLUDE:

- GAME TABLES (PING PONG/CHESS/ETC.)
- BOCCE COURT
- ENTRY PLAZA
- MOVEABLE FURNITURE
- SHADE GROVE

MAIN STREET

*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

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NEIGHBORHOOD LINEAR PARK PLAN & SECTION

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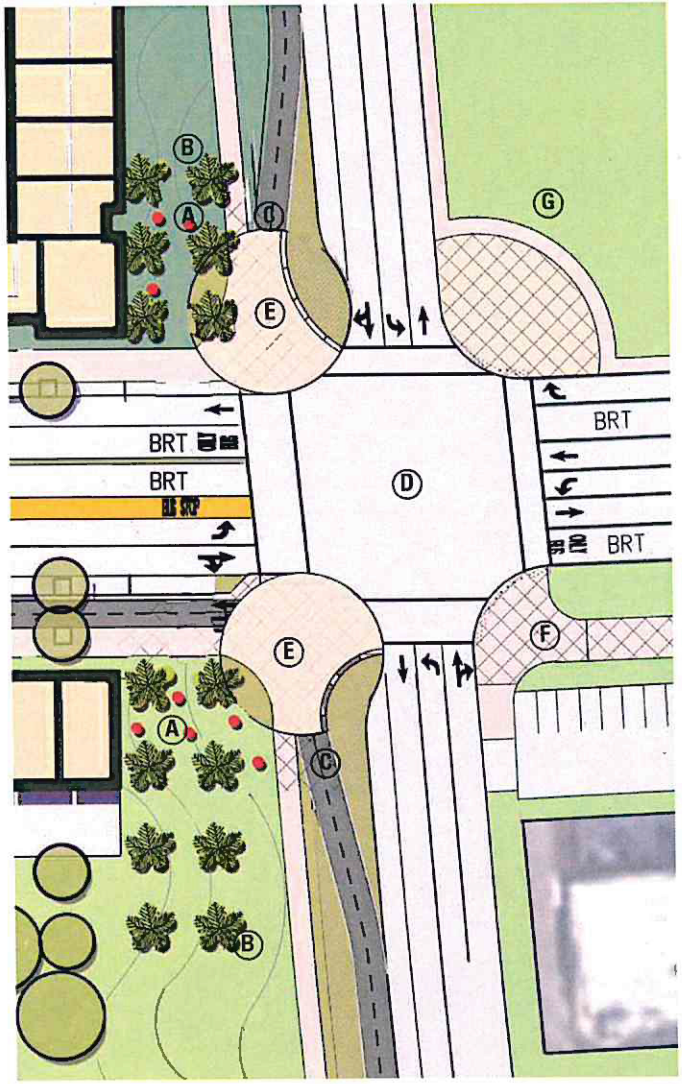

GATEWAY LEGEND:

- **A** HISTORIC ARTIFACT SCULPTURE
- **B** SENTINEL PALM TREE GRID WITH DRAMATIC LIGHTING
- **C** BIKE LANE INTERSECTION PAVING
- **D** PROPOSED MAIN ST. INTERSECTION
- **E** GATEWAY PLAZA
- **F** PROPOSED CROSS ALAMEDA TRAIL TERMINUS
- **G** EXISTING MAIN STREET LINEAR PARK

POSSIBLE ARTIFACT SCULPTURES:

- ALAMEDA POINT HISTORIC NAVAL BASE ARTIFACTS
- 'FOUND' NAVAL SHIP PROPELLERS
- ABSTRACT STEEL SHIP SCULPTURE
- LOCAL ARTISTS' CREATIONS
- SUSTAINABILTY RECLAIMED ART
- LIGHTING AS ART

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Entrance, U. S. Naval Air Station, Alameda, California

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GATEWAY PLAN AND CHARACTER

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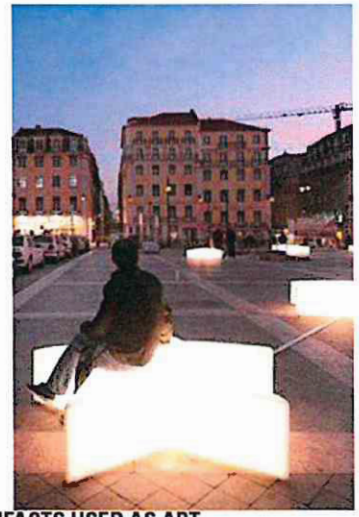
*SCULPTURE PIECE USING RECLAIMED MATERIAL

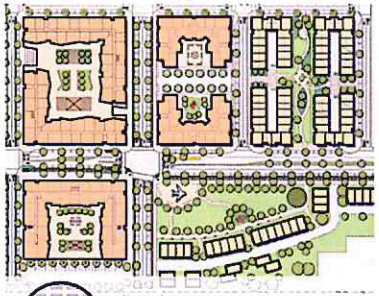


*ALAMEDA POINT NAVAL BASE ARTIFACTS USED AS ART

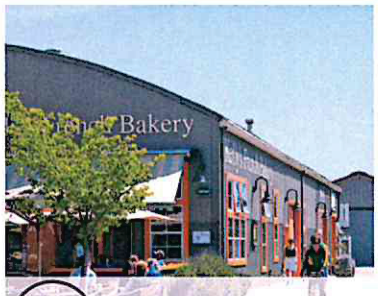
ALAMEDA POINT SITE A – SUSTAINABLE DESIGN:

THE FOLLOWING PROJECT FEATURES ARE DESIGNED TO REDUCE GREENHOUSE GAS EMISSIONS AND COMBAT CLIMATE CHANGE:

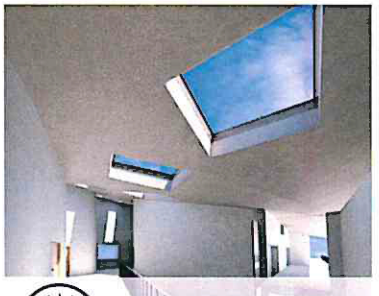
- PRESERVATION AND REUSE OF EXISTING BUILDINGS REDUCES WASTE, ENERGY USE AND GREENHOUSE GAS EMISSIONS DURING CONSTRUCTION;
- MIXED USE DEVELOPMENT ENCOURAGES ALTERNATIVE TRANSPORTATION USAGE;
- SITE PLANNING MAXIMIZES PUBLIC OPEN SPACE, INCREASING PERVIOUS SITE AREAS WHICH LEADS TO A REDUCTION IN STORM-WATER RUNOFF AND THE URBAN HEAT ISLAND EFFECT;
- ON-SITE TRANSPORTATION SERVICES, REDUCED PARKING, ON-SITE BICYCLE SERVICES (E.G., THE ON-SITE "BICYCLE KITCHEN" FOR BICYCLE MAINTENANCE), AND ON-SITE CAR SHARE SERVICES REDUCE GREENHOUSE GAS EMISSIONS FROM AUTOMOBILES;
- INTEGRATED DESIGN PROCESS THAT ANALYZES AND APPLIES TECHNOLOGIES TO REDUCE GREENHOUSE GASES;
- BUILDING DESIGN CONSISTENT WITH A LEED SILVER DESIGNATION OR ITS EQUIVALENT REDUCES GREENHOUSE GAS EMISSIONS FROM BUILDING HEATING, COOLING, AND OPERATIONS;
- BAY FRIENDLY LANDSCAPE MATERIALS THAT REDUCE GREENHOUSE GAS EMISSION FROM LANDSCAPE MAINTENANCE AND REDUCED WATER USE;
- ELECTRIC VEHICLE CHARGING STATIONS IN PARKING FACILITIES PROMOTE A REDUCTION IN AUTOMOBILE EMISSIONS.



SMALL BLOCK SIZES -
WALKABLE NEIGHBORHOODS

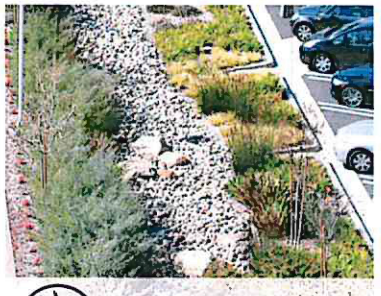


ADAPTIVE REUSE -
PRESERVE OUR RESOURCES



NATURAL DAYLIGHTING
REDUCE ENERGY USAGE

NATIVE, DROUGHT TOLERANT PLANTINGS
TO CONSERVE WATER USE



STORMWATER CAPTURE
FOR A CLEAN BAY

MAXIMIZE OPEN SPACE/PARKS
TO BUILD COMMUNITY

DEDICATED BIKE PATHS AND BIKE PARKING -
REDUCE VEHICLE DEMAND

CITYCARSHARE
A Bay Area nonprofit

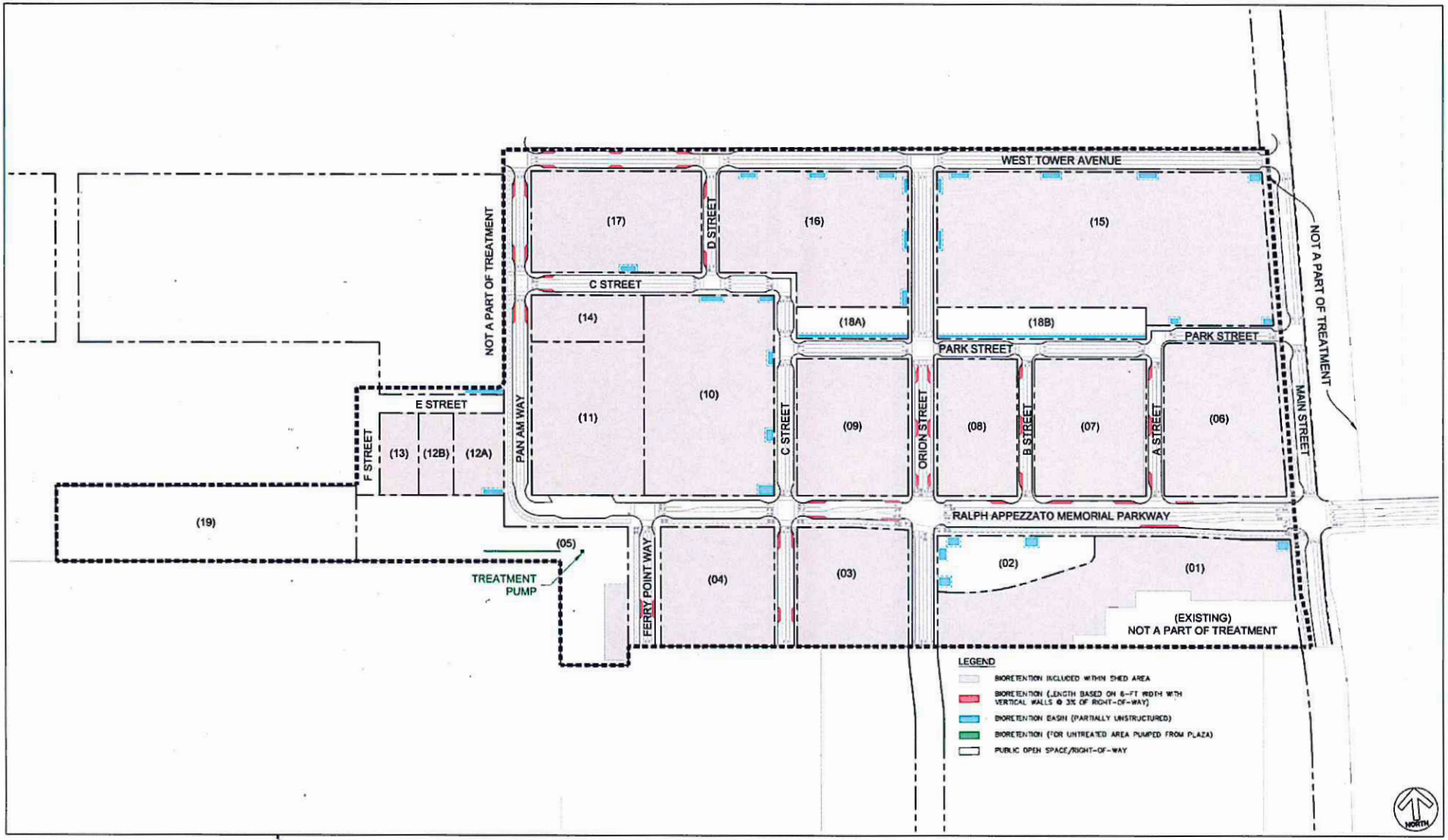
zipcar

CAR SHARE PARKING -
REDUCE VEHICLE DEMAND & PROMOTE SHARED ECONOMY

CAR CHARGING STATIONS -
PROMOTE A REDUCTION IN FOSSIL FUEL USE

ACCESS TO TRANSIT -
BRT / BUS / FERRY
REDUCE VEHICLE DEMAND

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com



ALAMEDA POINT | ALAMEDA, CA

CONCEPTUAL STORMWATER TREATMENT STRATEGY

BARarchitects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

BKF | ignition architecture | MBH arch | TRICON Tableau | EDEN HOUSING | e2blu | SRMERNST | Madison Marquette | LANGAN | KH | FIELD PAOLI | AP DW

05.11.15

14072

EXHIBIT I

FORM OF QUITCLAIM DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
No fee for recording pursuant to
Government Code Section 27383

QUITCLAIM DEED

For valuable consideration, the receipt of which is hereby acknowledged, the City of Alameda, a municipal corporation (the "Grantor"), hereby grants to Alameda Point Partners, LLC, a Delaware limited liability company (the "Grantee"), the real property (the "Property") more particularly described in Attachment A attached hereto and incorporated into this Quitclaim Deed (this "Quitclaim Deed") by this reference, and all existing improvements existing on the Property.

1. The Property is conveyed subject to the Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of _____, 2015 (the "DDA"). Capitalized terms used, but not defined, in this Quitclaim Deed, shall have the meaning set forth in the DDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Project on the Property in accordance with the DDA, and that such construction shall be commenced and completed within the times provided in the DDA.

(a) Promptly after completion of the Project on the Property or any Sub-Phase in accordance with the provisions of the DDA, the Grantor will furnish the Grantee with the Estoppel Certificate of Completion as more particularly described in Section 11.7 of the DDA. Except as otherwise provided in DDA Section 11.7, such Estoppel Certificate of Completion by the Grantor shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in the DDA and in this Quitclaim Deed with respect to the obligations of the Grantee and its successors and assigns to construct the development and the dates for the beginning and completion of such construction for the portion of the Property subject to the Estoppel Certificate of Completion.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction of the development and thereafter, the Grantee shall devote the Property only to the uses specified in the DDA, or as otherwise approved in writing by the Grantor.

4. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee 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, sublessees or vendees in the Property and the Improvements thereon.

5. The Grantee represents and agrees that the Property will be used for the purposes set forth in the DDA. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

(c) For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that, during the Term of the DDA, there shall be no Transfer in violation of the DDA.

(d) No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Quitclaim Deed or the DDA except as expressly set forth in this Quitclaim Deed or the DDA.

6. The covenants contained in this Quitclaim Deed shall remain in effect for the period set forth in the DDA, except for the nondiscrimination covenants contained in Section 5 above which shall run with the land in perpetuity.

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Quitclaim Deed 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 permitted by the DDA. However, any successor of Grantee to the Property shall be bound by such remaining 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.

8. The covenants contained in this Quitclaim Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Quitclaim Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor and assigns, and any successor in interest to the

Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties 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 property proceedings to enforce the curing of such breach. The covenants contained in this Quitclaim Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

9. Subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right, at its option, to reenter and take possession of the Property and the Project, or any portion thereof not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, if the DDA is terminated pursuant to Section 17.5 of the DDA prior to recordation of the Estoppel Certificate of Completion for the final Phase of the Project. Upon revesting in the Grantor of title to the Property, the Grantor shall promptly use its best efforts to resell the Property consistent with its obligations under state law. Upon sale the proceeds shall be applied as set forth in Section 17.5 of the DDA. Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by the DDA; and

(b) Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

10. Subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including also the right to execute and record or file with the Recorder of the County written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, in the portions of the Property not subject to an Estoppel Certificate of Completion or a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance, and the revesting of title thereto in the Grantor. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived. The Grantor's interest in the Property,

as set forth in this Section, shall be a "power of termination" as defined in California Civil Code Section 885.010.

11. If the DDA is terminated pursuant to Section 17.4 thereof following the Closing on any Phase and prior to the issuance of the Estoppel Certificate of Completion or a building permit for the Vertical Improvements that are subject to a Vertical Improvement Completion Assurance for the Phase, then the Grantor may at its option, in addition to other rights granted in the DDA, and subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, repurchase, reenter and take possession of the Property as set forth in the DDA.

12. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Quitclaim Deed or to subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

13. In the event there is a conflict between the provisions of this Quitclaim Deed and the DDA, it is the intent of the parties hereto and their successors in interest that the DDA shall control.

14. This Quitclaim Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

15. **NAVY QUITCLAIM DEED PROVISIONS** Prior to execution of this Quitclaim Deed, the applicable provisions from the Navy Quitclaim Deed or Deeds conveying the Property subject to this Quitclaim Deed will be incorporated herein.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Quitclaim Deed on this _____ day of _____, 20_____.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED

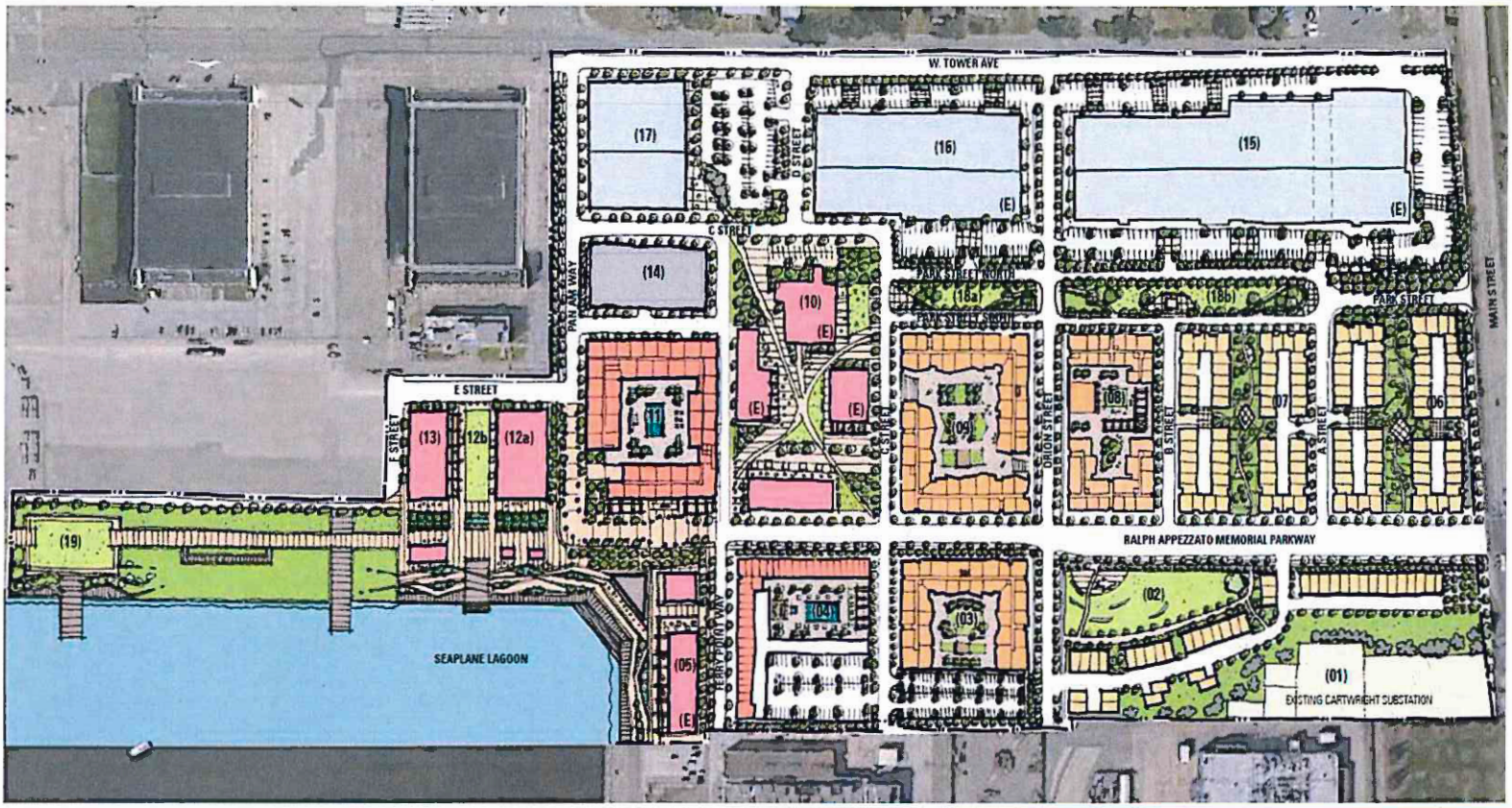
ATTACHMENT 1

PROPERTY DESCRIPTION

The land referred to herein is situated in the State of California, County of Alameda, City of Alameda and is described as follows:

EXHIBIT J

TDM COMPLIANCE STRATEGY



Alameda Point Site A Transportation Demand Management (TDM) Compliance Strategy

Final

May 2015

NELSON
NYGAARD

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1 INTRODUCTION

BACKGROUND

The City of Alameda has adopted a Transportation Demand Management (TDM) Plan[1] for Alameda Point. The purpose of this plan is to serve as a resource and guide for existing and future development on the former Alameda Naval Air Station, known as Alameda Point.

In order to help mitigate traffic issues and reduce environmental impacts, this plan identifies strategies to reduce single-occupant vehicle (SOV) trips generated by development in Alameda Point.

Included in the plan are vehicle trip reduction goals that were establish in the City's General Plan. The Plan's trip reduction goals for new development in Alameda Point are the following:

- 30% reduction in peak hour trips for commercial development; and
- 10% reduction in peak hour trips for residential development

The goals are measured against the estimation of automobile trips projected in the 2035 "buildout scenario" in the Alameda Point EIR.

The reduction in vehicle trips will be achieved both through services offered by the Transportation Management Association (TMA) for residents and employees, as well programs and incentives offered by developers, employers, and resident associations.

TRANSPORTATION MANAGEMENT ASSOCIATION

The Alameda Point TDM Plan was designed assuming the presence of an active TMA, who will be a key player in helping the area reduce vehicle trips. Alameda Point Partners (APP) is "first in," and will be developing Site A while the role of the TMA is still in its infancy. The City has also indicated the potential for a joint TMA (with an existing Alameda TMA) or a citywide TMA, which would have further implications for TDM implementation at Alameda Point.

APP and all future subsidiaries (collectively referred to as "APP" in the remainder of this document) envisions a strong TDM program at Alameda Point, but recognizes that Alameda's existing and future traffic challenges cannot be solved on a project-by-project basis. Reducing vehicle trips to, from, and within Alameda will take a coordinated, citywide transportation and TDM effort. Alameda Point and its TMA efforts can, and should, be a catalyst project to creating a robust and diverse citywide program for reducing vehicle trips.

[1] http://alamedaca.gov/alameda-point/approved-transportation-demand-management-plan

OBLIGATION TO COMPLY

As required by the Mitigation Monitoring and Reporting Program (MMRP) from the Alameda Point EIR, and the Alameda Point Zoning District in Section 30-4.24, all new development at Alameda Point will be required to meet the trip reduction goals and comply with the Alameda Point TDM Plan as part of any Disposition and Development Agreement (DDA) between the City and a developer, and as a condition of approval for any planning approval, including Development Plan, use permit, or design review.

Any DDA and condition of approval will require that all property owners fund the Plan and require through covenants, conditions and restrictions, or other enforceable real property interest, that run with the land that all commercial tenant associations, major employers, residential tenant association, and homeowner's associations join the TMA, file a Compliance Strategy with the TMA consistent with the Alameda Point TDM Plan, implement their Compliance Strategy, and refine it, as necessary.

This plan meets the requirements of the compliance strategy for Site A. APP and all future subsidiaries shall meet the trip reduction requirements and participate in the TMA to provide TDM programs, as outlined above and described in Chapters 4-6.

MODIFICATIONS TO THE COMPLIANCE STRATEGY

The actual implementation of this Compliance Strategy requires flexibility to respond to evolving development, demographic, market and technological conditions. As a result, it is expected that APP, future subsidiaries, and the TMA make modifications to this Compliance Strategy as new development occurs and more information exists about the type, amount, and location of new development and its associated traffic patterns.

PROJECT DESCRIPTION

APP will be developing Site A of Alameda Point (Figure 1-1). The proposed development is comprised of multi-family residential, townhomes, commercial and retail space, open space, and an urban park. The site will be constructed over three phases and will result in the construction of 800 residential units, of which 200 units or 25% will be affordable, 155,000 square feet of retail space, 350,000 square feet of commercial-flex space, and a hotel with approximately 125 rooms.

Figure 1-1 Town Center Area (top) and Illustrative Site Plan for Site A (bottom)

2 TDM VISION

APP has committed to a robust and comprehensive package of strategies for Site A. It is a significant investment and a demonstration of their commitment to meet the city's transportation goals for the site. APP recognizes that they are part of the larger Alameda community and that the Site A development will have significant implications for the future of Alameda. As such, the Compliance Strategy is designed to go beyond the core objective of reducing vehicle trips by also ensuring that the strategies contribute to larger city goals related to environmental sustainability, economic development, and quality of life. It is a plan that benefits not just Alameda Point, but all of Alameda.

COMPLIANCE STRATEGY GOALS

The primary goals of the Compliance Strategy include:

- Reduce vehicle trips in peak-hours, per city policy
- Provide additional mobility options for residents, employees, and visitors
- Attract residents and employees that use alternative modes of transportation in part to minimize car ownership and project vehicle trips
- Encourage healthy and sustainable travel
- Provide transportation benefits to the whole Alameda community

FACTORS FOR SUCCESS

In order for the Compliance Strategy to be successful, a number of factors are important. First, the Compliance Strategy must leverage the substantial investment in transportation infrastructure made by APP, particularly the new ferry terminal, transit lanes, and bicycle network. It is these backbone infrastructure investments that will make the TDM programs implementable.

Second, the Compliance Strategy should be actionable. It proposes a set of strategies that are operationally and financially realistic, enabling the plan to get "off the shelf".

Third, an active TMA is essential to effective implementation and management. A collaborative relationship between APP, the TMA, and the City is the only way that the Compliance Strategy can be in place on day one and properly adjusted over time.

Fourth, it is important to consider not just the individual strategies, but how they complement each other in a coordinated package. The Compliance Strategy is designed with the understanding that each component is needed to maximize trip reductions.

Fifth, a comprehensive parking management plan that prioritizes customer convenience and effective utilization of the site's parking supply will be crucial to achieving the City's transportation, economic, and sustainability goals.

Sixth, there should be realistic expectations about the Compliance Strategy. As stated in the Alameda Point TDM Plan, "TDM strategies require time to become established and become fully effective...

Therefore, the trip reduction goals need to be phased in so that they remain realistic and achievable."[2] No TDM plan is perfect on day one and monitoring of the programs is essential. Adjustments will be made to better tailor programs to actual usage and the evolving demographics of the site.

Finally, Alameda's traffic and transportation challenges are systemic and extend far beyond this project. Vehicle capacity constraints at the city's gateways will be an issue whether Alameda Point is developed or not. Therefore, the Compliance Strategy should be evaluated in the context of the need to develop a coordinated, citywide trip reduction and mobility strategy.

TDM APPROACH

APP is submitting a Compliance Strategy to mitigate potential traffic and parking impacts and minimize trips to and from Site A. In order to provide the most successful implementation, this Compliance Strategy will outline ways in which APP will work with the TMA and City of Alameda to provide a seamless level of service for residents and employees, while supporting larger City objectives and policies.

The strategies fall into five basic areas that are outlined in the following chapters:

- Multimodal Infrastructure
- Management and Marketing
- Employee and Resident Strategies
- Parking Management
- Monitoring

[2] Page 53 of Alameda Point TDM Plan.

3 MULTIMODAL INFRASTRUCTURE

The development of Site A will not only create new residential housing, office, and commercial/retail space, but also result in unprecedented levels of investment in new bicycle, pedestrian, and transit infrastructure. These investments will significantly improve transportation access and connectivity within Alameda Point, as well as to the rest of Alameda. Most importantly, it is these infrastructure investments which will enable the TDM programs to be successful and achieve the prescribed trip reduction goals.

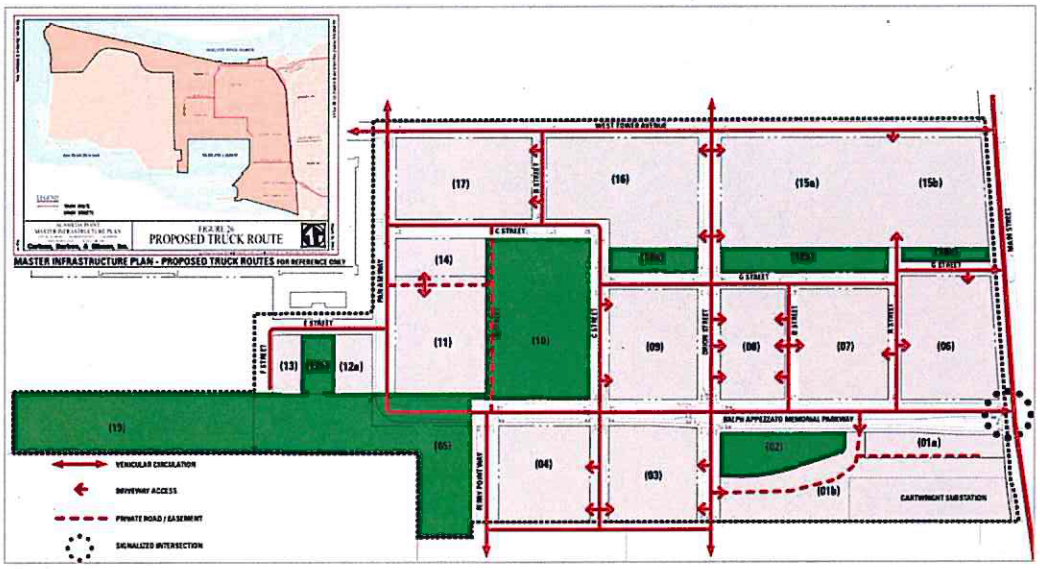
The proposed circulation network will result in a fine-grained street grid that is comfortable for motorists, pedestrians, and bicyclists. APP has pledged $10 million for a new ferry terminal, which will improve the island's connectivity to San Francisco and the rest of the Bay Area. The site will also be designed to accommodate both new shuttles and existing and future AC Transit bus service. As a result, Alameda Point will no longer be isolated from the rest of the island, but will instead be connected by a new network of multimodal streets.

VEHICULAR ACCESS

Description: Designing a connected street grid will enhance connectivity and circulation for vehicles. The dense grid will improve navigation through the site and offer a legible environment for motorists.

Action: Streets will be designed to not only facilitate vehicle movement, but also maximize safety. Proposed lane widths will reduce vehicle speeds, a key ingredient to creating a safe, attractive, and economically viable mixed-use district. Per the current development plan, the proposed street network and vehicular access is illustrated in Figure 3-1.

Figure 3-1 Proposed Street Network and Vehicle Access



TRANSIT INFRASTRUCTURE

A fundamental component of reducing vehicle trips is robust and diverse transit services. This can be achieved through improvements to existing transit services, as well as the addition of new bus routes running in mixed-flow travel lanes or by adding new service running in dedicated transit rights-of-way, such as Bus Rapid Transit (BRT).

Bus Rapid Transit

Description: A key element of the project will be connecting the site to transit and encouraging residents and employees to take advantage of existing bus service via incentives such as AC Transit's EasyPass, as well as by enabling transit vehicles to easily access the site and bypass congestion via dedicated transit lanes.

Action: In order to accommodate AC Transit's future BRT service to the site, and per the current development plan, Ralph Appezzato Memorial Parkway will be designed to provide a dedicated BRT lane (Figure 3-2 and Figure 3-3).

Figure 3-2 Proposed Transit Infrastructure

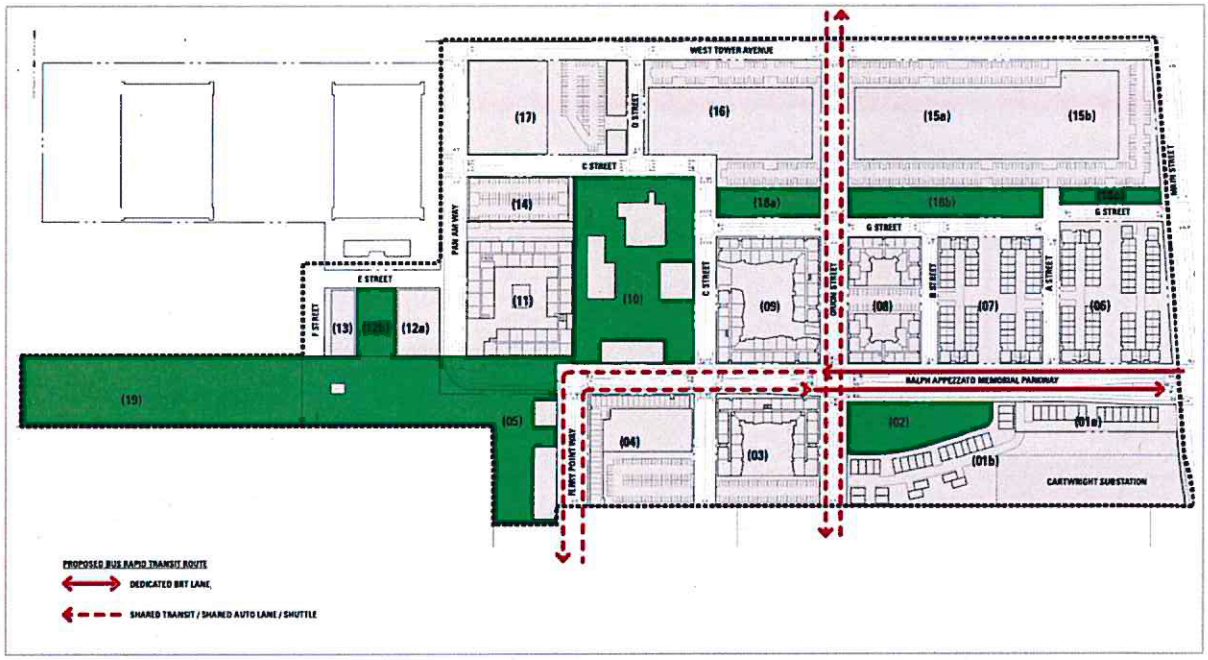
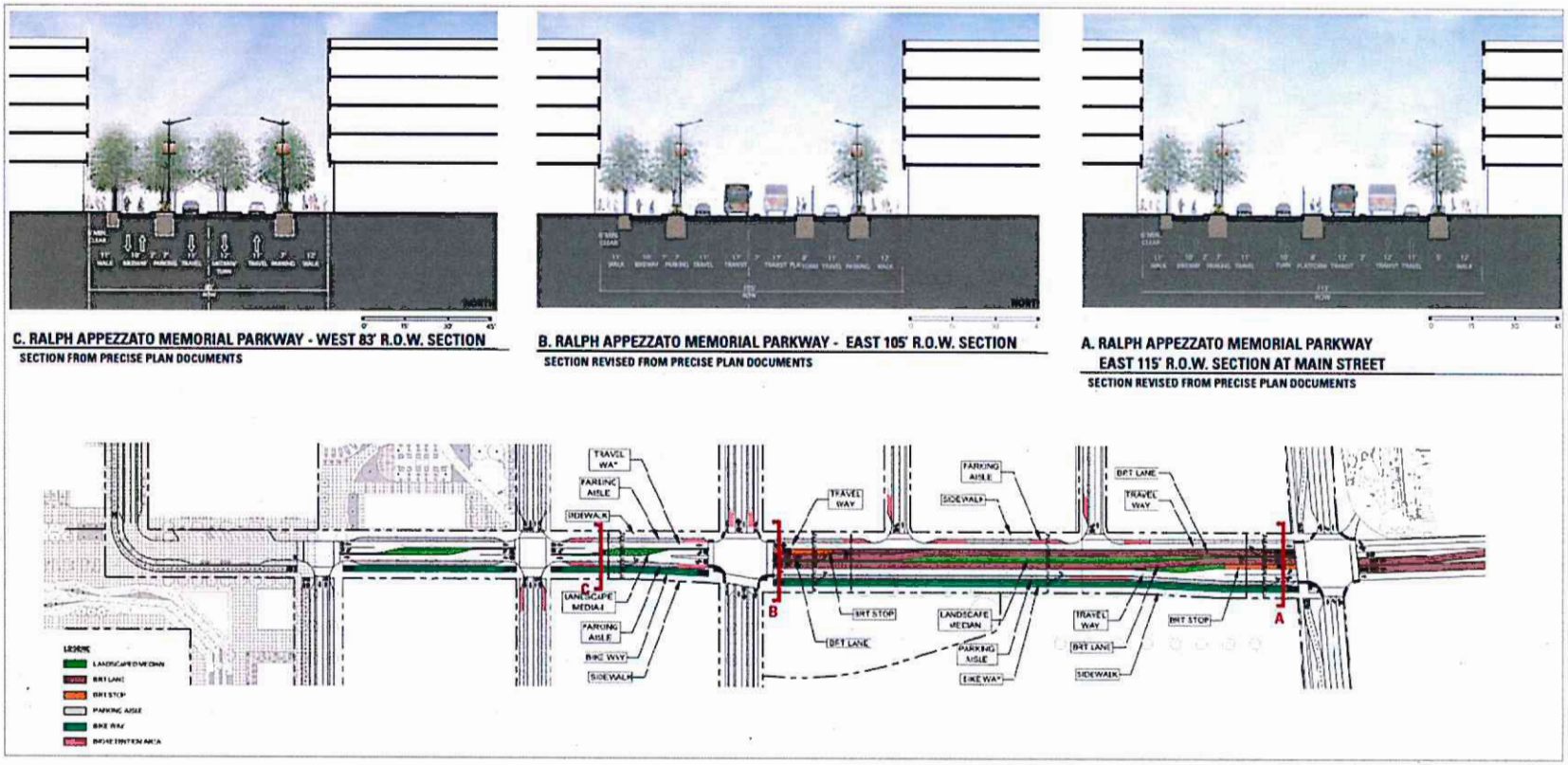


Figure 3-3 Proposed Multimodal Plan for Ralph Appezzato Memorial Parkway



Ferry Service

Description: As outlined in the Alameda Point Town Center and Waterfront Precise Plan the existing ferry terminal at Main Street will be supplemented, and possibly replaced, by a new ferry terminal at the Seaplane Lagoon. The existing ferry terminal is more than a 20-minute walk from portions of Site A, reducing its appeal to future residents and employees. By adding a new ferry terminal at the Seaplane Lagoon, the core of Site A will be within a 5-10 minute walk, making it a more attractive commute and recreational option to San Francisco.

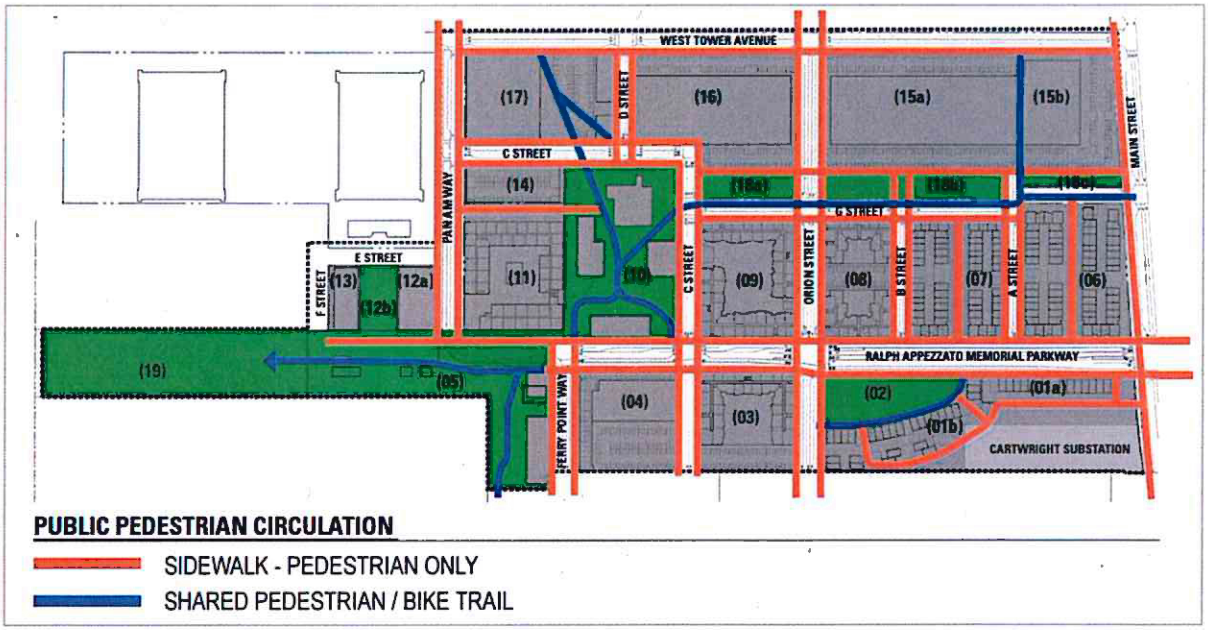
Action: APP has committed $10 million in funding to be used towards the construction of a new ferry terminal at Seaplane Lagoon.

PEDESTRIAN INFRASTRUCTURE

Description: A walkable environment gives people more transportation choices and improves quality of life. A well-designed network of streets and pedestrian amenities is key to improving accessibility. Creating a safe, comfortable, and convenient walking environment is key part of supporting alternative modes of transportation as all types of trips begin and end with a walk trip.

Action: Per the current development plan, sidewalks will be provided on all new roadways within Site A (Figure 3-4). In addition, a shared use trail will provide pedestrians and bicyclists with the ability to move through the vast majority of the site completely separated from cars. This facility will also serve as a recreational amenity that connects the site, as well as surrounding neighborhoods to the waterfront.

Figure 3-4 Proposed Pedestrian Facilities



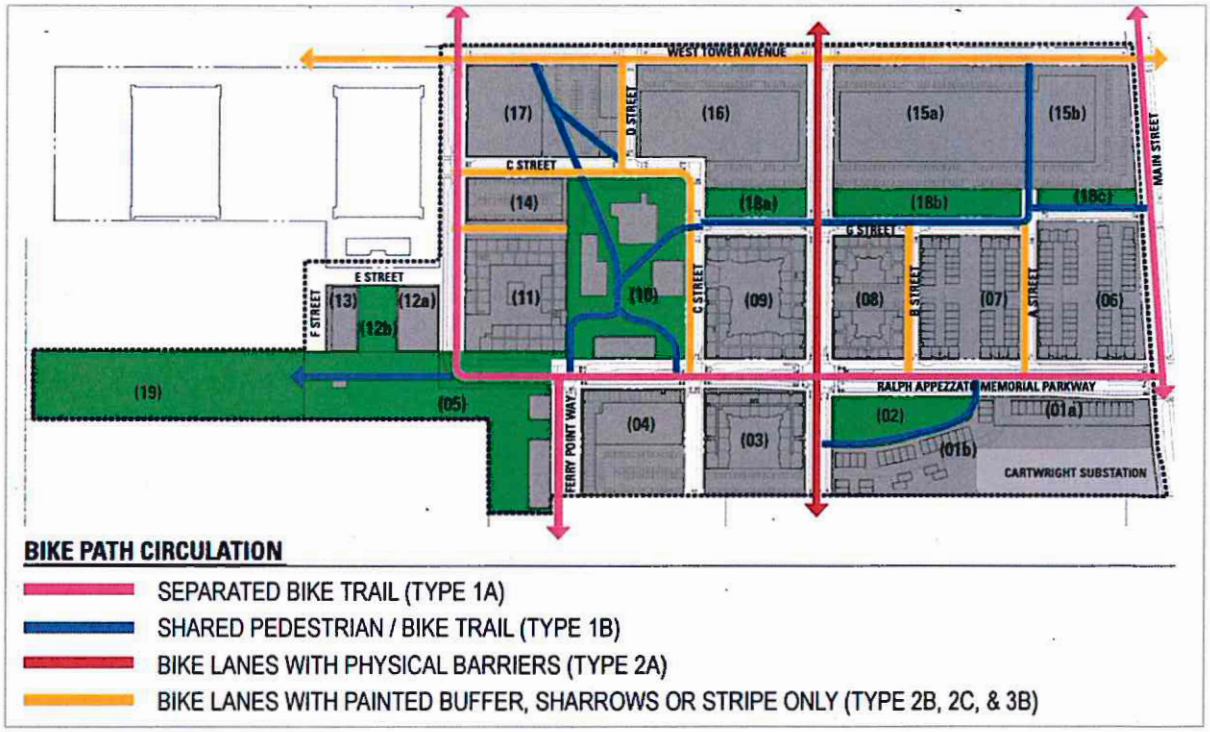
BICYCLE INFRASTRUCTURE

Bicycle Facilities

Description: Increasing bicycling to, from, and within Alameda Point and Alameda is a key strategy to reducing vehicle trips. The number of people bicycling is directly related to the quality of the bicycling network and presence of bicycling facilities. In particular, the presence of protected bicycle lanes (also known as cycle tracks) is perhaps the biggest predictor of bicycling. Complementary improvements to the larger citywide bicycling network, particularly cross-island routes and access within the tubes, will also be key to determining how many trips can be made by bike.

Action: Per the current development plan, Alameda Point Site A will include new bicycling facilities on all roadways as shown in Figure 3-5. Improvements include protected bicycle facilities along Pan Am Way, Ralph Appezzato Memorial Parkway, Ferry Point Way, and Main Street. On Orion Street, protected bicycle lanes will also be provided. Pedestrian- and bicycle-only trails will connect the open space components of the site. On the remaining streets, Class II bicycle lanes will be provided. APP will also work with the City work with to ensure that the proposed network connects to the larger bicycle network as envisioned in the City of Alameda Bicycle Master Plan.

Figure 3-5 Proposed Bicycle Facilities and Circulation



Secure Bicycle Parking

Description: Commuting by bike can be a significant financial investment for many. As such, even a small chance of theft can reduce bicycle commuting when all parking options leave bikes exposed to the elements. Sheltered parking and bicycle lockers also offer more protection from theft and vandalism when compared to standard bicycle racks.

This project must provide both short- and long-term bicycle parking for residents and employees, per Section 30-7.15 of the City of Alameda Zoning Code.

Action: Short-term bicycle parking for visitors in the form of individual bicycle racks will be provided in front of commercial shops and near recreational areas. Additional bicycle racks should be located throughout the parking garages and made available for residents, employees, visitors and retail shoppers.

In addition, secure long-term bicycle parking will be provided for residents and employees within buildings and future parking garages. This secure bicycle parking could be provided in the form of a centralized bicycle cage or multiple bicycle cages conveniently located near elevators and entrances to each building. In general, long-term bicycle parking should be easy to reach by bicycle from off-site, conveniently located in relation to residences, covered, and secure.

Per the current development plan, the bicycle parking plan includes approximately 660 long-term spaces and 400 short-term spaces, as required by Section 30-7.15 of the City of Alameda Zoning Code. See Figure 6-1 for more detail on the proposed bicycle parking plan.

4 MANAGEMENT AND MARKETING

Effective marketing and management of the TDM programs are essential to their success. If residents, employees, and the general public are unaware of the available transportations options and programs, they will not take advantage of them. Ongoing and tailored marketing efforts will be needed to ensure that programs are well utilized. Similarly, active management of the TDM programs by dedicated staff is needed to implement, tailor, and refine the programs and services to best meet the needs of the community.

INITIATION OF ALAMEDA POINT TMA

Description: As Site A is the first to be developed within Alameda Point, APP will be one of the founding members and will work collaboratively with the City and other members (if the TMA is expanded to cover other areas) to develop services and programs that can be adapted to serve the needs of subsequent projects and other geographic areas if appropriate. As needed, initial strategies can be designed and managed in such a way to transition them to the oversight of the TMA at a later date.

Action: The project will join the TMA prior to the completion of the first building. As part of membership in the TMA, the project will be required to pay an annual per unit and per square foot assessment.

SITE-LEVEL TRANSPORTATION COORDINATOR

Description: APP, or the relevant property manager, will designate one staff member or a consultant as the Transportation Coordinator. This position will have the authority to implement TDM strategies and oversee the management and marketing of TDM programs. The Transportation Coordinator will be responsible for developing information materials, managing transportation services offered as part of the TDM program, monitoring results, and coordinating with City staff and on-site representatives. Figure 4-1 summarizes the proposed management structure.

Action: In the initial implementation stages, a Transportation Coordinator will be hired at a 50% time commitment out of a 40-hour work week. Once the various programs are in place and informational materials have been created the time commitment could be reduced to 25% - 50%. The role of the Transportation Coordinator could also be reduced as the TMA and its staffing capabilities grow and expand.

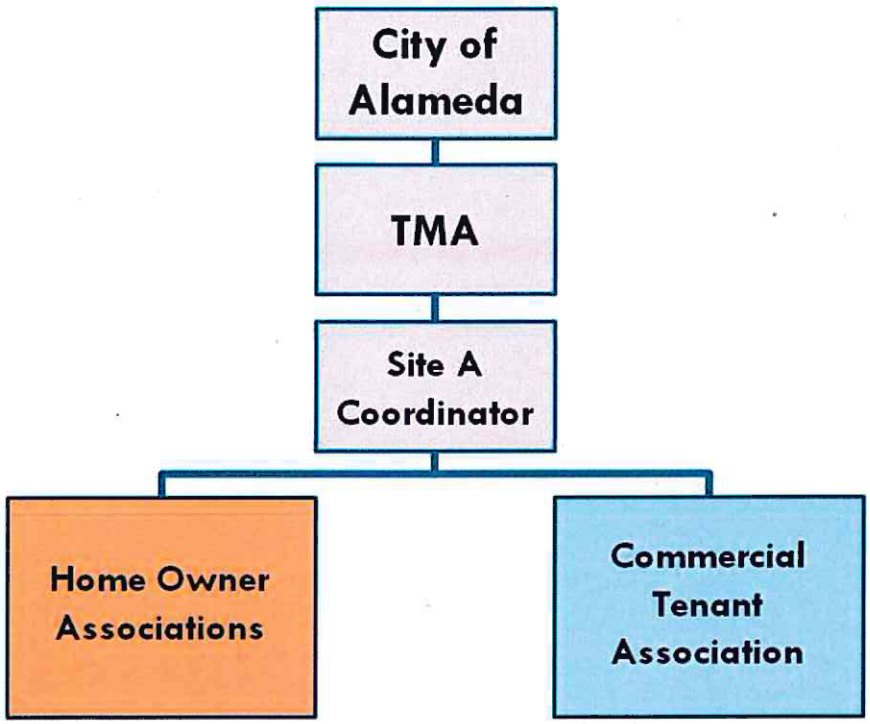
TRANSPORTATION REPRESENTATIVES

Description: For the residential component of the project, an on-site staff member of either the property management team or resident association would be designated as a Transportation Representative. As needed, the representative would work with the Transportation Coordinator to facilitate communications and program implementation with residential tenants.

Since many of the commercial-flex uses at Alameda Point Site A will be small businesses, a commercial tenant association will be created, which would have one representative to coordinate TDM implementation for all tenants. The commercial Transportation Representative will provide employees with a point of contact for any transportation related questions, and will work with employees to find transportation alternatives to driving alone to the site. The TDM Representatives will be responsible for distributing materials to residents/employees, promoting the use of alternative modes of transportation, and interacting with residents/employees.

Action: Require as part of any leasing agreement and designate a Transportation Representative for each residential building as they are completed. For all commercial uses, establish a commercial tenant association. As part of any lease agreement each commercial tenant will be required to join the association.

Figure 4-1 Proposed Management Structure for Site A



TRANSPORTATION INFORMATION

Description: Information on transportation options and/or links to the appropriate website will be conveyed to all prospective residential tenants and all prospective employees who receive an offer to work within the development. It will also be included as a component of resident and employee welcome packets or employee orientation. Furthermore, information and/or links will be posted in prominent locations for all residents and employees, such as apartment lobbies or lunchrooms.

The TMA will be developing marketing/informational materials as part of their initial scope of work. Given this, APP will work with the TMA to determine if there are additional supplemental materials that

they should create. Keeping information and materials updated and relevant will also be required on a routine basis to ensure residents and employees are receiving the most up-to-date information.

Relevant information will be distributed in a number of different ways:

Resident and Employee Handbook

At the beginning of the year, an up-to-date transportation handbook will be distributed electronically to all new and existing employees and residents. This information should also be posted on the project website. The handbook or web-based tool should include the following information:

- Transportation Coordinator and Representative contact information
- Commute trip planning information, including links to the 511 Rideshare program
- Subsidies or financial incentives provided through the TDM program
- Walking and biking routes within the area, including estimated walk and bike times to key locations and a link to the East Bay Bike Coalition bike map
- Local transit options and schedules, including links to AC Transit schedule/route maps and the online BART schedule and trip planner app
- Alameda County's Guaranteed Ride Home program

Website (initial) and Smartphone App (long-term)

Creating a website or smartphone app that serves as a comprehensive source of transportation and TDM information has proven highly effective in raising awareness of alternatives to drive-alone mobility and commute options. Such tools can provide specific information on costs, benefits, and multimodal options available to employees and residents as well as links to citywide or regional information.

The TMA has scoped the creation of a website as part of their initial work tasks. APP will share this information to tenants, residents, and employees.

As feasible in the long-term, a smartphone app should be developed by the TMA to provide transportation information for the City of Alameda.

Figure 4-2 Example TMA Website (Mountain View)

www.mvgo.org

Transportation Information Kiosks

The development should have locations at which both residents and employees can obtain the transportation information. Information posted at these sites could include a link to the website or electronic tool, and contact information for the Transportation Coordinator and Representatives. Information may also include train and bus schedules, information on the 511 Rideshare program, and transit pass programs.

Given the size and layout of the site, information would need to be posted more than one location in order to be easily accessible for both residents and employees. These boards would be maintained and updated as needed by the Transportation Coordinator. Where feasible, this information should be provided on electronic screens to enable updated information to be provided without the need to replace print materials.

Actions: APP will work with the TMA to develop informational materials related to transportation. These materials will be disseminated via the employee and resident handbook. APP will also post this information in kiosks or on electronic screens in the lobby of each residential building and in several additional locations throughout the site for employees and visitors. APP will work with the TMA to ensure that materials are kept up-to-date and residents and employees are provided with the most current program information on a routine basis.

5 EMPLOYEE AND RESIDENT TDM MEASURES

This chapter describes the TDM measures and policies APP will implement as part of the development of Site A for residents and employees. Since some of these measures will require coordination with and the input of the TMA and City of Alameda, the exact parameters of a given measure may evolve over time or be determined at a later time.

Resident and employee TDM measures and policies are grouped into three categories: 1) those measures that apply to residents and employees; 2) resident-only programs; and 3) employee-only programs. For each measure, an explanation of the policy or program is provided, as well as a detailed description of what APP will provide.

RESIDENTS AND EMPLOYEES

Public Transit Service to BART

Description: A key element to encouraging employees and residents to take transit is providing the "last-mile" connections with local or regional transit services, such as BART. A transit service between the site and BART is required in the Alameda Point TDM Plan as a "last-mile" connection for both residents and employees at Site A. This could be in the form of a private shuttle or performance contract with AC Transit.

Action: APP will help fund a transit service that will be managed by the TMA via a contract with a private shuttle provider or performance contract with AC Transit. The specific operator will be determined through a competitive bid process. The initial, "day-one" service that will be provided is described below.

- Service to 12th Street BART
- Operates only during the weekday peak periods
  - 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. (6 service hours)
  - 15-minute headways
- Detailed routing and interim stops are to be determined based on demand, connections to the larger transit network (including transbay bus routes), travel conditions, and financial resources
- Service is open to the public
- Fare structure is to be determined, but initial proposal is that the service would be free to Site A employees/residents and charge all other passengers

While this service plan only provides six hours of daily service, the 15-minute frequency will result in a more convenient and attractive option for BART riders. The proposed service would result in

approximately 4,500 annual service hours, or roughly 2.5 times the number of hours described in the 2014 Alameda Point TDM Plan[3].

APP will work with the TMA and City to determine the exact routing and stop locations for the service. Depending on system performance and demand, as well as financial resources, future service could include an expansion of peak-period service hours, all-day service, or additional stops. In addition, as part of the competitive bid process, the request for proposals will stipulate that transit vehicles provide high-capacity bicycle racks to facilitate bicycle travel on and off Alameda.

AC Transit EasyPass

Description: Universal transit pass programs are different from traditional financial incentives because the employer or property owner purchases a pass for all residents/employees/tenants, regardless of whether they currently ride transit or not. These passes typically provide unlimited transit rides on local or regional transit providers for a low monthly fee; a fee that is lower than the individual cost to purchase a pass as a bulk discount is given. Such programs are highly cost-effective subsidies.

Universal transit pass programs are more effective at reducing vehicle trips than a standard transit subsidy. By providing all employees with this pass, employees who currently do not use transit will often try taking transit since there is no cost barrier to do so. AC Transit currently offers a universal transit pass for both residential developments as well as employers, called the EasyPass[4]. EasyPass will be provided via the regional Clipper Card. The Transportation Coordinator will be responsible for ensuring a registration and sign up process with AC Transit and the Clipper Card.

Action: The initial proposal is for APP to provide an AC Transit EasyPass for all employees and all residents, regardless of whether they currently ride transit. Providing the free pass to everyone is the best way to incentivize non-riders to begin using transit. In future years, this program could be revised depending on program performance.

Car Sharing

Description: Car sharing programs allow people to have on-demand access to a shared fleet of vehicles on an as-needed basis. Car sharing has been shown to significantly reduce vehicle ownership and vehicle miles traveled (VMT). Car sharing provides employees with access to a vehicle for mid-day trips, reducing the need to drive their personal vehicle to work. For residents, car sharing increases the vehicle availability for non-car owners, and reduces the need for households to own more than one vehicle. Two potential operators are City CarShare[5], which currently operates in Alameda, and Zipcar[6], which operates throughout the East Bay. Other car share services, such as point-to-point or peer-to-peer, are encouraged by the developer and the City, but their deployment on Alameda or Alameda Point would ultimately be driven by the private vendor.

Action: Prior to the completion of the first phase, APP and the TMA will work with a car share operator to locate one or more vehicles on-site. Key program considerations include:

- If parking pricing is implemented (see below), operators should not be charged.

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[3] Page 19 and Table A-2a

[4] www.actransit.org/rider-info/easypass

[5] www.citycarshare.org

[6] www.zipcar.com

- Vehicles should not be reserved for residents or employees, but available to general public. As such, vehicles should only be located in publicly accessible locations.
- Allow car sharing vehicles to be located in both on- and off-street parking spaces to increase their visibility and access. This provision would require revision to the City zoning code.
- Maintain flexibility to increase the number of vehicles as development occurs.

APP and the TMA will continue to work with the private operators to provide additional vehicles as the site is developed and demand warrants additional vehicles. The type of vehicles provided will ultimately be determined by the car share provider; however APP and the TMA will work with the provider(s) to provide a range of vehicle types.

Bike Sharing

Description: Bike share systems provide a network of public bicycles from dispersed self-service bike share stations. Similar to car sharing, members can check out a bicycle, ride to their destination, and return the bicycle to any bike share pod in the system. For convenience, bike share systems typically provide real-time information on the status of available bikes and empty docks through the web, kiosk, and/or mobile applications. In order to increase accessibility and efficiency, bike share programs are typically provided as a dense network of stations across a city, region, or on district-wide level.

A formal bike sharing system may be provided by the TMA at a later point. Bay Area Bike Share[7] is currently exploring expansion into the East Bay, and there may be an opportunity to partner to bring that system to Alameda and Site A by the time of project completion.

Action: "Loaner" bikes will be offered free of charge to residents and employees, while also working with the TMA to determine the best location for future bike share pods. Given administrative costs, a loaner bike system would be exclusive to employees or residents, providing a free option to ride throughout Alameda Point and Alameda. Such a system will require a check out procedure to limit theft and damage, as well as providing helmets and locks as part of the rental. Initial size of such a system will be 45 bikes, phased in at 15 bikes per development phase.

On-site Bicycle Repair Facilities

Description: Providing basic tools for keeping bikes in good working order can encourage commuters to try biking to work, and keep them riding. Bicycle repair facilities, such as hand tools and an air compressor for tires, are a small investment that can keep bicycles in circulation and maximize bicycle trips.

Action: Do-it-yourself bicycle repair stands will be provided, including tire gauges, air pumps, wrenches and other tools for minor repairs in each secured parking facility that serves residents and employees.

EMPLOYEES ONLY

Transit Subsidy

Description: While the AC Transit EasyPass will be a viable transit option for commute and recreational trips, BART and the San Francisco Bay Ferry[8] provide additional connections to San Francisco and the larger region outside of the AC Transit service area. The new ferry terminal (assumed to be added to the

[7] www.bayareabikeshare.com

[8] Operated by the Water Emergency Transportation Authority, or WETA. http://sanfranciscobayferry.com/weta

Seaplane Lagoon) and proposed BART transit service will provide a direct connection to these regional services, further incentivizing transit trips.

Providing an additional monthly transit subsidy (in addition to the EasyPass) will encourage employees to use transit, particularly for those persons for whom their work or recreational trip cannot be completed on AC Transit service alone.

Action: APP will provide employees who take transit with a Clipper Card that will be loaded with $50 per month[9] to be used on the transit operator of their choice. Employees will need to notify the Transportation Coordinator and sign up to participate in this program.

Pre-tax Commuter Benefits

Description: Pre-tax commuter benefit programs allow employees to pay for transit passes with pre-tax earnings and can help encourage transit use among employees. Employees are given vouchers as a substitute for taxable salary. Employees can redeem vouchers for transit passes at sales offices, retail sales outlets, or online to have passes mailed to them or loaded onto a Clipper Card.[10] By substituting taxable salary for a tax-free voucher, employees can save 40% in after-tax value while the employer can save 10% in payroll-related costs. These benefits are offered at the federal tax level[11] and are available to employers of any size. One example is the Commuter Checks[12] program. Another example is the Federal Bike Commuter Benefit[13] which lets bike commuters receive up to $20 per month as a tax-free employer subsidy for riding to work. This benefit cannot be used in combination with the pre-tax transit benefit in the same month.

Action: Commercial lease agreements will be required to contain language requiring commercial tenants to provide their employees with a pre-tax commuter benefits program. The TMA and Transportation Coordinator can assist employers with set up and implementation of these programs.

Subsidized Carpools/Vanpools/Car sharing

Description: To further encourage carpooling and vanpooling, employers/property owners can offer financial incentives to those persons who carpool or vanpool or establish employee sponsored vanpools. Such a program shall be supported by preferential parking for ridesharing vehicles (described below). If employers/property owners are interested in establishing a vanpool there are several existing services that can assist employers/property owners. 511.org can provide assistance in setting this program up and finding a vendor. One example of an existing vendor in the Bay Area is Enterprise, which offers vanpooling services for both individuals and employers.[14]

In addition, subsidies could cover all or a portion of a car sharing membership.

Action: The on-site Transportation Coordinator will work with the TMA to establish carpools and vanpools and to promote carpooling and vanpooling. As TMA funding is available, subsidies will be

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[9] Subsidy amount subject to change based on demand, effectiveness in meeting trip targets, and financial resources.

[10] For more information on how Clipper Card works with Commuter Checks go to https://www.clippercard.com/ClipperWeb/commutercheck.do

[11] For more information on federal tax regulations go to http://www.irs.gov/pub/irs-pdf/p15b.pdf

[12] Commuter Benefit Solutions https://www.commutercheckdirect.com/ is a third party vendor than can oversee a commuter checks program

[13] For more information go to http://transerve.dot.gov/docs/bicyclepolicy.pdf

[14] For more information on services offered by Enterprise go to http://www.enterprisirideshare.com/vanpool/en.html

provided to employees who rideshare or use car sharing. The exact structure and amount of the subsidies would be based on the amount of funding available.

Parking Cash-out

Description: Many employers provide free or reduced price parking for their employees as a fringe benefit. A parking "cash-out" program gives employees the choice of keeping their parking space at work or accepting a cash payment in lieu of the space. This provides a financial incentive to find alternative means of transportation to work, while reducing demand for parking. The cash value of the parking subsidy can be offered in one of three forms:

- A transit/vanpool subsidy equal to the value of the parking subsidy (of which up to $130 is tax-free for both employer and employee).
- A taxable carpool/walk/bike subsidy equal to the value of the parking subsidy.
- Alternately, employees can be given a general "transportation fringe benefit" equal to the market value of an employee parking space, and all employee parking can simply be priced with a daily fee.

Parking cash-out is a state law in California, but the state law only applies to employers with 50 employees or more who lease their parking and where parking costs can be separated out as a line item on their lease.[15] Employees who choose to participate in the parking cash-out program will not be eligible for on-site parking. However, there may occasionally be times when employees who primarily commute using alternative modes of transportation need to drive to work. A limited number of daily parking passes could be provided to these employees for such occasions. A reasonable maximum could be 20 passes per year or 2 passes per month.

Action: Commercial lease agreements will be required to contain language requiring commercial tenants to conform with California's Parking Cash-out law. The TMA will work with commercial tenants to implement parking cash-out programs, as applicable.

Ridematching Services

Description: One of the greatest impediments to carpool and vanpool formation can be finding suitable riders with similar work schedules, origins, and destinations. Facilitated rideshare matching can overcome this obstacle by enabling commuters who are interested in ridesharing to enter their travel preferences into a database and receive a list of potential rideshare partners. The success of these programs is largely determined by the number of participants and, in turn, the number of potential matches that can be made.

Action: The Transportation Coordinator will work with the TMA to facilitate ridematching for residents and employees. Initially, existing programs such as 511.org can be utilized to facilitate carpooling. However, as Site A and Alameda Point as a whole develop, the TMA should consider developing an "internal" ridematching system that is only open to a given building or employer, as people are hesitant to rideshare with strangers. By creating a pool of rideshare partners that are from the same company or building, people may be more comfortable sharing a ride.

Depending on the system used, it is possible for participants to share information about themselves, which can also help facilitate matches. For example, Hovee (www.hov.ee) ridematching services allows

[15] For more information on California's parking cash-out law go to http://www.arb.ca.gov/planning/tsaq/cashout/cashout.htm

participants to create profiles, that can be viewed by other participants, helping them to determine if this would be a person that they would feel comfortable carpooling with.

Guaranteed Ride Home Program

Description: Guaranteed Ride Home (GRH) is a program that provides a "back-up" ride to employees who use transit, carpool, biking/walking, or other alternative as their commute mode. For example, if that employee needs to leave work for an unexpected need, they will be redeemed for the cost of taxi ride or rental car to get them home. This is an important supportive measure to encourage employees not drive alone to work.

Alameda County currently offers a free GRH program for all employees located in Alameda County. Employees can sign up online to participate in this program.

Action: The TMA will promote and encourage employees to sign up for the Alameda County's GRH program[16]. APP will include information on this program in the welcome packets for employees and residents.

Bike Buddy and Education Program

Description: Bicycling to work can be intimidating for commuters considering giving it a try. A Bike Buddy program pairs a beginning or novice bicyclist with an experienced rider who already knows safe routes and riding techniques. The buddies also provide "safety in numbers" on the road. In many cities, "bike trains" have become a popular way for bicyclists to commute, where a large group is organized to bike together on a common commuting route.

Action: The Transportation Coordinator will work with the TMA to provide the facilitation necessary to recruit participants and match novice bicyclists with experienced riders. The Transportation Coordinator will work with the TMA and other organizations such as Bike Walk Alameda, East Bay Bicycle Coalition, and/or Cycles of Change to offer bicycle safety and education classes.

Telecommuting/Flexible Work Schedules

Description: Offering employees the opportunity to work from home or travel outside the peak travel periods can help reduce the number of vehicle trips during the peak period and also serve as an employee benefit or perk.

Action: Commercial lease agreements will be required to contain language requiring commercial tenants to evaluate the feasibility of telecommuting and flexible work schedules and to offer this option to employees if feasible. The Transportation Coordinator will work with the TMA to help employers design and implement this program.

Showers and Lockers

Description: Showers and lockers for employees is an important supportive measure to encourage bicycling as a commute mode, offering bicyclists a place to shower and change after biking to work.

Action: Shower and locker facilities will be provided in new commercial/retail buildings.

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[16] http://grh.alamedactc.org/

6 PARKING MANAGEMENT

Sufficient automobile parking is necessary for the successful development of Alameda Point. However, too much parking can encourage traffic, limit the ability to meet trip reduction goals, increase project costs, and impact site design and aesthetics. Finding the right balance needed to support the City's goals is critical, particularly given that parking is an expensive resource. The role of parking and parking management is also a key element to helping Alameda Point meet its trip reduction goals. If free and unregulated parking is provided, there is little incentive for many employees and residents to use alternatives modes of transportation.

The parking management strategies presented in this chapter are designed to help ensure there are enough parking spaces to support functioning of the site, while not providing more parking than necessary. Balancing these factors will help achieve trip reduction goals, reduce development costs, and support the success of a pedestrian-friendly district. Since on-street and public off-street parking will be managed by the City of Alameda, APP will work with the TMA and City to develop parking management policies that support the City's trip reduction goals for Alameda Point. A combination of some or all of the strategies below may be appropriate.

PARKING RATIOS AND SHARED PARKING

Description: Alameda Point's zoning provisions eliminates minimum parking requirements and imposes maximum parking ratios. For residential uses the overall parking maximum for the site is 1.5 parking spaces per unit. For offices uses the parking maximum is 2.65 parking spaces per 1,000 square feet and for retail uses the parking maximum is 3.40 parking spaces per 1,000 square feet.

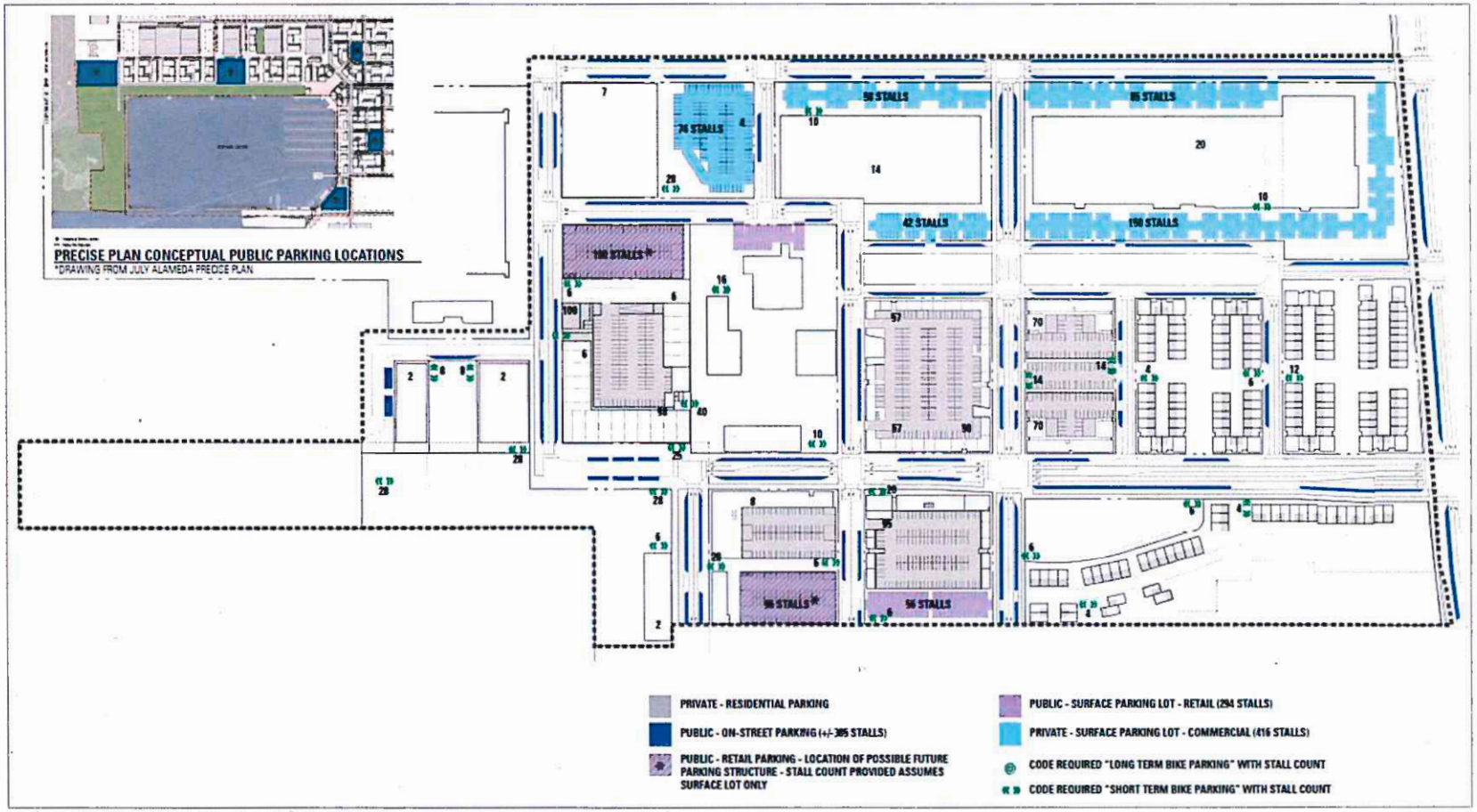
The zoning code also prioritizes the provision of a public pool of shared parking. It is recommended that the site plans provide as limited parking as feasible. Public parking supply should also be included in the initial development and retail/commercial should be "shared" and not reserved to a particular tenant or building.

Action: Per the current development plan, approximately 882 parking spaces will be provided for the 800 residential units.

Per the current development plan, off-street parking spaces will be provided in several surface lot facilities with a total of 710 off-street parking spaces for commercial and retail uses. In addition, on-street parking will be provided on all roadways within the site (Figure 6-1), resulting in approximately 375 on-street parking spaces. Two of the surface lots may be converted into parking structures as the site develops and if demand warrants it. Disabled parking will be provided as part of the public supply of parking.

Per the current development plan, the proposed bicycle parking plan includes approximately 660 long-term spaces and 400 short-term spaces dispersed throughout the site, as required by Section 30-7.15 of the City of Alameda Zoning Code. Figure 6-1 shows the proposed layout of bicycle parking.

Figure 6-1 Proposed On- and Off-Street Parking Supply



UNBUNDLED PARKING FOR RESIDENTS

Description: Parking construction and operating costs are generally subsumed into the price of housing. Although the cost of parking is often hidden in this way, parking is never free. Instead, the cost to construct and maintain the "free" parking is included in the cost to buy or rent housing.

The new residential units at Site A will provide unbundled parking consistent with the Town Center Plan.[17] Unbundling requires that off-street parking spaces shall be leased separately from the rental or purchase fees for the individual units for the life of the units. The unbundled parking policy provides a financial incentive to residents to use only the amount of parking they need. For residential development, unbundled parking may prompt some residents to dispense with one of their cars and to make more of their trips by other modes. Among households with below-average vehicle ownership rates (e.g., low-income, students, singles, seniors, etc.), unbundled parking can also provide a substantial financial benefit that increases housing affordability.

Action: APP will unbundle parking for multi-family units and lease those spaces on a month-to-month basis at the appropriate market rate[18]. The cost per space will be reviewed periodically to determine if the price should be increased or decreased to restrict demand to available supply.

In compliance with the Town Center and Waterfront Precise Plan, unbundling for Site A will be implemented as follows:

- Spaces shall be leased not sold. Month-to-month leases provide flexibility for residents and property owners. Leasing is much easier to manage.
- Leasing rates will be adjusted as needed to manage parking demand. Prices will reflect the market for parking and be used to restrict demand to available supply.
- Where there are fewer parking spaces than units, the parking spaces shall be offered to the potential buyers or renters of the largest units first.
- Potential buyers and renters of affordable residential units have an equal opportunity to buy or rent a parking spaces on the same terms and conditions, at a price proportional to the sale or rental price of their units as compared to comparable market rate units.
- Affordable units which include financing requirements that conflict with the unbundling provisions shall be granted an exception by the Community Development Director or Planning Board. At this time, it is highly unlikely that Site A's affordable units will be unbundled.
- Surplus spaces may be rented out to non-residents or non-tenants with the provision that such spaces must be vacated on 30-day notice if they become needed.

PARKING PRICING

Description: Parking management, and in particular charging visitors and employees for parking, is a key component to managing parking demand and to encouraging the use of alternative modes of transportation. Parking pricing is one of the most significant factors affecting a motorist's choice to drive or travel by another mode.

Action: APP work with the City and TMA to implement parking pricing for public parking from the onset. Public pricing rates will be set to ensure availability and determined based on parking demand and

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[17] Page 114 of Town Center and Waterfront Precise Plan

[18] Revenue will be utilized to cover the costs of parking construction and/or ongoing parking operations.

parking behavior. Rates should vary by location and time of day, with hourly rates in the core at a higher rate than those on the periphery and/or higher rates during peak periods, to ensure parking availability.

Rates should be set at the *lowest* hourly rate to ensure adequate availability per block. Occupancy should be monitored on a consistent basis, and rates should be adjusted to reflect demand. Parking should also be as convenient as possible, and meters should accept multiple forms of payment, including credit cards and pay-by-phone technology.

The exact timeframe for establishing off-street parking pricing will be developed in partnership with the City of Alameda and the TMA. In general, off-street parking pricing for employees should be structured as a daily rate, rather than a monthly or annual rate. When parking rates are structured on a daily schedule, this can also provide maximum flexibility to commuters who might prefer to bicycle or use transit on some days, but do not want to forfeit their driving options entirely. Conversely, monthly or annual parking passes encourage more driving, as parking costs become a "sunk" investment, after which parking becomes essentially free and choosing to take the bus or train becomes an additional expense. On-street rates should be set based on demand and to support the commercial and retail uses.

Finally, revenue generated from pricing of on- and off-street parking will be allocated as a funding source for TDM programs via a Parking Benefit District (PBD) for Alameda Point, or other appropriate mechanism as determined by the City. PBDs are defined geographic areas in which any revenue generated from on-street and off-street parking facilities within the district is reinvested back into local improvements, such as TDM. PBDs manage and coordinate parking programs and policies so that parking is, above all, convenient and easy for motorists.

Under California state law,[19] parking meter zones and parking meter rates can only be established by ordinance. In an ordinance to create a PBD, a city would need to specify the following: 1) district boundaries; 2) parking rates within the district; and 3) how the funds will be used. PBDs require the establishment of a governing body, which could be one role of the TMA.

TIME LIMITS

Description: Time limits encourage turnover of parking spaces in commercial areas and discourages employees from parking in spaces directly adjacent to businesses, ensuring greater availability for customers. A wide range of time limits are used for varying circumstances, from 10-minute loading and commercial zones to 4- or 6-hour zones. Time limits can be effective where businesses would prefer spaces be made available to customers throughout the day.

Action: APP will work with the City of Alameda and the TMA to determine where and what parking time limits would be beneficial. This strategy could be used in conjunction with parking pricing.

RESIDENTIAL PARKING PERMITS

Description: The primary goal of a residential parking permit (RPP) is to manage parking "spillover" into residential neighborhoods. A RPP operates by exempting permitted vehicles from the parking restrictions and time limits for non-metered, on-street parking spaces within a geographic area. A conventional RPP is one that allows those without a permit to park for a limited period during a specified time frame (e.g. 2-hour parking, 8 AM – 6 PM, Monday to Friday). Permit holders are exempt from these regulations and able to essentially store their vehicle on-street. Ownership of a permit, however, does not guarantee the availability of a parking space and for this reason, it is important not to sell too many permits far in excess of available curb spaces.

[19] California Vehicle Code Section 22508

An RPP may be appropriate for Alameda Point to manage spillover into adjacent neighborhoods.

Action: APP will work with the City of Alameda and the TMA to determine if, when, and where a RPP should be implemented. This strategy could be used in conjunction with time limits and parking pricing.

PREFERENTIAL PARKING FOR CARPOOLS/VANPOOLS/ELECTRIC VEHICLES

Description: Reserving a certain number of parking spaces for carpools and vanpools can encourage ridesharing. Preferential parking spaces should be located in highly visible areas, near convenient access points such as the entrance to buildings, and clearly marked.

Action: Preferential parking will be provided for carpool, vanpool, and electric vehicles. These spaces will be provided in parking facilities that serve employees. Occupancy of these spaces will be monitored by the Transportation Coordinator to determine when additional reserved spaces are needed to meet demand. In addition, electric vehicle charging stations should also be provided at key locations.

7 IMPLEMENTATION TIMELINE

Figure 7-1 summarizes the implementation timeline for the Site A Compliance Strategy. In general, the implementation timeline should remain flexible to ensure that strategies and programs are implemented in response to project conditions. Most strategies and programs would be in place on day one, while others would have limited deployment. Many of the employee strategies would be limited in their scope on day one simply because they are estimated to be a small number of employees. All of the strategies and programs would likely grow and evolve throughout the life of the project as Site A and Alameda Point is further developed. For example, limited car share vehicles may be needed initially, but as the site continues to develop additional cars would be needed to serve the increase in residents and employees.

Management of parking is largely to be determined based on market conditions. Pricing, time limits, and permit programs are all potential management tools on day one, but exactly how they are implemented would depend on the specific parking demand and behaviors at the time. Parking policies such as unbundled parking, shared parking, and preferential spaces for ridesharing and electric vehicles would be in place on day one.

Figure 7-1 Site A Compliance Strategy Timeline

Strategy/Program	Is the strategy/program operational?		
	Day One	Interim Phases	Build Out
Management and Marketing			
Initiation of Alameda Point TMA	Y	Y	Y
Site-Level Transportation Coordinator	Y	Y	Y
Transportation Representatives	Y	Y	Y
Transportation Website	Y	Y	Y
Transportation App	N	Implemented as demand grows and funding is available.	
Transportation Handbook	Y	Y	Y
Transportation Information Boards	Y	Y	Y
Resident and Employee TDM Programs			
Transit Service to BART	Y	Yes, with potential modifications based on performance	
AC Transit EasyPass	Y	Yes, with potential modifications based on performance	
Secure Bicycle Parking	Y	Y	Y
Car sharing	Limited	To be expanded as demand warrants	

Strategy/Program	Is the strategy/program operational?		
	Day One	Interim Phases	Build Out
Bike loaner program	Y	To be expanded as demand warrants or transitioned to BABS[20]	
Bike sharing	N	Integrate Alameda and Alameda Point with BABS as feasible	
On-site Bike Repair Facilities	Y	Y	Y
Employee Only TDM Programs			
Clipper Cash Transit Subsidy	Y	Y	Y
Pre-tax Commuter Benefits	Limited	Y	Y
Carpool/Vanpool/Car sharing Subsidies	Limited	Y	Y
Parking Cash-Out	N	If needed	If needed
Ridematching services	Limited	Y	Y
Guaranteed Ride Home Program	Limited	Y	Y
Bike Buddy & Education Program	Limited	Y	Y
Telecommuting/Flexible Work Schedules	Limited	Y	Y
Showers and Lockers	Y	Y	Y
Parking Management			
Shared Parking	Y	Y	Y
Unbundled Parking	Y	Yes, pricing would be adjusted based on market demand.	
Parking Pricing	Public parking would be priced on day one. Exact pricing structure TBD based on market conditions.		
Preferential Parking	Y	Y	Y
Residential Permit Program	TBD based on parking behavior and management plan.		
Time Limits	TBD based on parking behavior and management plan.		

[20] Bay Area Bike Share (www.bayareabikeshare.com)

8 VEHICLE TRIP TARGETS

As required by the City of Alameda's Transportation Demand Management (TDM) Plan for Alameda Point projects located in Alameda Point must achieve the following trip reduction goals:

- 30% reduction in peak hour trips for commercial development; and
- 10% reduction in peak hour trips for residential development

The goals are measured against the estimation of automobile trips projected in the 2035 "build out scenario" in the Alameda Point EIR. As stated in the Alameda Point TDM Plan, "TDM strategies require time to become established and become fully effective... Therefore, the trip reduction goals need to be phased in so that they remain realistic and achievable."[21]

This chapter establishes the baseline number of trips for Site A against which the required reductions will be measured and the vehicle trip targets for Site A.

BASELINE VEHICLE TRIPS

As part of the Environmental Impact Review (EIR) for Alameda Point a calculation of future vehicle trips was made for the 2035 "build out" scenario for the entire site using a travel demand model. Figure 8-1 shows the estimated vehicle trips that will be generated by all of Alameda Point at full build out, including 1,425 housing units and approximately 5.5 million square feet of commercial space.

Figure 8-1 Vehicle Trips - 2035, Existing Plus Project[22]

Daily Trips	AM Peak Hour Trips	PM Peak Hour Trips
33,429	2,928	3,294

Based on the EIR, of the AM peak hour trips 27% of trips are vehicles exiting the site and 73% of trips are vehicles entering the site. In the PM peak hour, 40% of vehicle trips are entering the site and 60% of vehicle trips are leaving the site. It was assumed that in the AM peak hour inbound trips are associated with commercial uses and outbound trips are associated with residential uses. In the PM peak hour the pattern is reversed, with inbound trips correlated to residents and outbound trips correlated to commercial uses.

Figure 8-2 shows the number of AM and PM peak hour residential and commercial trips for Alameda Point using the percentage of inbound and outbound vehicle trips.

[21] Page 53 of Alameda Point TDM Plan.

[22] Alameda Point Final EIR, Table 4.C-3

Figure 8-2 Peak Hour Residential and Commercial Vehicle Trips

Trip Type	AM Peak Hour Trips	PM Peak Hour Trips
Residential Trips	795	1,309
Commercial Trips	2,133	1,985
Total	**2,928**	**3,294**

Since the EIR analysis focused on the site as a whole, the number of trips generated by Site A must be derived from the total number of trips. At completion, Site A will be comprised of 800 housing units or 56% of the total housing supply and up to 600,000 square feet of commercial space or 11% of the total amount of commercial square footage. Using these percentages, the number of baseline vehicle trips generated by Site A for residential and commercial uses was calculated. Based on these calculations, the baseline number of trips associated with Site A during the AM peak hour is 681 trips and 953 vehicle trips during the PM peak hour, for a total of 1,634 trips.

Figure 8-3 Site A Peak Hour Residential and Commercial Vehicle Trips

Trip Type	AM Peak Hour Trips	PM Peak Hour Trips
Residential Trips	446	735
Commercial Trips	235	218
Total	**681**	**953**

SITE A PEAK HOUR TRIP TARGET

In order to meet the trip reduction targets identified in the TDM Plan for Alameda Point, Site A must reduce baseline residential trips by 10% and commercial trips by 30%. Figure 8-4 shows the number of trips that would be generated by Site A if there were a 30% reduction in commercial trips and a 10% reduction in residential trips. Based on the trip reductions, the AM peak hour trip target for Site A is 566 vehicle trips and the PM peak hour vehicle trip target for Site A is 814 vehicle trips, for a total of 1,380 trips. As discussed in Chapter 9, it is recommended that Site A's trips be monitored in the aggregate.

Figure 8-4 Site A AM and PM Peak Hour Vehicle Trip Targets

Land Use	Baseline Vehicle Trips		Adjusted Vehicle Trips		Less than Baseline	
	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour
Residential Trips	446	735	402	662	45	74
Commercial Trips	235	218	164	153	70	65
Total	**681**	**953**	**566**	**814**	**115**	**139**

9 ANNUAL MONITORING

A robust monitoring program is key to the success of the Alameda Point Site A TDM Program. Monitoring allows the TMA, City of Alameda, and project applicant to specifically determine trip reductions, as well as a more qualitative assessment of how the programs offered are meeting the needs of residents and employees.

The objectives of the annual monitoring program are:

- To measure progress towards achieving, or retaining, compliance with the Plan goals to reduce automobile trips; and
- To identify the most and least effective TDM strategies, so that the former can be strengthened and the later can be replaced or significantly improved.

Given that Site A will be constructed over several phases, and the role of the TMA will be evolving over this time period, it is expected that the positive impacts of these programs will increase with time. Ongoing monitoring will enable TMA, City of Alameda, and project applicant to determine if the effectiveness of the program is growing over time or if adjustments are needed to improve the performance of the TDM program.

It should be noted that the Alameda Point TDM Plan addressed the failure to meet the trip reduction targets by creating a "self-enforcing" Plan, in which the monitoring effort would trigger further financial investment in the TDM programs. As stated on page 45 of the TDM Plan:

> *"The approach recommended in this Plan is to allow the Plan to be self-enforcing, as proposed through annual monitoring, reporting and Plan refinement...This requirement in itself constitutes a form of financial penalty since the cost of revising the Plan and introducing new strategies along with marketing and promoting the strategies can be an incentive to implement robust strategies in the initial Plan and avoid the cost of revising the Plan, or implementing more costly strategies."*

This chapter describes the approach, program components, and proposed process of the monitoring program. As described in the Alameda Point TDM Plan, this process would be overseen and managed by the TMA. However, APP will work with the TMA to support the monitoring effort.

MONITORING APPROACH AND PROCESS

The monitoring approach and process for Site A includes the following:

1. Monitor
2. Analyze
3. Report
4. Refine
5. Implement

Monitoring Plan

The TMA will develop a data collection plan for traffic/bike/pedestrian counts, parking occupancy surveys, and an employee/resident survey. These materials will be updated each year, yet should facilitate consistent data collection and analysis across years.

Data should be collected over a one week period during the fall or spring during a "typical week" - one in which there are no holidays or rainy weather. Data collection should be done during the same month each year. The following data will be collected:

- Annual traffic counts at all entry and exit points to the site during AM and PM peak-hour.
- Sampling counts to determine automobile occupancies and carpool rates
- Resident and employee travel and TDM surveys, via hard copy and web-based survey methods
- Bicycle and pedestrian counts along key facilities or at gateways
- Parking occupancy for public and private, on- and off-street facilities

The Transportation Representatives will work with the site-level TDM Coordinator and the TMA to make sure the survey is distributed to all residents and employees, with a goal of a 60% response rate.

Access will be provided to all public and private parking facilities to allow parking occupancy counts to be conducted. Leasing agreements should stipulate that all private property owners shall provide parking and trip data on an annual basis or allow the TMA and/or City to count parking occupancy and vehicle trips annually.

Data Analysis

The TMA will analyze the data collected to measure the following metrics:

- Analysis of peak hour traffic counts to compare with the peak hour baseline trip generation for residential and non-residential land uses
- Employee and resident mode split
- Participation rates in TDM programs and services
- Parking utilization throughout the day at public/private on- and off-street facilities
- TDM program awareness
- Cost-effectiveness of the TDM program

In monitoring Site A's trip targets, it is strongly recommended that the monitoring program evaluate Site A's trips in the aggregate, and not try to differentiate trip type. From a practical perspective, trying to monitor "commercial" or "residential" trips will likely prove problematic. The surveys would provide a more appropriate method by which to determine mode split and travel behavior by user group or specific building/tenant.

In addition, the data collection and analysis process will enable the TMA to gather more qualitative data, such as employee and resident feedback on what programs they are using, what is working well, and how programs can be improved.

The data can be analyzed and cross-referenced to derive information such as by what mode employees and residents of Alameda Point travel for various trip purposes; the frequency of travel by a mode other than the single-occupant-vehicle; or which TDM services employees and residents use and why (and vice versa). This data can be further cross-referenced with demographic data to classify travel characteristics by personal and household characteristics such as occupation, income, vehicle ownership, vehicle

availability, place of residence, and household size. Cross-referencing is valuable in targeting specific groups with programs designed to meet their needs.

Annual Reporting

Following the data analysis the TMA will prepare an annual TDM Progress Report that summarizes the transportation program over the preceding year, intended upcoming changes, and achievement towards the trip reduction targets. The reports should be submitted within a month of the completion of the data collection. This report will be submitted to the TMA Board of Directors and posted online for public review. Descriptions of elements that will be included in the Progress Report are listed below:

- Introduction identifying goals of the TDM plan
- Summary of past performance
- Findings of the data analysis, including but not limited to:
  - Comparison of vehicle trips to trip reduction target
  - Mode split data by group
  - Parking occupancy rates
  - Bicycle and pedestrian counts
- Employee and resident survey results
- Any recommended or planned changes to the TDM program based on the performance of the programs over the past year or responses to the surveys

Refine and Implement

As needed, and based on the findings presented in the Annual Report, APP, in collaboration with the TMA Board of Directors and City, will develop an annual detailed refinement plan for the Site A TDM Compliance Strategy to improve performance of the program so as to reasonably meet the trip reduction targets by 2035. The refinement plan will included a detailed implementation program for program refinements, including required actions and timelines for property owners, businesses, tenants, and residential associations.

At this time, it is not possible or prudent to define exactly how the program can and should be revised if it does not reasonably comply with the trip reduction targets. Refinements to the TDM programs will need to be developed based on trip counts, survey data, and detailed information regarding travel behavior of residents employees, and visitors. Potential revisions to the TDM programs could include:

- Service modifications for ferry and bus services, such as expanded service hours, increased service frequency, or schedule/route changes
- Increased financial subsidies for transit, biking, walking, or ridesharing and/or direct financial payments to reduce single occupancy vehicle trips
- Improved and diversified parking management, including increasing parking fees
- Enhanced marketing and promotion of TDM programs
- Expanded bike sharing and car sharing services
- Additional investment in transit, biking, and walking infrastructure
- Increased TMA staffing levels
- Administrative changes to ensure that programs are as user-friendly as possible to use
- Other measures determined to be appropriate by APP, the City, and TMA

EXHIBIT K

EXISTING LEASES

SITE A

Building	Lessee	Address	SF	Term	Expired	Use	Monthly Income	Annual Income
13	Pacific PinBall Museum	2100 Ferry Point, Suites 100-300	1,200	3/9/07 - 10/31/17		Storage of museum artifacts	$ 2,446.00	$ 29,352.00
13	Edge Innovation	2100 Ferry Point, Suite 400	400	MTM	12/31/2009	Storage of Tenant's product and equipment	$ 1,000.00	$ 12,000.00
67	Puglia Engineering	410 W. Seaplane Lagoon	14,000	MTM	7/31/2011	Ship repair and related activities	$ 5,464.00	$ 65,568.00
90	PMRG Mgt. office	101 W. Atlantic Ave.	4,500	MTM		Alameda Point management office	$ -	$ -
98	Conmar	451 W. Seaplane Lagoon	8,200	MTM	9/30/2011	Light industrial, statuary, concrete and similar small construction uses	$ 2,745.00	$ 32,940.00
113	Fred Grandy	450 W. Atlantic Ave.	13,115	9/9/2014 - 9/8/2015		Design, sale and fabrication of toys and decorative items	$ 3,278.57	$ 39,342.84
117	Delphi Production	2251 Orion Street	9,200	MTM	8/31/2014	Design, sale, manufacture, distribution and storage of exhibit space and related activities	$ 18,115.64	$ 217,387.68
119	Wonky Kitchen	151 W. Seaplane Lagoon	4,700	9/4/2012 - 12/31/2015		Commercial kitchen for food production & packaging	$ 1,700.00	$ 20,400.00
162	Alameda Municipal Power	400 W. Atlantic Ave	38,500	6/1/2000	No lease	Storage of electric utility equipment and materials	$ 11,103.00	$ 133,236.00
512	No info. on this bldg.						$ -	$ -
517	Walashek Industrial	150 W. Trident Ave.	8,206	1/21/13 - 10/16/2015		Light industrial shop for valve repair and related marine support and repair work	$ 2,462.00	$ 29,544.00
564	Love Fellowship Church	190 W. Trident Ave.	8,750	10/17/2014 - 4/16/2016		Church	$ 2,000.00	$ 24,000.00
LAND	Rain Defense	330 W. Trident Avenue	19,800	MTM	2/28/2015	Land lease for roofing company	$ 1,980.00	$ 23,760.00

EXHIBIT L

LEASE AGREEMENTS

LEASE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation
AS LANDLORD

and

ALAMEDA POINT PARTNERS, LLC

a Delaware limited liability company
AS TENANT

BUILDING 117

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Exhibits

LEASE AGREEMENT
BASIC LEASE INFORMATION

Lease Date:	Dated as of _____, 2015 for reference purposes only
Landlord:	City of Alameda, a charter city and municipal corporation
Landlord's Address:	City of Alameda Alameda City Hall, Rm 320 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4700 Attn: City Manager **Notice Copy to:** City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4750 Attn: City Attorney
Tenant:	Alameda Point Partners, LLC a Delaware limited liability company
Tenant's Address:	Trammel Crow Residential 39 Forrest Street, Suite 201 Mill Valley, CA 94941 Telephone: 415-381-3001 Facsimile: 415-381-3003 Email: bd@thompsondorfman.com ***With copies to:*** SRM Ernst Development Partners 2220 Livingston Street Suite 208 Oakland, CA 94606 Telephone: 510-219-5376 Facsimile: 510-380-7056 Email: jernst@srmernst.com ***And to:*** Madison Marquette 909 Montgomery Street Suite 200 San Francisco, CA 94133 Telephone: 415-277-6828 Facsimile: 415-217-5368 Email: pam.white@madisonmarquette.com

	And to: Marc Stice Stice & Block 2335 Broadway, Suite 201 Oakland, CA 94612 Telephone; 510-735-0032 Email: mstice@sticeblock.com
Building:	That certain building located at 2251 Orion Street, Alameda, CA 94501 on the Property (as defined in Section 1) and commonly referred to as Building 117 (the "**Building**").
Premises:	The Building and the land upon which the Building sits as well as any parking area, access area and landscaped area immediately adjacent to the Building, as approximately depicted in **Exhibit A** (the "**Premises**"), which shall be more particularly identified upon the delivery by Tenant of an Election Notice (defined herein).
Permitted Uses:	Permitted Uses are described in Section 3.3.
Length of Term:	One hundred and twenty (120) full calendar months, commencing on the Commencement Date and, unless earlier terminated or extended pursuant to the terms of this Lease, expiring on the Expiration Date ("**Term**").
Commencement Date:	The date that occurs six (6) months after the date of the Election Notice, provided that Tenant shall have the right, but not the obligation, to accelerate the Commencement Date to such earlier date, in Tenant's sole discretion, after Landlord notifies Tenant in writing that the Premises are vacant and ready for delivery to Tenant.
Expiration Date:	The date that is one hundred and twenty (120) full calendar months after the Commencement Date, unless extended or earlier terminated pursuant to the terms of this Lease.
Assignment and Subletting:	Tenant shall have the right to assign this Lease to a Permitted Assignee pursuant to the Assignment Right as provided in Section 13.1(b) and such Permitted Assignee shall have the right to sublease the Premises to subtenants as provided in Section 13.2 hereto.
Renewal Option:	Two (2) renewal options of ten (10) years each, as provided in Section 4.2.
Rent:	Base Rent and Additional Rent are described in Article 5. Hold Over Rent is described in Article 20.
Taxes and Utilities:	Tenant shall directly contract for and pay all costs for services and Utilities (as defined in Section 9.1) to the Premises, as further provided in the Lease. Tenant shall pay all taxes (including

	possessory interest taxes and other assessments against the real property) levied on or against the Premises or Tenant's personal property to the extent provided in Article 6.
Security Deposit:	As provided in Article 8 of this Lease.
Parking:	Tenant shall have the right to have its employees, contractors, agents, subtenants and visitors park in the paved areas adjacent to the Building which are part of the Premises.
Brokers:	N/A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and ALAMEDA POINT PARTNERS, LLC, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Lease**". Capitalized terms used in this Lease without further definition have the meaning given them in the Disposition and Development Agreement ("**DDA**") between the Landlord and Tenant dated _____, 2015, unless otherwise defined herein. The Landlord and Tenant are sometimes collectively referred to in this Lease as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Lease with reference to the following facts:

1. RECITALS.

A. Landlord is the fee title owner of or has the right to acquire that certain portion of Alameda Point known as "**Site A**" which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway.

B. Certain former tide and submerged lands, including some of the lands within the Property boundaries are or will be held by Landlord subject to a public trust for commerce, navigation and fisheries, once they are conveyed out of federal ownership (the "**Public Trust**"). Those lands within Site A that are subject to the Public Trust are referred to herein as the "**Tidelands Parcel**". The Premises is outside the Tidelands Parcel.

C. Pursuant to the terms and conditions contained and as defined in the DDA, Landlord will transfer fee title to Site A (except for the Tideland Parcel but including the Premises) to Tenant in scheduled phases for development as mutually agreed to by the Parties and incorporated into the DDA. Pursuant to the terms of the DDA and as provided in this Lease, prior to the acquisition of the Premises by Tenant (as defined in the DDA), Tenant has the right to (a) at Tenant's election, lease the Premises from Landlord pursuant to this Lease, by submitting an Election Notice and complying with the terms and conditions set forth in Section 3.2 and (b) assign the Lease to a Permitted Assignee (as defined below). In addition, pursuant to the terms of the DDA and as provided in this Lease, such Permitted Assignee has the right to enter into subleases (the "**Subleases**") to sublease the Premises to third-party subtenants ("**Subtenants**").

D. Landlord and Tenant wish Tenant to lease the Premises, on the terms and conditions set forth in this Lease.

In consideration of the foregoing and the promises and other provisions of this Lease, the Parties agree as follows:

2. Demise.

2.1. Effectiveness of Lease; Demise. In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be

performed by Tenant in this Lease during the Term, Landlord and Tenant enter into this Lease Agreement which shall be immediately effective as of the Effective Date. On the Commencement Date, Landlord will deliver possession of, the Premises to Tenant for Tenant's exclusive use and enjoyment for the Term hereinafter stated and Tenant's rights and obligations under this Lease shall commence as of such Commencement Date. Tenant shall have no right or obligation hereunder, including, without limitation, with respect to the payment of Rent, repair or maintenance of the Premises or any indemnity obligations, until the occurrence of the Commencement Date.

2.2. Subsequent Conveyance. Tenant expects to acquire the Premises at a future date as provided in the DDA (the "**Conveyance**"), subject to Tenant's right to transfer its right to acquire the Premises as provided in the DDA. Notwithstanding anything to the contrary set forth in this Lease, if the Conveyance occurs prior to Tenant's delivery of an Election Notice or if after such Conveyance, Tenant and the owner of the fee interest in the Premises are the same entity, then, upon the Conveyance, Tenant's and Landlord's interest in this Lease shall merge and this Lease shall automatically terminate and be of no further force or effect. If, however, after the Conveyance occurs Tenant and owner of the fee interest are distinct persons or entities, then upon the Conveyance, Landlord's leasehold interest shall be concurrently transferred to the transferee in such Conveyance and this Lease shall continue in full force and effect.

2.3. Operating Memoranda.

(a) Landlord and Tenant acknowledge that the provisions of this Lease require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties to this Lease. Landlord and Tenant desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of certain items covered in general terms under this Lease. If and when, from time to time during the term of this Agreement and during any time that the City of Alameda is the Landlord under this Lease, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Landlord and Tenant which, after execution, shall be attached to this Lease as addenda and become a part hereof. This Lease expressly describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(b) Operating Memoranda that implement the provisions of this Lease or that provide clarification to existing terms of this Lease, including, for example, the legal description of the Premises, or the incorporation of DDA terms after the expiration or termination of the DDA, may be executed on Landlord's behalf by the City Manager of the City of Alameda, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not materially change material terms of this Lease: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Lease. Any substantive or significant modifications to the terms and conditions of performance under this Lease shall be processed as an amendment of this Lease in accordance with applicable law, and must be approved by resolution of the City Council.

3. Premises and Permitted uses.

3.1. Premises. The Premises demised by this Lease are specified in the Basic Lease Information and are generally depicted in **Exhibit A** hereto, but shall at all times exclude any existing or future public roads or access routes reasonably necessary for access to other buildings owned by Landlord in the vicinity of the Building or for emergency vehicle access, and the inclusion of any public roads or access routes in the Premises at any time shall be subject to approval of the City of Alameda fire marshal. The Building has the address and contains the approximate square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less. The Parties further agree that upon Tenant's delivery of the Election Notice, Tenant and Landlord shall cooperate to prepare a more definite metes and bounds legal description of the Premises generally based on the depiction attached as **Exhibit A** hereto, at Tenant's sole cost and expense. Such legal description, when prepared, shall be deemed incorporated into this Lease by the Parties' execution of an Operating Memorandum which each Party agrees to promptly execute and deliver to each other Party.

3.2. Commencement Date; Delivery of Election Notice.

(a) This Lease shall commence upon the date that occurs six (6) months after the date Tenant delivers a written notice of its election to take possession of the Premises from Landlord (the "**Election Notice**"). Notwithstanding the foregoing, Tenant shall have the right, but not the obligation, in Tenant's sole and absolute discretion, to accelerate the Commencement Date to an earlier date selected by Tenant that shall occur after Tenant delivers the Election Notice and Landlord notifies Tenant in writing that the Premises are ready for early delivery to Tenant and vacant (such date, as may be accelerated, shall be the "**Commencement Date**").

(b) The Election Notice shall include either (i) a copy of the form of any sublease or subleases that Tenant is proposing for the Premises or alternatively, (y) Tenant's general schematic plans and cost estimates for Tenant's proposed Alterations to the Premises totaling not less than two hundred and fifty thousand dollars ($250,000.00), and (z) a statement of the planned use of the Premises, which use shall be consistent with the Permitted Use permitted herein. Any proposed Sublease shall conform to the requirements of Article 13 of this Lease for Subleases. Tenant shall promptly after its execution deliver a copy of any Sublease entered into with a Subtenant to Landlord.

(c) Tenant's Election Notice shall be to lease the whole Building only, as well as the Premises as defined herein (as may be subsequently modified in accordance with Section 3.1, above). Any Election Notice that meets the requirements of this Section 3.2 shall be deemed approved.

3.3. Tenant Fails to Sublease or Improve After Election Request.

If, after Tenant submits a valid Election Notice pursuant to Section 3.2, Tenant fails to enter into a Sublease as required hereunder or (b) fails to commence and then diligently prosecute to completion construction of the improvements described in Tenant's Election

Request, each within twelve (12) months of the Commencement Date, then Tenant shall, in lieu of any other Base Rent due hereunder, promptly pay **directly** to Landlord the Hold Over Rent (as defined in Article 21) starting in arrears from the Commencement Date and continuing until such time as Tenant either: (i) secures a binding executed Sublease for the Premises; or (ii) substantially completes construction of the improvements described in the Election Notice. Nothing in this Section 3.3 shall be interpreted to relieve Tenant of its obligations to maintain, repair and insure the Premises starting on the Commencement Date and throughout the Term of this Lease.

3.4. Possession. On the Commencement Date Tenant will accept the Premises in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Building, Premises or infrastructure for the conduct of Tenant's business. Landlord shall not be liable for any latent or patent defects in the Building and/or on the Premises. Tenant shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy from the City of Alameda. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 7.1 below), and any other requirements mandated by the Certificate of Occupancy inspection. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Building, Premises, or infrastructure, or with respect to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose.

3.5. Permitted Use.

(a) Permitted Uses – Generally. Tenant shall use the Building and Premises during the Term solely for those uses permitted in the Development Plan approved on June 16, 2015, the Town Center Plan adopted on July 15, 2014, and the DDA (collectively, the "**Development Documents**"), all as consistent with this Lease and for no other purpose ("**Permitted Uses**"). Tenant acknowledges and agrees that in no event will the Permitted Uses include any residential use. For purposes of this Section 3.5 only, if there is a conflict between the above documents as it relates to permitted uses, the Development Plan shall govern over the Town Center Plan which shall govern over the DDA.

(b) Regulatory Approvals Required. Nothing in this Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City of Alameda for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. In approving a Permitted Use, improvement or other activity under this Lease, Landlord is acting in its capacity as owner of the Premises only, not in its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City of Alameda or other regulatory agency.

3.6. Termination or Expiration of DDA After Lease Execution and Prior to Conveyance or other Termination or Expiration of Lease.

(a) Prior to Commencement Date. The "**DDA Term**" as used in this Lease shall be the period during which the DDA is in effect, prior to its termination or expiration. If the DDA Term ends after the execution of this Lease but prior to the Commencement Date (as defined in Section 3.2, this Lease shall automatically terminate and be of no further force or effect whatsoever.

(b) After Commencement Date. If the DDA Term ends after the execution of this Lease and after the Commencement Date, then this Lease shall continue in full force and effect without reference to the DDA except as expressly set forth herein. Landlord shall have the right to sell its fee interest in the Premises and assign its interest as Landlord in this Lease (subject to all the terms and conditions herein) at Landlord's sole discretion. If Landlord sells its fee interest in the Premises, Landlord shall assign its interest under this Lease, and Landlord's successor owner of the Premises, assignee or transferee shall be the "Landlord" under this Lease.

(c) Any provisions of the DDA referenced in this Lease shall be deemed to be incorporated into this Lease and the Parties agree to reasonably cooperate to execute an Operating Memorandum to incorporate such terms of the DDA expressly into this Lease as are required for the purpose of the effectiveness and performance of the Parties' rights and obligations under this Lease.

3.7. Telecommunications Equipment. At no time shall Tenant have the right to install, operate or maintain telecommunications or any other equipment on the roof or exterior areas of the Building, except as may be necessary for Tenant's Permitted Use of the Premises (including use of the Premises by Subtenants) and Tenant's installation of such equipment is done in full compliance with Article 10 (Alterations).

4. Term.

4.1. Term.

(a) Lease Term. The term of this Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing upon the Commencement Date and, unless extended or earlier terminated as expressly provided herein, expiring on the Expiration Date. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Tenant fails to execute and deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant. Nothing in this Lease, including with respect to the Term hereof, shall amend or modify the obligations of Developer under the DDA, including with respect to the Milestone Schedule (as such term is defined in the DDA).

4.2. Option to Renew.

(a) Renewal Option. Tenant shall have two (2) options to extend the Term (each a "**Renewal Option**"), for a period of ten (10) years each (each a "**Renewal Term**"). A Renewal Option may be exercised only by Tenant, the Permitted Assignee and may not be exercised by any other sublessee or assignee or by any other successor or assign. Tenant may exercise the first Renewal Option if Tenant has invested (or will, by the end of the initial Term, invest) not less than two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations (as defined in Section 10.1, below), including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**First Renewal Investment**"). Tenant shall submit with its Renewal Notice for the first Renewal Option reasonable evidence that Tenant has made such First Renewal Investment. Tenant may exercise the second Renewal Option if Tenant has invested (or will, by the end of the first Renewal Term, invest) not less than an additional two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations, including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**Second Renewal Investment**"). Tenant shall submit with its Renewal Notice for the second Renewal Option reasonable evidence that Tenant has made such Second Renewal Investment. If Tenant submits a Renewal Notice after the end of the DDA Term, then, in addition to the First Renewal Investment or the Second Renewal Investment, Tenant shall make a one-time payment of $978,965 per acre of the Premises (as such amount is escalated each year from the Lease Date until the date of payment by the increase in the cost of construction as reported by the Engineering News Record Construction Cost Index for the San Francisco Bay Area or similar index if the Engineering News Record index is no longer published) to the City for infrastructure improvements consistent with the Alameda Point Master Infrastructure Plan and Alameda Point Development Impact Fee (Alameda Municipal Code 27-4.5) in connection with the first Renewal Option exercised by Tenant after such end of the DDA Term. A Renewal Option shall be effective only if Tenant is not in Default under this Lease, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term. Tenant shall exercise each Renewal Option, if at all, by written notice ("**Renewal Notice**") from Tenant to Landlord, in a form substantially the same as **Exhibit F**, given not more than twelve (12) months nor less than nine (9) months prior to expiration of the initial Term with respect to the first Renewal Option, and given not more than twelve (12) months nor less than nine (9) months prior to expiration of the first Renewal Term with respect to the second Renewal Option. Any such notice given by Tenant to Landlord shall be irrevocable. If Tenant fails to exercise a Renewal Option in a timely manner as provided for above such Renewal Option (and any remaining subsequent Renewal Option) shall be void.

(b) Terms and Conditions. If Tenant exercises a Renewal Option, the Term shall be extended for an additional period of ten (10) years upon the same terms and conditions as the initial Term (or the Renewal Term, for the second Renewal Option) except that (i) there shall be one fewer Renewal Option available to Tenant at the expiration of the first Renewal Term and no Renewal Option available to Tenant at the expiration of the second Renewal Term, (ii) Tenant shall continue to occupy the Premises in its "as-is" condition without any tenant improvement allowance from Landlord, and (iii) the Base Rent during each Renewal Term (the "**Renewal Rate**") after the expiration or earlier termination of the DDA shall be Fair Market Rent which shall be determined using the process provided in Section 5.1 below.

(c) Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Landlord.

5. Rent.

5.1. Base Rent, Use of Rent and Audit Rights.

(a) Base Rent and Use of Rent for Term During DDA Term. From and after the Commencement Date and until the earlier of the Conveyance or the expiration or termination of the DDA Term, all income received by Tenant from the Premises and expenses incurred by Tenant related to the Premises shall be included in the calculation of Unleveraged Cash Flow as that term is defined in Section 2.3(a)(10) of the DDA. The application of such expenses and revenues to Unleveraged Cash Flow shall be deemed to be Base Rent as provided hereunder and no additional Base Rent shall be payable by Tenant during the DDA Term.

(b) Base Rent for Term After DDA Term Ends. If the DDA Term ends prior to Conveyance, the Base Rent for the Premises commencing upon the expiration or termination of the DDA Term shall be the "Fair Market Rent." For purposes of this Section, "**Fair Market Rent**" means the prevailing rental rate per square foot then being obtained by landlords for buildings or spaces comparable to the Building in its condition as of the Commencement Date, located in the City of Alameda, taking into account (in either case) applicable base years, tenant improvement allowances, free rent periods and other tenant concessions, existing improvements and configuration of the space, any additional rent and all other payments and escalations payable hereunder and by tenants under leases of such comparable spaces as determined by the following process:

(i) Within thirty (30) days after the effective date of the expiration or termination of the DDA Term or as soon thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of the Fair Market Rent ("**Rate Notice**").

(ii) Tenant shall have twenty (20) days ("**Response Period**") after receipt of the Rate Notice to advise Landlord whether or not Tenant agrees with Landlord's determination of the Fair Market Rent. If Tenant does not respond to Landlord in writing within the Response Period, then Tenant shall be deemed to have accepted the Fair Market Rent specified by Landlord in the Rate Notice and Tenant shall be obligated to pay the Fair Market Rent as of the expiration or termination of the DDA Term. If Tenant agrees or is deemed to have agreed with Landlord's determination of the Fair Market Rent, then such determination shall be final and binding on the Parties.

(iii) If Tenant notifies Landlord in writing during the Response Period that Tenant disagrees with Landlord's determination of the Fair Market Rent, then within twenty (20) days after Landlord's receipt of Tenant's written notice, Landlord and Tenant shall each retain a licensed commercial real estate broker with at least five (5) years' experience negotiating commercial lease transactions in the cities of Alameda and Oakland, California and the Fair Market Rent shall be determined as follows:

A. If only one broker is appointed by the Parties during such period, then said broker shall, within twenty (20) days after his or her appointment, determine the Fair Market Rent.

B. If Landlord and Tenant each appoint a broker during such period, then the brokers shall meet and confer during the thirty (30) day period commencing on the date on which the last of the brokers has been appointed ("**Broker Negotiation Period**") to attempt to mutually agree upon Fair Market Rent.

C. If the brokers cannot agree upon Fair Market Rent as of the expiration of the Broker Negotiation Period, the two brokers shall, within twenty (20) days thereafter, attempt to select a third broker meeting the qualifications stated in this Section.

D. If the two brokers are unable to agree on the third broker, either Landlord or Tenant, by giving fifteen (15) days written notice to the other Party, can apply to then Presiding Judge of the Superior Court of Alameda County for the selection of a third broker who meets the qualifications stated in this paragraph.

E. Landlord and Tenant shall each bear one half (1/2) cost of appointing the third broker and paying the third broker's fees. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

F. The third broker shall, within twenty (20) days after his or her appointment, make a determination of Fair Market Rent. The determinations of Fair Market Rent prepared by all three (3) brokers shall be compared and the Fair Market Rent shall be whichever of the determinations by Landlord broker or Tenant's broker is closer to the determination of the third broker (and if they are equally close, the Fair Market Rent shall be the determination of the third broker). Such determination shall be final and binding upon the Parties.

(iv) Promptly following determination of Fair Market Rent pursuant to this Section, the Parties shall execute an Operating Memorandum memorializing such Fair Market Rent. After the Fair Market Rent has been determined, the Base Rent for the Premises shall increase at the annual rate of three percent (3%) per year throughout remaining Term of the Lease.

(c) Audit Rights. After the Commencement Date, Landlord shall be entitled from time to time to audit Tenant's books, records, and accounts pertaining to the collection and calculation of Base Rent by Tenant. Such audit shall be conducted during normal business hours upon five (5) business days' notice at the principal place of business of the Tenant and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. Landlord shall not be entitled to more than one audit for any particular calendar year, unless it shall reasonably appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. Landlord shall provide Tenant with copies of any audit performed ("**Audit Report**").

5.2. Additional Rent. As used in this Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent and Hold Over Rent, that are due and payable by Tenant under the terms of this Lease. The term "**Rent**," as used herein, shall mean all Base Rent (Section 5.1), Additional Rent (Section 5.2), Hold Over Rent (Article 21) and all other amounts payable hereunder from Tenant to Landlord, including any amount payable by Tenant to Landlord for Utilities pursuant to Section 9.1. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

5.3. Interest. Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) seven percent (7%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

6. Operating Expenses and Taxes.

6.1. Definitions. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, the amount payable by Tenant for Taxes and Operating Expenses shall be equitably adjusted for the Tax and Expense Years involved in any such change.

(b) **Taxes** shall mean all taxes, special taxes, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, excluding any personal property of Landlord used in the operation of the Building or Premises or Landlord's interest in the Premises but including Personal Property Taxes or possessory interest taxes which are the subject of Article 9. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Premises or any occupants thereof, on the use or occupancy of the Premises, on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Tenant or the Premises by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Parties on the date of this Lease. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over

different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord any refunded or recovered Tax previously paid by Tenant (and the foregoing obligation shall survive the termination or expiration of this Lease). Notwithstanding anything to the contrary set forth herein, during the DDA Term, Landlord agrees that Landlord will not, in its capacity as the property owner, consent or vote for any special assessments or taxes applicable to the Premises that are not consistent with Section 3.1(c) of the DDA, provided, however, nothing herein shall prevent the Landlord in its capacity as a taxing entity with the power to levy taxes from imposing taxes applicable to the Premises provided such taxes are generally applicable to similar properties in the City.

(c) **"Operating Expenses"** shall mean all costs of the management, operation, maintenance, insurance, repair and replacement of the Premises (including the exteriors, windows and roof of the Building and paved portions of parking areas included in the Premises).

6.2. Payment of Operating Expenses and Taxes. Tenant shall directly pay when due and before delinquency, all Operating Expenses and Taxes for the Premises. With reasonable promptness after the end of each Tax and Expense Year, Tenant shall submit to Landlord a statement showing the actual amount paid by Tenant with respect to Taxes and Operating Expenses for the past Tax and Expense Year ("**Tenant's Statement**"). The Parties acknowledge that this Lease is intended to be triple net to Tenant. Tenant is responsible for the entire cost of all Utilities, Taxes, maintenance and repair and other costs attributable to the management, operation, maintenance, insurance, repair and replacement of the Premises during the Term.

6.3. Personal Property Taxes. Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term ("**Personal Property Taxes**").

6.4. Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the Party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

6.5. Payment. Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. Tenant shall pay the Personal

Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either: (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes; or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

7. Compliance with Laws.

7.1. Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "**ADA**"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Premises into compliance with applicable ADA requirements and to ensure that the Premises remain in compliance throughout the Term of this Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant at the Property, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Building.

7.2. Compliance with Restrictions. The Premises is located on property known as the former Naval Air Station Alameda, portions of which were conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**") and portions of which are subject to the Lease in Furtherance of Conveyance dated June 6, 2000 as amended by the Amendment No. 1 dated November 28, 2000 and Amendment No. 2 dated March 30, 2009 ("**LIFOC**"). Said Quitclaim Deed and LIFOC conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises is further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). The Premises is also subject to a Site Management Plan. Copies of the Quitclaim Deed, LIFOC, Declaration of Restrictions and Site Management Plan have been delivered to Tenant and, concurrently with the execution of this Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the office of the County Recorder, Alameda County, CA (the "**CRUP**"), the National Environmental Protection Act

Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. A copy of the ROD is available for review at Landlord's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions, the Site Management Plan, the CRUP and the ROD, as they affect the Premises, are collectively referred to herein as the "**Restrictions**." Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Lease.

7.3. Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Premises (collectively "**Use Permit**").

8. Security Deposit.

No security deposit is required by Tenant under this Lease during the DDA Term. Upon the expiration or Termination of the DDA Term and the calculation of the Fair Market Rent payable by Tenant, Tenant shall deliver to Landlord a Security Deposit equal to Base Rent payable for one (1) calendar month (the "Security Deposit"). The Security Deposit shall be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy Tenant's breach under this Lease or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord so uses or applies all or any portion of the Security Deposit, then within fifteen (15) days after demand therefore, Tenant shall deposit cash with Landlord in an amount sufficient to restore the deposit to the full amount thereof, and Tenant's failure to do so shall constitute a Default under this Lease. If there are no payments to be made from the Security Deposit as set out in this paragraph, or if there is any balance of the Security Deposit remaining after all payments have been made, the Security Deposit, or such balance thereof remaining, will be refunded to the Tenant after the expiration or earlier termination of this Lease. Tenant hereby waives the benefit of the provisions of California Civil Code Section 1950.7. In the event of an act of bankruptcy by or insolvency of Tenant or the appointment of a receiver for Tenant or general assignment for the benefit of Tenant's creditors, the Security Deposit shall be deemed immediately assigned to Landlord.

9. Utilities.

9.1. Payments for Utilities and Services. Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the Premises, together with all related installation or connection charges or deposits ("**Utilities**"). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay **directly** to Landlord, as Additional Rent, all actual utility costs (without markup) paid by Landlord for use at the Premises on or before the date that is thirty (30) days after billing by Landlord. If any Utilities

are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code Section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

9.2. No Liability of Landlord. Except in the case of the gross negligence or willful misconduct of Landlord or any Landlord Related Party, after the Commencement Date, neither Landlord nor Landlord Related Parties shall be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the Premises, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises, or arising from the partial or total unavailability of the service or utility to the Premises, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its obligations under this Lease.

10. Alterations.

10.1. Permitted Alterations. A material consideration of Landlord entering into this Lease is the agreement by Tenant to make certain alterations to the Premises as required or approved for the Premises in connection with the Development Documents, including, without limitation, any Initial Improvements to be made by Tenant and landscaping and site work consistent with the Development Plan (the "**Permitted Alterations**"). During the DDA Term, notwithstanding anything to the contrary, Tenant shall have the right, without the further consent of Landlord to make any Permitted Alterations and, notwithstanding anything to the contrary in this Lease, including in this Article 10 or Article 20, Tenant shall have no requirement to remove any Permitted Alterations during or upon the expiration of the Term. The foregoing shall not exempt or affect Tenant's obligation to comply with applicable laws or secure any necessary permits from Landlord in its capacity as a governmental entity.

10.2. Other Alterations. Any alterations to the Premises made by Tenant, including the Permitted Alterations (collectively, the "**Alterations**"), shall be at Tenant's sole cost and expense, made in compliance with all applicable Laws and all reasonable requirements requested by Landlord. Tenant shall comply with the construction requirements set forth in Section 6.6 of the DDA (whether during or after the expiration or termination of the DDA Term), and, to the extent not done as part of such construction requirements, the following requirements shall also apply. Prior to starting work, Tenant shall furnish Landlord with plans and specifications (which shall be in CAD format if requested by Landlord); names of contractors reasonably acceptable to Landlord; required permits and approvals; evidence of contractors and subcontractors insurance in amounts reasonably required by Landlord and naming Landlord, Landlord Related Parties (as defined in Section 14.1) and such other persons or entities as Landlord may reasonably request,

as additional insureds; and any security for payment in performance and amounts reasonably required by Landlord. In addition, if any such Alteration requires the removal of asbestos, an appropriate asbestos disposal plan, identifying the proposed disposal site of all such asbestos, must be included with the plans and specifications provided to Landlord. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for Alterations. Landlord agrees to respond to Tenant's request for consent to any Alterations within fifteen (15) business days following Tenant's delivery of such request, accompanied by plans and specifications depicting the proposed Alterations ("**Plans**") and a designation of Tenant's general contractor (and major subcontractors) to perform such work. Landlord's response shall be in writing and, if Landlord withholds its consent to any Alterations, Landlord shall specify in reasonable detail in Landlord's notice of disapproval, the basis for such disapproval. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Plans, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Plans and contains the following statement in bold and capital letters:

> **"THIS IS A SECOND REQUEST FOR APPROVAL OF PLANS PURSUANT TO THE PROVISIONS OF SECTION 10.2 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE PLANS DESCRIBED HEREIN."**

If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Plans in question shall be deemed approved by Landlord in its proprietary capacity only. If Landlord timely delivers to Tenant a notice of Landlord's disapproval of any Plans, Tenant may revise Tenant's Plans and resubmit such Plans to Landlord; in such event the scope of Landlord's review of such Plans shall be limited to Tenant's correction of the items to which Landlord had previously objected. Landlord's review and approval (or deemed approval) of such revised Plans shall be governed by the provisions as set forth above in this Section 10.2. The procedure set forth above for approval of Tenant's Plans will also apply to any change, addition or amendments to Tenant's Plans. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. Upon completion, Tenant shall furnish Landlord with at least three (3) sets of "as built" Plans (as well as a set in CAD format, if requested by Landlord) for the Alterations, completion affidavit and full and final unconditional waivers of liens and will cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Any Alteration shall become the property of Landlord upon the expiration or earlier termination of this Lease, provided that the Conveyance has not occurred, and further provided that Landlord has not required Tenant to remove any Alterations prior to the expiration or sooner termination of this Lease. If Tenant serves a request in writing together with Tenant's request for Landlord's consent to any such Alterations ("**Removal Request**"), Landlord will notify Tenant at the time of Landlord's consent to any such Alterations as to whether Landlord requires their removal. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Tenant. If Tenant fails to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Landlord may do so and may charge the reasonable costs thereof to Tenant. All Alterations shall be made in good and workmanlike manner and in a manner that

will not disturb other tenants and Tenant shall maintain appropriate liability and builders' risk insurance throughout the construction. Tenant shall indemnify, defend, protect and hold Landlord and Landlord Related Parties harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due. Landlord's review and approval of any Alterations pursuant to this Lease shall be in its proprietary capacity as Landlord and no such approval shall constitute approval by the City of Alameda in its regulatory capacity. Tenant shall be obligated to obtain any permits and approvals from the City and any other governmental entities necessary for the Alterations.

10.3. Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Building) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., contacting Underground Service Alert or similar underground surveying services, potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval in its propriety capacity (which shall also require the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.4. Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use at the Premises. Tenant shall remove within a reasonable period of time not to exceed ten (10) days after notice of such lien, any mechanic liens or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Lease for any labor or materials furnished to Tenant in connection with work performed in, on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord and Landlord Related Parties (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

11. Maintenance and Repair of Premises.

11.1. Maintenance and Repair by Tenant.

(a) Tenant Maintenance. Tenant shall, at its sole cost and expense, maintain the Premises in good repair and in a neat and clean operating condition, including making all necessary repairs and replacements. Tenant's repair and maintenance obligations include, without limitation, repairs to all elements of the Building (including the roof, support structures, foundations, windows and exterior of the Building) and outdoor paved areas used for parking. Tenant's obligation to maintain any landscaping at the Premises shall be subject to any limitations on water use imposed by local, state or federal authorities, and Tenant shall not be required to incur any penalties in connection with respect to such water use in an effort to satisfy maintenance obligations under this Lease.

(b) Tenant Repair. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Building caused by Tenant or Tenant's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by: (i) the construction or installation of improvements to the Premises by or on behalf of Tenant; and (ii) the moving of any property into or out of the Building. If Tenant fails to make such repairs or replacement within fifteen (15) days after notice from Landlord, then Landlord may, at its option, upon prior reasonable notice to Tenant (except in an emergency) make the required repairs and replacements and the costs of such repairs or replacement (including a reasonable administrative charge) shall be charged to Tenant as Additional Rent and shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

12. Environmental Protection Provisions.

12.1. Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2. Reportable Uses Required Consent. Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (for purposes of this Article 12, referred to collectively herein as "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or transported to or from the Premises without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor.

12.3. Remediation Obligations. If at any time during the Term, any contamination of the Premises by the introduction of Hazardous Materials or the release or disturbance of Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement

of all amounts reasonably paid or incurred by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by a pending invoice or proof of payment of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "**Tenant's Contamination**" shall not refer to or include any Hazardous Materials that were not clearly introduced to the Premises by Tenant or Tenant Parties during the Term and shall in no event include any site contamination or conditions at the Premises pre-existing the Term, whether known or unknown, provided that the foregoing shall not affect any obligations of Tenant under the DDA during the DDA Term. Notwithstanding anything set forth herein, Landlord shall have no responsibility for the remediation or containment of any asbestos or lead dust found within the Building.

12.4. Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5. Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Absent the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such Landlord officer, agent, employee, contractor or subcontractor into or onto the Premises.

12.6. Hazardous Materials Handling Plan. Upon delivery of the Exercise Notice, Tenant shall execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit D** attached hereto, and Tenant shall, upon the execution of any Sublease, cause each Subtenant who will use any Hazardous Materials at the Premises to execute and deliver to Landlord an Environmental Questionnaire. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**") which shall be consistent with the Restrictions in Section 7.2. For a period of fifteen (15)

days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord's disapproval thereof. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, the Site Management Plan and the Hazardous Materials Handling Plan. Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto in Tenant's possession or control: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant's Permitted Use of the Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.7. Hazardous Materials Indemnity. In addition to any other provisions of this Lease, from and after the Commencement Date, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Landlord Related Parties from and against any loss, damage, cost, expense or liability Landlord may incur directly or indirectly arising out of or attributable to any Tenant's Contamination, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans and (3) all reasonable costs and expenses incurred by Landlord in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees. Tenant's obligation to indemnify, defend and hold harmless under this Section 12.7 shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

13. Assignment and Subletting.

13.1. Assignment.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law: (a) except in connection with Tenant Financing (as defined below), mortgage, pledge, hypothecate or encumber this Lease or any interest therein; (b) assign or transfer this Lease or any interest herein, or any right or privilege appurtenant thereto or any portion thereof, without first obtaining the written consent of Landlord.

(b) Notwithstanding the foregoing, Tenant shall have the right but not the obligation (the "**Assignment Right**"), either concurrent with the delivery of the Election Notice or at any time thereafter, upon thirty (30) days prior written notice to Landlord (the "**Assignment Notice**"), to assign Tenant's entire interest in this Lease to any transferee permitted under Section 12.4 and 12.5 of the DDA (each a "**Permitted Assignee**"). Any such Assignment Notice shall identify the Permitted Assignee and the date such assignment shall be effective (the "**Permitted Assignment Date**") and include a copy of a written agreement whereby Tenant assigns all its right, title, obligation and interest in this Lease to Permitted Assignee and Permitted Assignee assumes all such right, title, obligation and interest. The Permitted Assignee shall expressly assume and agree to perform all the terms and conditions of this Lease to be performed by Tenant after the Permitted Assignment Date and to use the Premises only for a Permitted Use. On and after the Permitted Assignment Date, provided that the written assignment complies with the requirements in this subsection, Tenant shall be automatically and forever released of any and all liability and obligation under this Lease other than any obligations that arise after the Commencement Date and prior to the Permitted Assignment Date.

Subletting. The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of sublease (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the proposed Sublease between Tenant and the proposed Subtenant. Tenant shall provide Landlord with any additional information or documentation reasonably requested by Landlord within ten (10) business days after receiving Landlord's request. Landlord shall then have a period of thirty (30) days following receipt of such additional information (or 30 days after receipt of Tenant's Sublet Notice if no additional information is requested) within which to notify Tenant in writing that Landlord elects either to approve or disapprove of the sublet, and if, disapproved, the reason for such disapproval. If Landlord fails to respond, upon the expiration of the applicable time period, the Sublease that is the subject of the Sublet Notice shall be deemed approved. Landlord may disapprove of any Sublease only if: (i) the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use or (ii) the Sublease will interfere with the Milestone Schedule or Phasing Plan in the DDA.

13.2. Intentionally Deleted.

13.3. Tenant Financing; Rights of Holders. Notwithstanding anything to the contrary contained in this Article 13, Tenant may obtain financing of improvements to the Premises, including any Alterations, and any of Tenant's obligations under the Development Documents as apply to the Premises (the "**Tenant Financing**").

(a) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any mortgagee of any Tenant Financing.

(b) The lender under any Tenant Financing permitted under this Section 13.3 shall be a "**Permitted Mortgagee**" and shall be entitled to the rights and, if applicable, subject to the obligations of a Permitted Mortgagee under Article 13 of the DDA. In addition, Landlord and Tenant expressly acknowledge that nothing in this Lease shall be deemed a grant by Tenant of a

security interest, or other lien, in favor of Landlord, upon any of Tenant's personal property situated in or upon the Premises, and Landlord expressly waives any rights, whether statutory or otherwise, that it may have to any lien against Tenant's personal property as may be required to secure the Tenant Financing, unless said lien is obtained pursuant to a judgment of a court of competent jurisdiction. Landlord further agrees to execute a reasonable form of Landlord lien waiver and nondisturbance agreement as may be required by a Permitted Mortgagee to secure the Tenant Financing.

13.4. No Release. No assignment, Sublease or other transfer other than the Permitted Assignment shall release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue to be fully liable hereunder. Each Subtenant or assignee (including Permitted Assignee) shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease. The assignment or Sublease, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or Subtenant, then Tenant shall hold such sums in trust in the segregated account for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sum shall not constitute an acceptance by Landlord of attornment by such assignee or Subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each assignment, Sublease or transfer agreement and an agreement of compliance by each such Subtenant or assignee.

13.5. Limitations on Transfer Reasonable. Given the long term and complex relationship between the Landlord and Tenant established by the DDA, Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Lease or any other interests herein, to Sublease the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to Sublease the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

14. Indemnity and Waiver of Claims.

14.1. Indemnification.

(a) From and after the Commencement Date, Tenant shall indemnify, defend and hold harmless Landlord and its City Council, boards, commissions, officers, employees and agents ("**Landlord Related Parties**") against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "**Losses**"), arising from: (a) the use of, or any activity done, permitted or suffered in or about the Premises; (b) any activity done, permitted or suffered by Tenant or any Tenant Party in or about Premises; (c) any act,

neglect, fault, willful misconduct of Tenant or Tenant Parties; or (d) from any breach or default in the terms of this Lease by Tenant or any Tenant Party, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Landlord or Landlord Related Parties. If any action or proceeding is brought against Landlord and/or Landlord Related Parties by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord Related Parties from responsibility for, waives its entire claim of recovery for and assumes all risks of: (i) damage to property or injury to person in or about the Premises from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties; or (ii) loss resulting from business interruption or loss of income at the Premises.

(b) Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties against and from all Losses, arising (a) prior to the Commencement Date and (b) after the Commencement Date if arising from any gross negligence or intentional misconduct by Landlord and/or Landlord Related Parties. If any action or proceeding is brought against Tenant and/or Tenant Parties by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

14.2. Waiver of Claims. Except in the event of the gross negligence or willful misconduct of Landlord or Landlord Related Parties, Landlord shall not be liable to Tenant or any Tenant Party with respect to the Premises after the Commencement Date and Tenant hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises after the Commencement Date from any cause. Without limiting the foregoing, except in the event of the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement of rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the Premises. The Parties agree that in no case shall either Party, or any Landlord Related Party or Tenant Party, be responsible or liable on any theory for any injury to the other Party's, Landlord Related Party's or Tenant Party's business, loss of profits, loss of income or any other form of consequential damage.

14.3. Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either Party pursuant to this Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

15. Insurance.

15.1. Tenant's Insurance

(a) Property Insurance. Tenant shall continuously keep the Premises and all improvements thereon insured during the Term for the mutual benefit of Tenant and Landlord and Landlord Related Parties as required by this Section 15.1(a).

(i) Such insurance shall include Landlord as named insured and Tenant as an additional insured and shall provide coverage on virtually an all risk basis, including the peril of flood but not including earthquake unless such insurance is available at commercially reasonable rates, as determined in Tenant's sole discretion.

(ii) Such insurance shall be on a replacement cost basis in an amount not less than the then current one hundred percent (100%) replacement cost of the Building and improvements at the Premises, and with a deductible subject to the approval of Landlord.

(iii) Such insurance shall include coverage for the demolition of a damaged structure and for increased costs of reconstruction arising from or caused by changes in building codes and other laws.

(iv) Such insurance shall also include comprehensive boiler and machinery coverage for all objects, including but not limited to boilers, pressure vessels, pressure piping and other major components or any centralized heating, air conditioning and cooling system and elevator system.

(b) Liability Insurance. Tenant shall obtain and maintain or cause its subtenants to obtain and maintain in full force at all times that the Premises is subject to this Lease, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars ($2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord or Landlord Related Parties covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord or Landlord Related Parties; and (v) name Landlord and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.

(c) Personal Property Insurance. Tenant and/or its subtenants shall obtain and maintain in full force and effect personal property insurance on all of their personal property, furniture, furnishings, trade fixtures and equipment from time to time located at the Premises

("**Tenant's Property**"), and any Alterations (as defined in Article 10) in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause or Loss") fire and casualty insurance policy. Landlord shall have no interest in the insurance upon Tenant's Property or Alterations and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Landlord will not carry insurance on Tenant's Property or Alterations.

(d) Worker's Compensation Insurance; Employer's Liability Insurance. Tenant and its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, worker's compensation insurance with not less than the minimum limits required by law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000.00).

(e) Pollution Legal Liability. Commercial Pollution Legal Liability Insurance with coverage limits of not less than Ten Million Dollars ($10,000,000).

(i) Commercial Pollution Legal Liability. Tenant shall use commercially reasonable efforts to maintain a Commercial Pollution Legal Liability Insurance with coverage limits of not less than One Million Dollars ($1,000,000) annual aggregate covering claims arising out of or related to Tenant's Contamination during the term of this Lease.

(A) Such policy shall name Tenant and each of its sub-tenants as a named or additional insured and shall name the City as an additional insured.

(B) Such policy may be placed on a multi-year basis, provided, however, in no event shall the term exceed five (5) years and, if placed on a multi-year basis, the required coverage shall be a One Million Dollar ($1,000,000) annual aggregate and a Three Million Dollar ($3,000,000) general aggregate for the term of such policy.

(C) If Tenant obtains the Pollution Legal Liability policy required by Section 16.7(a) or (d) of the DDA (the "**DDA PLL Policy**"), such DDA PLL Policy shall satisfy the requirements of this Section 15.1(e)(i) for the term of the "new releases" coverage provided by DDA PPL Policy.

(ii) Contractor's Pollution Legal Liability. Tenant shall cause the general contractor retained for the rehabilitation of the Premises shell improvements to obtain and maintain Contractor's Pollution Liability Insurance covering the general contractor and all subcontractors in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction. Any such policy shall name the City as an additional insured.

(f) Business Interruption Insurance. Tenant shall maintain in full force and effect during the Term of this Lease, Business Interruption Insurance with a limit of liability representing loss of at least approximately twelve (12) months of income.

(g) Automobile Liability. Tenant and/or its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability. Such policy shall be in an amount of not less than One Million Dollars ($1,000,000) combined singled limit.

15.2. Requirements For All Policies. Each policy of insurance required under Section 15.1 shall: (a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's or its Subtenant's sole cost and expense, and (c) require at least thirty (30) days' written notice (ten (10) day's written notice for non-payment of premium) to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state of California. Any deductible amount under such insurance shall not exceed $50,000. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty days prior written notice of any cancellation or modification.

15.3. Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article is in full force and effect, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form. In addition to the foregoing, Tenant shall provide to Landlord, upon request, copies of the actual insurance policies for the insurance required to be carried by Tenant pursuant to this Lease, including any endorsement affecting the additional insured status and evidence that premiums therefor have been paid.

Subrogation Waiver. Tenant hereby grants to Landlord and Landlord Related Parties, on behalf of itself and any insurer providing comprehensive general and automotive liability insurance to Tenant pursuant to this Lease, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord and/or Landlord Related Parties by virtue of the payment of any loss under such insurance. Tenant further agrees to include a subrogation waiver in each of its subleases requiring a similar waiver by its subtenants and their insurers in favor of Landlord and Landlord Related Parties.

15.4. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under Section 15.1 through Section 15.4, inclusive, such failure shall be a Default. If such Default continues after notice and expiration of any applicable cure period provided in this Lease, such Default shall be a Default entitling Landlord, at its election and in addition to such remedies as may otherwise be available under this Lease, to procure and maintain the required coverage. Tenant shall reimburse Landlord for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable **directly** to Landlord as Additional Rent and shall be due on or before the date that is thirty (30) days after billing by Landlord, failing which payment Landlord may exercise any and all remedies available to it under this Lease, at law or in equity. The failure by Landlord to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

16. Damage or Destruction.

16.1. Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property (as defined at Section 15.1(c)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction and the estimated time for repairing said damage.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction.

(c) "**Insured Loss**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which was caused by an event required to be covered by the insurance described in Article 15, irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the Building or improvements owned by Landlord (including Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) "**Hazardous Material Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 13.1), in, on, or under the Premises which requires repair, remediation, or restoration.

16.2. Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.3. Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, upon Tenant's written election, this Lease shall terminate and be of no force or effect except for those obligations specified in this Lease that expressly survive the expiration or termination of this Lease. If not so terminated, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.4. Abatement of Rent. In the event of Premises Partial Damage, Premises Total Destruction or Hazardous Material Condition, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. All other obligations of Tenant

hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

16.5. Limit on Claims. Tenant shall have no claim against Landlord for any Losses (as defined in Section 14.1) suffered by Tenant not caused by: (i) a breach of this Lease by Landlord; or (ii) the gross negligence or intentional misconduct of Landlord or Landlord Related Parties. Tenant and Landlord each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such sections or laws apply to any Losses. The Parties intend that the provisions of this Lease control in lieu of such laws.

17. Condemnation.

If the whole or if any material part of the Premises or Building under this Lease are taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises or Building unsuitable, in Landlord's reasonable opinion, for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking and any repairs by Tenant or its subtenants would be untenantable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations or if such Taking will make more than twenty-five percent (25%) of the Premises unusable by Tenant or Subtenants for the Permitted Use for a period greater than twelve (12) months, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The terminating Party shall provide written notice of termination to the other Party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in Tenant's or Subtenants' ability to use the Premises for the Permitted Use. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's leasehold interest in the Premises, and/or the value of Tenant's fixture, equipment and personal property (specifically excluding components of the Premises which exist prior to the Commencement Date or were paid for by Landlord), or Tenant's loss of business goodwill, provided that such award does not reduce any award otherwise allocable or payable to Landlord.

18. Default.

18.1. Events of Default. The occurrence of any of the following shall constitute a "**Default**" by Tenant if Tenant fails to cure such event within ten (10) days after written notice from Landlord:

(a) Tenant fails to pay Base Rent and Additional Rent in violation of Section 5.1 and Section 5.2.

(b) Tenant uses or permits the Premises to be used for purposes or activities that are in violation of the Permitted Uses contained in Section 3.3.

(c) Tenant fails timely to deliver any subordination document or estoppel certificate required to be given under this Lease within the applicable time period specified herein below.

(d) Tenant violates the restrictions on assignment, sublet or transfer set forth in Article 13.

(e) Tenant abandons the Premises as defined in Section 1951.3 of the California Civil Code.

(f) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(g) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (g) above, in which case Tenant's notice and cure period shall be extended to thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

(h) Tenant is in Default under the Disposition and Development Agreement after written notice and the expiration of the applicable cure period.

18.2. Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Subject to the rights of a Permitted Mortgagee (as set forth in Section 13.3), terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to:

(i) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;

(ii) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;

(iii) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided discounted to the then present value;

(iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "**Worth at the Time of Award**" of the amounts referred to in parts (i), (ii) and (iii) above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (A) the greatest per annum rate of interest permitted from time to time under applicable law, or (B) the Prime Rate plus 5% as determined by Landlord.

For purposes of this Section 18.2, "**Unpaid Rent**" shall include but not be limited to, (i) Base Rent payable by Tenant but not collected prior to termination; and (ii) Additional Rent and Hold Over Rent which remains due and owing as of the date of Termination.

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

(c) Should Tenant or its agents, employees, invitees or subtenants use the any portion of the Premises designated for parking in violation of this Lease, Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to tow away any vehicle involved in such violation and charge the cost of towing and storage to Tenant, which cost shall be immediately payable upon demand by Landlord as Additional Rent. Except to the extent caused by the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located at the Premises, whether pursuant to this Lease or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any

parking spaces or any portion of the Premises or any vehicles parked thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above.

(d) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above.

(e) Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of a Default, subleased or leased by Tenant to others, Tenant hereby appoints Landlord to act as Tenant's agent under such circumstances and Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Base Rent, Additional Rent, Hold Over Rent and any other rents due hereunder without in any way affecting Tenant's obligations to Landlord hereunder except with respect to the reduction of such amounts due from Tenant. Said sums collected in excess of rents due hereunder will be treated as Additional Rent payable by Tenant to Landlord until the time when any such Default is cured. Such agency, being given for security, is hereby declared to be irrevocable.

18.3. No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4. Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Lease following its termination as a result of Tenant's breach.

18.5. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6. Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to

do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 189.6, the full amount of the costs and expense incurred or the payments so made or the amount of the Losses so sustained shall be immediately be owed by Tenant to Landlord. Tenant shall promptly pay **directly** to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of seven percent (7%) per annum, or the highest rate permitted by applicable law.

18.7. Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19. Limitation of Landlord Liability.

(a) Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor Landlord) shall be limited to the value of the Premises. Tenant shall look solely to Landlord's interest in the Premises for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

(b) If Tenant believes a material breach of this Lease has occurred, Tenant shall first notify Landlord in writing of the purported breach, giving Landlord thirty (30) days from receipt of such notice to cure the breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that thirty (30) day period, begin to cure within thirty (30) days and thereafter diligently prosecute such cure to completion within a period not to exceed ninety (90) days, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this Lease; (ii) prosecuting an action for damages within the limitations set forth in Section 19 (a) above; (iii) seeking specific performance of this Lease; or (iv) any other remedy available at law or equity. .

20. Surrender of Premises.

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's personal property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair consistent with the condition of the Premises on the Commencement Date (as may have been improved pursuant to the requirements of the DDA or this Lease), ordinary wear and tear, damage caused by casualty or condemnation, and damage caused by Landlord or any Landlord Related Party excepted, provided, however, if this Lease is terminated as a result of the Conveyance, this Section shall not apply. If Tenant fails to remove any of Tenant's property, or to restore the Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or perform such restoration of the Premises. Landlord shall not be

responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

21. Holding Over.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease with respect to such Premises, occupancy of the Building and/or Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease. In addition, Tenant shall pay **directly** to Landlord, in monthly installments, a hold over rent equal to two hundred percent (200%) of the Base Rent payable by Tenant in the last month prior to such termination ("**Hold Over Rent**"). No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord and Landlord Related Parties from and against any and all losses or liability resulting from delay in Tenant so surrendering the Premises including, without limitations, any loss or liability resulting from any claim against Landlord and/or Landlord Related Parties made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

22. Notice.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the Party's respective Notice Address (es) set forth in the Basic Lease Information ("**Notice Address**"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either Party may, at any time, change its Notice Address (other than to a post office box address) by giving the other Party three (3) days prior written notice of the new address.

23. Labor Provisions. Tenant hereby agrees to comply with the following in its use of the Premises after the Commencement Date:

23.1. Equal Opportunity. During the Term, and with respect only to persons in the Building(s) and at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the

following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through its subleases, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 23.1.

23.2. Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

23.3. Prevailing Wages and Related Requirements. Nothing in this Lease constitutes a representation or warranty by Landlord regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after the Commencement Date.

From and after the Commencement Date, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code. Tenant's obligation to indemnify, defend and hold harmless under this Section 23.3(b) shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

24. Miscellaneous.

24.1. Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California. Any suit brought to defend or enforce the terms of this Lease shall be filed with the courts of the County of Alameda, State of California. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such courts.

24.2. Severability. If any Section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other Sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

24.3. Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing Party shall be entitled to recover from the non-prevailing Party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

24.4. Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing Party ("**Force Majeure**"). The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension provided however that under no circumstances may a Party request an extension for a cumulative period in excess of one (1) year. For purposes of this Lease, except as expressly provided in this Lease, the definition of Force Majeure shall be as set forth in this Section 24.4, and definitions set forth in other agreements between Landlord and Tenant, including but not limited to the Development Documents, shall be inapplicable with regards to actions required pursuant to this Lease.

24.5. Signs. Except with respect to temporary signage advertising the availability of the Premises for lease, Tenant shall not place, or suffer to be placed, any sign upon the exterior of the Building or elsewhere on the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the exterior of the Building or on the Premises by or for Tenant or its subtenants shall be subject to the provisions of this Lease. Tenant shall maintain or caused to be maintained any such signs installed on the exterior of the Building or on the Premises.

24.6. Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker(s) specified in the Basic Lease Information in the negotiating or making of this Lease. Each Party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified Party in conjunction with any such claim or claims of any other broker or brokers to

a commission in connection with this Lease as a result of the actions of the indemnifying Party. Provided that this Lease is fully executed by the Parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

24.7. Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the Term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes in which case Landlord shall notify Tenant as soon as reasonably possible of such entry. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord one set of keys therefor. Upon written request, all keys must be returned to Landlord at the expiration or termination of this Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving Alameda Point may be located within the Building or on the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Premises by Tenant and Tenant Parties.

24.8. Memorandum of Lease. This Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Lease Agreement in the form of **Exhibit G** shall be executed by the Parties concurrently herewith and the Tenant may record the same in the County Recorder's Office of Alameda County. In addition, Tenant and/or Lender may record such instruments as are customary and required by Lender to secure Lender's interest in the Lease.

24.9. Article and Section Titles. The Article and Section titles use herein are not to be consider a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

24.10. Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant does hereby covenant and warrant that: (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation; (b) Tenant has and is duly qualified to do business in California; (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Lease and to perform all Tenant's obligations hereunder; and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof

and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Lease and identifying the person(s) authorized to execute this Lease on behalf of Tenant.

24.11. Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

24.12. Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of its age, the Building may contain asbestos-containing materials ("**ACMs**"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

24.13. Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 10 of this Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Premises.

24.14. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

24.15. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

24.16. Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

24.17. Entire Agreement. This Lease contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or

understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

24.18. Rules and Regulations. Tenant shall faithfully observe and comply with the non-discriminatory rules and regulations attached hereto as **Exhibit E** and incorporated herein by this reference, as the same may be modified from time to time by Landlord. Any additions or modifications to those rules shall be binding upon Tenant's upon Landlord's delivery of a copy to Tenant.

24.19. Relocation Waiver. Tenant acknowledges that upon the expiration or earlier termination of this Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

24.20. Subdivision and Development of Property. Subject to Tenant's rights under the Development Documents, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Premises is located. As a material inducement for Landlord to enter into this Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant's rights under this Lease.

24.21. Environmental and Planning Documents. Tenant acknowledges that its use of the Premises and any Alterations thereto shall comply with the terms, conditions and requirements of the Development Documents which shall include, without limitation, the following: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); (d) the Alameda Point Transportation Demand Management Plan; and (e) the Site Management Plan.

24.22. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Such executed counterparts may be delivered by electronic means, including by facsimile or electronic mail, and such delivery of copies shall have the same force and effect as the delivery of ink original signatures.

24.23. Independent Contractors. The relationship between the Parties is one of Landlord and Tenant acting as independent contractors, and not one of partnership, joint venture, agency,

employment, trust or other joint or fiduciary relationship. This Lease is not for the benefit of any other third party.

[Remainder of this Page Intentionally Left Blank]

Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: BRUCE DORFFMAN

Title: VICE PRESIDENT

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

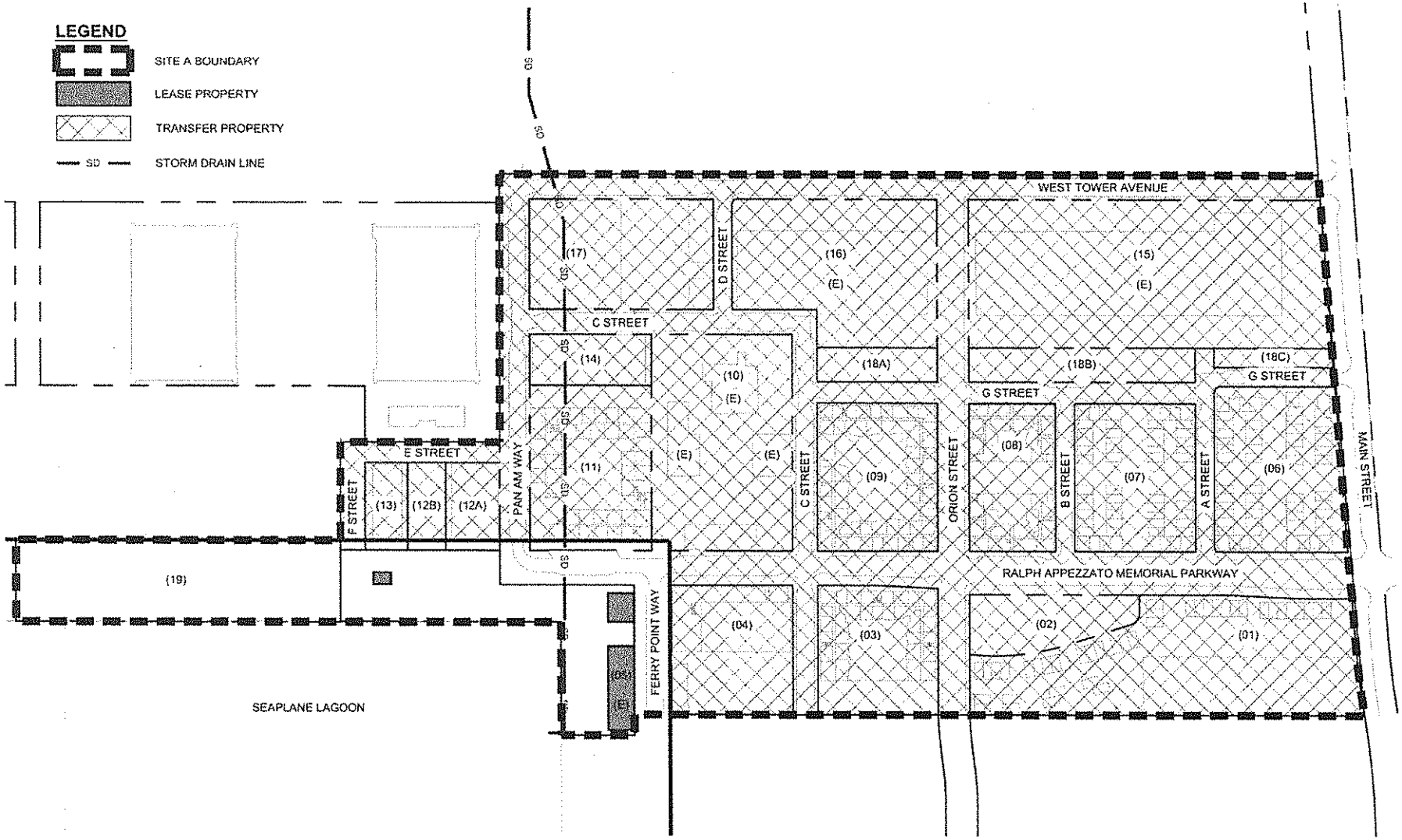
Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

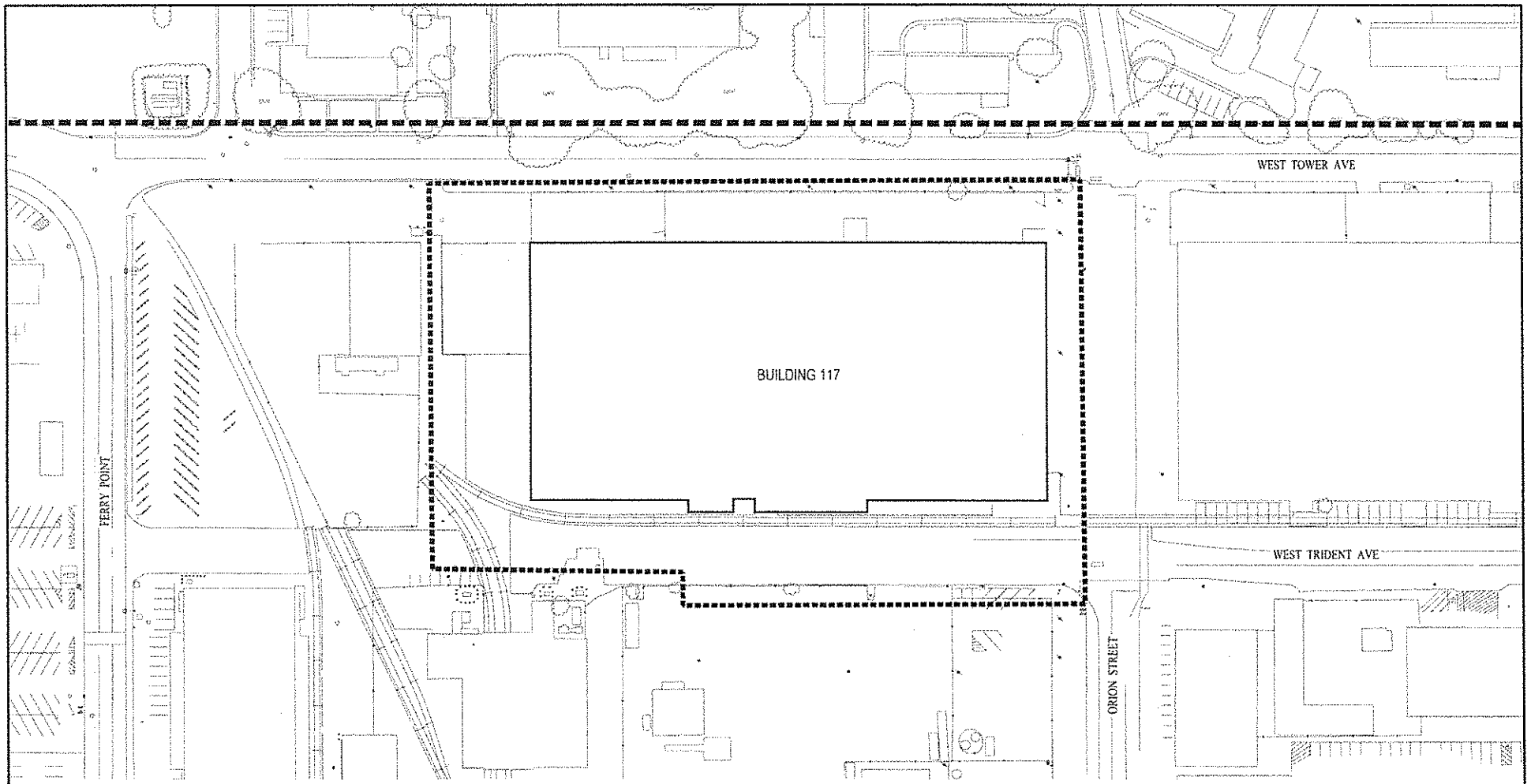
EXHIBIT A
DEPICTION OF PREMISES



MAP OF SITE A PROPERTY

05/29/2015

NOT TO SCALE



LEGEND

SITE A BOUNDARY

APPROXIMATE LEASE PREMISES OF BUILDING 117

ALAMEDA POINT
BUILDING 117
SITE A

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

0' 40' 120' 160'

SCALE: 1" = 40' DATE: JUNE 1, 2015

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

EXHIBIT B
COMMENCEMENT LETTER

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and Alameda Point Partners, LLC, a Delaware limited liability company, as Tenant, for _____ rentable square feet in Building _____ located at _____, Alameda, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Lease is _____;

2. The Expiration Date of the Lease is _____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda By: _____ Name: _____ Title:	Tenant: Alameda Point Partners By: _____ Name: _____ Title: _____

[Exhibit Do not sign]

EXHIBIT C
ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Partners, LLC, a Delaware limited liability company ("Tenant") dated as of _____ ___, 2015 ("**Lease**") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**");

- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**");

- Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the Office of the County Recorder, Alameda County ("**CRUP**");

- Lease in Furtherance of Conveyance Dated June 6, 2000, as amended by the Amendment No. 1 dated November 28, 200 and Amendment No. 2 dated march 30, 2009 ("**LIFOC**"); and

- Site Management Plan for the Premises dated March 29, 2015 ("**Site Management Plan**")

Pursuant to Section 7.3 of the Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Lease.

Signatures on next page.

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT D
ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of Hazardous Materials (as defined in Section 13.1 of the Lease and copied for convenience below) in the process proposed on the Premises to be leased. Any such use must be approved in writing by Landlord. Tenant or prospective subtenants should answer the questions in light of their proposed operations in the Building and on or about the Premises. Existing tenants should answer the questions as they relate to ongoing operations in the Building and on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. Hazardous Materials is defined as follows:

"**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, California 94501
(510) 747-4700
Attn: City Manager

1. **General Information.**

Name of Responding Company:_____

Check the Applicable Status:_____

Tenant ☐ Prospective Subtenant ☐ Existing Tenant ☐

Mailing Address:_____

_____

Contact Person and Title:_____

Telephone Number: (___) _____

Alameda Point Address of Proposed Premises to be Leased:_____

_____

Length of Lease Term:_____

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

_____

_____

_____

2. **Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes ☐ No ☐

Hazardous Chemical Products Yes ☐ No ☐

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes ☐ No ☐

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes ☐ No ☐

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes ☐ No ☐

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

_____

_____

_____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes ☐ No ☐

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

_____

_____

3. **Storage Tanks and Pumps.**

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes ☐ No ☐

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

_____

_____

_____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes ☐ No ☐ Not Applicable ☐

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes ☐ No ☐ Not Applicable ☐

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes ☐ No ☐ Not Applicable ☐

If so, describe. _____

_____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes ☐ No ☐ Not Applicable ☐

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes ☐ No ☐ Not Applicable ☐

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. **Spills.**

4.1 During the past year, have any spills occurred on any site you occupy?

Yes ☐ No ☐ Not Applicable ☐

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes ☐ No ☐ Not Applicable ☐

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐ No ☐ Not Applicable ☐

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work_____

_____

_____

_____

5. **Waste Management.**

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes ☐ No ☐

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☐ No ☐

If yes: EPA ID#_____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐ No ☐

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes ☐ No ☐

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes ☐ No ☐

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes ☐ No ☐

If yes, what types and quantities? _____

_____

_____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

_____

_____

_____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

_____

_____

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes ☐ No ☐

If yes, please describe any existing or proposed treatment, processing or recycling methods. ____

_____

_____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. **Wastewater Treatment/Discharge.**

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

_____ storm drain _____ sewer

_____ surface water _____ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes ☐ No ☐

6.3 Is your wastewater treated before discharge?

Yes ☐ No ☐ Not Applicable ☐

If yes, describe the type of treatment conducted.

_____

_____

_____

6.4 Does your business conduct operations outside the building or store materials outside?

Yes ☐ No ☐ Not Applicable ☐

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes ☐ No ☐ Not Applicable ☐

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes ☐ No ☐ Not Applicable ☐

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes ☐ No ☐ Not Applicable ☐

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. **Air Discharges.1**

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes ☐ No ☐

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes ☐	No ☐
Dip tank	Yes ☐	No ☐
Drying oven	Yes ☐	No ☐
Incinerator	Yes ☐	No ☐
Other (please describe)	Yes ☐	No ☐
Boiler	Yes ☐	No ☐

[1] NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

I/C Engine	Yes ☐	No ☐
Emergency Backup Generator	Yes ☐	No ☐
Processes that apply coatings, inks, adhesives or use solvents	Yes ☐	No ☐

7.3 Do you emit or plan to emit any toxic air contaminates?

Yes ☐ No ☐

7.4 Are air emissions from your operations monitored?

Yes ☐ No ☐

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

_____

_____

_____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. **8. Enforcement Actions, Complaints.**

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes ☐ No ☐

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

_____

_____

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ☐ No ☐

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes ☐ No ☐

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes ☐ No ☐

If so, discuss the results of the audit. _____

_____

_____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes ☐ No ☐

Please describe:_____

_____

_____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

_____

a _____

By:_____

Title:_____

Date:_____

EXHIBIT E
PROPERTY RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the non-performance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Property, provided that Landlord shall not enforce the Rules and Regulations in a manner that discriminates against Tenant or Subtenants. In the event of any conflicts between the Rules and Regulations and other provisions of this Lease, the Lease shall control.

1. Except for signs advertising the Premises for lease or sublease, no advertisements, pictures or signs of any sort shall be displayed on or outside the Premises or Building without the prior written consent of Landlord. This prohibition shall include any portable signs or vehicles placed within the parking lot, or on streets adjacent thereto for the purpose of advertising or display. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

2. Storage of forklift propane tanks, whether interior or exterior, shall be in secured and protected storage and enclosure approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Tenant shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

3. Intentionally Omitted.

4. All goods, including materials used to store goods, delivered to the Premises shall be immediately moved into the Building and shall not be left in parking or exterior loading areas overnight.

5. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must uses steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. No parking or storage of such trailers will be permitted in the auto parking areas adjacent to the Building or on the Premises or on streets adjacent thereto.

6. Tenant is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures.

7. Tenant shall not store or permit the storage or placement of merchandise in areas outside or surrounding the Building or outside the Premises. No displays or sales of merchandise shall be allowed in the parking lots.

8. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screen enclosures at locations approved by Landlord.

9. Intentionally Omitted.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. Intentionally Omitted.

13. Tenant shall not overload the floor of the Building.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Tenant hereby acknowledges that Landlord shall have no obligation to Tenant providing guard service or other security measures for the benefit of the Premises or Building. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed.

17. No auction, liquidation, fire sale, going out of business or bankruptcy sale shall be conducted in or about the Premises without the prior written consent of Landlord.

18. No tenant shall use or permit the use of any portion of the Building or Premises for living quarters, sleeping apartments or lodging rooms.

19. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in driveways, service entrances, or areas posted as no parking.

20. If the Building and/or Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Building and/or Premises by Tenant, its agents, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expenses, cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be reasonably approved in writing in advance by Landlord.

21. Intentionally Omitted.

22. Tenant, its employees and agents shall not in any way obstruct the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, or vestibules of Building in a manner that conflicts with applicable laws or safety codes and regulations..

23. Intentionally Omitted.

24. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants thereof, provided that prior to the enforcement of any such new or revised Rules and Regulations against Tenant or any Subtenant, Landlord shall provide Tenant with a written copy of any such changes and additions. Subject to the obligation not to discriminate in its application or enforcement of the Rules and Regulations against Tenant or Subtenants, Landlord may waive any one or more of these Rules and Regulations for the

benefit of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

EXHIBIT F
RENEWAL NOTICE

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and _____, a _____, as Tenant.

Dear _____:

In accordance with Section 4.2 of the above referenced Lease, by this notice Tenant hereby irrevocably exercises its ***[first] [second]*** Renewal Option for the Renewal Term, at the Renewal Rate and upon the terms and conditions specified in Section 4.2.

Sincerely:

_____
[Name of Tenant]
By: _____
Its: _____

[Exhibit: Do Not Sign]

EXHIBIT G
FORM OF MEMORANDUM OF LEASE

Prepared by and after
recording return to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

DOCUMENT EXEMPT FROM RECORDATION FEE
UNDER GOVERNMENT CODE SECTION 27383

MEMORANDUM OF LEASE AGREEMENT

The **CITY OF ALAMEDA**, a charter city and municipal corporation (the "Landlord"), and Alameda Point Partners, LLC a Delaware liability company (the "Tenant"), do hereby declare on this ___ day of _____, 2015 this Memorandum Lease Agreement (this "Memo"):

Pursuant to that certain Lease dated as of _____ ___, 2015 (the "Lease"), the Landlord demised and leased unto the Tenant, and the Tenant leased and demised from the Landlord, that certain property described in the Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Lease.

The term of the Lease commenced as of _____ __, 20__ and shall terminate on _____ __, 20__, unless sooner terminated or extended as provided in the Lease.

1. Except as provided in the Lease and with respect to subleases of the Premises, the Tenant shall not assign or transfer the Lease without the prior written consent of the Landlord in accordance with the Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Lease, the Lease shall control.

3. Upon the earlier of termination or expiration of the Lease, pursuant to the terms thereof, the Landlord shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Lease has been properly terminated or has expired by its terms, then the Landlord and the Tenant agree to execute the Release within 10 days after receipt of a written request for the same by either Party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Lease.

5. This Memo may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[*Signatures to follow*]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Lease Agreement as of the ___ day of _____, 20____.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

LANDLORD
City of Alameda, a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager
Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

[Exhibit: Do Not Sign]

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, _____, 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.

_____
Name: _____
Notary Public

[ADD NOTARY/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 _____)

On _____, before me, _____, 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.

_____
Name: _____
Notary Public

LEASE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation
AS LANDLORD

and

ALAMEDA POINT PARTNERS, LLC

a Delaware limited liability company
AS TENANT

BUILDING 118

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INDEX OF EXHIBITS

Exhibits

LEASE AGREEMENT
BASIC LEASE INFORMATION

Lease Date:	Dated as of _____, 2015 for reference purposes only
Landlord:	City of Alameda, a charter city and municipal corporation
Landlord's Address:	City of Alameda Alameda City Hall, Rm 320 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4700 Attn: City Manager **Notice Copy to:** City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4750 Attn: City Attorney
Tenant:	Alameda Point Partners, LLC a Delaware limited liability company
Tenant's Address:	Trammel Crow Residential 39 Forrest Street, Suite 201 Mill Valley, CA 94941 Telephone: 415-381-3001 Facsimile: 415-381-3003 Email: bd@thompsondorfman.com ***With copies to:*** c/o SRM Ernst Development Partners 2220 Livingston Street Suite 208 Oakland, CA 94606 Telephone: 510-219-5376 Facsimile: 510-380-7056 Email: jernst@srmernst.com ***And to:*** Madison Marquette 909 Montgomery Street Suite 200 San Francisco, CA 94133 Telephone: 415-277-6828 Facsimile: 415-217-5368 Email: pam.white@madisonmarquette.com

	And to: Marc Stice Stice & Block 2335 Broadway, Suite 201 Oakland, CA 94612 Telephone; 510-735-0032 Email: mstice@sticeblock.com
Building:	That certain building located at 51 West Trident Avenue, Alameda, CA 94501 on the Property (as defined in Section 1) and commonly referred to as Building 118 (the "**Building**").
Premises:	The Building and the land upon which the Building sits as well as any parking area, access area and landscaped area immediately adjacent to the Building, as approximately depicted in **Exhibit A** (the "**Premises**"), which shall be more particularly identified upon the delivery by Tenant of an Election Notice (defined herein).
Permitted Uses:	Permitted Uses are described in Section 3.3.
Length of Term:	One hundred and twenty (120) full calendar months, commencing on the Commencement Date and, unless earlier terminated or extended pursuant to the terms of this Lease, expiring on the Expiration Date ("**Term**").
Commencement Date:	The date that occurs six (6) months after the date of the Election Notice, provided that Tenant shall have the right, but not the obligation, to accelerate the Commencement Date to such earlier date, in Tenant's sole discretion, after Landlord notifies Tenant in writing that the Premises are vacant and ready for delivery to Tenant.
Expiration Date:	The date that is one hundred and twenty (120) full calendar months after the Commencement Date, unless extended or earlier terminated pursuant to the terms of this Lease.
Assignment and Subletting:	Tenant shall have the right to assign this Lease to a Permitted Assignee pursuant to the Assignment Right as provided in Section 13.1(b) and such Permitted Assignee shall have the right to sublease the Premises to subtenants as provided in Section 13.2 hereto.
Renewal Option:	Two (2) renewal options of ten (10) years each, as provided in Section 4.2.
Rent:	Base Rent and Additional Rent are described in Article 5. Hold Over Rent is described in Article 20.
Taxes and Utilities:	Tenant shall directly contract for and pay all costs for services and Utilities (as defined in Section 9.1) to the Premises, as further provided in the Lease. Tenant shall pay all taxes (including

	possessory interest taxes and other assessments against the real property) levied on or against the Premises or Tenant's personal property to the extent provided in Article 6.
Security Deposit:	As provided in Article 8 of this Lease.
Parking:	Tenant shall have the right to have its employees, contractors, agents, subtenants and visitors park in the paved areas adjacent to the Building which are part of the Premises.
Brokers:	N/A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and ALAMEDA POINT PARTNERS, LLC, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Lease**". Capitalized terms used in this Lease without further definition have the meaning given them in the Disposition and Development Agreement ("**DDA**") between the Landlord and Tenant dated _____, 2015, unless otherwise defined herein. The Landlord and Tenant are sometimes collectively referred to in this Lease as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Lease with reference to the following facts:

1. RECITALS.

A. Landlord is the fee title owner of or has the right to acquire that certain portion of Alameda Point known as "**Site A**" which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway.

B. Certain former tide and submerged lands, including some of the lands within the Property boundaries are or will be held by Landlord subject to a public trust for commerce, navigation and fisheries, once they are conveyed out of federal ownership (the "**Public Trust**"). Those lands within Site A that are subject to the Public Trust are referred to herein as the "**Tidelands Parcel**". The Premises is outside the Tidelands Parcel.

C. Pursuant to the terms and conditions contained and as defined in the DDA, Landlord will transfer fee title to Site A (except for the Tideland Parcel but including the Premises) to Tenant in scheduled phases for development as mutually agreed to by the Parties and incorporated into the DDA. Pursuant to the terms of the DDA and as provided in this Lease, prior to the acquisition of the Premises by Tenant (as defined in the DDA), Tenant has the right to (a) at Tenant's election, lease the Premises from Landlord pursuant to this Lease, by submitting an Election Notice and complying with the terms and conditions set forth in Section 3.2 and (b) assign the Lease to a Permitted Assignee (as defined below). In addition, pursuant to the terms of the DDA and as provided in this Lease, such Permitted Assignee has the right to enter into subleases (the "**Subleases**") to sublease the Premises to third-party subtenants ("**Subtenants**").

D. Landlord and Tenant wish Tenant to lease the Premises, on the terms and conditions set forth in this Lease.

In consideration of the foregoing and the promises and other provisions of this Lease, the Parties agree as follows:

2. Demise.

2.1. Effectiveness of Lease; Demise. In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be

performed by Tenant in this Lease during the Term, Landlord and Tenant enter into this Lease Agreement which shall be immediately effective as of the Effective Date. On the Commencement Date, Landlord will deliver possession of, the Premises to Tenant for Tenant's exclusive use and enjoyment for the Term hereinafter stated and Tenant's rights and obligations under this Lease shall commence as of such Commencement Date. Tenant shall have no right or obligation hereunder, including, without limitation, with respect to the payment of Rent, repair or maintenance of the Premises or any indemnity obligations, until the occurrence of the Commencement Date.

2.2. Subsequent Conveyance. Tenant expects to acquire the Premises at a future date as provided in the DDA (the "**Conveyance**"), subject to Tenant's right to transfer its right to acquire the Premises as provided in the DDA. Notwithstanding anything to the contrary set forth in this Lease, if the Conveyance occurs prior to Tenant's delivery of an Election Notice or if after such Conveyance, Tenant and the owner of the fee interest in the Premises are the same entity, then, upon the Conveyance, Tenant's and Landlord's interest in this Lease shall merge and this Lease shall automatically terminate and be of no further force or effect. If, however, after the Conveyance occurs Tenant and owner of the fee interest are distinct persons or entities, then upon the Conveyance, Landlord's leasehold interest shall be concurrently transferred to the transferee in such Conveyance and this Lease shall continue in full force and effect.

2.3. Operating Memoranda.

(a) Landlord and Tenant acknowledge that the provisions of this Lease require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties to this Lease. Landlord and Tenant desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of certain items covered in general terms under this Lease. If and when, from time to time during the term of this Agreement and during any time that the City of Alameda is the Landlord under this Lease, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Landlord and Tenant which, after execution, shall be attached to this Lease as addenda and become a part hereof. This Lease expressly describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(b) Operating Memoranda that implement the provisions of this Lease or that provide clarification to existing terms of this Lease, including, for example, the legal description of the Premises, or the incorporation of DDA terms after the expiration or termination of the DDA, may be executed on Landlord's behalf by the City Manager of the City of Alameda, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not materially change material terms of this Lease: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Lease. Any substantive or significant modifications to the terms and conditions of performance under this Lease shall be processed as an amendment of this Lease in accordance with applicable law, and must be approved by resolution of the City Council.

3. Premises and Permitted uses.

3.1. Premises. The Premises demised by this Lease are specified in the Basic Lease Information and are generally depicted in **Exhibit A** hereto, but shall at all times exclude any existing or future public roads or access routes reasonably necessary for access to other buildings owned by Landlord in the vicinity of the Building or for emergency vehicle access, and the inclusion of any public roads or access routes in the Premises at any time shall be subject to approval of the City of Alameda fire marshal. The Building has the address and contains the approximate square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less. The Parties further agree that upon Tenant's delivery of the Election Notice, Tenant and Landlord shall cooperate to prepare a more definite metes and bounds legal description of the Premises generally based on the depiction attached as **Exhibit A** hereto, at Tenant's sole cost and expense. Such legal description, when prepared, shall be deemed incorporated into this Lease by the Parties' execution of an Operating Memorandum which each Party agrees to promptly execute and deliver to each other Party.

3.2. Commencement Date; Delivery of Election Notice.

(a) This Lease shall commence upon the date that occurs six (6) months after the date Tenant delivers a written notice of its election to take possession of the Premises from Landlord (the "**Election Notice**"). Notwithstanding the foregoing, Tenant shall have the right, but not the obligation, in Tenant's sole and absolute discretion, to accelerate the Commencement Date to an earlier date selected by Tenant that shall occur after Tenant delivers the Election Notice and Landlord notifies Tenant in writing that the Premises are ready for early delivery to Tenant and vacant (such date, as may be accelerated, shall be the "**Commencement Date**").

(b) The Election Notice shall include either (i) a copy of the form of any sublease or subleases that Tenant is proposing for the Premises or alternatively, (y) Tenant's general schematic plans and cost estimates for Tenant's proposed Alterations to the Premises totaling not less than two hundred and fifty thousand dollars ($250,000.00), and (z) a statement of the planned use of the Premises, which use shall be consistent with the Permitted Use permitted herein. Any proposed Sublease shall conform to the requirements of Article 13 of this Lease for Subleases. Tenant shall promptly after its execution deliver a copy of any Sublease entered into with a Subtenant to Landlord.

(c) Tenant's Election Notice shall be to lease the whole Building only, as well as the Premises as defined herein (as may be subsequently modified in accordance with Section 3.1, above). Any Election Notice that meets the requirements of this Section 3.2 shall be deemed approved.

3.3. Tenant Fails to Sublease or Improve After Election Request.

If, after Tenant submits a valid Election Notice pursuant to Section 3.2, Tenant fails to enter into a Sublease as required hereunder or (b) fails to commence and then diligently prosecute to completion construction of the improvements described in Tenant's Election

Request, each within twelve (12) months of the Commencement Date, then Tenant shall, in lieu of any other Base Rent due hereunder, promptly pay **directly** to Landlord the Hold Over Rent (as defined in Article 21) starting in arrears from the Commencement Date and continuing until such time as Tenant either: (i) secures a binding executed Sublease for the Premises; or (ii) substantially completes construction of the improvements described in the Election Notice. Nothing in this Section 3.3 shall be interpreted to relieve Tenant of its obligations to maintain, repair and insure the Premises starting on the Commencement Date and throughout the Term of this Lease.

3.4. Possession. On the Commencement Date Tenant will accept the Premises in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Building, Premises or infrastructure for the conduct of Tenant's business. Landlord shall not be liable for any latent or patent defects in the Building and/or on the Premises. Tenant shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy from the City of Alameda. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 7.1 below), and any other requirements mandated by the Certificate of Occupancy inspection. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Building, Premises, or infrastructure, or with respect to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose.

3.5. Permitted Use.

(a) Permitted Uses – Generally. Tenant shall use the Building and Premises during the Term solely for those uses permitted in the Development Plan approved on June 16, 2015, the Town Center Plan adopted on July 15, 2014, and the DDA (collectively, the "**Development Documents**"), all as consistent with this Lease and for no other purpose ("**Permitted Uses**"). Tenant acknowledges and agrees that in no event will the Permitted Uses include any residential use. For purposes of this Section 3.3 only, if there is a conflict between the above documents as it relates to permitted uses, the Development Plan shall govern over the Town Center Plan which shall govern over the DDA.

(b) Regulatory Approvals Required. Nothing in this Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City of Alameda for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. In approving a Permitted Use, improvement or other activity under this Lease, Landlord is acting in its capacity as owner of the Premises only, not in its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City of Alameda or other regulatory agency.

3.6. Termination or Expiration of DDA After Lease Execution and Prior to Conveyance or other Termination or Expiration of Lease.

(a) Prior to Commencement Date. The "**DDA Term**" as used in this Lease shall be the period during which the DDA is in effect, prior to its termination or expiration. If the DDA Term ends after the execution of this Lease but prior to the Commencement Date (as defined in Section 3.2, this Lease shall automatically terminate and be of no further force or effect whatsoever.

(b) After Commencement Date. If the DDA Term ends after the execution of this Lease and after the Commencement Date, then this Lease shall continue in full force and effect without reference to the DDA except as expressly set forth herein. Landlord shall have the right to sell its fee interest in the Premises and assign its interest as Landlord in this Lease (subject to all the terms and conditions herein) at Landlord's sole discretion. If Landlord sells its fee interest in the Premises, Landlord shall assign its interest under this Lease, and Landlord's successor owner of the Premises, assignee or transferee shall be the "Landlord" under this Lease.

(c) Any provisions of the DDA referenced in this Lease shall be deemed to be incorporated into this Lease and the Parties agree to reasonably cooperate to execute an Operating Memorandum to incorporate such terms of the DDA expressly into this Lease as are required for the purpose of the effectiveness and performance of the Parties' rights and obligations under this Lease.

3.7. Telecommunications Equipment. At no time shall Tenant have the right to install, operate or maintain telecommunications or any other equipment on the roof or exterior areas of the Building, except as may be necessary for Tenant's Permitted Use of the Premises (including use of the Premises by Subtenants) and Tenant's installation of such equipment is done in full compliance with Article 10 (Alterations).

4. Term.

4.1. Term.

(a) Lease Term. The term of this Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing upon the Commencement Date and, unless extended or earlier terminated as expressly provided herein, expiring on the Expiration Date. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Tenant fails to execute and deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant. Nothing in this Lease, including with respect to the Term hereof, shall amend or modify the obligations of Developer under the DDA, including with respect to the Milestone Schedule (as such term is defined in the DDA).

4.2. Option to Renew.

(a) Renewal Option. Tenant shall have two (2) options to extend the Term (each a "**Renewal Option**"), for a period of ten (10) years each (each a "**Renewal Term**"). A Renewal Option may be exercised only by Tenant, the Permitted Assignee and may not be exercised by any other sublessee or assignee or by any other successor or assign. Tenant may exercise the first Renewal Option if Tenant has invested (or will, by the end of the initial Term, invest) not less than two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations (as defined in Section 10.1, below), including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**First Renewal Investment**"). Tenant shall submit with its Renewal Notice for the first Renewal Option reasonable evidence that Tenant has made such First Renewal Investment. Tenant may exercise the second Renewal Option if Tenant has invested (or will, by the end of the first Renewal Term, invest) not less than an additional two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations, including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**Second Renewal Investment**"). Tenant shall submit with its Renewal Notice for the second Renewal Option reasonable evidence that Tenant has made such Second Renewal Investment. If Tenant submits a Renewal Notice after the end of the DDA Term, then, in addition to the First Renewal Investment or the Second Renewal Investment, Tenant shall make a one-time payment of $978,965 per acre of the Premises (as such amount is escalated each year from the Lease Date until the date of payment by the increase in the cost of construction as reported by the Engineering News Record Construction Cost Index for the San Francisco Bay Area or similar index if the Engineering News Record index is no longer published) to the City for infrastructure improvements consistent with the Alameda Point Master Infrastructure Plan and Alameda Point Development Impact Fee (Alameda Municipal Code 27-4.5) in connection with the first Renewal Option exercised by Tenant after such end of the DDA Term. A Renewal Option shall be effective only if Tenant is not in Default under this Lease, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term. Tenant shall exercise each Renewal Option, if at all, by written notice ("**Renewal Notice**") from Tenant to Landlord, in a form substantially the same as **Exhibit F**, given not more than twelve (12) months nor less than nine (9) months prior to expiration of the initial Term with respect to the first Renewal Option, and given not more than twelve (12) months nor less than nine (9) months prior to expiration of the first Renewal Term with respect to the second Renewal Option. Any such notice given by Tenant to Landlord shall be irrevocable. If Tenant fails to exercise a Renewal Option in a timely manner as provided for above such Renewal Option (and any remaining subsequent Renewal Option) shall be void.

(b) Terms and Conditions. If Tenant exercises a Renewal Option, the Term shall be extended for an additional period of ten (10) years upon the same terms and conditions as the initial Term (or the Renewal Term, for the second Renewal Option) except that (i) there shall be one fewer Renewal Option available to Tenant at the expiration of the first Renewal Term and no Renewal Option available to Tenant at the expiration of the second Renewal Term, (ii) Tenant shall continue to occupy the Premises in its "as-is" condition without any tenant improvement allowance from Landlord, and (iii) the Base Rent during each Renewal Term (the "**Renewal Rate**") after the expiration or earlier termination of the DDA shall be Fair Market Rent which shall be determined using the process provided in Section 5.1 below.

(c) Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Landlord.

5. Rent.

5.1. Base Rent, Use of Rent and Audit Rights.

(a) Base Rent and Use of Rent for Term During DDA Term. From and after the Commencement Date and until the earlier of the Conveyance or the expiration or termination of the DDA Term, all income received by Tenant from the Premises and expenses incurred by Tenant related to the Premises shall be included in the calculation of Unleveraged Cash Flow as that term is defined in Section 2.3(a)(10) of the DDA. The application of such expenses and revenues to Unleveraged Cash Flow shall be deemed to be Base Rent as provided hereunder and no additional Base Rent shall be payable by Tenant during the DDA Term.

(b) Base Rent for Term After DDA Term Ends. If the DDA Term ends prior to Conveyance, the Base Rent for the Premises commencing upon the expiration or termination of the DDA Term shall be the "Fair Market Rent." For purposes of this Section, "**Fair Market Rent**" means the prevailing rental rate per square foot then being obtained by landlords for buildings or spaces comparable to the Building in its condition as of the Commencement Date, located in the City of Alameda, taking into account (in either case) applicable base years, tenant improvement allowances, free rent periods and other tenant concessions, existing improvements and configuration of the space, any additional rent and all other payments and escalations payable hereunder and by tenants under leases of such comparable spaces as determined by the following process:

(i) Within thirty (30) days after the effective date of the expiration or termination of the DDA Term or as soon thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of the Fair Market Rent ("**Rate Notice**").

(ii) Tenant shall have twenty (20) days ("**Response Period**") after receipt of the Rate Notice to advise Landlord whether or not Tenant agrees with Landlord's determination of the Fair Market Rent. If Tenant does not respond to Landlord in writing within the Response Period, then Tenant shall be deemed to have accepted the Fair Market Rent specified by Landlord in the Rate Notice and Tenant shall be obligated to pay the Fair Market Rent as of the expiration or termination of the DDA Term. If Tenant agrees or is deemed to have agreed with Landlord's determination of the Fair Market Rent, then such determination shall be final and binding on the Parties.

(iii) If Tenant notifies Landlord in writing during the Response Period that Tenant disagrees with Landlord's determination of the Fair Market Rent, then within twenty (20) days after Landlord's receipt of Tenant's written notice, Landlord and Tenant shall each retain a licensed commercial real estate broker with at least five (5) years' experience negotiating commercial lease transactions in the cities of Alameda and Oakland, California and the Fair Market Rent shall be determined as follows:

A. If only one broker is appointed by the Parties during such period, then said broker shall, within twenty (20) days after his or her appointment, determine the Fair Market Rent.

B. If Landlord and Tenant each appoint a broker during such period, then the brokers shall meet and confer during the thirty (30) day period commencing on the date on which the last of the brokers has been appointed ("**Broker Negotiation Period**") to attempt to mutually agree upon Fair Market Rent.

C. If the brokers cannot agree upon Fair Market Rent as of the expiration of the Broker Negotiation Period, the two brokers shall, within twenty (20) days thereafter, attempt to select a third broker meeting the qualifications stated in this Section.

D. If the two brokers are unable to agree on the third broker, either Landlord or Tenant, by giving fifteen (15) days written notice to the other Party, can apply to then Presiding Judge of the Superior Court of Alameda County for the selection of a third broker who meets the qualifications stated in this paragraph.

E. Landlord and Tenant shall each bear one half (1/2) cost of appointing the third broker and paying the third broker's fees. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

F. The third broker shall, within twenty (20) days after his or her appointment, make a determination of Fair Market Rent. The determinations of Fair Market Rent prepared by all three (3) brokers shall be compared and the Fair Market Rent shall be whichever of the determinations by Landlord broker or Tenant's broker is closer to the determination of the third broker (and if they are equally close, the Fair Market Rent shall be the determination of the third broker). Such determination shall be final and binding upon the Parties.

(iv) Promptly following determination of Fair Market Rent pursuant to this Section, the Parties shall execute an Operating Memorandum memorializing such Fair Market Rent. After the Fair Market Rent has been determined, the Base Rent for the Premises shall increase at the annual rate of three percent (3%) per year throughout remaining Term of the Lease.

(c) Audit Rights. After the Commencement Date, Landlord shall be entitled from time to time to audit Tenant's books, records, and accounts pertaining to the collection and calculation of Base Rent by Tenant. Such audit shall be conducted during normal business hours upon five (5) business days' notice at the principal place of business of the Tenant and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. Landlord shall not be entitled to more than one audit for any particular calendar year, unless it shall reasonably appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. Landlord shall provide Tenant with copies of any audit performed ("**Audit Report**").

5.2. Additional Rent. As used in this Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent and Hold Over Rent, that are due and payable by Tenant under the terms of this Lease. The term "**Rent**," as used herein, shall mean all Base Rent (Section 5.1), Additional Rent (Section 5.2), Hold Over Rent (Article 21) and all other amounts payable hereunder from Tenant to Landlord, including any amount payable by Tenant to Landlord for Utilities pursuant to Section 9.1. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

5.3. Interest. Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) seven percent (7%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

6. Operating Expenses and Taxes.

6.1. Definitions. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, the amount payable by Tenant for Taxes and Operating Expenses shall be equitably adjusted for the Tax and Expense Years involved in any such change.

(b) **Taxes** shall mean all taxes, special taxes, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, excluding any personal property of Landlord used in the operation of the Building or Premises or Landlord's interest in the Premises but including Personal Property Taxes or possessory interest taxes which are the subject of Article 9. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Premises or any occupants thereof, on the use or occupancy of the Premises, on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Tenant or the Premises by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Parties on the date of this Lease. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over

different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord any refunded or recovered Tax previously paid by Tenant (and the foregoing obligation shall survive the termination or expiration of this Lease). Notwithstanding anything to the contrary set forth herein, during the DDA Term, Landlord agrees that Landlord will not, in its capacity as the property owner, consent or vote for any special assessments or taxes applicable to the Premises that are not consistent with Section 3.1(c) of the DDA, provided, however, nothing herein shall prevent the Landlord in its capacity as a taxing entity with the power to levy taxes from imposing taxes applicable to the Premises provided such taxes are generally applicable to similar properties in the City.

(c) **"Operating Expenses"** shall mean all costs of the management, operation, maintenance, insurance, repair and replacement of the Premises (including the exteriors, windows and roof of the Building and paved portions of parking areas included in the Premises).

6.2. Payment of Operating Expenses and Taxes. Tenant shall directly pay when due and before delinquency, all Operating Expenses and Taxes for the Premises. With reasonable promptness after the end of each Tax and Expense Year, Tenant shall submit to Landlord a statement showing the actual amount paid by Tenant with respect to Taxes and Operating Expenses for the past Tax and Expense Year ("**Tenant's Statement**"). The Parties acknowledge that this Lease is intended to be triple net to Tenant. Tenant is responsible for the entire cost of all Utilities, Taxes, maintenance and repair and other costs attributable to the management, operation, maintenance, insurance, repair and replacement of the Premises during the Term.

6.3. Personal Property Taxes. Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term ("**Personal Property Taxes**").

6.4. Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the Party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

6.5. Payment. Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. Tenant shall pay the Personal

Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either: (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes; or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

7. Compliance with Laws.

7.1. Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "**ADA**"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Premises into compliance with applicable ADA requirements and to ensure that the Premises remain in compliance throughout the Term of this Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant at the Property, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Building.

7.2. Compliance with Restrictions. The Premises is located on property known as the former Naval Air Station Alameda, portions of which were conveyed to the City by the United States of America, acting by and through the Department of the Navy by quitclaim deeds dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199826 and Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**") and portions of which are subject to the Lease in Furtherance of Conveyance dated June 6, 2000 as amended by the Amendment No. 1 dated November 28, 2000 and Amendment No. 2 dated March 30, 2009 ("**LIFOC**") Said Quitclaim Deed and LIFOC conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises is further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). The Premises is also subject to a Site Management Plan. Copies of the Quitclaim Deed, LIFOC, Declaration of Restrictions and Site Management Plan have been delivered to Tenant and, concurrently with the execution of this Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the office of the County Recorder, Alameda County, CA (the "**CRUP**"), the National Environmental Protection

Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. A copy of the ROD is available for review at Landlord's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions, the Site Management Plan, the CRUP and the ROD, as they affect the Premises, are collectively referred to herein as the "**Restrictions**." Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Lease.

7.3. Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Premises (collectively "**Use Permit**").

8. Security Deposit.

No security deposit is required by Tenant under this Lease during the DDA Term. Upon the expiration or Termination of the DDA Term and the calculation of the Fair Market Rent payable by Tenant, Tenant shall deliver to Landlord a Security Deposit equal to Base Rent payable for one (1) calendar month (the "Security Deposit"). The Security Deposit shall be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy Tenant's breach under this Lease or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord so uses or applies all or any portion of the Security Deposit, then within fifteen (15) days after demand therefore, Tenant shall deposit cash with Landlord in an amount sufficient to restore the deposit to the full amount thereof, and Tenant's failure to do so shall constitute a Default under this Lease. If there are no payments to be made from the Security Deposit as set out in this paragraph, or if there is any balance of the Security Deposit remaining after all payments have been made, the Security Deposit, or such balance thereof remaining, will be refunded to the Tenant after the expiration or earlier termination of this Lease. Tenant hereby waives the benefit of the provisions of California Civil Code Section 1950.7. In the event of an act of bankruptcy by or insolvency of Tenant or the appointment of a receiver for Tenant or general assignment for the benefit of Tenant's creditors, the Security Deposit shall be deemed immediately assigned to Landlord.

9. Utilities.

9.1. Payments for Utilities and Services. Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the Premises, together with all related installation or connection charges or deposits ("**Utilities**"). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay **directly** to Landlord, as Additional Rent, all actual utility costs (without markup) paid by Landlord for use at the Premises on or before the date that is thirty (30) days after billing by Landlord. If any Utilities

are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code Section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

9.2. No Liability of Landlord. Except in the case of the gross negligence or willful misconduct of Landlord or any Landlord Related Party, after the Commencement Date, neither Landlord nor Landlord Related Parties shall be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the Premises, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises, or arising from the partial or total unavailability of the service or utility to the Premises, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its obligations under this Lease.

10. Alterations.

10.1. Permitted Alterations. A material consideration of Landlord entering into this Lease is the agreement by Tenant to make certain alterations to the Premises as required or approved for the Premises in connection with the Development Documents, including, without limitation, any Initial Improvements to be made by Tenant and landscaping and site work consistent with the Development Plan (the "**Permitted Alterations**"). During the DDA Term, notwithstanding anything to the contrary, Tenant shall have the right, without the further consent of Landlord to make any Permitted Alterations and, notwithstanding anything to the contrary in this Lease, including in this Article 10 or Article 20, Tenant shall have no requirement to remove any Permitted Alterations during or upon the expiration of the Term. The foregoing shall not exempt or affect Tenant's obligation to comply with applicable laws or secure any necessary permits from Landlord in its capacity as a governmental entity.

10.2. Other Alterations. Any alterations to the Premises made by Tenant, including the Permitted Alterations (collectively, the "**Alterations**"), shall be at Tenant's sole cost and expense, made in compliance with all applicable Laws and all reasonable requirements requested by Landlord. Tenant shall comply with the construction requirements set forth in Section 6.6 of the DDA (whether during or after the expiration or termination of the DDA Term), and, to the extent not done as part of such construction requirements, the following requirements shall also apply. Prior to starting work, Tenant shall furnish Landlord with plans and specifications (which shall be in CAD format if requested by Landlord); names of contractors reasonably acceptable to Landlord; required permits and approvals; evidence of contractors and subcontractors insurance in amounts reasonably required by Landlord and naming Landlord, Landlord Related Parties (as defined in Section 14.1) and such other persons or entities as Landlord may reasonably request,

as additional insureds; and any security for payment in performance and amounts reasonably required by Landlord. In addition, if any such Alteration requires the removal of asbestos, an appropriate asbestos disposal plan, identifying the proposed disposal site of all such asbestos, must be included with the plans and specifications provided to Landlord. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for Alterations. Landlord agrees to respond to Tenant's request for consent to any Alterations within fifteen (15) business days following Tenant's delivery of such request, accompanied by plans and specifications depicting the proposed Alterations ("**Plans**") and a designation of Tenant's general contractor (and major subcontractors) to perform such work. Landlord's response shall be in writing and, if Landlord withholds its consent to any Alterations, Landlord shall specify in reasonable detail in Landlord's notice of disapproval, the basis for such disapproval. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Plans, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Plans and contains the following statement in bold and capital letters:

> **"THIS IS A SECOND REQUEST FOR APPROVAL OF PLANS PURSUANT TO THE PROVISIONS OF SECTION 10.2 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE PLANS DESCRIBED HEREIN."**

If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Plans in question shall be deemed approved by Landlord in its proprietary capacity only. If Landlord timely delivers to Tenant a notice of Landlord's disapproval of any Plans, Tenant may revise Tenant's Plans and resubmit such Plans to Landlord; in such event the scope of Landlord's review of such Plans shall be limited to Tenant's correction of the items to which Landlord had previously objected. Landlord's review and approval (or deemed approval) of such revised Plans shall be governed by the provisions as set forth above in this Section 10.2. The procedure set forth above for approval of Tenant's Plans will also apply to any change, addition or amendments to Tenant's Plans. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. Upon completion, Tenant shall furnish Landlord with at least three (3) sets of "as built" Plans (as well as a set in CAD format, if requested by Landlord) for the Alterations, completion affidavit and full and final unconditional waivers of liens and will cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Any Alteration shall become the property of Landlord upon the expiration or earlier termination of this Lease, provided that the Conveyance has not occurred, and further provided that Landlord has not required Tenant to remove any Alterations prior to the expiration or sooner termination of this Lease. If Tenant serves a request in writing together with Tenant's request for Landlord's consent to any such Alterations ("**Removal Request**"), Landlord will notify Tenant at the time of Landlord's consent to any such Alterations as to whether Landlord requires their removal. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Tenant. If Tenant fails to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Landlord may do so and may charge the reasonable costs thereof to Tenant. All Alterations shall be made in good and workmanlike manner and in a manner that

will not disturb other tenants and Tenant shall maintain appropriate liability and builders' risk insurance throughout the construction. Tenant shall indemnify, defend, protect and hold Landlord and Landlord Related Parties harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due. Landlord's review and approval of any Alterations pursuant to this Lease shall be in its proprietary capacity as Landlord and no such approval shall constitute approval by the City of Alameda in its regulatory capacity. Tenant shall be obligated to obtain any permits and approvals from the City and any other governmental entities necessary for the Alterations.

10.3. Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Building) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., contacting Underground Service Alert or similar underground surveying services, potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval in its propriety capacity (which shall also require the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.4. Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use at the Premises. Tenant shall remove within a reasonable period of time not to exceed ten (10) days after notice of such lien, any mechanic liens or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Lease for any labor or materials furnished to Tenant in connection with work performed in, on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord and Landlord Related Parties (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

11. Maintenance and Repair of Premises.

11.1. Maintenance and Repair by Tenant.

(a) Tenant Maintenance. Tenant shall, at its sole cost and expense, maintain the Premises in good repair and in a neat and clean operating condition, including making all necessary repairs and replacements. Tenant's repair and maintenance obligations include, without limitation, repairs to all elements of the Building (including the roof, support structures, foundations, windows and exterior of the Building) and outdoor paved areas used for parking. Tenant's obligation to maintain any landscaping at the Premises shall be subject to any limitations on water use imposed by local, state or federal authorities, and Tenant shall not be required to incur any penalties in connection with respect to such water use in an effort to satisfy maintenance obligations under this Lease.

(b) Tenant Repair. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Building caused by Tenant or Tenant's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by: (i) the construction or installation of improvements to the Premises by or on behalf of Tenant; and (ii) the moving of any property into or out of the Building. If Tenant fails to make such repairs or replacement within fifteen (15) days after notice from Landlord, then Landlord may, at its option, upon prior reasonable notice to Tenant (except in an emergency) make the required repairs and replacements and the costs of such repairs or replacement (including a reasonable administrative charge) shall be charged to Tenant as Additional Rent and shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

12. Environmental Protection Provisions.

12.1. Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2. Reportable Uses Required Consent. Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (for purposes of this Article 12, referred to collectively herein as "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or transported to or from the Premises without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor.

12.3. Remediation Obligations. If at any time during the Term, any contamination of the Premises by the introduction of Hazardous Materials or the release or disturbance of Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement

of all amounts reasonably paid or incurred by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by a pending invoice or proof of payment of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "**Tenant's Contamination**" shall not refer to or include any Hazardous Materials that were not clearly introduced to the Premises by Tenant or Tenant Parties during the Term and shall in no event include any site contamination or conditions at the Premises pre-existing the Term, whether known or unknown, provided that the foregoing shall not affect any obligations of Tenant under the DDA during the DDA Term. Notwithstanding anything set forth herein, Landlord shall have no responsibility for the remediation or containment of any asbestos or lead dust found within the Building.

12.4. Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5. Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Absent the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such Landlord officer, agent, employee, contractor or subcontractor into or onto the Premises.

12.6. Hazardous Materials Handling Plan. Upon delivery of the Exercise Notice, Tenant shall execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit D** attached hereto, and Tenant shall, upon the execution of any Sublease, cause each Subtenant who will use any Hazardous Materials at the Premises to execute and deliver to Landlord an Environmental Questionnaire. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**") which shall be consistent with the Restrictions in Section 7.2. For a period of fifteen (15)

days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord's disapproval thereof. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, the Site Management Plan and the Hazardous Materials Handling Plan. Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto in Tenant's possession or control: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant's Permitted Use of the Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.7. Hazardous Materials Indemnity. In addition to any other provisions of this Lease, from and after the Commencement Date, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Landlord Related Parties from and against any loss, damage, cost, expense or liability Landlord may incur directly or indirectly arising out of or attributable to any Tenant's Contamination, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans and (3) all reasonable costs and expenses incurred by Landlord in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees. Tenant's obligation to indemnify, defend and hold harmless under this Section 12.7 shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

13. Assignment and Subletting.

13.1. Assignment.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law: (a) except in connection with Tenant Financing (as defined below), mortgage, pledge, hypothecate or encumber this Lease or any interest therein; (b) assign

or transfer this Lease or any interest herein, or any right or privilege appurtenant thereto or any portion thereof, without first obtaining the written consent of Landlord.

(b) Notwithstanding the foregoing, Tenant shall have the right but not the obligation (the "**Assignment Right**"), either concurrent with the delivery of the Election Notice or at any time thereafter, upon thirty (30) days prior written notice to Landlord (the "**Assignment Notice**"), to assign Tenant's entire interest in this Lease to any transferee permitted under Section 12.4 and 12.5 of the DDA (each a "**Permitted Assignee**"). Any such Assignment Notice shall identify the Permitted Assignee and the date such assignment shall be effective (the "**Permitted Assignment Date**") and include a copy of a written agreement whereby Tenant assigns all its right, title, obligation and interest in this Lease to Permitted Assignee and Permitted Assignee assumes all such right, title, obligation and interest. The Permitted Assignee shall expressly assume and agree to perform all the terms and conditions of this Lease to be performed by Tenant after the Permitted Assignment Date and to use the Premises only for a Permitted Use. On and after the Permitted Assignment Date, provided that the written assignment complies with the requirements in this subsection, Tenant shall be automatically and forever released of any and all liability and obligation under this Lease other than any obligations that arise after the Commencement Date and prior to the Permitted Assignment Date.

Subletting. The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of sublease (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the proposed Sublease between Tenant and the proposed Subtenant. Tenant shall provide Landlord with any additional information or documentation reasonably requested by Landlord within ten (10) business days after receiving Landlord's request. Landlord shall then have a period of thirty (30) days following receipt of such additional information (or 30 days after receipt of Tenant's Sublet Notice if no additional information is requested) within which to notify Tenant in writing that Landlord elects either to approve or disapprove of the sublet, and if, disapproved, the reason for such disapproval. If Landlord fails to respond, upon the expiration of the applicable time period, the Sublease that is the subject of the Sublet Notice shall be deemed approved. Landlord may disapprove of any Sublease only if: (i) the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use or (ii) the Sublease will interfere with the Milestone Schedule or Phasing Plan in the DDA.

13.2. Intentionally Deleted.

13.3. Tenant Financing; Rights of Holders. Notwithstanding anything to the contrary contained in this Article 13, Tenant may obtain financing of improvements to the Premises, including any Alterations, and any of Tenant's obligations under the Development Documents as apply to the Premises (the "**Tenant Financing**").

(a) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any mortgagee of any Tenant Financing.

(b) The lender under any Tenant Financing permitted under this Section 13.3 shall be a "**Permitted Mortgagee**" and shall be entitled to the rights and, if applicable, subject to the obligations of a Permitted Mortgagee under Article 13 of the DDA. In addition, Landlord and Tenant expressly acknowledge that nothing in this Lease shall be deemed a grant by Tenant of a security interest, or other lien, in favor of Landlord, upon any of Tenant's personal property situated in or upon the Premises, and Landlord expressly waives any rights, whether statutory or otherwise, that it may have to any lien against Tenant's personal property as may be required to secure the Tenant Financing, unless said lien is obtained pursuant to a judgment of a court of competent jurisdiction. Landlord further agrees to execute a reasonable form of Landlord lien waiver and nondisturbance agreement as may be required by a Permitted Mortgagee to secure the Tenant Financing.

13.4. No Release. No assignment, Sublease or other transfer other than the Permitted Assignment shall release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue to be fully liable hereunder. Each Subtenant or assignee (including Permitted Assignee) shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease. The assignment or Sublease, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or Subtenant, then Tenant shall hold such sums in trust in the segregated account for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sum shall not constitute an acceptance by Landlord of attornment by such assignee or Subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each assignment, Sublease or transfer agreement and an agreement of compliance by each such Subtenant or assignee.

13.5. Limitations on Transfer Reasonable. Given the long term and complex relationship between the Landlord and Tenant established by the DDA, Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Lease or any other interests herein, to Sublease the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to Sublease the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

14. Indemnity and Waiver of Claims.

14.1. Indemnification.

(a) From and after the Commencement Date, Tenant shall indemnify, defend and hold harmless Landlord and its City Council, boards, commissions, officers, employees and agents ("**Landlord Related Parties**") against and from all liabilities, obligations, damages,

penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "**Losses**"), arising from: (a) the use of, or any activity done, permitted or suffered in or about the Premises; (b) any activity done, permitted or suffered by Tenant or any Tenant Party in or about Premises; (c) any act, neglect, fault, willful misconduct of Tenant or Tenant Parties; or (d) from any breach or default in the terms of this Lease by Tenant or any Tenant Party, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Landlord or Landlord Related Parties. If any action or proceeding is brought against Landlord and/or Landlord Related Parties by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord Related Parties from responsibility for, waives its entire claim of recovery for and assumes all risks of: (i) damage to property or injury to person in or about the Premises from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties; or (ii) loss resulting from business interruption or loss of income at the Premises.

(b) Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties against and from all Losses, arising (a) prior to the Commencement Date and (b) after the Commencement Date if arising from any gross negligence or intentional misconduct by Landlord and/or Landlord Related Parties If any action or proceeding is brought against Tenant and/or Tenant Parties by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

14.2. Waiver of Claims. Except in the event of the gross negligence or willful misconduct of Landlord or Landlord Related Parties, Landlord shall not be liable to Tenant or any Tenant Party with respect to the Premises after the Commencement Date and Tenant hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises after the Commencement Date from any cause. Without limiting the foregoing, except in the event of the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement of rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the Premises. The Parties agree that in no case shall either Party, or any Landlord Related Party or Tenant Party, be responsible or liable on any theory for any injury to the other Party's, Landlord Related Party's or Tenant Party's business, loss of profits, loss of income or any other form of consequential damage.

14.3. Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any

insurance carrier of its obligations under any policies required to be carried by either Party pursuant to this Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

15. Insurance.

15.1. Tenant's Insurance

(a) Property Insurance. Tenant shall continuously keep the Premises and all improvements thereon insured during the Term for the mutual benefit of Tenant and Landlord and Landlord Related Parties as required by this Section 15.1(a).

(i) Such insurance shall include Landlord as named insured and Tenant as an additional insured and shall provide coverage on virtually an all risk basis, including the peril of flood but not including earthquake unless such insurance is available at commercially reasonable rates, as determined in Tenant's sole discretion.

(ii) Such insurance shall be on a replacement cost basis in an amount not less than the then current one hundred percent (100%) replacement cost of the Building and improvements at the Premises, and with a deductible subject to the approval of Landlord.

(iii) Such insurance shall include coverage for the demolition of a damaged structure and for increased costs of reconstruction arising from or caused by changes in building codes and other laws.

(iv) Such insurance shall also include comprehensive boiler and machinery coverage for all objects, including but not limited to boilers, pressure vessels, pressure piping and other major components or any centralized heating, air conditioning and cooling system and elevator system.

(b) Liability Insurance. Tenant shall obtain and maintain or cause its subtenants to obtain and maintain in full force at all times that the Premises is subject to this Lease, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars ($2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord or Landlord Related Parties covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord or Landlord Related Parties; and (v) name Landlord and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.

(c) Personal Property Insurance. Tenant and/or its subtenants shall obtain and maintain in full force and effect personal property insurance on all of their personal property, furniture, furnishings, trade fixtures and equipment from time to time located at the Premises ("**Tenant's Property**"), and any Alterations (as defined in Article 10) in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause or Loss") fire and casualty insurance policy. Landlord shall have no interest in the insurance upon Tenant's Property or Alterations and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Landlord will not carry insurance on Tenant's Property or Alterations.

(d) Worker's Compensation Insurance; Employer's Liability Insurance. Tenant and its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, worker's compensation insurance with not less than the minimum limits required by law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000.00).

(e) Pollution Legal Liability. Commercial Pollution Legal Liability Insurance with coverage limits of not less than Ten Million Dollars ($10,000,000).

(i) Commercial Pollution Legal Liability. Tenant shall use commercially reasonable efforts to maintain a Commercial Pollution Legal Liability Insurance with coverage limits of not less than One Million Dollars ($1,000,000) annual aggregate covering claims arising out of or related to Tenant's Contamination during the term of this Lease.

A. Such policy shall name Tenant and each of its sub-tenants as a named or additional insured and shall name the City as an additional insured.

B. Such policy may be placed on a multi-year basis, provided, however, in no event shall the term exceed five (5) years and, if placed on a multi-year basis, the required coverage shall be a One Million Dollar ($1,000,000) annual aggregate and a Three Million Dollar ($3,000,000) general aggregate for the term of such policy.

C. If Tenant obtains the Pollution Legal Liability policy required by Section 16.7¶(a) or (d) of the DDA (the "**DDA PLL Policy**"), such DDA PLL Policy shall satisfy the requirements of this Section 15.1(e)(i) for the term of the "new releases" coverage provided by DDA PLL Policy.

(ii) Contractor's Pollution Legal Liability. Tenant shall cause the general contractor retained for the rehabilitation of the Premises shell improvements to obtain and maintain Contractor's Pollution Liability Insurance covering the general contractor and all subcontractors in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction. Any such policy shall name the City as an additional insured.

(f) Business Interruption Insurance. Tenant shall maintain in full force and effect during the Term of this Lease, Business Interruption Insurance with a limit of liability representing loss of at least approximately twelve (12) months of income.

(g) Automobile Liability. Tenant and/or its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability. Such policy shall be in an amount of not less than One Million Dollars ($1,000,000) combined singled limit.

15.2. Requirements For All Policies. Each policy of insurance required under Section 15.1 shall: (a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's or its Subtenant's sole cost and expense, and (c) require at least thirty (30) days' written notice (ten (10) day's written notice for non-payment of premium) to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state of California. Any deductible amount under such insurance shall not exceed $50,000. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty days prior written notice of any cancellation or modification.

15.3. Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article is in full force and effect, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form. In addition to the foregoing, Tenant shall provide to Landlord, upon request, copies of the actual insurance policies for the insurance required to be carried by Tenant pursuant to this Lease, including any endorsement affecting the additional insured status and evidence that premiums therefor have been paid.

Subrogation Waiver. Tenant hereby grants to Landlord and Landlord Related Parties, on behalf of itself and any insurer providing comprehensive general and automotive liability insurance to Tenant pursuant to this Lease, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord and/or Landlord Related Parties by virtue of the payment of any loss under such insurance. Tenant further agrees to include a subrogation waiver in each of its subleases requiring a similar waiver by its subtenants and their insurers in favor of Landlord and Landlord Related Parties.

15.4. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under Section 15.1 through Section 15.4, inclusive, such failure shall be a Default. If such Default continues after notice and expiration of any applicable cure period provided in this Lease, such Default shall be a Default entitling Landlord, at its election and in addition to such remedies as may otherwise be available under this Lease, to procure and maintain the required coverage. Tenant shall reimburse Landlord for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable **directly** to Landlord as Additional Rent and shall be due on or before the date that is thirty (30) days after billing by Landlord, failing which payment Landlord may exercise any and all remedies available to it under this Lease, at law or in equity. The failure by Landlord to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

16. Damage or Destruction.

16.1. Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property (as defined at Section 15.1(c)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction and the estimated time for repairing said damage.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction.

(c) **"Insured Loss"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which was caused by an event required to be covered by the insurance described in Article 15, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the Building or improvements owned by Landlord (including Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) **"Hazardous Material Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 13.1), in, on, or under the Premises which requires repair, remediation, or restoration.

16.2. Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.3. Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, upon Tenant's written election, this Lease shall terminate and be of no force or effect except for those obligations specified in this Lease that expressly survive the expiration or termination of this Lease. If not so terminated, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.4. Abatement of Rent. In the event of Premises Partial Damage, Premises Total Destruction or Hazardous Material Condition, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. All other obligations of Tenant

hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

16.5. Limit on Claims.Tenant shall have no claim against Landlord for any Losses (as defined in Section 14.1) suffered by Tenant not caused by: (i) a breach of this Lease by Landlord; or (ii) the gross negligence or intentional misconduct of Landlord or Landlord Related Parties. Tenant and Landlord each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such sections or laws apply to any Losses. The Parties intend that the provisions of this Lease control in lieu of such laws.

17. Condemnation.

If the whole or if any material part of the Premises or Building under this Lease are taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises or Building unsuitable, in Landlord's reasonable opinion, for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking and any repairs by Tenant or its subtenants would be untenantable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations or if such Taking will make more than twenty-five percent (25%) of the Premises unusable by Tenant or Subtenants for the Permitted Use for a period greater than twelve (12) months, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The terminating Party shall provide written notice of termination to the other Party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in Tenant's or Subtenants' ability to use the Premises for the Permitted Use. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's leasehold interest in the Premises, and/or the value of Tenant's fixture, equipment and personal property (specifically excluding components of the Premises which exist prior to the Commencement Date or were paid for by Landlord), or Tenant's loss of business goodwill, provided that such award does not reduce any award otherwise allocable or payable to Landlord.

18. Default.

18.1. Events of Default. The occurrence of any of the following shall constitute a "**Default**" by Tenant if Tenant fails to cure such event within ten (10) days after written notice from Landlord:

(a) Tenant fails to pay Base Rent and Additional Rent in violation of Section 5.1 and Section 5.2.

(b) Tenant uses or permits the Premises to be used for purposes or activities that are in violation of the Permitted Uses contained in Section 3.3.

(c) Tenant fails timely to deliver any subordination document or estoppel certificate required to be given under this Lease within the applicable time period specified herein below.

(d) Tenant violates the restrictions on assignment, sublet or transfer set forth in Article 13.

(e) Tenant abandons the Premises as defined in Section 1951.3 of the California Civil Code.

(f) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(g) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (g) above, in which case Tenant's notice and cure period shall be extended to thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

(h) Tenant is in Default under the Disposition and Development Agreement after written notice and the expiration of the applicable cure period.

18.2. Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Subject to the rights of a Permitted Mortgagee (as set forth in Section 13.3), terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to:

(i) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;

(ii) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;

(iii) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided discounted to the then present value;

(iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "**Worth at the Time of Award**" of the amounts referred to in parts (i), (ii) and (iii) above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (A) the greatest per annum rate of interest permitted from time to time under applicable law, or (B) the Prime Rate plus 5% as determined by Landlord.

For purposes of this Section 18.2, "**Unpaid Rent**" shall include but not be limited to, (i) Base Rent payable by Tenant but not collected prior to termination; and (ii) Additional Rent and Hold Over Rent which remains due and owing as of the date of Termination.

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

(c) Should Tenant or its agents, employees, invitees or subtenants use the any portion of the Premises designated for parking in violation of this Lease, Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to tow away any vehicle involved in such violation and charge the cost of towing and storage to Tenant, which cost shall be immediately payable upon demand by Landlord as Additional Rent. Except to the extent caused by the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located at the Premises, whether pursuant to this Lease or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any

parking spaces or any portion of the Premises or any vehicles parked thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above.

(d) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above.

(e) Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of a Default, subleased or leased by Tenant to others, Tenant hereby appoints Landlord to act as Tenant's agent under such circumstances and Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Base Rent, Additional Rent, Hold Over Rent and any other rents due hereunder without in any way affecting Tenant's obligations to Landlord hereunder except with respect to the reduction of such amounts due from Tenant. Said sums collected in excess of rents due hereunder will be treated as Additional Rent payable by Tenant to Landlord until the time when any such Default is cured. Such agency, being given for security, is hereby declared to be irrevocable.

18.3. No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4. Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Lease following its termination as a result of Tenant's breach.

18.5. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6. Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to

do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 189.6, the full amount of the costs and expense incurred or the payments so made or the amount of the Losses so sustained shall be immediately be owed by Tenant to Landlord. Tenant shall promptly pay **directly** to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of seven percent (7%) per annum, or the highest rate permitted by applicable law.

18.7. Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19. Limitation of Landlord Liability.

(a) Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor Landlord) shall be limited to the value of the Premises. Tenant shall look solely to Landlord's interest in the Premises for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

(b) If Tenant believes a material breach of this Lease has occurred, Tenant shall first notify Landlord in writing of the purported breach, giving Landlord thirty (30) days from receipt of such notice to cure the breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that thirty (30) day period, begin to cure within thirty (30) days and thereafter diligently prosecute such cure to completion within a period not to exceed ninety (90) days, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this Lease; (ii) prosecuting an action for damages within the limitations set forth in Section 19 (a) above; (iii) seeking specific performance of this Lease; or (iv) any other remedy available at law or equity. .

20. Surrender of Premises.

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's personal property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair consistent with the condition of the Premises on the Commencement Date (as may have been improved pursuant to the requirements of the DDA or this Lease), ordinary wear and tear, damage caused by casualty or condemnation, and damage caused by Landlord or any Landlord Related Party excepted, provided, however, if this Lease is terminated as a result of the Conveyance, this Section shall not apply. If Tenant fails to remove any of Tenant's property, or to restore the Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or perform such restoration of the Premises. Landlord shall not be

responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

21. Holding Over.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease with respect to such Premises, occupancy of the Building and/or Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease. In addition, Tenant shall pay **directly** to Landlord, in monthly installments, a hold over rent equal to two hundred percent (200%) of the Base Rent payable by Tenant in the last month prior to such termination ("**Hold Over Rent**"). No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord and Landlord Related Parties from and against any and all losses or liability resulting from delay in Tenant so surrendering the Premises including, without limitations, any loss or liability resulting from any claim against Landlord and/or Landlord Related Parties made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

22. Notice.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the Party's respective Notice Address (es) set forth in the Basic Lease Information ("**Notice Address**"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either Party may, at any time, change its Notice Address (other than to a post office box address) by giving the other Party three (3) days prior written notice of the new address.

23. Labor Provisions. Tenant hereby agrees to comply with the following in its use of the Premises after the Commencement Date:

23.1. Equal Opportunity. During the Term, and with respect only to persons in the Building(s) and at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the

following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through its subleases, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 23.1.

23.2. Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

23.3. Prevailing Wages and Related Requirements. Nothing in this Lease constitutes a representation or warranty by Landlord regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after the Commencement Date. From and after the Commencement Date, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code. Tenant's obligation to indemnify, defend and hold harmless under this Section 23.3(b) shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

24. Miscellaneous.

24.1. Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California. Any suit brought to defend or enforce the terms of this Lease shall be filed with the courts of the County of Alameda, State of California. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such courts.

24.2. Severability. If any Section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other Sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

24.3. Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing Party shall be entitled to recover from the non-prevailing Party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

24.4. Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing Party ("**Force Majeure**"). The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension provided however that under no circumstances may a Party request an extension for a cumulative period in excess of one (1) year. For purposes of this Lease, except as expressly provided in this Lease, the definition of Force Majeure shall be as set forth in this Section 24.4, and definitions set forth in other agreements between Landlord and Tenant, including but not limited to the Development Documents, shall be inapplicable with regards to actions required pursuant to this Lease.

24.5. Signs. Except with respect to temporary signage advertising the availability of the Premises for lease, Tenant shall not place, or suffer to be placed, any sign upon the exterior of the Building or elsewhere on the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the exterior of the Building or on the Premises by or for Tenant or its subtenants shall be subject to the provisions of this Lease. Tenant shall maintain or caused to be maintained any such signs installed on the exterior of the Building or on the Premises.

24.6. Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker(s) specified in the Basic Lease Information in the negotiating or making of this Lease. Each Party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified Party in conjunction with any such claim or claims of any other broker or brokers to

a commission in connection with this Lease as a result of the actions of the indemnifying Party. Provided that this Lease is fully executed by the Parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

24.7. Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the Term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes in which case Landlord shall notify Tenant as soon as reasonably possible of such entry. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord one set of keys therefor. Upon written request, all keys must be returned to Landlord at the expiration or termination of this Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving Alameda Point may be located within the Building or on the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Premises by Tenant and Tenant Parties.

24.8. Memorandum of Lease. This Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Lease Agreement in the form of **Exhibit G** shall be executed by the Parties concurrently herewith and the Tenant may record the same in the County Recorder's Office of Alameda County. In addition, Tenant and/or Lender may record such instruments as are customary and required by Lender to secure Lender's interest in the Lease.

24.9. Article and Section Titles. The Article and Section titles use herein are not to be consider a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

24.10. Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant does hereby covenant and warrant that: (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation; (b) Tenant has and is duly qualified to do business in California; (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Lease and to perform all Tenant's obligations hereunder; and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof

and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Lease and identifying the person(s) authorized to execute this Lease on behalf of Tenant.

24.11. Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

24.12. Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of its age, the Building may contain asbestos-containing materials ("**ACMs**"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

24.13. Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 10 of this Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Premises.

24.14. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

24.15. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

24.16. Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

24.17. Entire Agreement. This Lease contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or

understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

24.18. Rules and Regulations. Tenant shall faithfully observe and comply with the non-discriminatory rules and regulations attached hereto as **Exhibit E** and incorporated herein by this reference, as the same may be modified from time to time by Landlord. Any additions or modifications to those rules shall be binding upon Tenant's upon Landlord's delivery of a copy to Tenant.

24.19. Relocation Waiver. Tenant acknowledges that upon the expiration or earlier termination of this Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

24.20. Subdivision and Development of Property. Subject to Tenant's rights under the Development Documents, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Premises is located. As a material inducement for Landlord to enter into this Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant's rights under this Lease.

24.21. Environmental and Planning Documents. Tenant acknowledges that its use of the Premises and any Alterations thereto shall comply with the terms, conditions and requirements of the Development Documents which shall include, without limitation, the following: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); (d) the Alameda Point Transportation Demand Management Plan; and (e) the Site Management Plan.

24.22. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Such executed counterparts may be delivered by electronic means, including by facsimile or electronic mail, and such delivery of copies shall have the same force and effect as the delivery of ink original signatures.

24.23. Independent Contractors. The relationship between the Parties is one of Landlord and Tenant acting as independent contractors, and not one of partnership, joint venture, agency,

employment, trust or other joint or fiduciary relationship. This Lease is not for the benefit of any other third party.

[Remainder of this Page Intentionally Left Blank]

Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: BRUCE DORFMAN

Title: VICE PRESIDENT

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

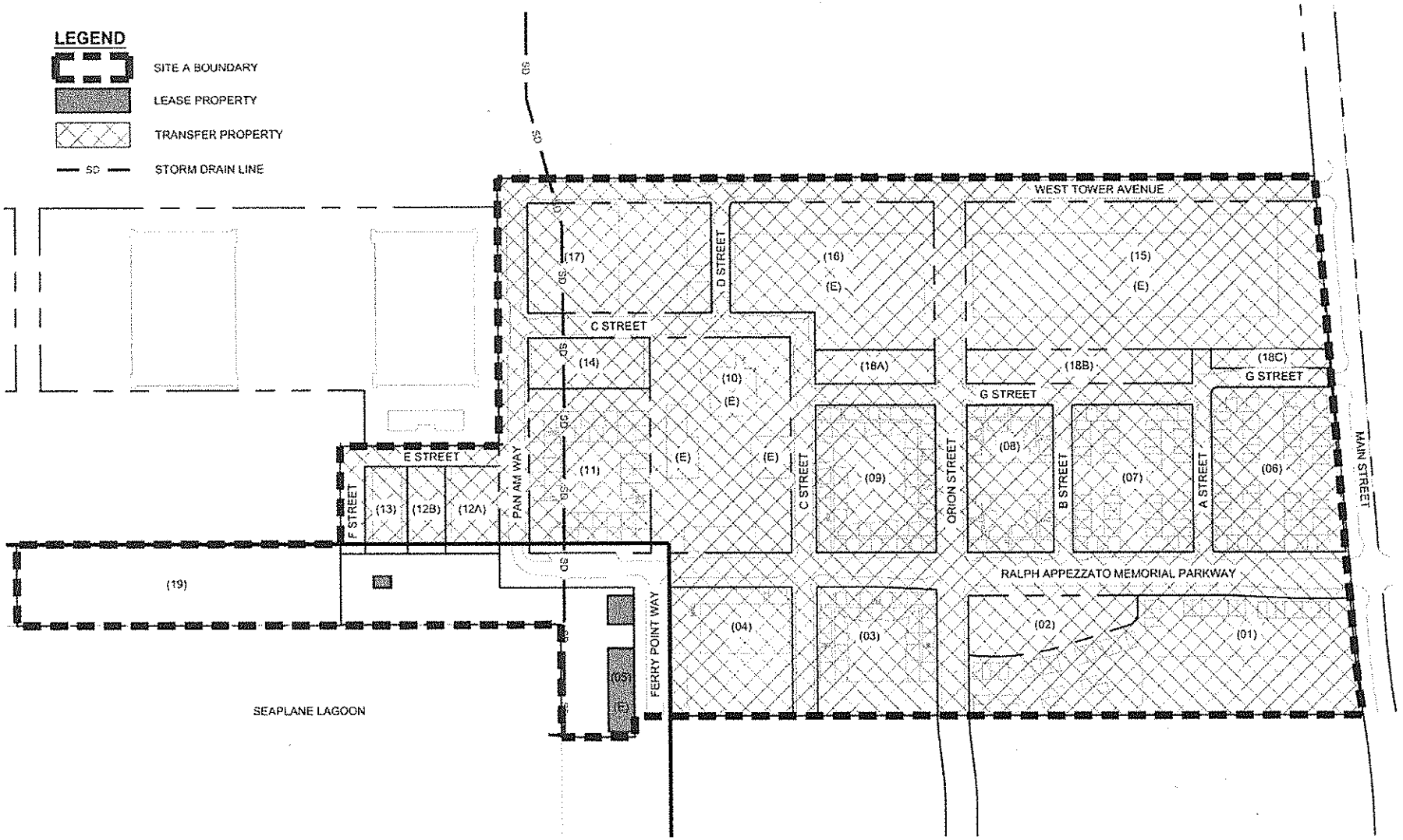
Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

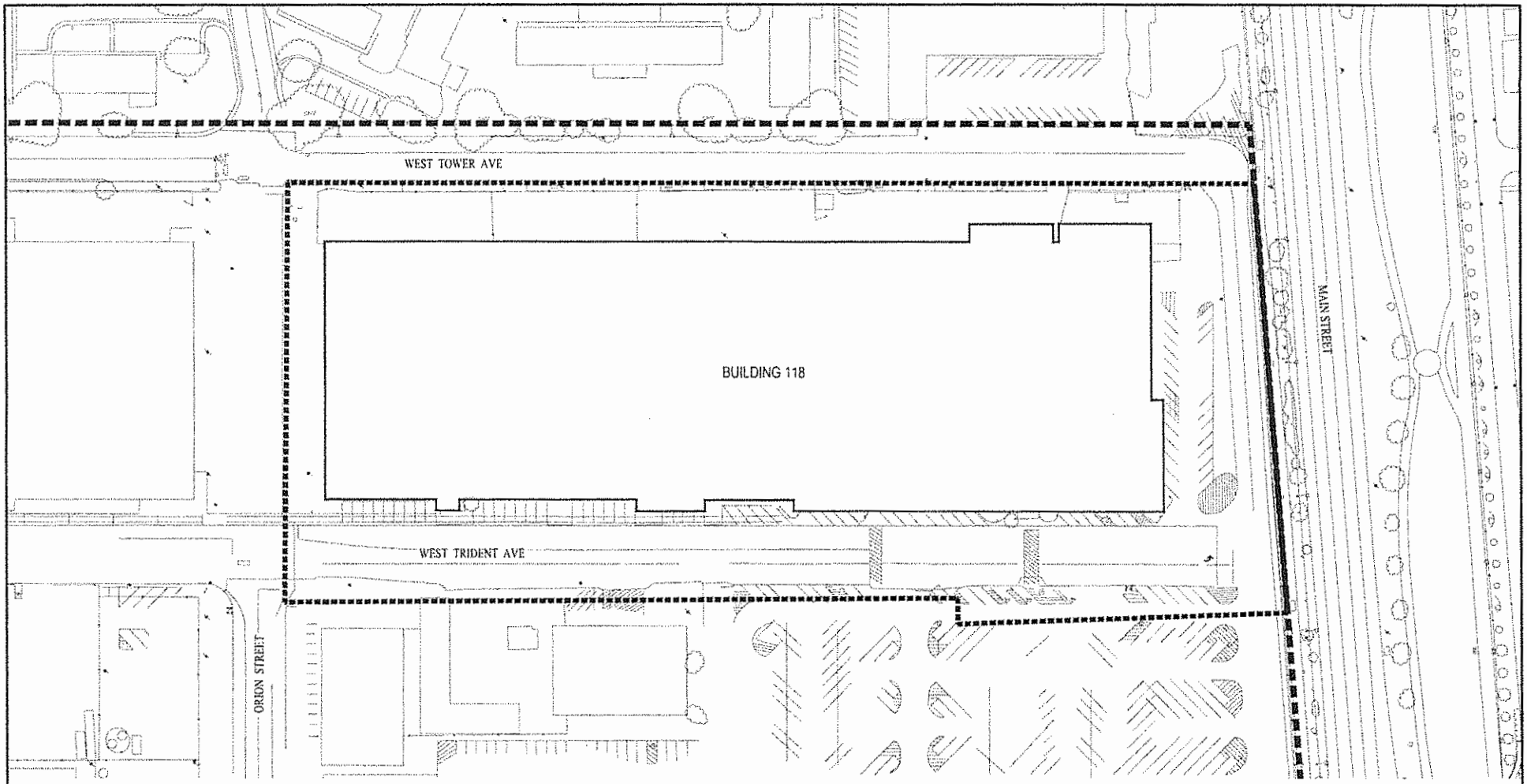
EXHIBIT A
DEPICTION OF PREMISES



MAP OF SITE A PROPERTY

05/29/2015

NOT TO SCALE



LEGEND

SITE A BOUNDARY

APPROXIMATE LEASE PREMISES OF BUILDING 118

ALAMEDA POINT
BUILDING 118
SITE A

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

0' 40' 120' 160'

SCALE: 1" = 40' DATE: JUNE 1, 2015

cbg Carlson, Barbee & Gibson, Inc.

EXHIBIT B
COMMENCEMENT LETTER

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and Alameda Point Partners, LLC, a Delaware limited liability company, as Tenant, for _____ rentable square feet in Building ____ located at _____, Alameda, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Lease is _____;

2. The Expiration Date of the Lease is _____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda By: _____ Name: _____ Title:	Tenant: Alameda Point Partners By: _____ Name: _____ Title: _____

[Exhibit Do not sign]

EXHIBIT C
ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Partners, LLC, a Delaware limited liability company ("Tenant") dated as of _____ ___, 2015 ("**Lease**") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199826 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**");

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**");

- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**");

- Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the Office of the County Recorder, Alameda County ("**CRUP**");
- Lease in Furtherance of Conveyance Dated June 6, 2000, as amended by the Amendment No. 1 dated November 28, 200 and Amendment No. 2 dated march 30, 2009 ("**LIFOC**"); and
- Site Management Plan for the Premises dated March 29, 2015 ("**Site Management Plan**")

Pursuant to Section 7.3 of the Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Lease.

Signatures on next page.

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT D
ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of Hazardous Materials (as defined in Section 13.1 of the Lease and copied for convenience below) in the process proposed on the Premises to be leased. Any such use must be approved in writing by Landlord. Tenant or prospective subtenants should answer the questions in light of their proposed operations in the Building and on or about the Premises. Existing tenants should answer the questions as they relate to ongoing operations in the Building and on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. Hazardous Materials is defined as follows:

"**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, California 94501
(510) 747-4700
Attn: City Manager

1. **General Information.**

Name of Responding Company:_____

Check the Applicable Status:_____

Tenant ☐ Prospective Subtenant ☐ Existing Tenant ☐

Mailing Address:_____

_____

Contact Person and Title:_____

Telephone Number: (___) _____

Alameda Point Address of Proposed Premises to be Leased:_____

_____

Length of Lease Term:_____

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

_____

_____

_____

2. **Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes ☐ No ☐

Hazardous Chemical Products Yes ☐ No ☐

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes ☐ No ☐

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes ☐ No ☐

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes ☐ No ☐

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

_____

_____

_____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes ☐ No ☐

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

_____

_____

3. **Storage Tanks and Pumps.**

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes ☐ No ☐

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

_____

_____

_____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes ☐ No ☐ Not Applicable ☐

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes ☐ No ☐ Not Applicable ☐

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes ☐ No ☐ Not Applicable ☐

If so, describe. _____

_____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes ☐ No ☐ Not Applicable ☐

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes ☐ No ☐ Not Applicable ☐

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. **Spills.**

4.1 During the past year, have any spills occurred on any site you occupy?

Yes ☐ No ☐ Not Applicable ☐

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes ☐ No ☐ Not Applicable ☐

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐ No ☐ Not Applicable ☐

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work_____

_____

_____

_____

5. **Waste Management.**

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes ☐ No ☐

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☐ No ☐

If yes: EPA ID#_____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐ No ☐

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes ☐ No ☐

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes ☐ No ☐

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes ☐ No ☐

If yes, what types and quantities? _____

_____

_____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

_____

_____

_____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

_____

_____

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes ☐ No ☐

If yes, please describe any existing or proposed treatment, processing or recycling methods. ____

_____

_____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. **Wastewater Treatment/Discharge.**

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

_____ storm drain _____ sewer

_____ surface water _____ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes ☐ No ☐

6.3 Is your wastewater treated before discharge?

Yes ☐ No ☐ Not Applicable ☐

If yes, describe the type of treatment conducted.

_____

_____

_____

6.4 Does your business conduct operations outside the building or store materials outside?

Yes ☐ No ☐ Not Applicable ☐

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes ☐ No ☐ Not Applicable ☐

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes ☐ No ☐ Not Applicable ☐

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes ☐ No ☐ Not Applicable ☐

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. **Air Discharges.1**

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes ☐ No ☐

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes ☐	No ☐
Dip tank	Yes ☐	No ☐
Drying oven	Yes ☐	No ☐
Incinerator	Yes ☐	No ☐
Other (please describe)	Yes ☐	No ☐
Boiler	Yes ☐	No ☐

[1] NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

I/C Engine	Yes ☐	No ☐
Emergency Backup Generator	Yes ☐	No ☐
Processes that apply coatings, inks, adhesives or use solvents	Yes ☐	No ☐

7.3 Do you emit or plan to emit any toxic air contaminates?

Yes ☐ No ☐

7.4 Are air emissions from your operations monitored?

Yes ☐ No ☐

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

_____

_____

_____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. **8. Enforcement Actions, Complaints.**

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes ☐ No ☐

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

_____

_____

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ☐ No ☐

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes ☐ No ☐

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes ☐ No ☐

If so, discuss the results of the audit. _____

_____

_____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes ☐ No ☐

Please describe:_____

_____

_____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

_____

a _____

By:_____

Title:_____

Date:_____

EXHIBIT E
PROPERTY RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the non-performance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Property, provided that Landlord shall not enforce the Rules and Regulations in a manner that discriminates against Tenant or Subtenants. In the event of any conflicts between the Rules and Regulations and other provisions of this Lease, the Lease shall control.

1. Except for signs advertising the Premises for lease or sublease, no advertisements, pictures or signs of any sort shall be displayed on or outside the Premises or Building without the prior written consent of Landlord. This prohibition shall include any portable signs or vehicles placed within the parking lot, or on streets adjacent thereto for the purpose of advertising or display. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

2. Storage of forklift propane tanks, whether interior or exterior, shall be in secured and protected storage and enclosure approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Tenant shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

3. Intentionally Omitted.

4. All goods, including materials used to store goods, delivered to the Premises shall be immediately moved into the Building and shall not be left in parking or exterior loading areas overnight.

5. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must uses steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. No parking or storage of such trailers will be permitted in the auto parking areas adjacent to the Building or on the Premises or on streets adjacent thereto.

6. Tenant is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures.

7. Tenant shall not store or permit the storage or placement of merchandise in areas outside or surrounding the Building or outside the Premises. No displays or sales of merchandise shall be allowed in the parking lots.

8. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screen enclosures at locations approved by Landlord.

9. Intentionally Omitted.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. Intentionally Omitted.

13. Tenant shall not overload the floor of the Building.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Tenant hereby acknowledges that Landlord shall have no obligation to Tenant providing guard service or other security measures for the benefit of the Premises or Building. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed.

17. No auction, liquidation, fire sale, going out of business or bankruptcy sale shall be conducted in or about the Premises without the prior written consent of Landlord.

18. No tenant shall use or permit the use of any portion of the Building or Premises for living quarters, sleeping apartments or lodging rooms.

19. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in driveways, service entrances, or areas posted as no parking.

20. If the Building and/or Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Building and/or Premises by Tenant, its agents, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expenses, cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be reasonably approved in writing in advance by Landlord.

21. Intentionally Omitted.

22. Tenant, its employees and agents shall not in any way obstruct the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, or vestibules of Building in a manner that conflicts with applicable laws or safety codes and regulations..

23. Intentionally Omitted.

24. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants thereof, provided that prior to the enforcement of any such new or revised Rules and Regulations against Tenant or any Subtenant, Landlord shall provide Tenant with a written copy of any such changes and additions. Subject to the obligation not to discriminate in its application or enforcement of the Rules and Regulations against Tenant or Subtenants, Landlord may waive any one or more of these Rules and Regulations for the

benefit of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

EXHIBIT F
RENEWAL NOTICE

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and _____, a _____, as Tenant.

Dear _____:

In accordance with Section 4.2 of the above referenced Lease, by this notice Tenant hereby irrevocably exercises its ***[first] [second]*** Renewal Option for the Renewal Term, at the Renewal Rate and upon the terms and conditions specified in Section 4.2.

Sincerely:

_____
[Name of Tenant]
By: _____
Its: _____

[Exhibit: Do Not Sign]

EXHIBIT G
FORM OF MEMORANDUM OF LEASE

Prepared by and after
recording return to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

DOCUMENT EXEMPT FROM RECORDATION FEE
UNDER GOVERNMENT CODE SECTION 27383

MEMORANDUM OF LEASE AGREEMENT

The **CITY OF ALAMEDA**, a charter city and municipal corporation (the "Landlord"), and Alameda Point Partners, LLC a Delaware liability company (the "Tenant"), do hereby declare on this ___ day of _____, 2015 this Memorandum Lease Agreement (this "Memo"):

Pursuant to that certain Lease dated as of _____ ___, 2015 (the "Lease"), the Landlord demised and leased unto the Tenant, and the Tenant leased and demised from the Landlord, that certain property described in the Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Lease.

The term of the Lease commenced as of _____ __, 20__ and shall terminate on _____ __, 20__, unless sooner terminated or extended as provided in the Lease.

1. Except as provided in the Lease and with respect to subleases of the Premises, the Tenant shall not assign or transfer the Lease without the prior written consent of the Landlord in accordance with the Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Lease, the Lease shall control.

3. Upon the earlier of termination or expiration of the Lease, pursuant to the terms thereof, the Landlord shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Lease has been properly terminated or has expired by its terms, then the Landlord and the Tenant agree to execute the Release within 10 days after receipt of a written request for the same by either Party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Lease.

5. This Memo may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[*Signatures to follow*]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Lease Agreement as of the ___ day of _____, 20____.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

[Exhibit: Do Not Sign]

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, _____, 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.

_____
Name: _____
Notary Public

[ADD NOTARY/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 _____)

On _____, before me, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT M

AFFORDABLE HOUSING IMPLEMENTATION PLAN

AFFORDABLE HOUSING IMPLEMENTATION PLAN
(Alameda Point- Site A Affordable Housing)

This Affordable Housing Implementation Plan (this "Plan") is appended as Exhibit M of that certain Disposition, Development Agreement, dated as of June 16, 2015, as may be amended (the "**DDA**"), by and among the City of Alameda, a California charter city (the "**City**") and Alameda Point Partners, LLC, a Delaware limited liability company (the "**Developer**"). Execution of the DDA is deemed to be an agreement by the Developer to be bound by the terms of this Plan.

RECITALS

A. Under the DDA, the Developer has agreed to redevelop the property more particularly described in Exhibit A of the DDA (the "**Property**") and shown on the site map attached as Exhibit B of the DDA, into a high quality, mixed-use "urbanistic" development which will include 800 Residential Units of new construction and up to 600,000 net new rentable square feet of permitted and conditionally permitted non-residential uses (including but not limited to, retail, commercial, civic and other commercial space) and, which may include the adaptive reuse of some of the existing structures on the Property, and approximately 15 acres of public open space and parks (the "**Project**") to be the catalyst for the revitalization of the Alameda Point district.

B. The Project is a multi-phased mixed used transit oriented development. As part of the Project, the Developer must construct or cause to be constructed a sufficient number of Affordable Housing Units to comply with the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement as further detailed in Article 2 of this Plan. The current Project approvals allow for the construction of 800 Residential Units of which not less than two hundred (200) are required to be Affordable Housing Units permanently restricted to occupancy by Very Low Income Households, Low Income Households and Moderate Income Households.

C. Subject to satisfaction of the conditions in the DDA, the City will transfer portions of the Property in phases directly to the Developer for the construction of the six hundred (600) Market Rate Residential Units and Seventy-two (72) of the Affordable Housing Units that will be permanently restricted for occupancy by Moderate Income Households and will be, to the maximum extent feasible, dispersed throughout the Residential Projects containing Market Rate Residential Units.

D. The Developer is also responsible for the development of one hundred twenty-eight (128) Affordable Housing Units that will be permanently restricted to Very Low Income and Low Income Households. The Developer intends to meets its obligation to develop the Very Low Income and Low Income Homes by partially assigning its obligation to construct the Affordable Housing Development to a Qualified Affordable Housing Developer pursuant to an Affordable Housing Plan Assignment approved by the City. The Developer will remain

responsible to provide the Project Infrastructure for the Affordable Housing Site pursuant to the terms of the DDA and this Plan and for the completion of all Affordable Housing Units.

E. Subject to the satisfaction of the conditions of the DDA and this Plan, the parties contemplate that the City will transfer the Affordable Housing Site directly to the Qualified Affordable Housing Developer to facilitate the construction and operation of the Affordable Housing Development, the construction of which is anticipated to occur in not more than two phases.

F. The purposes of this Plan, as more specifically set forth herein, are to: (1) document, implement and ensure compliance with the requirements of the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance, and the Density Bonus Regulations as they apply to the Project; (2) enumerate the conditions for site control and the transfer of the Affordable Housing Site to the Developer or a Qualified Affordable Housing Developer; (3) provide for the orderly development and operation of the Affordable Housing Development and the Moderate Income Units; and (4) set forth the ongoing requirements for the operation of the Affordable Housing Units.

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions and promises set forth herein and in the DDA, the Parties agree as follows:

ARTICLE 1. TIME OF PERFORMANCE

Section 1.1 Milestone Schedules.

(a) Consistency with DDA Milestone Schedule. The Developer and the City are each required to perform certain tasks and to fulfill certain obligations as set forth in the DDA and this Plan. The schedule of the deadlines for performance of various conditions and requirements under the DDA and this Plan must be consistent with the requirements set forth in the DDA Milestone Schedule and the DDA Phasing Plan, incorporated herein by this reference. The DDA Milestone Schedule and DDA Phasing Plan may only be amended pursuant to the terms of the DDA, including Section 1.3 thereof.

(b) Affordable Housing Development Milestone Schedule. The schedule of the deadlines for the Developer's performance (and pursuant to the Affordable Housing Plan Assignment, the Qualified Affordable Housing Developer's performance) of various conditions and requirements applicable only to the Affordable Housing Development under this Plan are set forth in the Affordable Housing Development Milestone Schedule attached as Attachment A.

ARTICLE 2. AFFORDABLE HOUSING OBLIGATIONS AND PROJECT SPECIFIC IMPLEMENTATION

Section 2.1 Applicable Housing Requirements. The redevelopment of the Property is subject to the requirement under the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance and the Density Bonus Regulations as further set forth below:

(a) Renewed Hope Settlement Agreement. Under the Renewed Hope Settlement Agreement twenty-five percent (25%) of all newly constructed housing units at Alameda Point must be made permanently Affordable as follows: (1) ten percent (10%) of all Residential Units shall be made permanently Affordable to Very Low Income Households and Low Income Household (households with incomes at or below 80% of median income); and (3) the remaining fifteen (15%) of all Residential Units shall be made permanently Affordable to Very Low Income Households, Low Income Households and Moderate Income Households under the criteria set forth in Health and Safety Code Section 33413(b)(2).

(b) Inclusionary Housing Ordinance. Under AMC 30-16-4 at least fifteen percent (15%) of the total units in the Project must be "inclusionary units" restricted for occupancy by Very Low Income Households, Low Income Households and Moderate Households Income Households. Specifically, the Inclusionary Ordinance requires that: (1) four percent (4%) of the units be restricted to occupancy by Very Low Income Households; (2) four percent (4%) of the units must be restricted to occupancy by Low Income Households; and (3) seven percent (7%) of the units must be restricted to occupancy by Moderate Income Households.

(c) Density Bonus Regulations. The Developer has filed an application for a Density Bonus waiver for the Project under the City's Density Bonus Regulations and in consideration for such waiver the Developer has agreed to make at least ten percent (10%) of the total units in the Project affordable to Low Income Households; or at least five percent (5%) of the total units in the Project affordable to Very Low Income Households; or at least ten percent (10%) of the total units in the Project affordable to Moderate Income Households.

(d) Project Specific Requirements. The City has determined that in order to comply with the combined requirements of the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement, not less than twenty-five percent (25%) of the Residential Units to be constructed under the DDA shall be made permanently Affordable as follows: (1) six percent (6%) of all Residential Units shall be made permanently Affordable to Very Low Income Households; (2) ten percent (10%) of all Residential Units shall be made permanently Affordable to Low Income Households; and (3) nine percent (9%) of all Residential Units shall be made permanently Affordable to Moderate Income Households. The Developer agrees and acknowledges that based on the Project approvals contemplating eight hundred (800) Residential Units, the Developer is required to construct not less than 200 Affordable Housing Units in the following proportions:

(1) Forty-eight (48) Very Low Income Units are required to be made available to and occupied by Very Low Income Households.

(2) Eighty (80) Low Income Units are required to be made available to and occupied by Low Income Households.

(3) Seventy-two (72) Moderate Income Units are required to be made available to and occupied by Moderate Income Households.

Section 2.2 Recorded Restrictions.

(a) To ensure that all Affordable Housing Units constructed as part of the Project are permanently available to and occupied by income eligible households at an Affordable Housing Cost in compliance with this Plan, the parties hereby agree to execute and record in the public records with the Alameda County Recorder (the "Official Records"): (1) a City Regulatory Agreement in substantially the form attached as Attachment B restricting Very Low Income Homes and the Low Income Homes at the time of conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer; (2) a City Regulatory Agreement in substantially the form attached as Attachment B restricting the Moderate Income Units that are For-Rent Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Rent Residential Unit; and (3) to record an Affordable Housing Covenant in substantially the form attached as Attachment C restricting the sale of Moderate Income Units that are For-Sale Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Sale Residential Unit. The City Regulatory Agreement or Affordable Housing Covenant shall be recorded against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The parties agree to meet and confer if the priority lien position of the City Regulatory Agreement or Affordable Housing Covenant interferes with the Qualified Affordable Housing Developer's ability to obtain market rate debt financing. The Qualified Affordable Housing Developer must demonstrate to the City's reasonable satisfaction that subordination of the City Regulatory Agreement or Affordable Housing Covenant is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Affordable Development. To satisfy this requirement, the Qualified Affordable Housing Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the senior debt is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Affordable Development and adequate financing for the Affordable Development would not be available without the proposed subordination.

(b) The Developer further agrees that upon sale of any Affordable Housing Units that are For-Sale Residential Units the Developer will require that purchaser enter, execute and record the Affordable Resale Restriction in substantially the form attached as Exhibit E of the Affordable Housing Covenant attached hereto as Attachment C against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City.

(c) This Plan and the recorded restrictions required under this Section 2.2 shall satisfy the requirement for: (1) an "affordable housing agreement" ensuring the continuing affordability of housing pursuant to the Density Bonus Regulations as specified in AMC 30-17; and (2) an "affordable housing plan" ensuring the continuing affordability of housing constructed pursuant to the Inclusionary Housing Ordinance as specified AMC 30-16-10.

ARTICLE 3. CONDITIONS FOR AND DISPOSITION OF AFFORDABLE HOUSING SITE

Section 3.1 Site Conveyance- Affordable Housing Development. The City shall convey to a Qualified Affordable Housing Developer, through an option agreement or purchase and sale agreement, the Affordable Housing Site in accordance with the terms of this Plan and the DDA. The parties agree that the City shall have no obligation to convey the Affordable Housing Site until and unless the Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof) and the Developer or the Qualified Affordable Housing Developer has met the conditions to conveyance set forth in Article 3 of this Plan.

Section 3.2 Conditions to Conveyance of Affordable Housing Site. The conveyance by the City of the Affordable Housing Site for the Affordable Housing Development shall be subject to the satisfaction or waiver by the City of the following conditions:

(a) The City shall have approved the Qualified Affordable Housing Developer. Eden Housing, Inc., a California nonprofit public benefit corporation ("Eden Housing") is hereby approved as the Qualified Affordable Housing Developer, provided however, the Developer may designate an alternative Qualified Affordable Housing Developer if: (1) Eden Housing cannot meet the conditions for conveyance of the Affordable Housing Site set forth in this Plan and the DDA within the time periods required by the Milestone Schedule and the Affordable Housing Development Milestone Schedule; or (2) the Affordable Housing Plan Assignment with Eden Housing is terminated prior to the conveyance of the Affordable Housing Site. The City approval of any alternative Qualified Affordable Housing Developer shall be required prior to conveyance of an Affordable Housing Site to the alternative Qualified Affordable Housing Developer.

(b) If the Qualified Affordable Housing Developer is proposing to develop affordable senior housing within the Affordable Housing Development, the Qualified Affordable Housing Developer shall provide evidence of a fully executed modification or amendment to the Renewed Hope Settlement Agreement as necessary to allow for the development of affordable senior housing at Alameda Point.

(c) The City shall have approved an Affordable Housing Plan Assignment that requires the Qualified Affordable Housing Developer to:

(1) Prepare an Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan;

(2) Provide the City a breakdown of the number of Low Income Homes and Very Low Income Homes it intends to develop and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households;

(3) Obtain all applicable Supplemental City Approvals, including without limitation design review approval in accordance with the Project Approvals (as defined in the DDA);

(4) Develop and construct the Affordable Housing Development in accordance with the applicable Project Approvals and any Supplemental City Approvals and to manage and operate the Affordable Housing Development consistent with the requirements of the DDA, this Plan and the applicable City Regulatory Agreement.

(5) Secure all financing necessary for the development and operation of the Affordable Housing Development consistent with the approved Phase Financing Plan and the Affordable Housing Development Financing Plan, and includes the requirement that the Qualified Affordable Housing Developer obtain Tax Credit Reservations for both phases of the Affordable Housing Development and apply for a commitment of AHSC Program Funds prior to conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer;

(6) Enter into and record a City Regulatory Agreement for the benefit of the City (which shall be binding on the respective successors and assigns of the City and the Qualified Affordable Housing Developer);

(7) Grant to the City an option to acquire the Affordable Housing Site, which option will be evidenced by the Memorandum of Option substantially in the form of Attachment D to be recorded against the Affordable Housing Site at the time of conveyance to the Qualified Affordable Housing Developer. In accordance with the terms of the Memorandum of Option, the City shall be entitled to exercise the option if the Qualified Affordable Housing Developer has failed to meet the performance standards in the City Regulatory Agreement or fails to Commence or Complete Construction of the Affordable Housing Development within the times specified in Affordable Housing Development Milestone Schedule. If the City exercises the Option and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.4 below and the Qualified Affordable Housing Developer has not installed the Deferred Infrastructure prior to the exercise of the option, the Affordable Housing Plan Assignment shall further require that the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. The Affordable Housing Plan Assignment shall further require that if the City exercises the Option and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development (including design) of the Affordable Housing Development on the Affordable Housing Site at no cost to the City;

(8) Deliver to the Developer the Preliminary Development Notice required pursuant to Section 4.3 of this Plan as well as a written Commencement Notice at least six (6) months prior to the date the Qualified Affordable Housing Developer intends to Commence Construction and to provide the Developer with notice of any subsequent revision to the Qualified Affordable Housing Developer's Commencement of Construction date in order to allow the Developer sufficient time to coordinate and complete the applicable Project

Infrastructure required to provide access and utility service to the Affordable Housing Site prior to Commencement of Construction.

(d) The City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan.

(e) The Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof), or Developer's obligation to Complete such infrastructure is covered in a subdivision improvement agreement governing the applicable infrastructure (including any Deferred Project Infrastructure) in which: (1) Developer is obligated to Complete the applicable infrastructure (other than any applicable Deferred Project Infrastructure) on the earlier of (i) the date that the Qualified Affordable Housing Developer Commences Construction of the Affordable Housing Development; or (ii) within the timeframes required under the subdivision improvement agreement; and (2) Developer's obligations to Complete the Project Infrastructure and Deferred Project Infrastructure is subject to Completion Assurances to the City.

Section 3.3 Conveyance to Qualified Affordable Housing Developer.

(a) Upon satisfaction of the conditions set forth in Section 3.2, satisfaction of the conditions for conveyance of Phase I of the Property to the Developer pursuant to the DDA, and other requirements of this Plan, the City shall convey the Affordable Housing Site to the Qualified Affordable Housing Developer at a cost of $100. Within thirty (30) days of satisfaction of the conditions set forth in Section 3.2, the City shall deliver to Escrow a Quitclaim Deed substantially in the form of Exhibit I in the DDA. The City and the Qualified Affordable Housing Developer shall ensure that the document conveying title to the Affordable Housing Site to the Qualified Affordable Housing Developer provide sufficient access to the Developer to enable the Developer to complete the necessary in-tract infrastructure work.

(b) At close of escrow conveying the Affordable Housing Site to the Qualified Affordable Housing Developer, the City Regulatory Agreement and the City Option shall be recorded against the Affordable Housing Site.

(c) The City shall deliver title to the Affordable Housing Parcel to the Qualified Affordable Housing Developer in accordance with Section 4.5 of the DDA.

Section 3.4 Affordable Housing Development Financing Plan.

(a) Phase Financing Plan for Affordable Housing Development. In addition to the requirements set forth in Section 3.1(b) of the DDA, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit to the City Manager for approval the Affordable Housing Development Financing Plan for each phase of the Affordable Housing Development which shall contain the following documents and information:

(1) An updated "sources and uses" breakdown of the costs of acquiring the Affordable Housing Site and constructing the Affordable Housing Development, and an updated operating proforma for the Affordable Housing Development. Such updated sources and uses breakdown shall reflect the Qualified Affordable Housing Developer's then current expectations for funding sources and development costs and may be in a form substantially similar to the most recently revised Phase Financing Plan, or in such other form as is mutually agreed upon by the Parties. The sources and uses breakdown shall include a project budget and include a disbursement schedule identifying the source of funds and the timing of disbursement.

(2) As requested by the City, financial information concerning the providers of the funds showing their ability to provide the committed funds;

(3) Any other information that is reasonably necessary to the City in determining that the Qualified Affordable Housing Developer has the financial capability to pay all costs of acquiring, constructing and operating the Affordable Housing Development, as applicable, such as evidence of the availability of equity funds other than tax credit investor equity; and

(4) Project cash flows showing the estimated costs of operating the Affordable Housing Development in accordance with this Plan, the City Regulatory Agreement and other project documents, for not less than fifty-five (55) years after their respective anticipated dates of completion.

(b) The City's time periods for review and approval of the Affordable Housing Development Financing Plan shall be in accordance with the requirements for review and approval of the Phase Financing Plan set forth in Section 3.2 of the DDA.

Section 3.5 AHSC Program Grant.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize funding from the Affordable Housing and Sustainable Communities Program ("AHSC Program") to partially finance the development of the Affordable Housing Development. The AHSC Program is subject to a competitive application process implemented by HCD in coordination with the California Strategic Growth Council. Receipt by the Qualified Affordable Housing Developer of an AHSC Program grant in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.5, the AHSC Program grant shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4 above.

(b) Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for AHSC Program funds to HCD for the Affordable Housing Development. If the Qualified Affordable Housing Developer receives an invitation to submit a full application for AHSC program funds from HCD, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete full application for AHSC Program funds within the time specified by

HCD. If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC program funds from HCD or an AHSC Program grant allocation, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for the AHSC Program funds to HCD for the next available AHSC funding cycle but in no event later than the time specified in the Affordable Housing Development Milestone Schedule.

(c) If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program funds, fails to receive an allocation of AHSC Program funds by the outside date specified in the Affordable Housing Development Milestone Schedule for receipt of an allocation of AHSC Program funds, or the AHSC Program regulations change such that the Qualified Affordable Housing Developer or the Affordable Housing Development does not qualify for AHSC Program funds, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed sixty (60) days to determine if the Qualified Affordable Housing Developer should submit a further applications to HCD in a subsequent concept proposal application rounds or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such sixty (60) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have sixty (60) days to provide the City with a feasible proposal for how it expects to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within sixty (60) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

Section 3.6 Tax Credits.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize Tax Credit Funds to partially finance the Affordable Housing Development, which are subject to a competitive application process implemented by TCAC. Receipt by the Qualified Affordable Housing Developer of a Tax Credit Reservation in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.6, the Tax Credit Reservations shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4.

(b) Phase I Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. If the Developer does not receive a Tax Credit Reservation in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely

and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(c) Phase II Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for a Tax Credit Reservation to TCAC for the second phase of the Affordable Housing Development. If a Tax Credit Reservation is not received for the second phase of the Affordable Housing Development in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(d) If Tax Credit Reservations for Phase I or Phase II of the Affordable Housing Development are not received by the time specified in the Affordable Housing Development Milestone Schedule, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed ninety (90) days to determine if the Qualified Affordable Housing Developer should submit a further application to TCAC in a subsequent preliminary reservation round or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such ninety (90) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have ninety (90) days to provide the City with a feasible proposal for how it intends to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within ninety (90) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

(e) Upon an award of the Tax Credit Reservation from TCAC, the Developer shall or shall cause the Qualified Affordable Housing Developer to exercise diligent good faith efforts to obtain a funding commitment from a tax credit investor for the Tax Credit Funds. Such funding commitment shall be in a form reasonably acceptable to the City. Procurement of the Tax Credit Reservations and acceptable funding commitments for the Tax Credit Funds shall be a condition precedent to the City's obligation to convey the Affordable Housing Site to the Qualified Affordable Housing Developer.

Section 3.7 Other Financing. In addition to the Tax Credit Funds all other financing necessary to construct the Affordable Housing Development, as required and approved by the City in the Affordable Housing Development Financing Plan, shall be closed by the Qualified Affordable Housing Developer prior to, or simultaneously with, the transfer of an Affordable Housing Site. As a condition of conveyance of the Affordable Housing Site, the City shall have received evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds described in the approved Affordable Housing Development Financing Plan as the sources of funds to pay the costs of constructing the Affordable Housing Development have been met or will be met upon the transfer of an Affordable Housing Site.

Section 3.8 Developer Contribution. The Developer shall provide to the Qualified Affordable Housing Developer, a loan or equity contribution (the determination of the form of the assistance shall be at the Qualified Affordable Housing Developer's sole and absolute discretion and the assistance may be funded first to the City and then from the City to the Qualified Affordable Housing Developer) in the amount of Three million Dollars ($3,000,000) for the construction of the Affordable Housing Development. As a condition to the conveyance of the Affordable Housing Site, the Developer shall provide evidence of the Developer Contribution to the City in a form reasonably satisfactory to the City. The Developer agrees to issue a formal binding commitment to the Qualified Affordable Housing Developer prior to submission by the Qualified Affordable Housing Developer of a Tax Credit Application in compliance with Section 3.6 above.

Section 3.9 City Use of Project-Generated Fees. The Developer shall receive a credit toward the Non-Residential Affordable Housing Fee imposed pursuant to AMC Section 27, for the construction of eighty (80) on site affordable housing units in excess of the affordable housing units required by the City's Inclusionary Housing requirements set forth in in this Plan. The Developer shall be obligated to pay the applicable Non-Residential Affordable Housing Fee, in excess of the 80 unit Fee credit, on any Non-Residential development in the Project, which fee shall be calculated using the 2014-15 effective rate. To the extent the Project generates any additional Non-Residential Affordable Housing Fee as a result of increase in the amount of commercial space developed, the City shall use all of the Non-Residential Affordable Housing Impact Fees generated from the Property only for purposes of providing funding assistance to the Affordable Housing Development through the date that commencement of construction of all Affordable Housing Development has occurred. Thereafter, any Non-Residential Affordable Housing Impact Fees generated from development of the Property shall be used to fund the City's general affordable housing.

Section 3.10 Right of Reverter. Subject to Section 17.5 of the DDA, the City shall have the right to reacquire title to the Affordable Housing Site if the Qualified Affordable Housing Developer fails to construct the Affordable Housing Development. If the City acquires the Affordable Housing Site pursuant to the right of reverter, the City shall take title subject to the Regulatory Agreement and the conditions set forth in this Plan. If the City exercises its right of reverter and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.8 below and the Qualified Affordable Housing Developer has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. If the City exercises the right of reverter and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development of the Affordable Housing Development.

ARTICLE 4. CONSTRUCTION OF AFFORDABLE HOUSING UNITS

Section 4.1 Schedule for Developing Affordable Housing Units.

(a) The Developer shall or shall cause the Qualified Affordable Housing Developer to construct and deliver the Affordable Housing Development within the times set forth in the Affordable Housing Development Milestone Schedule which at all times must be consistent with the DDA Milestone Schedule and the DDA Phasing Plan, subject to extension provisions of Section 1.3 of the DDA.

(b) The Developer shall construct and deliver the Moderate Income Units within the times set forth in the DDA Milestone Schedule and the DDA Phasing Plan.

Section 4.2 Timing of Construction

(a) The Developer contemplates that the Project shall be phased with construction and development occurring as set forth in the Phasing Plan contained in the DDA. The parties acknowledge and agree that the first phase of the Project will include the construction of the Affordable Housing Development, which the parties contemplate will be constructed in two phases (but could be combined into one phase). To the extent the Developer and the Qualified Affordable Housing Developer elect to develop Moderate Income Units in the Affordable Housing Development, the Developer shall submit to the City and obtain City approval of an amendment to the Development Plan to authorize the development of Moderate Income Units in the Affordable Housing Development.

(b) The City shall have no obligation to issue building permits for Residential Units in the first phase of the Project after the issuance of the building permit for the three hundred ninety-fifth (395th) market rate Residential Unit (specifically excluding any building permits issued for the construction of permanently restricted Moderate Income Units necessary to meet the Moderate Income Unit requirements) until and unless a Tax Credit Reservation has been received and executed for both phases of the Affordable Housing Development.

(c) If the City ceases to issue building permits for Residential Units after the issuance of the three hundred ninety-fifth (395th) Residential Unit building permit pursuant to Section 4.2 (b) above, the City shall not be obligated to commence issuance of further building permits for Residential Units unless and until: (1) the Qualified Affordable Housing Developer receives and executes a Tax Credit Reservation for both phases of the Affordable Housing Development and the Qualified Affordable Housing Developer has submitted and the City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan ; or (2) the Developer records a Regulatory Agreement on undeveloped residential land in Phase 1 of the Project that will permanently restrict one hundred and seven (107) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 1 of the Project. If and to the extent, the Developer records a Regulatory Agreement on Phase 1 of the Project pursuant to this Section 4.2(c)(2), then the Developer shall be required to record a Regulatory Agreement on undeveloped residential land

in Phase 2 of the Project that will permanently restrict twenty-one (21) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 2 of the Project.

(d) The Developer shall have discretion to determine the exact number of Moderate Income Units to be developed in each market rate Residential Project, provided that the required number of Moderate Income Units provided in each Phase will allow the Developer to meet the Moderate Income Unit requirement for the Project. The Developer shall provide the City with written notice, prior to the conveyance of the first parcel to a vertical developer, or if the Developer intends to complete the vertical development, prior to the issuance of the first building permits for vertical construction, of the Residential Projects designated or anticipated to be designated to include Moderate Income Units. The Developer may update the designation of Residential Projects to include Moderate Income Units at any time as long as the designation in each Phase meets the required number of Moderate Income Units for the Project and is consistent with the DDA Phasing Plan. The Developer shall impose the requirement to provide Moderate Income Units in the Residential Projects designated by the Developer to include Moderate Income Units upon the vertical developers at time of sale or transfer of the parcels so designated and a covenant or other deed restriction acceptable to the City restricting the designated number of Moderate Income Units to be developed on that portion of the Property shall be recorded on each parcel transferred or prior to issuance of a building permit.

Section 4.3 Preliminary Development Notice.

(a) The planning, design and construction of the Affordable Housing Development and the associated Project Infrastructure and Deferred Project Infrastructure required to provide minimum access and utility services for the Affordable Housing Development will require cooperation and coordination between the City, the Developer and the Qualified Affordable Housing Developer, and coordination and cooperation will also be required of them with respect to the construction of other portions of the Project and Project Infrastructure that may, from time to time, also be concurrently under construction. The Qualified Affordable Housing Developer and Developer shall agree to cooperate and to take all acts reasonably necessary to reduce conflicts between the development of the Affordable Housing Development and the associated Project Infrastructure and the development of other portions of the Property and associated Project Infrastructure.

(b) The Affordable Housing Plan Assignment shall require the Qualified Affordable Housing Developer to provide the Developer with a preliminary development notice at the earlier of: (i) twelve (12) months prior to its targeted date for Commencement of Construction on an Affordable Housing Site; or (ii) the date that Qualified Affordable Housing Developer submits its first application for tax credit financing to TCAC (the "Preliminary Development Notice"). The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, the information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Qualified Affordable Housing Developer's anticipated construction start date, preliminary construction schedule, description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads, and anticipated dates for completion of construction of the

Affordable Housing Development, when Deferred Project Infrastructure, including utility hookups and public access, will be required. The Preliminary Development Notice shall be updated on regular intervals, but not less frequently than every three months.

(c) The Qualified Affordable Housing Developer shall notify Developer and the City if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed Completion dates thereof. The Qualified Affordable Housing Developer, Developer and City shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable the Developer to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

(d) Developer shall provide the Qualified Affordable Housing Developer with a reasonable opportunity (of not less than thirty (30) days), to review and comment on draft improvement plans for Project Infrastructure and Deferred Project Infrastructure, provided that nothing herein shall require Developer to delay preparation or approval of improvement plans or construction to accommodate the Qualified Affordable Housing Developer's schedule for design and construction, absent notice and request from the Qualified Affordable Housing Developer and consent thereto by Developer.

Section 4.4 Coordination of Construction and Deferred Project Infrastructure.

(a) The Parties intend that Deferred Project Infrastructure related to the Affordable Housing Site will be completed by Developer in coordination with the development of the Affordable Housing Units on the Affordable Housing Site. Developer's obligation to Complete the Deferred Project Infrastructure will be secured by completion assurances given in accordance with the applicable Subdivision Improvement Agreement, and City shall provide Developer with all access needed to Complete the Deferred Project Infrastructure on the Affordable Housing Site. The Developer shall coordinate the construction of the Deferred Project Infrastructure with the construction of the Affordable Housing Development to ensure that: (1) the Deferred Project Infrastructure is Completed at or before completion of the Affordable Housing Development; (2) the utility laterals serving the Affordable Housing Site are Completed in coordination with the construction of the Affordable Housing Development; and (3) Developer's work does not interfere with or obstruct the Qualified Affordable Housing Developer's work during such construction to the maximum extent reasonably feasible and that the Qualified Affordable Housing Developer's work similarly does not interfere with Developer's work.

(b) Notwithstanding the foregoing, if Developer has Commenced the Project Infrastructure required to serve parcels adjacent to or in the same Phase of the Project and in the vicinity of the Affordable Housing Site, then Developer shall have the right to Commence and Complete the Deferred Project Infrastructure related to the Affordable Housing Site (other than the utility laterals for the Affordable Housing Site) even though design, development or construction of the Affordable Housing Development may not yet have Commenced to the same extent.

(c) Developer shall provide the Qualified Affordable Housing Developer and the City not less than ninety (90) days' notice of its intent to Commence the Deferred Project Infrastructure, and such right shall accrue unless: (1) the City or the Qualified Affordable Housing Developer objects within thirty (30) days following the receipt of Developer's notice; and (2) the City or Qualified Affordable Housing Developer, as applicable, and the Developer agree, within sixty (60) days following the objection, to a payment amount equal to Developer's anticipated cost of completing some or all of the Deferred Project Infrastructure on the Affordable Housing Site (the "Deferred Infrastructure Liquidation Amount"). The City, the Qualified Affordable Housing Developer, and the Developer shall meet and confer in good faith during the 60-day period (or such longer period as may be agreed to by the City, the Qualified Affordable Housing Developer and the Developer) to reach agreement on the Deferred Project Infrastructure Liquidation Amount. Developer shall provide its estimate of such costs, based upon the Deferred Project Infrastructure to be completed and substantiated by qualified contractor bid(s) or estimates(s) specifying the quantity and cost to complete the Deferred Project Infrastructure. If the City, Qualified Affordable Housing Developer and the Developer are able to reach agreement on the Deferred Infrastructure Liquidation Amount, then Developer shall promptly pay this sum to the then current owner of the Affordable Housing Site, either the City or the Qualified Affordable Housing Developer, and thereafter: (i) Developer shall be released from any further obligation to construct that portion of the Deferred Project Infrastructure for which Developer has paid the Deferred Infrastructure Liquidation Amount; and (ii) the City shall release any associated completion assurance given pursuant to the Subdivision Improvement Agreement.

(d) If the City receives the Deferred Infrastructure Amount, the City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Affordable Housing Developer at time of the conveyance of the Affordable Housing Site. Upon receipt of the Deferred Infrastructure Liquidation Amount, the Qualified Affordable Housing Developer shall be responsible to construct the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount. If the City, Qualified Affordable Housing Developer and the Developer are not able to reach agreement on the Deferred Infrastructure Liquidation Amount within the time frame set forth above, then Developer shall proceed to install the Deferred Project Infrastructure related to the Affordable Housing Site. The Parties agree that completion of the utility laterals and other components of Deferred Project Infrastructure on the Affordable Housing Site in advance of the design development or related construction of the Affordable Housing Development on the Affordable Housing Site may result in the need to move or replace all or part of said Deferred Project Infrastructure. In order to avoid unnecessary costs and duplication of work, in the event the Developer elects to proceed and to install the Deferred Project Infrastructure serving the Affordable Housing Site prior to adequate design development or construction to define and locate said Deferred Project Infrastructure for the Affordable Housing Development, Developer shall Complete all of the Deferred Project Infrastructure except for the utility laterals and any other components of Deferred Project Infrastructure for which Developer does not have sufficient design information from the Qualified Affordable Housing Developer, and the Developer shall pay to the City or the Qualified Affordable Housing Developer a Deferred Infrastructure Liquidation Amount equal to the amount determined by Developer and approved by the City and the Qualified Affordable Housing Developer as the reasonably estimated cost of installing the utility lateral(s) or other deferred components of Deferred Project Infrastructure upon Completion of the remaining

Deferred Project Infrastructure and upon such payment: (i) Developer shall be released from any obligation to Complete such Deferred Project Infrastructure; and (ii) the City shall release any associated completion assurance pursuant to the applicable Subdivision Improvement Agreement.

Section 4.5 Schedule Adjustments. Developer's schedule under this Plan to deliver Project Infrastructure and Deferred Project Infrastructure required to service an Affordable Housing Development shall be subject to modification if and to the extent changes in the type, nature, locations, amount, cost or phasing of Project Infrastructure or Deferred Project Infrastructure are required to respond to the Qualified Affordable Housing Developer's request or to accommodate changes in the Affordable Housing Development from those assumed in the previously approved improvement plans and agreement. Developer shall have the right to reject such proposed Project Infrastructure changes if it would materially and adversely: (1) delay (unless such delay is accepted by the City and the Qualified Affordable Housing Developer) or increase the costs of Project Infrastructure for the Affordable Housing Development; (2) increase the costs to other Residential Projects or their associated Project Infrastructure; or (3) delay or interfere with actual construction of such other Project Infrastructure or such other Residential Projects. If Developer believes any adjustment to the Project Infrastructure or Deferred Project Infrastructure Completion dates related to the Affordable Housing Development is required, it shall provide City and the Qualified Affordable Housing Developer with notice and the detailed reasons therefor, and the Parties shall thereafter proceed in good faith to attempt to mutually agree upon a revised schedule, provided that the Developer shall have the right to modify the schedule as necessary to respond to such materially changed circumstances or information related to the design and development of the Affordable Housing Development.

Section 4.6 Performance.

(a) During the construction of Project Infrastructure and Deferred Project Infrastructure, Developer shall deliver status reports to the City and the Qualified Affordable Housing Developer advising of the status and progress of the preparation of improvement plans and the construction of the Project Infrastructure (or Deferred Project Infrastructure), including a report of any significant delays in the progress of such construction and whether such delays are due to Force Majeure Delay or Affordable Housing Development specific infrastructure changes, and updating, as necessary, the estimated Project Infrastructure Completion date.

(b) Notwithstanding the foregoing provisions of this Plan to the contrary, in no event shall Developer be in default of its obligation to Complete the Project Infrastructure (or Deferred Project Infrastructure) hereunder unless Developer's failure materially and adversely interferes with the Qualified Affordable Housing Developer's obtaining construction financing, permits and/or approvals for development of the Affordable Housing Development, or the construction, use or occupancy of the Affordable Housing Development thereon, materially increases the Qualified Affordable Housing Developer's costs with respect to such Affordable Housing Development, or materially delays the Qualified Affordable Housing Developer's construction or occupancy of the Affordable Housing Development (when compared to the development schedule, including any updates provided or agreed upon in good faith), and such failure continues for more than forty-five (45) days following Developer's receipt of written notice thereof from the Qualified Affordable Housing Developer; provided, however, that if

more than forty-five (45) days is reasonably required to sufficiently complete the Project Infrastructure (or Deferred Project Infrastructure) to eliminate the interference with or delay to the Qualified Affordable Housing Developer's obtaining construction permits or approvals for development or its construction, use or occupancy of the Affordable Housing Development, then Developer's will not be in default hereunder so long as: (1) temporary infrastructure is available to eliminate such interference or delay, including any interference or delay in the Qualified Affordable Housing Developer's obtaining construction permits or approvals for the Affordable Housing Development or, if applicable, a certificate of occupancy, and Developer provides such temporary infrastructure within thirty (30) days following Developer's receipt of the Qualified Affordable Housing Developer's notice described above; (2) Developer continues to so provide such temporary infrastructure until the completion of the Project Infrastructure (or Deferred Project Infrastructure); and (3) Developer diligently pursues completion of the Project Infrastructure (or Deferred Project Infrastructure).

(c) The Qualified Affordable Housing Developer's notice to Developer of Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) must specify, in reasonable detail, the basis for the Qualified Affordable Housing Developer's assertion that Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) constitutes a default in Developer's obligations as described above.

Section 4.7 Comparability of Housing Units.

(a) The Affordable Housing Units and Moderate Income Units shall include a range of sizes generally reflecting the range and numbers of bedrooms of Market Rate Residential Units (the Project as a whole) and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in comparison to the Market Rate Residential Units.

(b) For-Sale Residential Unit that are Moderate Income Units may be smaller in size and have different interior finishes and features than market-rate For-Sale Residential Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined by the Community Development Director. All For-Sale Residential Unit that are Moderate Income Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that the Developer need not provide For-Sale Residential Unit that are Moderate Income Units of more than four bedrooms.

ARTICLE 5. ON GOING OBLIGATIONS FOR AFFORDABLE HOUSING UNITS

Section 5.1 Marketing. Prior to marketing an Affordable Housing Unit, the Developer or Qualified Affordable Housing Developer shall submit to the City: (a) a marketing plan for the applicable Affordable Housing Units; (b) the proposed rental charges and purchase prices for such Affordable Housing Units that are consistent with the requirements of this Plan; and (c) proposed eligibility and income-qualifications of renters and purchasers. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt. If the City disapproves the marketing

plan, it shall state its reasons for such disapproval in writing and with specificity. The Developer or Qualified Affordable Housing Developer shall resubmit a revised marketing plan addressing the City's reasons for disapproval prior to marketing the Affordable Housing Units. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt of a revised market plan.

Section 5.2 Satisfaction of Inclusionary Housing Obligations. The requirements of the Inclusionary Housing Ordinance, Density Bonus Regulations and Settlement Agreement shall be satisfied with respect to the Project if the Developer constructs or causes to be constructed the Affordable Housing Units in compliance with this Plan, and the Affordable Housing is made available to and occupied by income eligible households in compliance with the applicable City Regulatory Agreement and Affordable Resale Restriction. The Developer shall be deemed to have satisfied its obligations under the Inclusionary Ordinance only upon the issuance of a Certificate of Occupancy for the Affordable Housing Development. Units in the Affordable Development in excess of the units required under the Inclusionary Housing Ordinance with respect to the first phase of the Project shall be credited towards the satisfaction of requirements of the Inclusionary Housing Ordinance for future phases of the Project.

Section 5.3 Consistency with Palmer and Non-Applicability of Costa Hawkins.

(a) The Developer has or will submit an application for density bonus pursuant to the City's Density Bonus Regulations.

(b) The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Housing Units developed pursuant to this Plan and subject to the City Regulatory Agreement. This Plan falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all affiliates, successor and assigns, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer's obligations set forth in this Plan related to Affordable Housing Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all agreements it enters into with Affiliates, successor or assigns transferring any portion of the Property:

> "The Disposition and Development Agreement by and between the City of Alameda and Alameda Point Partners, LLC, dated _____ and recorded _____, at _____ implements City of Alameda policies and includes regulatory concessions, incentives and significant public investment in the Alameda Point Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and any successors and assigns, as contemplated by California Government Code Section 65915. In light of the City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand

and agree that the Costa-Hawkins Act does not and shall not apply to the Affordable Housing Units as defined in the Disposition and Development Agreement developed at the Alameda Point Property."

The Parties understand and agree that the City would not be willing to enter into the DDA or this Plan, without the agreement and waivers as set forth in this Plan.

ARTICLE 6. DEFINITIONS

Section 6.1 Definitions. Initially capitalized terms unless separately defined in this Plan have the meanings and content set forth elsewhere in the DDA. In addition to the terms defined elsewhere in this Plan, the following definitions shall apply:

(a) "Affordable" or Affordable Housing Cost" means (i) with respect to a Rental Residential Unit required to be Affordable to a Very Low Income Household a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Rental Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of eighty percent (80%) of the Area Median Income based upon Assumed Household Size and (iii) with respect to Rental Residential Unit required to be Affordable to Moderate Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of one hundred twenty percent (120%) of Area Median Income based upon Assumed Household Size. With respect to a For-Sale Residential Unit, Affordable or Affordable Housing Cost means a purchase price determined such that the homeowner's total annual housing payment does not exceed thirty three percent (33%) of the maximum Area Median Income permitted for the applicable type of Residential Unit, based upon Assumed Household Size. For purposes of such For-Sale Residential Units, the total annual housing payment will include principal and interest on a fixed rate thirty (30) year mortgage with commercially reasonable rates, points, and fees, assuming a five percent (5%) down payment, taxes and assessments and any homeowners association dues.

(b) "Affordable Housing Covenant" means the Affordable Housing Covenant imposing the requirements of this Plan on the Affordable Housing Covenant will be recorded against any portion of the Property at the close of escrow for any portion of the Property transferred to the Developer for market-rate housing on which the Developer will build any For-Sale Residential Units at the time each such site is transferred. The form of the Affordable Housing Covenant is attached hereto as Attachment C, incorporated herein by this reference.

(c) "Affordable Housing Development" means the Residential Project constructed by a Qualified Affordable Housing Developer in one or two buildings and up to two phases on a shared or separate podium on the Affordable Housing Site. The Affordable Housing Development will consist of not less than one hundred twenty-eight (128) Affordable Housing Units to be available to and occupied by Low Income Home and Very Low Income Households.

(d) "Affordable Housing Development Financing Plan" means the financing plan for each of the two construction phases of the Affordable Housing Development which

Developer shall or shall cause the Qualified Affordable Housing Developer to prepare and submit to the City for its approval not later than the date set forth in the Milestone Schedule for the approval of the Affordable Housing Development Financing Plan.

(e) "Affordable Housing Plan Assignment" means a written assignment agreement, in a form to be approved by the City, between the Developer and the Qualified Affordable Housing Developer, meeting the requirements of this Plan and setting forth the transferees express assumption of the obligations to construct the Affordable Housing Development in accordance with the DDA and this Plan. Notwithstanding anything to the contrary in the Affordable Housing Plan Assignment, the Developer shall remain liable for construction of the Affordable Housing Development.

(f) "Affordable Housing Site" means that portion of Site A, referred to as Block 8, depicted in the Affordable Housing Site Map attached hereto as Attachment E incorporated herein by this reference.

(g) "Affordable Housing Units" means one of the two hundred Residential Units required to be Affordable to Very Low Income Households, Low Income Households or Moderate Income Households, developed in accordance with this Plan subject to the City Regulatory Agreement or Affordable Resale Restriction. The Affordable Housing Units shall also serve as the "inclusionary units" for purposes of fulfilling the requirements of the City's Inclusionary Housing Ordinance.

(h) "Affordable Resale Restriction" means the Resale Restriction and Option to Purchase Agreement between a homebuyer and the City in the form attached as Exhibit E to the Affordable Covenant attached hereto as Attachment C and incorporated herein by this reference, which places restrictions on the resale of the For-Sale Residential Unit that is also an Affordable Housing Units to specified eligible purchasers at specified eligible purchase prices, and which provides mechanisms to enforce such restrictions. The Affordable Resale Restriction will be recorded against each For-Sale Residential Unit that is an Affordable Housing Unit at the time of conveyance to an eligible household.

(i) "AHSC Program" has the meaning set forth in Section 3.5 hereof.

(j) "Area Median Income" means the median income for households in Alameda City, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for actual household size or Assumed Household Size as specified in this Plan.

(k) "City Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants imposing the requirements of this Plan. The City Regulatory Agreement will be recorded against the Affordable Housing Site at the close of escrow for the transfer of the Affordable Housing Site and will be recorded against any portion of the Property transferred to the Developer for market-rate housing at the time each such site is transferred. The form of the City Regulatory Agreement is attached hereto as Attachment B, incorporated herein by this reference.

(l) "Commence Construction" or Commencement of Construction means, for

purposes of this Plan, commencement of excavation for or commencement of structural foundations for the Affordable Housing Development, as set forth in the Affordable Housing Development Milestone Schedule.

(m) "Completed" means, for purposes of this Plan , completion of all horizontal infrastructure required by the City in order to enable a Qualified Affordable Housing Developer to obtain a building permit to Commence Construction of the Affordable Housing Development and upon the completion of construction of the Affordable Housing Development, to obtain a permanent certificate of occupancy for the Affordable Housing Units located therein.

(n) "Costa Hawkins Act" means Chapter 2.7 of Title 5 of Part 4 of Division 3 of the California Civil Code.

(o) "Deferred Project Infrastructure" means items of horizontal infrastructure related to the Affordable Housing Site consisting of: (i) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts; and (ii) utility laterals serving the Affordable Housing Site, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

(p) "Density Bonus Regulations" means City of Alameda Ordinance 3012, set forth in Section 30-17 (Density Bonus Regulations) of Chapter XXX (Development Regulations) of the Municipal Code.

(q) "For-Rent or Rental Residential Unit" means a Residential Unit which is not a For-Sale Residential Unit.

(r) "For-Sale Residential Unit" means a Residential Unit which is intended to be offered for sale.

(s) "HCD" means the California Department of Housing and Community Development.

(t) "HUD" means the United States Department of Housing and Urban Development.

(u) "Inclusionary Housing Ordinance" means City of Alameda Ordinance 2926, set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations), commencing with Section 30-16 of the Municipal Code.

(v) "Low Income Homes" means Residential Units constructed by a Qualified Affordable Housing Developer on the Affordable Housing Site which are available at an Affordable Housing Cost and rented to Low Income Households.

(w) "Low Income Household" means a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for actual

household size. The term Low Income Household shall be read to include a Very Low Income Household.

(x) "Market Rate Residential Unit" means a Residential Unit which has no restrictions or requirements under this Plan with respect to affordability levels or income restrictions for occupants other than the marketing requirements set forth in Section 5.1.

(y) "Memorandum of Option" has the meaning set forth in Section 3.2(b)(7) hereof.

(z) "Moderate Income Household" means households whose income does not exceed the moderate income limits applicable to Alameda City as published annually by HCD pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision). The term Moderate Income Household shall be read to include a Very Low Income Household and Low Income Household.

(aa) "Moderate Income Units" means Residential Units which are Affordable to and occupied by Moderate Income Households, and which may be For-Sale Residential Units or a Rental Residential Units. The parties contemplate that the Moderate Income Units may be constructed in multiple phases within the market rate residential developments.

(bb) "Phase Financing Plan" means the financing plan for a particular phase of the Development prepared and approved in accordance with the terms of Section 3.1(b) of the DDA.

(cc) "Project Infrastructure" means the infrastructure required to be constructed as part of the Phase I Infrastructure Package described in more detail in Section 5.2 of the DDA.

(dd) "Qualified Affordable Housing Developer" means an organization including governmental or quasi-governmental agencies, nonprofits and limited partnership with the financial capacity and experience and a proven history of developing affordable housing consistent with the character and quality of the Residential Projects, the DDA, the Development Agreement and this Plan, approved by the City pursuant to Section 3.2(a) hereof.

(ee) "Renewed Hope Settlement Agreement" means that certain Settlement Agreement dated as of March 20, 2001 related to the Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.

(ff) "Residential Project" means a Project containing Residential Units which may also contain other uses permitted under the DDA, the Development Agreement and the Project Approvals.

(gg) "Residential Unit" means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, with or without shared living spaces, such as kitchens, dining facilities or bathrooms.

(hh) "Tax Credit Funds" means the proceeds from the syndication and sale of federal low-income housing tax credits established pursuant to Section 42 of the Internal

Revenue Code of 1986, as amended , in the amount of the Affordable Housing Finance Plan approved by the City.

(ii) "Tax Credit Reservation" means a preliminary reservation letter from TCAC under which TCAC reserves an allocation of 9% or 4% Low Income Housing Tax Credits.

(jj) "TCAC" means the California Tax Credit Allocation Committee.

(kk) "Utility Allowance" means a utility allowance based on the utility allowance schedule published by the City of Alameda Housing Authority or the TCAC.

(ll) "Very Low Income Homes" means Residential Units constructed by a Qualified Affordable Housing Developer on an Affordable Housing Site which are available at an Affordable Housing Cost and rented to Very Low Income Households.

(mm) "Very Low Income Household" means a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

Section 6.2 Attachments: Each Attachment to this Plan is incorporated herein and made a part hereof as if set forth in full

Attachment A:	Affordable Housing Development Milestone Schedule
Attachment B:	Form City Regulatory Agreement
Attachment C:	Form of Affordable Housing Covenant
Attachment D:	Memorandum of City Option
Attachment E:	Legal Description of Affordable Housing Site

Attachment A

Affordable Housing Development Milestone Schedule

ACTION	DATE
AHSC Concept Proposal Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for the AHSC Program Grant to HCD. [§3.5]	The deadline for submission of concept proposal application for funding in March 2016, or such date HCD issues as the deadline for submission of a full application. If the Qualified Affordable Housing Developer's concept proposal application is successful, the Qualified Affordable Housing Developer will submit a full application in April 2016, or such date HCD issues as the deadline for submission of a full application. If Qualified Affordable Housing Developer does not receive a AHSC Program grant allocation in the April 2016 round, or such date HCD issues as the deadline for submission of a full application, then the Qualified Affordable Housing Developer shall submit a timely concept proposal application for funding in March 2017 or some other earlier round if available.
AHSC Full Application. The Qualified Affordable Housing Developer shall submit a timely and complete full application for the AHSC Program Grant to HCD. [§3.5]	The deadline for submission of full applications for funding provided by HCD after submission of the Concept Proposal Application. If the Qualified Affordable Housing Developer's concept proposal application is successful in the March 2017 round, or such date HCD issues as the deadline for submission of a concept application, the Qualified Affordable Housing Developer will submit a full application in April 2017, or such date HCD issues as the deadline for submission of a full application If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program grant allocation in the April 2017 round, then the Qualified Affordable Housing Developer shall meet with the City as required under 3.6(c).
Phase I Tax Credit Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for a 9% Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. [§3.6(b)]	In the first competitive application round of TCAC preliminary reservation application of 2017 and each subsequent preliminary reservation application round up to and including the second competitive round in 2018, and in no event later than July 2018, unless the Developer applies for as is granted extensions under the DDA.
Phase II Tax Credit Application. The Qualified Affordable Housing Developer shall submit a	In the non-competitive application round of TCAC commencing June 2017 and each

timely and complete application for a4% Tax Credit Reservation to TCAC and a tax exempt bond application to CDLAC for the second phase of the Affordable Housing Development. [§3.6(c)]	subsequent preliminary reservation application rounds through October 2018.
Phase I Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the first phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
Phase II Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the second phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
AHSC Award. The Qualified Affordable Housing Developer shall have obtained an award of AHSC Program funds. [§3.5]	No later than June 2018 or such date that HCD awards AHSC program funds from the first full application round in 2018.
Affordable Housing Site Conveyance. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers Affordable Housing Site. [§3.3]	No later than December 31, 2018.
Phase I Building Permit. The Qualified Affordable Housing Developer shall have obtained a Tax Credit Reservation for the first phase of the Affordable Housing Development. [§4.2(b)]	Prior to the issuance of the building permit for the three hundred ninety-sixth (396^{th}) market rate Residential Unit.
Phase II Building Permit. The Qualified Affordable Housing Developer shall have obtained a building permit for the second phase of the Affordable Housing Development. [§4.2(c)]	Prior to the issuance of any building permit for the development of residential or commercial private development for Phase II of the Project.
Phase I Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	Within 180 days of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the second phase of the Affordable Housing Development. [§4.1]	Within 90 days of a 4% tax credit allocation reservation for Phase II of the Affordable Housing Development.

Phase I Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the first phase of the Affordable Housing Development [§4.1]	No later than two years from the date of receipt of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the second phase of the Affordable Housing Development [§4.1]	No later than two years from the date of receipt of a 4% tax credit reservation and CDLAC allocation for Phase II of the Affordable Housing Development.

Attachment B

Form of City Regulatory Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, California 94501
Attention: City Manager

Exempt from recording fees pursuant to
Cal. Gov't Code § 27383

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

APN: _____

[CITY FORM]
AFFORDABLE HOUSING AGREEMENT

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

This Affordable Housing Agreement ("**Agreement**") dated _____ ("**Effective Date**"), is entered into between the **CITY OF ALAMEDA**, a municipal corporation ("**City**") and Alameda Point Partners, a California limited liability company ("**Developer**").

RECITALS

The following recitals are a substantive part of this Agreement.

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**").

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**"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

C. The Property is the site of approximately 800 units of residential housing located in the City of Alameda ("Housing Project") and is, therefore, subject to the City Inclusionary Policy. The Housing Project shall be developed by Developer in accordance with City Council Ordinance No. _____ approving the Disposition and Development Agreement dated _____(the "DDA") as depicted on the approved site plans for the Housing Project attached as Exhibit B.

D. The Developer has received a discretionary approval from the City to construct the Housing Project which requires that the Developer reserve at least 25% of the units in the Project for rent to very low-, low- and moderate- income households (each an **"Affordable Unit,"** and collectively, the **"Affordable Units"**) in accordance with the City Inclusionary Policy.

E. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Project, the Developer is required to enter into this Agreement on terms acceptable to the City. This Agreement shall be executed and recorded against the Property prior to the recordation of any parcel map or final map or issuance of any building permit for the Project. The purpose of this Agreement is to set forth the terms and conditions for producing and marketing the Affordable Units in greater specificity and to ensure that the Affordable Units are built as part of the Project. The Developer and City desire by the execution of this Agreement to assure the Property meets the requirements of the City Inclusionary Policy, and that the Affordable Units remain affordable permanently upon the recordation of this Agreement.

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "**Affordable Rent**" is the amount of rent considered as "affordable rent" for very low, low or moderate income households, adjusted for family size appropriate to the unit, less a utility allowance (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not telephone or cable television service), pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 "adjusted for family size appropriate to the unit" shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

1.02 "**Eligible Households**" shall mean households meeting the income restrictions as set forth in Section 2.01.

1.03 "**Area Median Income**" shall mean the median income for households in Alameda County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at

least 18 months, the City shall provide the Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

1.04 "**Applicable Laws**" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Housing Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Developer or the Housing Project.

ARTICLE 2. RENT, INCOME AND OCCUPANCY RESTRICTIONS

2.01 Rent and Income Restrictions. All of the Affordable Units to be located on the Property shall be rented to very low, low or moderate income households whose income does not exceed the limits set forth below:

(a) Very Low Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.

(b) Low Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed eighty percent (80%) of the Area Median Income at an Affordable Rent.

(c) Moderate Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed one hundred twenty percent (120%) of the Area Median Income at an Affordable Rent. *[Note: Delete if no Moderate Income units in the project.]*

[Optional resident manager provision – insert if 100% affordable project or delete if mixed market and affordable project, as applicable] Notwithstanding the foregoing, Developer may, in its sole reasonable judgment, elect to have a full-time property manager residing on the Property, in which event one (1) of the Affordable Units may be designated as a resident manager's unit, and such Affordable Unit shall not be subject to the above affordability restrictions so long as such Affordable Unit is occupied by a full-time on-site manager for the Housing Project.

No less than one (1) person per bedroom shall be allowed. No more than two (2) persons shall be permitted to occupy a studio Affordable Unit, no more than two (2) persons shall be permitted to occupy a one (1) bedroom Affordable Unit, no more than four (4) persons shall be permitted to occupy a two (2) bedroom Affordable Unit, and no more than six (6) persons shall be permitted to occupy a three (3) bedroom Affordable Unit. City may make exceptions to the

foregoing occupancy standards to the extent such exceptions are required by Applicable Laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement.

Not more than once per year, Developer may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Developer may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by HUD and the State of California Department of Housing and Community Development ("**HCD**"). Developer must notify each tenant and City in writing of any increase in monthly rent for an Affordable Unit at least thirty (30) days in advance of the effective rent adjustment date. The written notice of rent increase provided to City shall indicate: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice required shall be considered a default by Developer under this Agreement.

The determination of a status as an Eligible Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. The income of all persons residing in the Affordable Unit shall be considered for purposes of calculating the household income. Developer shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. Developer shall notify City in writing whenever the tenant in an Affordable Unit changes. The notice shall indicate the name and household size of the tenant vacating the Affordable Unit. Once the Affordable Unit is reoccupied, Developer shall notify City in writing of the new tenant's name, household size and income.

Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the occupants of such Affordable Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Affordable Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B. If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph *[Insert (a), (b) and/or (c), as appropriate]*, of this Section 2.01, the occupant may continue to occupy the former Affordable Unit; provided, however, Developer may increase the rental rate for such former Affordable Unit to market rate or the highest rent allowable under regulatory restrictions and Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit. Developer shall send written notice to City with the address and bedroom/bathroom mix of the Affordable Unit designated by Developer as the replacement Affordable Unit.

In lieu of designating another comparable Housing Project unit as the replacement Affordable Unit to meet the income requirements of paragraph *[insert (a), (b) and/or (c), as appropriate]* of this Section 2.01, Developer may designate as an Affordable Unit an occupied unit within the Housing Project that is not currently designated as an Affordable Unit if such unit is then occupied by a tenant meeting the income requirements set forth in paragraph *[insert (a),*

(b) and/or (c), as appropriate], of this Section 2.01. In the event Developer makes such a substitution, Developer shall send written notice to the City with the address and bedroom/bathroom mix of the substituted Affordable Unit, along with the name of the occupant and household size and income of the household occupying the unit.

2.02 Designation of Affordable Units. The initial designation and location of the Affordable Units is set forth in the Site Plan attached hereto as Exhibit C. The appearance, materials, finished quality and amenities of the Affordable Units shall be comparable to the market rate rental units within the Housing Project. Attached hereto as Exhibit D is a list of the materials, amenities and finishes that will be featured in each of the units within the Housing Project, including both the market rate units and the Affordable Units.

2.03 Marketing and Leasing Program.

Developer shall actively market rental of all units within the Housing Project, including the Affordable Units. Prior to lease-up of the Affordable Units, Developer shall provide City with a copy of its marketing program for the Housing Project, which shall include a marketing program for the Affordable Units ("**Affordable Units Marketing Program**"). City shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. Developer shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by City.

Developer is responsible for implementing the Affordable Units Marketing Program actively and in good faith. City may extend the required marketing period in its discretion if Developer delays implementation or otherwise fails to comply with the Affordable Units Marketing Program as approved by City.

2.04 Agreement to Limitation on Rents. The City has provided a waiver of AMC 30-53 for the Housing Project as part of the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Civil Code Sections 1954.52(b) and 1954.53(a)(2) provide that where an owner has received a form of concessions specified in Chapter 4.3, certain provisions of Civil Code Section 1954.51 et seq. (Costa-Hawkins Act) do not apply to the project if the Developer has so agreed by contract. Developer hereby agrees to limit rents as provided in this Agreement in consideration of Developer's receipt of the waiver of AMC 30-53 as the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, and further agrees that the limitations on rents imposed by this Agreement are in conformance with Civil Code Section 1954.51 et seq. (Costa-Hawkins Act).

2.05 Satisfaction of Affordable Housing Requirement. The City Inclusionary Policy shall be satisfied with respect to the Property if the Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Article 2 above, in compliance with the schedule set forth in the DDA.

ARTICLE 3. REPORTING REQUIREMENTS FOR HOUSING PROJECT

3.01 Reporting Requirements. Developer shall submit an annual report and income certification to the City. The report, at a minimum, shall include:

(a) The number of persons per Affordable Unit;
(b) Name of each Affordable Unit Tenant;
(c) Initial occupancy date;
(d) Rent paid per month; and
(e) Gross income per year.

Such information shall be reported to the City substantially in the form of the Certification of Continuing Compliance attached hereto as Exhibit E or in such other format as may be reasonably requested by City.

Annual income recertification shall also contain those documents used to certify eligibility. The City, from time to time during the term of this Agreement, may request additional or different information, if such information is required in order for the City to comply with its reporting requirements, and Developer shall promptly supply such additional or different information in the reports required hereunder. Developer shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Developer, at such time and in such forms as City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Agreement. Upon reasonable advance request for examination by City, Developer, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Developer shall permit City to audit, examine and make excerpts or transcripts from these records at City's sole cost.

The first annual report and annual income certification ("**Initial Report**") shall be submitted to the City within sixty (60) days of the date of the initial rental of all the Affordable Units on the Property. Subsequent annual reports and annual income certifications or recertifications shall be submitted to the City on the anniversary date of submittal of the Initial Report.

3.02 City Approval of Lease Forms. City shall have the right to review and approve Developer's form of lease for the Affordable Units, including disclosures of the affordability restrictions on the Affordable Units, prior to Developer's use of such form.

3.03 Verification of Citizenship or Qualified Alien Status. Developer shall verify the citizenship or qualified alien status of all adult tenants and all adult applicants for tenancy of the Affordable Units as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. § 1621). Developer may charge a new tenancy applicant (but not an existing tenant) a reasonable eligibility verification fee only if approved in writing by the City. On an annual basis at the time of the annual income

recertification, Developer shall verify the citizenship or qualified alien status of all Affordable Unit tenants.

To the extent allowable under applicable regulatory restrictions, the Developer shall verify the citizenship or qualified alien status by causing the tenant or applicants for tenancy of all Affordable Units to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be retained by Developer and shall be disclosed to City upon request.

All eligibility shall be conducted without regard to race, creed, color, gender, religion, age, disability, familial status or national origin of the tenant or applicant for tenancy.

ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

4.01 Maintenance. During the term of this Agreement, Developer shall maintain, or cause to be maintained, the Property, including all improvements thereon, in a manner consistent with the provisions set forth therefor in the Alameda Municipal Code, and shall keep the entire Property free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Developer fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of sixty (60) days from the date of written notice from the City to the Developer, City may perform the necessary corrective maintenance, and Developer shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Property should Developer not reimburse City for such costs within sixty (60) days following City's written demand for reimbursement of such costs. Developer, on behalf of itself, its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from City and Developer's failure to cure or remedy such failure within sixty (60) days of such notice. Any such entry shall be made only after reasonable notice to Developer, and City shall indemnify and hold Developer harmless from any claims or liabilities pertaining to any such entry by City. Failure by Developer to maintain the Property in the condition provided in this Article 4 may, in City's reasonable discretion, constitute a default under this Agreement.

ARTICLE 5. NO TRANSFER

5.01 Prohibition. Except with respect to Permitted Transferees (as defined below), Developer shall not make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property, the Housing Project or this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld.

5.02 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or conveyance of the

Property or Housing Project, or any part thereof, shall not be required in connection with any of the following (the **"Permitted Transfers"**):

(a) The lease of Affordable Units to Eligible Households.

(b) Assignments for financing purposes, and any subsequent transfer to the lender providing such financing by foreclosure or deed in lieu of foreclosure thereunder, subject to such financing being considered and approved by the City.

(c) Transfer of the Property and Housing Project to an affiliate entity which controls, is controlled by or under common control with Developer.

(d) In the event of an assignment by Developer pursuant to subparagraph (c) not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to the City of such assignment or transfer and that such transferee shall be required to assume Developer's obligations under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

5.03 City Consideration of Requested Transfer. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Article 5 provided (a) the Developer delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as Developer, and (c) the assignee or transferee assumes the obligations of the Developer under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth herein and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within forty-five (45) days of its receipt of the Developer's notice and all information and materials required herein.

ARTICLE 6. 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 Developer, 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.

ARTICLE 7. 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 and Housing Project 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.

ARTICLE 8. DURATION

The covenants contained in Articles 2, 3, 4 and 5 of this Agreement shall be deemed to run with the Property and Housing Project permanently following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity, unless otherwise terminated by the City.

ARTICLE 9. SUCCESSORS AND ASSIGNS

The covenants contained in the Agreement shall be binding upon Developer and its heirs, successors and assigns, and such covenants shall run in favor of the City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard as to whether the City is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Developer's obligations under this Agreement, City and its successors and assigns 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. The covenants contained in the Agreement, without regard to technical classification and designation, shall be for the benefit of and shall be enforceable only by the City, and its successors and assigns.

ARTICLE 10. SUBORDINATION AGREEMENT

Except as otherwise expressly provided below, this Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Developer shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to City for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to City, subordinating such mortgages, deeds of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens. Notwithstanding the subordination provisions set forth herein, the City may, in its sole discretion, subordinate this Agreement.

ARTICLE 11. DEFAULT

Any failure by Developer to perform any term or provision of this Agreement shall constitute a "**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 can be cured within such thirty (30) day period, Developer does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any 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.

ARTICLE 12. NOTICES, DEMANDS AND COMMUNICATIONS

Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received: (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To City:	City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 Attention: City Manager
With a copy to:	City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Avenue Alameda, CA 94501 Attn: City Attorney
Authority	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attn: Executive Director

With a copy to: _____

_____

Attention: _____

To Developer Alameda Point Partners

_____

_____

Attention: _____

With a copy to: _____

_____

_____

Attention: _____

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

ARTICLE 13. ATTORNEYS' FEES

In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in any action or proceeding.

ARTICLE 14. RECORDATION OF AGREEMENT

Immediately following the Effective Date, this Agreement and the Notice of Affordability Restrictions on Transfer of Property in the form attached hereto as Exhibit F, shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 15. COMPLIANCE MONITORING FEE

Developer acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis and, therefore, agrees to pay City for a portion of its administrative costs for such monitoring by paying to City an annual monitoring fee in an amount of _____Dollars ($_____) which fee shall be due on the initial date of occupancy and each year on the anniversary date of the initial date of occupancy

ARTICLE 16. INDEMNIFICATION

Except for an award of attorney's fees to Developer, Developer will indemnify and hold harmless (without limit as to amount) the Authority and City and their elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of this Agreement, arising out of or

relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation the construction or sale of any unit in the Project, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the Authority and/or the City, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Article 16 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Article 16 shall remain in full force and effect.

ARTICLE 17. MISCELLANEOUS

Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement 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. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[The Remainder of this Page is Intentionally Left Blank]

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

CITY:

RECOMMENDED FOR APPROVAL:

CITY OF ALAMEDA, a municipal corporation

_____
Executive Director, Housing Authority

_____
City Manager
[Signature must be notarized]

APPROVED AS TO FORM:

_____
City Attorney

- and -

DEVELOPER::

Alameda Point Partners, a California limited liability company

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

NOTARY 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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT A

Description of Property

EXHIBIT B

Tenant Income Certification

Project Name and Address:_____ Date: _____

Affordable Units: ☐ 50% of Median Income
☐ 80% of Median Income
☐ 120% of Median Income

Address/Unit Number: _____ Rent:_____

Tenant/Household Name:_____ Date of Lease:_____

Size of Household: _____ Expiration:_____

Total Household Income:_____ per year

The following list includes each member of the household and their income. Attached are federal or state income tax returns for the most recent tax year, current stubs from paychecks or other evidence of the income of each income-producing member of the household.

Name of Household Member	Relationship	Age	Social Security Number	Annual Income	Source of Income/ Name of Employer

I/We the undersigned have read and answered fully, frankly and personally each of the above questions under penalty of perjury and do hereby swear they are true.

_____ _____

Head of Household Date Developer/ Agent Date

EXHIBIT C

Site Plan

[To be inserted]

EXHIBIT D

Materials, Amenities and Finishes

[To be inserted]

EXHIBIT E

CERTIFICATION OF CONTINUING COMPLIANCE

Project Name and Address:_____ Date: _____

Total Affordable Housing Units in Project:

Very Low Income Units (not to exceed 50% of Median Income): _____

Low Income Units (not to exceed 80% of Median Income): _____

Moderate Income Units (not to exceed 120% of Median Income): _____

The Developer, in accordance with the Affordable Housing Agreement dated _____, does hereby certify to the City of Alameda that during the preceding year, the units identified on the following pages were occupied in accordance with the Affordable Housing Agreement and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge.

Signed:_____ Date:_____
Developer/ Agent

[See Attached]

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

Very Low Income Units (Not to Exceed 50% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent

(Attach additional sheets as required.)

Signed:_____ Date:_____
Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

Low Income Units (Not to Exceed 80% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent

(Attach additional sheets as required.)

Signed:_____ Date:_____

Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

Moderate Income Units (Not to Exceed 120% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent

(Attach additional sheets as required.)

Signed:_____ Date:_____

Developer / Agent

EXHIBIT F

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, CA 94501
Attention: City Manager

Exempt from recording fees pursuant to Cal.Gov't Code Section 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") which restrict the price and terms at which the Property may be sold or rented. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions also limit the income of persons and households who are permitted to purchase and rent the Property.

Title of Document Containing Affordable Housing Restrictions:

Affordable Housing Agreement (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: (*check one*)

☐ as Document No. _____, official records of _____ County, on _____; or

☐ concurrently with this Notice, official records of _____ County.

Legal Description of Property:

See Exhibit A (Attached hereto)

Street Address of Property: _____, Unit No._____, _____, California.

Assessor's Parcel Number of Property:_____

Summary of Affordable Housing Restrictions (*check as applicable*):

☐ The Affordable Housing Restrictions restrict the amount of rent which may be charged for the rental housing unit or units on the Property, as follows:

_____.

☐ The Affordable Housing Restrictions restrict the sales price which may be charged for the sale of the ownership housing unit or units on the Property, as follows:

_____.

☐ The Affordable Housing Restrictions restrict the income level of the tenant or buyer of the Property, as follows:

_____.

☐ Term of Restrictions: permanent, commencing on the date of recordation of and terminating only upon termination of the Affordable Housing Restrictions.

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 which 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 shall be indexed against the City and the current Owner of the Property.

CITY OF ALAMEDA:

Dated: _____, 20___ By: _____
City Manager

OWNER:

Dated: _____, 20___ _____

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, _____, 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.

_____
Name: _____
Notary Public

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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment C

Form of Affordable Housing Covenant

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, California 94501
Attention: City Manager

Exempt from recording fees pursuant to
Cal. Gov't Code § 27383

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

[CITY FORM]

AFFORDABLE HOUSING AGREEMENT

(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 _____, 20__ ("Effective Date"), by and among the CITY OF ALAMEDA, a municipal corporation ("City") and Alameda Point Partners, LLC, a Delaware limited liability company ("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"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

C. The Property is the site of approximately 800 units of residential development located in the City of Alameda ("Project") and is, therefore, subject to the City Inclusionary Policy. The Project is to be developed by Developer in accordance with City Council Ordinance No. _____ approving the Disposition and Development Agreement dated _____ (the "DDA"), as depicted on the approved site plans for the Project attached as Exhibit B.

D. The Developer has received a discretionary approval from the City to construct the Project which requires that the Developer reserve at least _____ units in the Project for sale

to [*moderate-, low- and very low-income*] households (each an "Affordable Unit," and collectively, the "Affordable Units") in accordance with the City Inclusionary Policy (the "Project Inclusionary Requirement").

E. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended.

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Project, the Developer is required to enter into this Agreement on terms acceptable to the City. This Agreement shall be executed and recorded against the Property prior to the recordation of any parcel map or final map or issuance of any building permit for the Project. The purpose of this Agreement is to set forth the terms and conditions for producing and marketing the Affordable Units in greater specificity and to ensure that the Affordable Units are built as part of the Project. The 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 that includes a reasonable down payment and results in a monthly housing payment that is affordable. A maximum purchase price shall be considered affordable only if the Owner-Occupied Monthly Housing payment 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 ____ (___) 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" is defined in Recital E.

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

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

H. "Developer" means _____, a _____.

I. "Deed of Trust" means the deed of trust, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit, securing the buyer's performance under the Resale Restriction and the Note

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

K. "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.

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

M. "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.

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

O. "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.

P. "Note" means the promissory note, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit.

Q. "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property attached here to as Exhibit __.

R. "Owner-Occupied Monthly Housing Payment" means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not including telephone or cable television service), 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).

S. "Phasing Schedule" is defined in Section 2.1.D. [If applicable]

T. "Property" is defined in Recital A.

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

V. "Project" is defined in Recital C.

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

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

Y. "Term" is defined in Section 4.3.

Z. "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 ___ (__) Affordable Units in the Project, which will be sold to and occupied by Eligible Households, as follows: ___ (__) or 9% of the Affordable Units shall be sold to and occupied by Moderate Income Households, ___ (__) or 10% of the Affordable Units shall be sold to and occupied by Low Income Households, and ___ (__) or 6% 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 Phasing Plan. 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 phasing schedule outlined in the Affordable Housing Implementation Plan, incorporated herein by this reference.

E. Developer shall make a written designation to City, at the time the final subdivision map for the Site is recorded, of the units that shall be the Affordable Units, which designation shall be consistent with the terms of this Agreement. The total number of Affordable Units being offered for sale in accordance with this Article 2 shall be as required by subsection 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. 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 price that does not exceed the Affordable Sales Price for such a household, subject to prior approval of the City as further described below.

2. 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, as they may be amended from time to time (the "Inclusionary Ownership Guidelines"). 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 purchasing 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. 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.

3. 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.

4. 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, THE NOTE AND THE DEED OF TRUST SUPPLIED BY AND APPROVED BY CITY, AND FOR THE

BENEFIT OF CITY. UPON RECORDATION OF THE RESALE RESTRICTION AND THE DEED OF TRUST: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION AND DEED OF TRUST; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION AND THE DEED OF TRUST, 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.

2.2 Maintenance and Management. During the Term, the Property and the Project shall be maintained by a Homeowners' Association formed 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. Upon the sale and close of escrow on each 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 equal approximately $_____ per Affordable Unit per year, subject to increases as provided for in the CC&R's.

2.3 Satisfaction of Affordable Housing Requirement. The City Inclusionary Policy shall be satisfied with respect to the Property if the Developer constructs or causes to be constructed and sold to eliglble households the Affordable Units meeting the requirements of Article 2 above, in compliance with the schedule set forth in the DDA.

2.4 Immediately following the Effective Date, this Agreement and the Notice of Affordability Restrictions shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 3
MARKETING

3.1 Marketing and Sales Program and Marketing Reports.

A. On or before issuance of the building permit for the first home to be developed as part of the Project, Developer shall design and deliver to the Authority Executive Director a marketing and 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 Authority Executive Director's review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing and sales program for the Affordable Units referenced in subsection A above shall give preference in the sale of the Affordable Units according to a point system that allots one preference point to persons and households who meet each of the following criteria: (1) persons who live or work in the City of Alameda; (2) persons who are first-time buyers; and (3) households containing four or more individuals. For persons and households who match more than one of these criteria, preference points shall be aggregated.

3.2 Verification of Citizenship or Qualified Alien Status. At the time of sale of an Affordable Unit, Developer shall verify the citizenship or qualified alien status of all adult buyers as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. §1621). Developer shall verify the citizenship or qualified alien status by causing the applicants for purchase to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be forwarded by Developer to City.

3.3 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 or Authority 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.

3.4 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 Condition of Approval No. _____ imposed by the City pursuant to City Council Ordinance No. _____. 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 Authority 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:

To the Developer:

Alameda Point Partners, LLC
_____
_____
Attention: _____

with a copy to:

_____
_____
_____
Attention: _____.

To the City:

City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501
Attention: 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 the Authority:

Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, California 94501
Attention: Executive Director

with a copy to:

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

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

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 permanently enforceable by City and its successors and assigns, ("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. Except as expressly permitted by this subsection B., Developer shall not 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 without prior written approval of the City Manager, the Authority Executive Director, or their respective designee. The approval of the City Manager Authority Executive Director, or their designee shall not be unreasonably withheld or delayed. This restriction shall not apply to (i) any Transfer of Developer's interest in the Property to any trust, partnership, corporation, limited liability company or other entity that is managed and controlled by Developer, or (ii) any Transfer after the closing date for the last Affordable Units sold to an Eligible Household pursuant to Article 2 above. This restriction on Transfer shall not be deemed to limit or restrict the sale of the Market Rate Units, nor shall it be deemed to limit the making of dedications or granting of easements or permits to facilitate the development of the Property. This restriction on Transfer shall also not be deemed to prohibit, limit or restrict the assignment or granting of any security interests in the Property for the purpose of securing loans or funds to be used for financing the construction of the improvements on the Property, or the exercise by any lenders of their rights and remedies, including without limitation foreclosure, under the agreements and instruments evidencing or securing any such financing.

4.8 Distribution of Foreclosure Proceeds. Upon recording, this Agreement shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Project, or any portion thereof, and Developer shall be required to furnish to City subordination agreements in a form substantially similar to the Subordination Agreement attached hereto as Exhibit F, 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.

E. Notwithstanding the foregoing, in the event that Developer fails to comply with the terms of this Agreement, City may suspend issuance of building permits for Market Rate Units, building inspections of Market Rate Units, or issuance of occupancy permits for Market Rate Units, or pursue any other remedy available to it.

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 Indemnification. Except for an award of attorney's fees to Developer under 4.18, Developer will indemnify and hold harmless (without limit as to amount) the Authority and City and their elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of this Agreement, arising out of or relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation

the construction or sale of any unit in the Project, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the Authority and/or the City, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Section 4.16 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 4.16 shall remain in full force and effect

4.17 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.

4.18 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.

4.19 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.

4.20 No Joint Venture. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[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:

_____
Executive Director, Housing Authority

APPROVED AS TO FORM:

_____
City Attorney

CITY:

CITY OF ALAMEDA, a municipal corporation

_____
[Signature must be notarized]
City Manager

DEVELOPER:

Alameda Point Partners, LLC, a Delaware limited liability company

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

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, _____, 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.

_____
Name: _____
Notary Public

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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plans for Project

EXHIBIT C

Phasing Schedule

EXHIBIT D

Inclusionary Housing Program Buyer Selection Guidelines

EXHIBIT E

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
)
)
City of Alameda)
2263 Santa Clara Avenue, Rm 320)
Alameda, California 94501)
Attention: City Manager)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383.

[CITY FORM – FOR-SALE UNITS]

AFFORDABILITY, RESTRICTIONS ON RESALE AND OPTION TO PURCHASE AGREEMENT

THIS AFFORDABILITY, RESTRICTIONS ON RESALE AND OPTION TO PURCHASE AGREEMENT ("Agreement") is made as of _____, 20__, ("Effective Date") by and between _____ ("Owner," as further defined below) and the City of Alameda ("City") 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 between the City of Alameda, a California charter city ("City") and Alameda Point Partners, LLC, a Delaware limited liability company ("Developer") dated _____ ("Developer Affordable Housing Agreement").

B. In furtherance of the goals of preserving, improving and increasing the supply of low- and moderate-income housing within the City, Section 30-16 of the City Municipal Code was added by Ordinance No. 2965-NA adopted on June 15, 2004, setting forth certain inclusionary housing requirements for residential development in the City ("City Inclusionary Policy"). City entered into the Developer Affordable Housing Agreement with Developer to set forth the Developer's obligations to provide affordable housing for *[insert as applicable: very low-income, low-income, moderate-income]* households in conformance with the City Inclusionary Policy.

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

D. In order to ensure the Property remains permanently affordable to a *[insert as applicable: very low-income, low-income, moderate-income]* household , the Owner is required to execute the City Note and City Deed of Trust, as such terms are defined below.

E. 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 was purchased by Owner as a *[insert as applicable: very low-income, low-income, moderate-income]* household at a below fair market price in accordance with the goals and purposes of the City Inclusionary Policy and the Developer Affordable Housing Agreement.

F. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended.

NOW, THEREFORE, in order to establish the use, occupancy and resale restrictions of the Property, in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement, and Grant Deed and to reserve certain remedies (including the right to purchase the Property) as covenants running with the land and equitable servitudes that benefit City and that burden the Property, the Owner and all of its respective successors and assigns, Owner 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, its heirs, successors and assigns, and shall inure to the benefit of the City, and that entering into this Agreement is good and reasonable consideration for the ability to purchase the Property at a below fair market price as described herein.

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).

1.1 "Affordable Housing Cost" shall be as defined in Health and Safety Code Section 50052.5 or any successor thereto in effect at the time of purchase of the Property, for persons and families of *[insert as applicable: very low, low or moderate]* income whose gross income does not exceed ____% [*insert appropriate percentage for income category i.e., 50%, 80% or 120%*] of Area Median Income adjusted for family size appropriate for the Property. For

the purposes hereof, "family size appropriate for the Property" shall be two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Housing Cost for purposes of this Agreement.

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

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

1.4 "Assumption Agreement" shall mean the Disclosure, Acknowledgment and Assumption Agreement in the form attached as Exhibit G.

1.5 "Authority" is defined in Recital F.

1.6 "Capital Improvements" shall mean any capital improvements or upgrades made by Owner to the Property which significantly increases the value of the Property, and which are pre-approved in writing by City. City, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (a) whether the improvements qualify as Capital Improvements; (b) the value of the Capital Improvements which value may be less than the actual cost of the Capital Improvements; and (c) the depreciation value or rate, if any, to be applied to such value. By way of example, upgrading an appliance shall not be a Capital Improvement, but upgrading all appliances, flooring, countertops and cabinetry in the kitchen could be approved by the City as a Capital Improvement under the particular circumstances presented.

1.7 "City" shall mean the City of Alameda.

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

1.9 "City Note" shall mean a promissory note executed by 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 (a) the Initial 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 Option Price" shall mean an amount equal to the Eligible Buyer Purchase Price less Repair Costs.

1.11 "City's Purchase Option" shall have the meaning given in Section 5.1.

1.12 "City Resale Costs" means any and all costs and fees incurred by City whether directly by City or City staff or indirectly under Authority 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, recording fees, escrow charges, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections and appraisals, and document preparation and processing.

1.13 "City's Shared Appreciation" shall have the meaning given in Section 6.3.

1.14 "CC&Rs" shall mean that certain Declaration of Covenants, Conditions, and Restrictions recorded on _____, as Document No. _____ in the Official Records of Alameda County, as amended from time to time. [*Delete if inapplicable*].

1.15 "Eligible Buyer" shall mean those persons and families meeting the income requirements described in Section 1.1.

1.16 "Eligible Buyer Purchase Price" shall mean the allowable purchase price to be paid by an Eligible Buyer of the Property as determined under Section 4.3.

1.17 "Event of Default" shall have the meaning given in Section 8.11.

1.18 "Extraordinary Sale" shall mean a Sale conducted under the provisions of Article 6.

1.19 "Extraordinary Sale Price" means the actual gross sales price for the Property under an Extraordinary Sale, pursuant to Section 6.2.

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

1.21 "Initial Financing" shall have the meaning given in Section 7.1(a).

1.22 "Initial Price" shall mean the initial purchase price of the Property paid by the Owner, in the case of the initial Owner, or the Eligible Buyer Purchase Price, in the case of a subsequent Owner.

1.23 "Market Value" shall mean the 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.

1.24 "Maximum Affordable Housing Costs" means the maximum affordable housing cost allowable for a [*insert as applicable: very low, low or moderate*] income household, as

determined under California Health and Safety Code Section 50052.5 calculated at the time of a Permitted Sale.

1.25 "Notice of Intent to Transfer" is described in Section 3.2 and Exhibit B.

1.26 "Notice of Intent to Sell" is described in Section 4.1 and Exhibit C.

1.27 "Notice of Extraordinary Sale" is described in Section 6.2 and Exhibit D.

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

1.29 "Owner's Gross Proceeds" is equal to the Eligible Buyer Purchase Price paid for the Property.

1.30 "Owner's Net Proceeds" means the net amount available to Owner pursuant to Section 4.5(d) in case of a Permitted Sale, or Section 6.4(e) in the case of an Extraordinary Sale.

1.31 "Permitted Transfer" shall mean a Transfer described in Section 2.2.

1.32 "Permitted Sale" shall mean a Sale described in Section 2.3.

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

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

1.35 "Property" shall have the meaning given in Recital A.

1.36 "Refinancing" shall have the meaning given in Section 7.1(b).

1.37 "Repair Costs" shall have the meaning given in Section 4.2.

1.38 "Sale," "Sell" or "Sold" shall mean a Transfer of the Property for monetary consideration.

1.39 "Senior Lien" shall have the meaning given in Section 7.1.

1.40 "Senior Lender" shall have the meaning given in Section 7.1.

1.41 "Term" shall have the meaning given in Section 8.17.

1.42 "Transfer" shall mean any voluntary or involuntary assignment or transfer of ownership of or 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.

1.43 "Transferee" shall mean the person or persons to whom the Property, is Transferred or Sold.

1.44 "Unit Amenities" shall have the meaning given in Section 4.2.

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 WHICH IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT SUCH PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND 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 FOR THE DURATION OF ITS OWNERSHIP. Upon request by the City, each Owner shall submit an affidavit to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide City with a recent utility bill or other evidence of residency 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 8.11 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 Deed of Trust. The Owner further 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. Owner's right to resell the Property at Market Value is very limited, in certain instances, City will have the option to purchase the Property from Owner. In order to ensure the Property shall remain available at an Affordable Housing Cost over

the Term of this Agreement, Owner's right to resell the Property may not be 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 Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Initial Price that Owner originally paid for the Property and, 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 of title by gift, devise, or inheritance to an Owner's spouse or state registered domestic partner;

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

(c) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property;

(d) Transfer of title to a spouse or state registered domestic partner as part of divorce or dissolution proceedings; or

(e) Transfer of title or any interest in the Property to the spouse or state registered domestic partner in conjunction with marriage or establishment of a registered domestic partner relationship.

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"). If the City or the Owner are unable to identify an Eligible Buyer as provided in Article 4, then 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 and 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 Transfer by Devise or Inheritance. If an Owner has made a Permitted Transfer (other than by gift) by devise, inheritance or rights of survival under Sections 2.2(a), (b) or (c), the trustee, executor or new owner shall notify City in writing of the change in ownership of the Property within 20 days of such event giving rise to such Permitted Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement and the trustee, executor or new owner shall execute, acknowledge and deliver to the City, within such 20-day period, an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

3.2 Other Permitted Transfers. If an Owner desires to Transfer the Property by gift under Section 2.2(a) or by a Permitted Transfer under Sections 2.2(d) or (e), Owner shall provide City with a Notice of Intent to Transfer, 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 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. The Transfer shall be deemed a Permitted Transfer if City fails to disapprove the proposed Transfer within such 45 day period. The Owner shall complete the Permitted Transfer, including recordation of all applicable documents, within 60 days after receipt of approval of the Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner and shall execute, acknowledge and deliver to the City an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

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 the 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 City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

ARTICLE 4
SALE PROCEDURES

4.1 Notice of Permitted Sale. If an Owner desires to Sell the Property, the Owner shall provide City with a Notice of Intent to Sell. Within 60 days after receipt of the Notice of Intent to Sell, 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. If City identifies an Eligible Buyer, the Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price (as determined pursuant to Section 4.3 herein) within 30 days after identification of the Eligible Buyer. If the Sale to the Eligible Buyer

does not occur within said 30-day period, City may either extend the period of time for the Sale to occur or may, within 30 days thereafter, identify another Eligible Buyer, in which case all the provisions of this Section 4.1 shall be applicable to such Eligible Buyer, including the provisions of this sentence. If City is unable to identify an Eligible Buyer within the applicable time periods set forth above, then the Owner shall have the option to identify an Eligible Buyer, subject to City's written approval, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed and this Agreement. If City (or the Owner) fails to identify an Eligible Buyer within the applicable time periods set forth above, City shall have 30 days from the expiration of the final applicable period to exercise City's Purchase Option under Article 5.

4.2 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 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. City shall conduct its inspection within 15 days after receipt of the Notice of Intent to Sell. In the event any damage or violations are discovered, City shall determine the cost of repair or correction of such condition ("Repair Costs"). By way of example, Repair Costs would include the cost of repairing or replacing such things as broken, damaged or worn appliances, fixtures (including lights, shelving, bathroom fixtures, cabinets, countertops, tubs and vanities) walls, ceilings and paint and exterior surfaces, window coverings and carpets (collectively "Unit Amenities") due to stains, extreme wear, damage or destruction. Within 30 days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (i) repair or replace the items on such report at Owner's cost prior to closing (without extending the closing date), or (ii) at closing cause the escrow holder to pay the Repair Costs to 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 4.2 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 from the Owner's Gross Proceeds the Repair Costs in such amounts as City determines are necessary to complete the remaining repairs and/or replacements. The City shall use any Repair Costs paid to it to make the necessary repairs and/or replacements.

4.3 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 Initial Price paid by Owner for the Property, plus (b) the product of the Initial Price multiplied by the percentage increase in the Affordable Housing Cost that has occurred since the Owner's purchase of the Property to the date when the Notice of Intent to Sell, plus (c) the depreciated value of any Capital Improvements approved by the City as described in Section 1.12. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Maximum Affordable Housing Cost allowable for a *[insert as applicable: very low, low or moderate]* income household. The Eligible Buyer Purchase Price shall be established by the City in accordance with this Section 4.3, within 20 days following City's receipt of a Notice of Intent to Sell delivered pursuant to Section 4.1.

4.4 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 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 4.5 (b).

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 difference between the then current Market Value of the Property, and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note);

(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) the Assumption Agreement, fully executed in recordable form by all appropriate parties, in substantially the form of Exhibit G hereto; and

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

4.5 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;

(b) second, to pay all customary closing costs that a seller would pay in Alameda County and a basic one-year home warranty as provided in Section 4.8, 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 4.4; and

(c) third, to pay to the City all Repair Costs (if any, and to the extent not already paid) which are owed to the City under Section 4.2; and

(d) fourth, any remaining amounts shall be paid to the Owner as the Owner's Net Proceeds.

4.6 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 City in writing.

4.7 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 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.

4.8 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 insuring 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) which 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 Alameda County.

ARTICLE 5
CITY'S PURCHASE OPTION

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

(a) in the event the City or the Owner is unable to identify an Eligible Buyer pursuant to and within the times set forth in Section 4.1;

(b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;

(c) in the event that the Owner is in default of the occupancy requirement set forth in Section 2.1.B.;

(d) upon occurrence of an Event of Default (as defined in Section 8.11);

(e) in the event that escrow fails to close within the times set forth in Section 4.1 or Section 6.5; or

(f) as reserved to City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer;

provided, that in the case of (b), (c), (d) or (e), above, the City's 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's Purchase Option.

5.2 Exercise of Option.

(a) Permitted Sale. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(a), then City may exercise the City's Purchase Option within the 30-day period described in Section 4.1 and in accordance with Section 5.4.

(b) Prohibited Transfer, Prohibited Sale, Failure to Occupy or Event of Default. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(b), (c), or (d) above, then City may exercise its option in accordance with Section 5.4.

(c) Failure to Close Escrow. If the City's Purchase Option is available to the City pursuant to Section 5.1(e) or (f), then City shall exercise its option in accordance with Section 5.4.

5.3 Assignment of City's Purchase Option. After City has notified Owner of its intent to exercise the City's Purchase Option, City may, without the Owner's or Transferee's consent, assign the City's 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.

5.4 Procedure Upon Exercise of Option. The City shall exercise the City's Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable). Closing of escrow shall occur within 110 days (plus any time delays caused by the Owner), or such additional time as reasonably determined by the City is necessary under the circumstances after the date of City's written notice exercising the City's Purchase Option.

5.5 Failure to Close. If after City exercises the City's Purchase Option pursuant to Section 5.1(a), the City fails to close escrow pursuant to Section 5.4, then the Owner may conduct an Extraordinary Sale under Article 6. If after City exercises the City's Purchase Option pursuant to Section 5.1(b), (c), (d), (e) or (f), the City fails to close escrow pursuant to Section 5.4, then the City shall be deemed to retain all remedies available under Section 8.11.

5.6 Power of Attorney. By taking title to the Property, each 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's Purchase Option.

ARTICLE 6
EXTRAORDINARY SALE

6.1 When Extraordinary Sale Permitted. If City or an Owner fails to identify an Eligible Buyer within the times set forth in Section 4.1 after City's receipt of a Notice of Intent to Sell, and:

(a) The City fails to exercise the City's Purchase Option within the times set forth in Sections 4.1 and 5.2(a), or

(b) The City fails to close escrow pursuant to Section 5.4 after exercising the City's Purchase Option pursuant to Section 4.1 and 5.2(a),

then the Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6; provided, however that City shall retain the City's Purchase Option for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer. In no event shall an Owner have the right to make an Extraordinary Sale in the event of

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. Each Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale. 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 provide the Owner with a copy of the Appraisal within 10 days after receipt by the City. The City shall use reasonable efforts to obtain the Appraisal within 60 days after receipt of the Notice of Extraordinary Sale. The Owner shall be required to Sell the Property at a price not less than the current Market Value, unless otherwise approved by the City in writing. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval as consistent with the terms of this Agreement. The actual gross sales price for the Property under any such sale is the "Extraordinary Sale Price." In addition, the Owner shall pay the City the City Resale Costs at close of escrow.

6.3 City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner whose Property is the subject of the Extraordinary Sale shall pay to the City in addition to the principal amount of the City Note, a share of the appreciation (the "City's Shared Appreciation") in the value of the Property between the time the Property was acquired by the Owner and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein.

The appreciation in the value of the Property shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by the Owner, and the Extraordinary Sale Price. The distribution of any appreciation in value of the Property to City or Owner shall only be available after payment of all other sums set forth in Section 6.4 (a) through (e) and shall be shared by the Owner and the City in proportion to the amount of initial equity contributed by each party as follows:

(a) The City's initial equity contribution shall equal the principal amount of the City Note (which shall be equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Initial Price, in the case of the original Owner, or the applicable Eligible Buyer Purchase Price, in the case of a subsequent Owner, and which is defined as the Differential Amount in the City Note).

(b) The Owner's initial equity contribution shall be equal to the amount of the down-payment paid by the Owner at the time Owner acquired the Property plus any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner for the acquisition of the Property, as substantiated by the Owner pursuant to Section 6.7 hereof.

[Example: If, (i) at the time an Owner acquired the Property, the Owner paid a down-payment equal to $18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Owner equal to $2,000, resulting in a total Owner equity amount of $20,000, and (ii) the City Note for such transaction reflected a

principal amount of $80,000, then (iii) after payment of all other sums set forth in Section 6.4 (a) through (d), the Owner would receive 20% of any remaining appreciation value, and the City would receive 80% of any remaining appreciation value at the time of an Extraordinary Sale.]

(c) The City's Shared Appreciation shall be included in the City Note as a contingent deferred amount payable to City in the event of an Extraordinary Sale.

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

6.4 Distribution of Proceeds. 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, 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, and, to the extent not already paid by Owner to City, the costs of the Appraisal and the City Resale Costs under Section 6.2;

(c) third, to pay to City all amounts owing under the City Note and City Deed of Trust, including the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(d) fourth, subject to the provisions of Section 6.7 below, to pay the selling Owner the following:

i. amount of down payment paid by the Owner at the time the Owner acquired the Property;

ii. amount of installment payments of mortgage principal repaid on Owner's Senior Lien by Owner prior to the Extraordinary Sale;

iii. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;

iv. amount of money paid by the Owner for Capital Improvements to the Property; and

v. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (i) through (iv) above.

(e) fifth, to pay any remaining balance pro-rata on the basis of percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under

the City Note for the City's Shared Appreciation and to the selling Owner, as the Owner's Net Proceeds.

6.5 Time Requirements for Extraordinary Sale. Each Owner shall complete an Extraordinary Sale within 120 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's 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's Purchase Option. Pursuant to Section 8.13 and in accordance with this Section 6.6, 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's Purchase Option.

6.7 Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Prior to the close of escrow in the event of an Extraordinary Sale, selling the Owner shall submit evidence to the reasonable satisfaction of the City not less than 30 days prior to the first scheduled date for the close of escrow to allow the City to verify the evidence provided by the Owner of the Owner's initial equity as set forth in Section 6.3(b) and the Owner's costs as set forth in Section 6.4(b) and (d). To the extent such evidence is not submitted by Owner to the reasonable satisfaction of City at least 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, included as part of the Owner's initial equity under Section 6.3(b) or to receive payment of the sums set forth in Section 6.4(b) and (d). 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, and shall be considered reasonable evidence of the Owner's initial equity as set forth in Section 6.3(b). 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. The City may, at its sole discretion, 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. Any such subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, and may contain any other provisions required by or acceptable to the City.

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 2924b. 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 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 the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(iii) third, subject to the provisions of Section 6.7, to pay the Owner the following:

1. amount of down payment paid by the Owner at the time the Owner acquired the Property;

2. amount of installment payments of mortgage principal repaid on the Owner's Senior Lien by Owner prior to the foreclosure sale;

3. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;

4. amount of money paid by the Owner for Capital Improvements to the Property; and

5. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (1) through (4) above.

(iv) fourth, to pay any remaining balance pro-rata in the percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under the City Note for the City's Shared Appreciation, and to the Owner or the person or persons legally entitled thereto, as required by law.

(d) By taking a loan from a Senior Lender, each the Owner represents that it has provided Senior Lender the necessary consent and authorization to provide the City, upon the City written request, with a report of the payment status of the Owner and all other financial information concerning the Owner to the City. Therefore, upon written request by the City, 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 te City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, Senior Lender grants to the City the option to purchase the Senior Lien from 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 (A) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (B) with respect to a deed-in-lieu of foreclosure, within ten (10) days after receiving written notice from 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, City shall establish an escrow at such title company and concurrently therewith give Senior the

Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after 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 of the 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 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 (irrespective of whether the escrow closes), 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's 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's 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 [*Insert*: "in a good and clean condition" *or* "in accordance with the CC&Rs", *if applicable*]. Each Owner shall maintain the interior of the single-family 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 each 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, and the provisions of the Grant Deed, and the Developer Affordable Housing Agreement [*Insert if applicable*: "and the CC&R's"]. No Owner shall grant use of, rent or lease all or any part of the Property, but shall occupy the Property as its principal residence as provided in Article 2.

8.4 Default Remedies. In addition to any other rights or remedies set forth in this Agreement or allowed by law or equity, in the event of a default by an Owner of any of the Owner's obligations under this Agreement, City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed Sale or

Transfer in violation of this Agreement or for enforcing the City's Purchase Option, or for any such other relief as may be appropriate (including, but not limited to, monetary damages).

8.5 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.

8.6 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.

8.7 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.

8.8 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.

8.9 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
c/o Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

If to Owner: At the Property address of the Owner

8.10 Covenants Running with the Land. 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 hereto and inure to the benefit of City and its permitted successors and assigns. The covenants benefit and bind the City, the Property, and all owners and successor owners thereto. 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.

8.11 Default. If an Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement, and if such default remains

uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), or in the event an Owner has provided false information or documentation required in connection with the purchase or sale of the Property, then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Agreement, including without limitation any or all of the following:

(a) by any suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants under this Agreement or enjoin any unlawful acts;

(b) by taking such other action at law or in equity as may appear necessary or desirable to enforce the Owner's obligations, covenants and agreements; or

(c) by exercising the City's Purchase Option pursuant to Article 5.

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's 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 neuter, 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 6.5. 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 termination of this Agreement, on request of the then record Owner of the Property, 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 Indemnification. Each Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective 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) incurred by the City arising out of or relating to any action by the Owner. Each Owner agrees that if any claims, demands, suits or other legal proceedings are made or instituted by any person against City which arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with the City in the defense or other disposition.

8.15 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 City. The

modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.16 Modification of Covenants. Each Owner hereby agrees as follows:

(a) To the extent any amendments to sections of the California Health & Safety Code referenced in this Agreement or any amendments to the City Inclusionary Policy retroactively impose requirements upon the ownership or operation of the Property more restrictive than those imposed by this Agreement, and if such requirements are applicable to the Property, this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) Each Owner and City shall execute, deliver and, if applicable, record any and all documents and instruments necessary to effectuate the intent of this Section 8.16, and each Owner hereby appoints the City as its true and lawful attorney-in-fact to execute, deliver and, if applicable, record on behalf of the Owner and City, as applicable, any such document or instrument (in such form as may be approved in writing by the City) if the Owner defaults in the performance of its obligations under this subsection (b).

8.17 Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall permanently remain in full force and effect from the date of recordation of this Agreement. T the non-discrimination covenant in Section 8.18shall run with the land in perpetuity.

8.18 No Discrimination. Notwithstanding the following, Owner acknowledges under this Agreement that it is expressly prohibited from leasing the Property and is required to occupy the Property as its principal residence at all times:

> Owner 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.

8.19 Compliance Monitoring. The Owner acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis. The Owner agrees to cooperate with City's annual monitoring requirements by supplying true, correct and complete annual owner information as required by Authority's Affordable Housing Ownership Program Qualified Household Annual Update Questionnaire.

8.20 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.

8.21 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 H, shall be recorded against the Property in the Official Records of Alameda County.

8.22 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: Disclosure, Acknowledgment and Assumption Agreement
Exhibit H: Notice of Affordability Restrictions on Transfer of Property

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

CITY:

CITY OF ALAMEDA, a public body corporate and politic

By:_____
City Manager
[Signature must be notarized]

OWNER(S):

_____
[Signature must be notarized]

_____
[Signature must be notarized]

RECOMMENDED FOR APPROVAL:

_____
Executive Director
Housing Authority of the City of Alameda

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

Property Description

EXHIBIT B

NOTICE OF INTENT TO TRANSFER

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 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 3.2 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 City's receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

_____
Owner

EXHIBIT C

NOTICE OF INTENT TO SELL

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 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 City'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 Authority to contact to schedule inspection: _____ and _____
(name) (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 Authority or its designee to enter and inspect the Property to verify its condition.

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 Authority 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 Authority or its designee to inspect the Property within thirty (30) days of this Notice,

4. if requested by the Authority following the Authority'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 Authority 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.

_____
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*]_____, ("Property"). On _____, 20___, the Owner provided the City with written notice of its intent to sell the Property. The City has failed to identify an Eligible Buyer in accordance with Section 4.1 of the Affordability, Restrictions on Resale and Option to Purchase Agreement ("Agreement") and the City has failed to exercise the City's Purchase Option pursuant to Article 5, or failed to close escrow within the time set forth in Section 5.4 of the Agreement. Accordingly, the Owner hereby notifies City of its intent to make an Extraordinary Sale of the Property in accordance with Section 6.2 of the Agreement. The Owner hereby requests that 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's 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.

_____
Owner

EXHIBIT E

FORM OF CITY NOTE

(Shared Appreciation Loan)

Differential Amount Alameda, California

FOR VALUE RECEIVED, _____ ("Maker") promises to pay the CITY OF ALAMEDA, a California charter city ("City") the Differential Amount, as defined and calculated under Section 3 below and payable under Section 5 below, plus a contingent deferred amount equal to the City's Shared Appreciation as calculated and payable under Section 6, below, any additional amounts due and owing pursuant to Sections 8 and 10, below, any additional amounts due and owing pursuant to the Deed of Trust (as defined below), and any additional amounts due and owing as permitted by law.

1. PROPERTY. The "Property" is that certain real property commonly known as _____[insert address]_____, 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 "_____[insert housing project name]_____" ("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 and _____ ("Developer") dated _____ ("Developer Affordable Housing Agreement"). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to Maker at an Affordable Housing Cost, as defined below, subject to the covenants, conditions, restrictions and option to purchase set forth herein. Maker assumes title to the Property subject to that certain Affordability, Restrictions on Resale and Option to Purchase Agreement, between the Maker and City recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California ("Resale Restrictions"). 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 Maker shall pay the City an amount equal to the difference between the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property was acquired by the Maker, and the Initial Price (the "Differential Amount"). The Maker acknowledges and agrees that the Differential Amount 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, and which amount is reflected above as the Differential Amount of this Note.

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

5. REPAYMENT OF NOTE. There shall be no payments due under this Note, unless payments are otherwise due pursuant to provisions of Sections 5 (c) and (d) of this Note. All amounts due under this Note shall be assumed, repaid and/or cancelled, as follows:

a. In the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, the Transferee shall assume the rights and obligations of Maker under this Note and the Deed of Trust securing this Note.

b. In the event of a Permitted Sale to an Eligible Buyer pursuant to Section 2.3 and Article 4 of the Resale Restrictions, or upon acquisition of the Property by the City pursuant to the City's Purchase Option provided in Section 2.3 and Article 5 of the Resale Restrictions, then this Note, and all amounts due and owing to the City hereunder, shall be cancelled. In such event, the City shall execute and deliver for the benefit of Maker any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

c. In the event of an Extraordinary Sale to a non-Eligible Buyer pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions, Maker shall pay to the City, through escrow and from the proceeds of such sale, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount of this Note and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation which shall be paid to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. Upon receipt of such payments, the City shall execute and deliver any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

d. In the event of a default by Maker under this Note or under the Deed of Trust, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation, shall be due and payable in full, at City's option, without notice or demand. The City's Shared Appreciation shall be due and payable to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. If Maker defaults in the performance or observance of any agreement or obligation of Maker set forth in this Note or the Deed of Trust, and if such default remains uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Note and the Deed of Trust.

6. CITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions or in the event of a default by Maker under this Note or under the Deed of Trust, City shall receive, and Owner shall to pay to City in addition to the unpaid Differential Amount of this Note, a share of the appreciation ("City's Shared Appreciation") in the value of the Property between the time the Property was acquired by Maker and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein. The distribution of any appreciation in the value of the Property to City shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by Maker, and the Extraordinary Sale Price. The distribution of any appreciation in value shall be shared by Maker and the City in proportion to the amount of initial equity contributed by each party as follows.

a. The City's initial equity contribution shall equal the Differential Amount of this Note, as calculated in accordance with Section 3 of this Note.

b. Maker's initial equity contribution shall be equal to the aggregate amount of the following:

i. amount of the down payment paid by Maker at the time Maker acquired the Property; and
ii. escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker.

[Example of Maker's initial equity: If, (i) at the time Maker acquired the Property, the Maker paid a down payment equal to $18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker equal $2,000 resulting in a total Maker equity amount of $20,000, and (ii) the Differential Amount of this Note were $80,000, then (iii) the Owner would receive 20% of any remaining appreciation value available for distribution, and the City would receive 80% of any remaining appreciation value available for distribution at the time of an Extraordinary Sale.]

c. The City's right to receive the City's Shared Appreciation shall be subject to the Maker's superior right to receive repayment of the following items as described in California Civil Code Section 1917.006(a)(3) and the requirements of Section 6(e) below:

i. amount of the down payment paid by Maker at the time Maker acquired the Property;
ii. amount of installment payments of mortgage principal repaid to a Senior Lender by Maker prior to the Extraordinary Sale;
iii. amounts of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker;
iv. money paid by Maker for Capital Improvements to the Property; and
v. amount equal to the "legal rate of interest" (as defined herein in Section 6(d) below) on cash payments by Maker as identified in (i) through (iv) above.

d. Because there is no generally accepted definition of "legal rate of interest," as the term is used in Civil Code Section 1917.006(a)(3), Maker and City stipulate and agree that the "legal rate of interest" for purposes of this Note shall be calculated using the annual compound interest rate for the Long-Term Applicable Federal Rate (AFR) as defined in 26 U.S.C. Section 1274(d) and as is issued by the United States Internal Revenue Service monthly, as then in effect at the time this Note is executed. Based on the foregoing, the legal rate of interest for purposes of this Note is stipulated to be _____ _____percent (_____%) per annum, compounded annually.

e. Prior to payment to Maker of the amounts set forth in Section 6(c) of this Note, Maker shall submit evidence not less than 30 days prior to the first scheduled date for the close of escrow or foreclosure sale to allow the City to verify the evidence provided by Maker to the reasonable satisfaction of the City of the Maker's initial equity as set forth in Section 6(b) and Maker's actual payments as set forth in Section 6(c). To the extent such evidence is not timely submitted by Maker to the reasonable satisfaction of City, such costs shall be deemed waived by the Maker and Maker shall not be entitled to have such costs, as applicable, included as part of Maker's initial equity under Section 6(b) or to receive payment of the sums set forth in Section 6(c) herein. City acknowledges that such evidence may include, by way of example and not limitation, Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors.

7. PAYMENTS. Payments shall be made payable to the City of Alameda, 2263 Santa Clara Avenue, Alameda, California 94501, Attention: City Manager *(or Authority Executive Director)*. The place of payment may be changed from time to time as City may from time to time designate in writing. Payments shall be made in lawful money of the United States of America.

8. COLLECTION. This Note is secured by a Deed of Trust recorded against the Property. Maker agrees to pay all collection and enforcement costs, expenses and attorneys' fees paid or incurred by the City or adjudged by a Court in any litigation or controversy connected with this Note, or security for it, including but not limited to actions for declaratory relief that the City is required to prosecute or defend and actions for relief based on rescission, or actions to cancel this Note that the City is required to defend.

9. SHARED APPRECIATION LOAN. This Note evidences a "Shared Appreciation Loan" as defined in California Civil Code Section 1917.006 and the parties therefore intend this Note to be exempt from any usury limitations. Notwithstanding anything to the contrary contained herein, to the extent the City's Shared Appreciation is deemed interest (other than as permitted under California Civil Code Section 1917.006) and therefore subject to limitation by usury law, that portion of interest in excess of applicable usury limitation shall be forgiven.

10. COSTS. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees:

a. If after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection,

b. If after a default hereunder or under the Deed of Trust and after the expiration of all notice and cure periods City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note or the Deed of Trust, or

c. If City seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

If City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Property or the title thereto or the interest of the City under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Maker immediately upon demand for all costs, charges and reasonable attorneys' fees incurred by City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.

11. MISCELLANEOUS. This Note, the Deed of Trust, the Resale Restrictions, and any other documents executed by the parties relating thereto, embody the entire agreement between the City and Maker. The obligations of the Maker hereunder shall run with the land and be enforceable against Maker and the successors and assigns of Maker approved in writing by the City. Except in the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, Maker shall not assign or transfer any of its interest and obligations under this Note without the express prior written consent of City. The City, at its sole option, may negotiate transfer or assumption of this Note. This Note may not be modified or amended except by an instrument in writing executed by the parties sought to be bound thereby. This Note shall be governed by and construed in accordance with the laws of the State of California. 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.

MAKER:

_____

Address:

_____

_____

_____

Address:

_____

_____

EXHIBIT F

FORM OF CITY DEED OF TRUST

The City Deed of Trust shall be a standard title company deed of trust with a rider in the form set forth below.

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 _____ 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.

_____
Trustor

EXHIBIT G

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

Exempt from recording fees pursuant to Cal.Gov't Code Section 27383

DISCLOSURE, ACKNOWLEDGMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made by and among _____ ("Seller" or "Transferor"), _____ ("Buyer" or "Transferee") and the CITY OF ALAMEDA ("City").

WHEREAS, Seller is the current owner of the real property commonly known as [insert street address] _____, Alameda, California, more particularly described on Exhibit A, which together with all improvements located thereon is referred to in this Agreement as the "Property"; and

WHEREAS, Seller wishes to sell, transfer and convey the Property to the Buyer; and

WHEREAS, the Property is subject to affordability restrictions applicable to the Property as described in the Affordability, Restrictions on Resale and Option to Purchase Agreement, recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California (the "Resale Restrictions") which restricts the Property from being sold at its fair market value; and

WHEREAS, the Property is being sold to Buyer subject to a Shared Appreciation Loan that may result in the Buyer being obligated to pay a contingent deferred amount as discussed below in Section 2; and

WHEREAS, the Buyer is purchasing, or otherwise acquiring, the Property and will assume the obligations of an Owner under the Resale Restrictions; and

WHEREAS, capitalized terms used herein and not defined in this Agreement shall have the meanings set forth in the Resale Restrictions.

NOW THEREFORE, the parties hereto agree as follows:

1. THE BUYER HEREBY ACKNOWLEDGES AND AGREES TO THE FOLLOWING:

a. THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND, BUYER AGREES AS AN OWNER TO BE BOUND BY ALL OF THE CONDITIONS AND COVENANTS CONTAINED IN THE RESALE RESTRICTIONS. THE PROPERTY IS PART OF AN AFFORDABLE HOUSING PROGRAM OPERATED BY THE CITY AND DESIGNED TO CREATE, PRESERVE, MAINTAIN AND PROTECT HOUSING AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME. BUYER ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE RESALE RESTRICTIONS AND UNDERSTANDS AND ACKNOWLEDGES THAT ITS RIGHT TO SELL THE PROPERTY AT FAIR MARKET VALUE IS VERY LIMITED, AND THAT, IN CERTAIN INSTANCES, THE CITY WILL HAVE THE OPTION TO PURCHASE THE PROPERTY FROM BUYER. THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____. IF BUYER SELLS THE PROPERTY IN VIOLATION OF THE RESALE RESTRICTIONS, THE CITY IS ENTITLED TO EXERCISE THE CITY'S PURCHASE OPTION UNDER THE RESALE RESTRICTIONS.

b. THAT BUYER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE FOR THE DURATION OF ITS OWNERSHIP.

c. THAT THE PROPERTY WILL NOT NECESSARILY APPRECIATE IN VALUE DURING THE DURATION OF ITS OWNERSHIP, AND THAT THE RESALE PRICE (THE ELIGIBLE BUYER PURCHASE PRICE AS DEFINED IN THE RESALE RESTRICTIONS) MAY BE LESS THAN WHAT BUYER ORIGINALLY PAID FOR THE PROPERTY AND THUS WHEN BUYER SELLS THE PROPERTY IT MAY RECEIVE LESS THAN IT PAID FOR THE PROPERTY.

2. City Note and City Deed of Trust.

a. If Buyer is an Eligible Buyer, as provided in Section 4.1 of the Resale Restrictions, the Buyer has concurrently with this Agreement executed a new City Note and a new City Deed of Trust in favor of the City, as provided in Section 4.4 of the Resale Restrictions. The City Note is in the initial principal amount equal to the difference between the market value of the Property and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note). The new City Note also provides for payment to the City of the City's Shared Appreciation in the event of an Extraordinary Sale under the Resale Restrictions; or

b. If Buyer is taking title through a Permitted Transfer, as provided in Section 2.2 and Article 3 of the Resale Restrictions, then Buyer hereby assumes the City Note and the City Deed of Trust as provided for under Section 5(a) of the City Note and Buyer agrees to be bound by and subject to the provisions of the Resale Restrictions, the City Note and the City Deed of Trust.

3. The City hereby consents to the transfer of the Property to the Buyer as an Eligible Buyer or to the Transferee under a Permitted Transfer within the meaning of the Resale Restrictions.

4. All questions with respect to the interpretation of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.

5. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.

6. Buyer hereby grants to City an irrevocable power of attorney coupled with an interest to act on Buyer's behalf to execute, acknowledge and deliver any and all documents relating to the City's Purchase Option under Article 5 of the Resale Restrictions.

7. This Agreement and the City's lien under the City Note and City Deed of Trust shall be subordinate to that certain deed of trust in favor of _____ recorded concurrently herewith, subject to the conditions set forth in Article 7 of the Resale Restrictions.

Executed on _____, 20__, at Alameda, California.

SELLER:

Dated:_____

_____

Print name:_____

BUYER:

Dated:_____

_____

Print name:_____

-AND-

CITY:

CITY OF ALAMEDA

Dated:_____

By: _____
Print name: _____

Its: City Manager

ATTEST:

By: _____

NOTARY ACKNOWLEDGMENTS

[TO BE INSERTED]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property located in the City of Alameda, County of Alameda and more particularly described as Lot ___ as shown on that certain final subdivision map entitled "_____" recorded on _____, 20__ as Document No. _____ in the Official Records of Alameda County.

EXHIBIT H

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

Exempt from recording fees pursuant to Cal.Gov't Code Section 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. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions also limit the income of persons and households who are permitted to purchase and rent the Property.

Title of Document Containing Affordable Housing Restrictions: Affordability, Restrictions on Resale and Option to Purchase Agreement (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: (*check one*)

☐ as Document No. _____, official records of Alameda County, on _____; or

☐ concurrently with this Notice, as Document No. _____, official records of Alameda County.

Legal Description of Property:

See Exhibit A (Attached hereto)

Street Address of Property: _____, Unit No._____,

_____, California.

Assessor's Parcel Number of Property:_____

Summary of Affordable Housing Restrictions (*check 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 Authority or the City.

☐ The Owner must give notice to the Authority and 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.

☐ The Affordable Housing Restrictions restrict the amount of rent which may be charged for the rental housing unit or units on the Property, as follows:

_____.

☐ The Affordable Housing Restrictions restrict the sales price which may be charged for the sale of the ownership housing unit or units on the Property, as follows:

_____.

☐ The Affordable Housing Restrictions restrict the income level of the tenant or buyer of the Property, as follows:

_____.

☐ Term of Restrictions: _____ years, commencing on _____ and terminating on _____.

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 which 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 shall be indexed against the City and the current Owner of the Property.

CITY OF ALAMEDA:

Dated: _____, 20___ By: _____
City Manager

OWNER:

Dated: _____, 20___ _____

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, _____, 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.

_____
Name: _____
Notary Public

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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment D

Memorandum of City Option

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(Space Above This Line For Recorder's Use)

MEMORANDUM OF
PURCHASE OPTION

This Memorandum of Purchase Option (this "Memorandum") is entered into as of _____ ___, 20__, by and between Alameda Point Partners LLC, a Delaware limited liability company (the "Developer"), and the City of Alameda, a California charter City (the "City"), with respect to certain rights provided under that certain Affordable Housing Implementation Plan (the "Housing Implementation Plan") dated as of _____, 2015, appended as Exhibit M of that certain Disposition, Development Agreement, dated as of _____, 2015, as may be amended (the "DDA").

This Memorandum confirms that pursuant to Section 3.2(c)(7) of the Affordable Housing Implementation Plan, the Developer has granted to the City an option to purchase the property owned by the Developer, located in the City of Alameda, County of Alameda, California, more particularly described in Exhibit A attached hereto (the "Property").

This Memorandum shall incorporate all of the terms and provisions stated in the Affordable Housing Implementation Plan as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the provisions of the Affordable Housing Implementation Plan.

This Memorandum may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

CITY:

CITY OF ALAMEDA, a California charter city

By: _____

Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:
ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

[SIGNATURES MUST BE NOTARIZED]

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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[NOTE: Legal Descriptions To Be Inserted At The Time Option Is Recorded Against Parcels are conveyed pursuant to terms of DDA and Housing Implementation Plan.]

Attachment E

Legal Description of Affordable Housing Site

BkF
ENGINEERS
SURVEYORS
PLANNERS

DESCRIPTION FOR:
ALAMEDA POINT SITE A
AFFORDABLE HOUSING PARCEL

All that real property situate in the City of Alameda, Alameda County, California, described as follows:

Commencing at a U.S.C & G.S. brass disk, labeled "MAIN-ATL", as said disk is shown on Record of Survey "RS No. 2565", recorded in Book 39 of Maps, at Page 88, Alameda County records, a U.S.C & G.S. brass disk, labeled "MAIN" bears North 00°31'07" East 1179.82 feet;

Thence North 84°38'27" West 734.21 feet to the **Point of Beginning;** Thence North 85°08'27" West 210.00 feet; Thence North 4°51'33" East 360.00 feet; Thence South 85°08'27" East 210.00 feet; Thence South 4°51'33" West 360.00 feet to the **Point of Beginning.**

Containing 75,600 square feet, 1.74 acres, more or less

This description is not to be used for any purpose that would violate the California Subdivision Map Act

This description has ~~been~~ prepared by me of under my supervision for BKF Engineers

By: _____
Barry T. Williams P.L.S. No. 6711
License Expires: 06/30/2016

Dated: 6-2-15

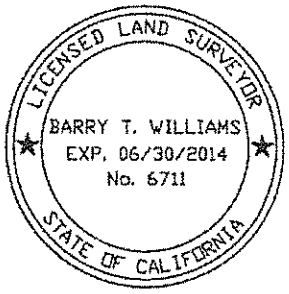


EXHIBIT N

DESCRIPTION OF PHASE 0 ACTIVITIES

EXHIBIT N
PHASE 0 OUTLINE

Consistent with the Town Center and Waterfront Precise Plan, Phase 0 shall be implemented to quickly bring people to the waterfront and further establish Alameda Point as a fun and cultural experience demonstrating what it can become. The focus, which shall include significant engagement of the local business community, is to create events that support Alameda Point Partner's ("Developer") long term vision, create an immediate draw and be transitioned into a permanent part of Site A development.

The Developer will engage a consultant and/or event manager to coordinate with the City and execute the Phase 0 plan consistent with its development plan and the City's vision. Phase 0 features and events shall cater to a diverse audience. In addition to the ideas put forth by the City, other ideas may include:

- Develop the theme of a 'creative waterfront' with space, events and exhibits focusing on the 'artisan-maker-innovator' community that leverages the industrial vibe of the base and the existing makers already there. An East-Bay 'Dogpatch' expanding on the Bay Area's and East Bay's thriving entrepreneurship. Creative waterfront will include the development of distinct gathering places to serve as a stage for future phase zero events. Spaces will be designed to appeal to broad audiences including families, artists, and athletes.
    - Work with Martha Trela of UrbanBloc to explore creation of an eclectic shipping container village for local retailers and restaurants to use for events, some of which may later be incorporated into a permanent, central urban park.
- Produce one large-scale signature event to draw in new, regional audiences, for example, Alameda Point Open House.
- Host a Night Market or Antiques Fair After Party– instead of just the typical off-the-grid events, hold a once-a-month night market. Think First Fridays/Art Murmur in Oakland, or the Frenchmen Art Market in New Orleans but with an Alameda vibe and personality.
    - Commence a formal outreach to artisans, local restaurants and purveyors with the goal that this become a permanent event at Alameda Point.
- Host an outdoor movie series to compliment or expand on Alameda Parks & Recreation summer outdoor movie series at Alameda Point. Partner with Alameda businesses and food trucks for concessions.
- Introduce the 'Pan Am Plaza' concert series to be coordinated with the Crab Cove Concert series.
- Holiday events focused on kids and families including a Halloween pumpkin patch and Christmas tree sales with kid's attractions (e.g. Speer Family Farms). Events may feature a charitable element including a holiday toy drive to benefit the Alameda Collaborative and other children's charities.
- Leverage Community Involvement: engage existing community business members and event producers to be a part of and participate in the successful launch of The Town Center. Some events might include:
    - Rythmix Cultural Works in connection with the Night Market
    - Alameda Bicycle and Team Alameda – bike events including a safety classes and lessons, weeknight criterium's and host its family bike tours and BBQs.
    - Bladium – set up waterfront space and sports courts for local tournaments and events, including water events, while promoting the vision for the Regional Sports Complex.

- Alameda Community Sailing Center: provide lessons and rentals of small, non-motorized watercraft including junior sailing camps.
- Alameda Point Collaborative – staffing for special events or Ploughshares Nursery participation in the market
- Spirits Alley tenants – serve primarily Alameda crafted wine, beer, and spirits at phase zero events

IMPLEMENTATION SCHEDULE

- Engage Phase 0 marketing/event consultant by the date that Phase 0 Activities Plan is presented to City Council to develop a theme and brand, including a website and social media tools, engage with any participating community members, and publish a detailed implementation plan including schedule of first year events.
- During Year One the plan is to hold one signature event and at least one other event per month, as well as ongoing activities, such as the beach volleyball court.
- Develop necessary marketing collateral and launch the Phase 0 marketing campaigns as provided in the DDA
- Launch the year 1 program as provided in the DDA.

EXHIBIT O

GENERAL ASSIGNMENT

(Alameda Point Site A, Phase_____)

THIS GENERAL ASSIGNMENT ("**Assignment**") is entered into the day of _____, 20__ (the "**Effective Date**"), by and between the CITY OF ALAMEDA, a California charter city (the "**City**"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("**Developer**").

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the Property (the "**DDA**"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

B. Pursuant to the DDA, the City is obligated, inter alia, to assign the following to the Developer and the Developer is obligated to accept the following from Assignor: (1) any and all permits, entitlements rights, intangibles or privileges appurtenant or otherwise related to Phase, including, without limitation, the EDC Agreement, and (2) the leases set forth in Schedule 1 attached hereto (collectively, the "**Phase Intangible Property**").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Acceptance. Effective as of the Effective Date, (a) the City hereby assigns the Phase Intangible Property to the Developer and (b) the Developer hereby accepts the foregoing assignment.

2. Notice. From and after the Effective Date, the notices to be delivered with respect to the Phase Intangible Property shall be delivered to:

Developer: Trammel Crow Residential
39 Forrest Street, Suite 201
Mill Valley, CA 94941
Telephone: 415-381-3001
Facsimile: 415-381-3003
Email: bd@thompsondorfman.com

With copies to: Alameda Point Partners, LLC
c/o SRM Ernst Development Partners
2220 Livingston Street Suite 208
Oakland, CA 94606
Telephone: 510-219-5376

Facsimile: 510-380-7056
Email: jernst@srmernst.com

With copies to: Madison Marquette
909 Montgomery Street Suite 200
San Francisco, CA 94133
Telephone: 415-277-6828
Facsimile: 415-217-5368
Email: pam.white@madisonmarquette.com

With copies to: Marc Stice
Stice & Block
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: 510-735-0032
Email: mstice@sticeblock.com

3. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

4. Entire Agreement. All attachments are incorporated herein by this reference, are an integral part of this Assignment, and will be read and interpreted together as a single document. This Assignment and the applicable provisions of the DDA set forth the complete, exclusive and final statement of the agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

5. Counterparts. This Assignment may be executed in one or more counterparts by actual or email signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

6. Miscellaneous. This Assignment shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Assignment, the prevailing party shall be entitled to recover from the other party all reasonable costs and expenses of the action or suit, including reasonable attorneys' fees, charges and costs, in addition to any other relief to which it may be entitled. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

Schedule 1
Assigned Leases

1. Insert any applicable Lease Agreements.

EXHIBIT P
BILL OF SALE

This **BILL OF SALE** is entered into as of _____, 201___, by and between the CITY OF ALAMEDA, a California charter city (the "**City**"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("**Developer**").

A. DDA. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the property commonly referred to as Site A of Alameda Point (the "**DDA**"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA. Pursuant to the DDA, the City is obligated to, inter alia, transfer the Phase _____ Personal Property (defined below) to the Developer.

B. Transfer. In consideration of the portion of the Land Payment allocated to Phase _____ and other provisions of this Bill of Sale, the City does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to the Developer the personal property listed in Exhibit 1 attached hereto (the "**Phase Personal Property**"). The Developer hereby accepts the Phase _____ Personal Property pursuant to the terms of this Bill of Sale.

C. City's Representation: As-Is Purchase; Waiver of Implied Warranties; Limitation of Liability.

1. The City hereby represents that the Phase ___ Personal Property is free and clear of all encumbrances.

2. The Developer acknowledges that the Developer has had the opportunity to inspect the Phase ____ Personal Property and, except as expressly set forth in Section 3.1, hereby agrees that the Developer is accepting the Phase _____ Personal Property in their "As-Is" condition.

3. Except as expressly set forth in Section 3.1, the Developer agrees that no other representations or warranties (express or implied) are made by the City, and any implied warranties of merchantability or fitness for a particular purpose are hereby disclaimed.

D. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Bill of Sale, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

E. Entire Agreement. All attachments are incorporated herein by this reference, are an integral part of this Bill of Sale, and will be read and interpreted together as a single document. This Bill of Sale (including all attachments thereto) and the applicable provisions of

the DDA set forth the complete, exclusive and final statement of the agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

F. Counterparts. This Bill of Sale may be executed in one or more counterparts by actual or email signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

G. Miscellaneous. This Bill of Sale shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all reasonable costs and expenses of the action or suit, including reasonable attorneys' fees, charges and costs, in addition to any other relief to which it may be entitled. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed and delivered this Bill of Sale as of the day and year first above written.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT "1" **TO BILL OF SALE**

Phase _____ Personal Property

EXHIBIT Q

PUBLIC IMPROVEMENT AGREEMENT

PUBLIC IMPROVEMENT AGREEMENT

(Alameda Point- Site A, Phase _____; Map No. _____)

This Public Improvement Agreement ("Agreement") is made by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California, hereinafter called "City," and Alameda Point Partners, LLC, a Delaware limited liability company, hereinafter called "Developer" and dated this ____ day of _____, 20__ (the "Effective Date").

WITNESSETH:

WHEREAS, Developer is the owner of a tract of land lying in the City of Alameda, County of Alameda, State of California, commonly referred to as Phase __ of Alameda Point- Site A, and more particularly described in Exhibit A-1, attached hereto and incorporated herein by this reference, (hereinafter called the "Subdivision"); and

WHEREAS, Developer has a right to enter City specified publicly owned land in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A-2, attached hereto and incorporated herein by this reference, (hereinafter called the "City-Retained Property");

WHEREAS, the [Tentative Map No. _____ (the "Tentative Map")/Final Map No. _____ (the "Final Map")] of the Subdivision was approved with conditions by the City on _____ __, 20__, which conditions are on file in the Public Works Department and incorporated herein by this reference (the "Conditions of Approval"); and **[Note: Select whether PIA is being made part of Tentative Map approval or Final Map approval.]**

WHEREAS, Developer recognizes that approval of the [Tentative Map/Final Map] was subject to the findings and conditions in the Conditions of Approval and hereby acknowledges and agrees to be bound by such Conditions of Approval; and

WHEREAS, the Final Map has been reviewed by the City's Public Works and Planning Directors and found to be in compliance with the approved Tentative Map; and **[Note: Include only if accompanied by Final Map]**

WHEREAS, the Subdivision improvements required to be constructed by the Conditions of Approval (the "Public Infrastructure Improvements"), as more particularly described in the Public Infrastructure Improvement plans and specifications listed in Exhibit B, attached hereto (the "Plans and Specifications"), have not been completed as of the Effective Date; and

WHEREAS, as a condition precedent to the approval and acceptance of the [Tentative Map/Final Map] and pursuant to Sections 66462 and 66419(a) of the Government Code and Chapter 30 of the Alameda Municipal Code, the City is requiring the execution of this Agreement relating to

installation of the Public Infrastructure Improvements (including outside the boundaries of the Subdivision); and

WHEREAS, in accordance with Section 66499 of the Government Code, the City is requiring that this Agreement be secured by a surety bond or an instrument of credit issued by a financial institution subject to approval by the City and subject to regulation by the State or federal governments, or by a cash deposit; and

WHEREAS, Section 66499.3 of the Government Code establishes the types and amount of security to guarantee the performance of improvement agreements; and

WHEREAS, the City and the Developer have previously entered into that certain Disposition and Development Agreement, dated _____, 2015, regarding the Subdivision and other property included in Alameda Point – Site A (the "DDA"), which DDA includes certain requirements related to the construction of the Public Infrastructure Improvements.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto mutually agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

2. Construction Obligation; Offers of Dedication. Developer agrees at Developer's sole cost and expense to cause all Public Infrastructure Improvements to be made and completed to the City-Retained Property and the Subdivision pursuant to this Agreement prior to _____ (the "Completion Date") as further detailed in the Phase __ Milestone Schedule attached hereto as Exhibit C, incorporated herein by this reference; which at all times shall remain consistent with the DDA Milestone Schedule, as such may be amended pursuant to the terms of the DDA. The Completion Date is subject to extension pursuant to Section 1.3 of the DDA; provided, however, that any extension occurring after the "commencement of construction"(defined as performance of any work on the Public Infrastructure Improvements including clearing, grading, or other preliminary site work) of the Public Infrastructure Improvements shall be: (a) limited to extension pursuant to Section 1.3(b) of the DDA, (b) limited to a maximum of two (2) years, and (c) subject to the requirements of Section 1.3(c) of the DDA. Subject to the foregoing, any modification to the Completion Date shall be initiated by a written application made by Developer to the City Manager and Public Works Director stating fully the grounds of the application and facts relied upon for such an extension and in conformance with any requirements set forth in the DDA. Subject to the foregoing, any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither the modification or extension of the Completion Date nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety.

A copy of such conditions is on file in the Public Works Department.

If the Public Infrastructure Improvements are completed prior to the recordation of a Final Map for the Subdivision, Developer shall provide the City with such Irrevocable offers of Dedication for public right-of-way or easements as are necessary for the City's ownership, operation and maintenance of the applicable Public Infrastructure Improvements.

3. Easements and Permits. Subject to the City's obligations under Section 4.3(b)(14) of the DDA with regards to right of entry and access to the City-Retained Property, the Developer shall, at Developer's sole cost and expense: (a) provide any and all rights of way and easements, with cooperation from City when applicable or necessary, which may be necessary or convenient for the Subdivision and its required improvements; (b) obtain all necessary permits and licenses for the construction of the required improvements; (c) give all necessary notices; and (d) pay all fees and taxes required by law.

4. Performance of the Work. Construction of the required Public Infrastructure Improvements shall be performed in a workmanlike and professional manner, in accordance with the "Applicable Requirements" which shall include: (a) all requirements of State and local law, including the Alameda Municipal Code; (b) the Public Works Standard Specifications; (c) the Master Infrastructure Plan ("MIP") approved by the City Council on February 4, 2014; (d) the Conditions of Approval (defined in the third recital hereof) filed in the office of the City's Public Works Director; (e) the provisions of Article 5 and Section 8.3 of the DDA; (g) measures imposed to mitigate adverse environmental effects of the project under the MMR Program (as defined in the DDA); and (f) the Plans and Specifications (including all details and notes shown on the Plans and Specifications).

Developer shall provide personal supervision of the work on the Public Infrastructure Improvements or have a competent contractor, foreman or superintendent on the work at all times during progress with authority to act for Developer.

5. Modifications. Developer reserves the right to modify the Plans and Specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Public Works Director, and so long as such modifications are materially consistent with the Applicable Requirements. City also reserves the right to make or require reasonable modifications to the Plans and Specifications whenever field conditions and/or public safety require such modifications. Developer shall pay the City for all costs including, without limitation, plan check and inspection costs resulting from any such modifications.

Any alteration or alterations made to the Plans and Specifications or to any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to such bonds waive the provisions of Section 2819 of the California Civil Code.

6. Compliance and Inspection. All development activity shall be in compliance with Applicable Requirements, and all Public Infrastructure Improvements shall be inspected by the City for compliance with Applicable Requirements. Concurrent with the execution of this

Agreement Developer shall pay to City the sum of $_____, which is to cover the costs of all inspections and Public Works charges, consistent with then applicable Master Fee Schedule.

7. Access to Work. Developer shall allow City's duly authorized representatives access to the work under this Agreement at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the Applicable Requirements. Developer is required to give at least one day's advance notice of the date upon which such work is commenced and the date upon which such work is to be completed. City may reject defective work and require its repair, replacement, or removal by Developer, all at no expense to City.

8. Acceptance of Offers of Dedication and Public Infrastructure Improvements. Subject to compliance with the requirements of Section 16 below, the City hereby agrees to accept the offers of dedication to the City [necessary for the operation of the Public Infrastructure Improvements/ shown on the Final Map] and accept the Public Infrastructure Improvements for permanent maintenance upon Developer's completion of the Public Infrastructure Improvements in accordance with the all Applicable Requirements and upon inspection pursuant to Section 6 of this Agreement.

9. City Services. Developer agrees to be financially responsible for all required City services provided to subdivision residents prior to acceptance of improvements by City.

10. Developer Not Agent of City. Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. Developer has full rights, however, to manage its employees in their performance of services under this Agreement. Developer is not authorized to bind City to any contracts or other obligations.

11. Developer Responsibility for Work. Until such time as the Public Infrastructure Improvements are accepted by City, Developer shall be responsible for, and bear the risk of loss to, any of the Public Infrastructure Improvements constructed or installed. Until such time as all Public Infrastructure Improvements required by this Agreement are fully completed, passed final inspection and, if to be dedicated to the City, are and accepted by City, Developer will be responsible for the care, maintenance of, and any repairs or reconstruction to remedy any damage to such Public Infrastructure Improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Developer.

12. Obligation to Warn Public. Until final acceptance of the Public Infrastructure Improvements, Developer shall give good and adequate warning to the public of each and every potentially dangerous condition which exists in said Public Infrastructure Improvements, and will take all reasonable actions to protect the public from such condition(s). Developer shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the tract site as may be necessary to prevent accidents to the

public and damage to the property. In addition, if the Developer exercises its rights to extend the Completion Date pursuant to Section 1.3 of the DDA, the Developer shall be obligated to comply with the requirements of this Section in addition to the requirements set forth in Section 1.3(c) of the DDA, as applicable.

13. Sale or Disposition of Subdivision. Developer is the owner of the Subdivision and has executed this Agreement to indicate consent to the terms herein. The sale or other disposition of any party of the Subdivision will not relieve Developer from the obligations set forth herein. If the Subdivision or any portion of the Subdivision is sold to any other person, the Developer may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Developer may obtain a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Developer of the obligations under Paragraphs 22 and 23 for the work or improvements done by or on behalf of Developer unless such a release is expressly approved by the City pursuant to the terms of the DDA. Developer shall give written notice to City within ten (10) days after close of escrow of any sale or transfer of all or any portion of the Subdivision and any assignment of this Agreement, specifying the name or names of the assignee, the Assignee's mailing address, the amount and location of the land sold or transferred, evidence of the express assumption of the obligations hereunder, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given. All transfers of property are subject to the requirements of the DDA, and nothing in this Agreement is intended to amend, modify or otherwise change the Developer's ability to transfer the Subdivision under the DDA.

14. Improvement Security. In order to insure full and faithful performance of this Agreement and in accordance with the requirements of the Subdivision Map Act and local implementing ordinances, Developer shall file with this Agreement the following security in the type and amounts specified:

(a) Performance Bond. Faithful performance security in an amount not less than one hundred percent (100%) of the total approved estimate for the cost of improvement including a ten percent (10%) contingency, sufficient to assure City that the improvements will be satisfactorily completed. Developer shall furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.1 or in a form reasonably satisfactory to the City Attorney.

(b) Labor and Material Bond. Labor and materials security to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public and private improvements, which is equivalent to one hundred percent (100%) of the total approved estimate for the costs of labor and materials including a ten percent (10%) contingency. Developer shall furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.2 or in a form reasonably satisfactory to the City Attorney.

(c) Monumentation Bond. To guarantee payment of the installation of the required permanent monumentation, the Developer shall furnish to City either: (i) a bond; or (ii) cash deposit, in the amount of _____($_____);

(d) Warranty Bond. Pursuant to Government Code Sections 66499, 66499.4 and 66499.9, to serve as a guarantee and warranty of the Work against any defective work or labor done or defective materials furnished (from the date when the City Council accepts the Work as complete until one year thereafter), Developer shall furnish to City either: (i) a cash deposit; (ii) a corporate surety bond issued by a company duly licensed to conduct a general surety business in the State of California; or (iii) an instrument of credit, in the amount of _____($_____) and in no event less than ten percent (10%) of the estimated cost of the Public Infrastructure Improvements in accordance with City Code Section 30-85.2.c.

15. Form of Security.

(a) All security shall be of a type specified in Government Code §66499(a)(1), (2), (3) or (5), as applicable, and must be satisfactory to and be approved by the City Attorney as to form. In conjunction with the submittal of bonds, the Developer shall furnish the following information:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bonds to do so; and

(2) Evidence that the issuing corporate surety or sureties are duly and legally licensed to conduct a general surety business in the State of California.

(3) A certificate from the Clerk Alameda County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.

(b) As an alternative to bonds, the Developer may:

(1) Submit an instrument of credit or certificate of deposit from one or more financial institutions subject to regulation by the State or Federal Governments with an office located in the nine Bay Area counties and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment.

(2) Make a deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public money.

(c) Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that the City is the owner of record of such funds.

(d) The City shall be the sole indemnity, beneficiary or loss payee (as applicable) named on any instrument required by this Agreement. In addition to the full amount

of the security, there shall be included costs and reasonable expenses and fees including attorney's and expert's fees incurred in enforcing the obligation secured.

16. Acceptance of Public Infrastructure Improvements. No Public Infrastructure Improvements shall be accepted by the City unless and until Developer submits a warranty bond in the amount required by Section 14(d) and such Public Infrastructure Improvements are free of all liens and encumbrances, free of all material defects and conditions which may create a hazard to the public health, safety, or welfare and until Developer has set and established survey monuments in accordance with the Final Map] and all Applicable Requirements. Upon completion of final inspection of the Public Infrastructure Improvements described herein, the Developer shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements, and other interests to be dedicated to the City shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances of any kind or character whatsoever and free of any and all material defects and conditions creating a hazard to public health or public safety.

City shall release any and all security provided by Developer in the manner described in Government Code Section 66499.7.

17. Guarantee and Security. Developer guarantees that all Public Infrastructure Improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of at least one (1) year from and after acceptance of such improvements by City as complete, and the Developer shall repair any defects in any such Public Infrastructure Improvements and replace any defective improvements which cannot be repaired and which occur or arise within said one (1) year period at Developer's own expense. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or contract for the necessary work and Developer shall pay to City the actual cost of such repairs as well as all administrative expenses incurred by City.

18. Exoneration of Surety. City shall not be required to exonerate any surety, release any security relating to satisfactory completion of the Public Infrastructure Improvements or issue occupancy permits until acceptance of proposed Public Infrastructure Improvements by the City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final inspection by City. In addition, release of security, exoneration of sureties and issuance of occupancy permits will be predicated upon the receipt of required warranty agreements and warranty security required under Section 14(d) therefore, as well as payment of all outstanding fees and reimbursements due City pursuant to this Agreement.

19. Building Permit Requirements. Prior to issuance of any building permit, Developer shall comply with all conditions precedent to issuance, including without limitation, the Uniform Fire Code requirements relating to access and water supply. Developer shall also

pay all required fees in the amounts set forth in the Development Agreement for the Subdivision which are to be paid prior to the issuance of a building permit.

20. Default of Developer. Default of Developer shall include, but not be limited to, Developer's failure to timely commence construction of the Public Infrastructure Improvements under this Agreement; Developer's failure to timely complete construction of the Public Infrastructure Improvements; Developer's failure to timely cure any defect in the Public Infrastructure Improvements; Developer's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work (subject to the exercise of Developer's rights set forth in Section 2 above); Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within sixty (60) days; the commencement of a foreclosure action against the Developer or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; a default under the DDA; or Developer's failure to perform any other obligation under this Agreement. Developer shall notify the Public Works Director of Developer's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

Upon the happening of any event described in this Section 20, the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the Developer shall cure the breach or failure as soon as practicable but in no event later than sixty (60) days from the date of receipt of such notice.

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to Force Majeure (as described in Section 1.3(b) of the DDA).

21. Remedies in Event of a Default. In the event of Developer's default: (beyond the applicable cure periods and subsequent to City's written notice to Developer of such default):

(a) City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Developer agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

(b) Developer, the surety and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property hereinabove described and each of them shall totally reimburse City for its reasonable costs and expenses (including reasonable attorney's fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in

connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on the subject property.

(c) City may enter onto the subject property, take over the work and prosecute the same to completion by contract or any other method City deems advisable, and, in such event, City, without liability for so doing, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer which may be on the site of the work and necessary performance of the work.

(d) City may record a Notice of Violation against all lots in the Subdivision, revert the Subdivision to acreage and/or withhold or revoke all building, zoning and occupancy permits.

(e) Declare a default under the DDA in accordance with Section 17.4 of the DDA, but only as to the applicable Phase.

(f) Notwithstanding the forgoing, in the event that the City elects to exercise its rights under Section 17.5 or 17.6 of the DDA in conjunction with an Event of Default under this Agreement, from and after the date the City obtains title to the Subdivision (or applicable portion thereof) pursuant to such provisions:

(1) (A) the City's right to avail itself of any rights under the bonds delivered pursuant to Section 14(a) and 14(b) shall be limited to those Infrastructure Sub-Phases (as defined in the DDA): (i) for which Developer has previously commenced construction (as defined in Section 2 above); and (ii) any necessary Public Infrastructure Improvements necessary for permanent access and utility services to serve vertical improvements Commenced as of the Event of Default; and (B) the City shall release/reduce any such bonds with respect to the balance of the Public Infrastructure Improvements, excepting the bonds related to the Ferry Terminal Sub-Phase, which are addressed in Section 21(f)(2) below; and

(2) solely with respect to the bonds related to the Ferry Terminal Sub-Phase, the City shall release such bonds upon the earlier to occur of:(A) Developer's payment of all obligations required under the Ferry Terminal Payment Note; or (B) Developer's completion of the Ferry Terminal pursuant to this Agreement.

22. Hold Harmless. The Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer's general contractor, subcontractor, consultants, employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

23. Duty to Defend and Indemnify. Claims Related to City's Approval and Implementation of Public Improvement Agreement: Developer shall, with counsel reasonably approved by the City, hold harmless, defend, and indemnify City, its officers, officials, directors, employees, and agents from and against any claim, action, or proceeding against the City or its agents, officers, and employees to attack set aside, void, or annul an approval of the City concerning the Public Improvement Agreement, which action is brought within the time period

provided for in Government Code Section 66499.37. The City of Alameda shall promptly notify the developer of any claim, action, or proceeding and the City shall cooperate fully in the defense.

Claims Related to Injury to Persons or Property: Developer further agrees that it will hold harmless, defend, and indemnify the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, lawsuit, costs (including costs of defense) and damages of every kind caused to any person or to the property of any person which may occur on any portion of the property then owned by Developer and caused by any acts or omissions of the Developer or its agents, servants, employees or contractors in any way arising from or related to the performance of its duties under this Agreement.

24. Insurance. Without limiting Developer's indemnification provided herein, Developer shall take out and maintain at all times during the term of this Agreement the following policies of insurance with insurers (if other than the State Compensation Fund) with a current A.M. Best's rating of no less than A:VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Developer, its agents, employees or subcontractors:

(a) Workers' Compensation with statutory limits as required by the California Labor Code. Said policy shall contain or be endorsed to provide that the policy shall not be canceled without thirty (30) days prior written notice to City and that the policy shall provide for a waiver of subrogation against City, its officers, employees and agents.

(b) Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001) in an amount of $2,000,000.00 per occurrence. If work involves explosives, underground or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be three times the required occurrence limit. The amount of any deductible or self-insured retention over $100,000.00 shall be declared to and security posted guaranteeing payment of losses and defense costs. Said policy shall contain, or be endorsed with, the following provisions:

(1) The City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, and volunteers (collectively, the "Additional Insureds"), are covered as insureds for liability arising out of the operations performed by or on behalf of the Developer, including materials, parts or equipment furnished in connection with such work or operations, with coverage to include products and completed operations of Developer and premises owned, occupied or used by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to City by certified mail.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(4) For claims related to the Developer Infrastructure, the Developer's insurance is primary coverage to the City, and any insurance or self-insurance programs maintained by the City is excess to Developer's insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to the Additional Insureds.

(c) Automobile Liability, with coverage at least as broad as Insurance Services Office form number CA 0001 06 92, Code 1 (any auto), in an amount of $1,000,000.00 per accident. The amount of any deductible or self-insured retention over $100,000.00 shall be declared to and approved by the City. Said policy shall contain, or be endorsed with, the provision that coverage shall not be canceled nor reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to City by certified mail.

(d) Prior to City's execution of Agreement, Developer shall provide properly executed Certificates of Insurance and Endorsements, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the insurance required herein on forms approved by the City. The amount of any policy deductible or self-insured retention over $100,000.00 shall be included.

(e) Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

(f) In the event the City has agreed to allow the general contractor to provide the required insurance, Developer shall provide City with a letter naming such contractor. Work on the Developer Infrastructure may then only continue as long as that general contractor is engaged as the general contractor on the job. No other general contractor may be substituted unless and until a letter naming the new general contractor is provided to City along with the necessary evidence of all required insurance.

25. Attorney's Fees; Etc. In the event any party to this Agreement brings an action to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees from the other party, whether or not such action or proceeding is prosecuted to judgment. This provision shall be in addition to any provisions regarding attorney's fees set forth in Section 14, Section 20 or any other section of this Agreement.

26. Time of Essence. Time is of the essence.

27. Severability. The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

28. Entire Agreement. This Agreement, together with the Applicable Requirements, constitute the entire agreement with respect to the subject matter and all modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the City Manager and the Public Works Director. Modifications, amendments or waivers under the DDA are subject to the terms and conditions of the DDA.

29. Reference. Any reference to a department manager shall include his or her duly authorized deputy or representative.

30. No Pledging of City's Credit. Under no circumstances shall Developer have the authority or power to pledge the credit of City or incur any obligation in the name of City. Developer shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Developer under this Agreement.

31. Recordation. Upon request by City, Developer agrees to execute and acknowledge a memorandum of this Agreement for recordation with the County Recorder. By recordation of this Agreement or a memorandum hereof, it is parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. At its option City may record the agreement or memorandum or may require Developer, at Developer's cost, to record such Agreement or memorandum and may withhold City permits until proof of recordation is provided to City.

32. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Alameda, or if appropriate, in the United States District Court, Northern District of California, Oakland, California.

33. Captions. The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

34. Obligations Run With the Land. All obligations and provisions of this Agreement shall run with the real property described in attached Exhibit A-1 and shall bind the Parties and each of their respective successors and assigns.

IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

DEVELOPER:
ALAMEDA POINT PARTNERS, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

CITY OF ALAMEDA

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer,
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

EXHIBIT A-1

PROPERTY LEGAL DESCRIPTION

EXHIBIT A-2

CITY-RETAINED PROPERTY
LEGAL DESCRIPTION

EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENT
PLANS AND SPECIFICATIONS

[Note: Exhibit B to include the improvements set forth in the applicable Infrastructure Phase of the Infrastructure Package described in the Tentative Map or Final Map.]

EXHIBIT C

PHASE __ MILESTONE SCHEDULE

EXHIBIT R

TRUST LEASE

TRUST LEASE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation
AS LANDLORD

and

ALAMEDA POINT PARTNERS, LLC

a Delaware Limited Liability Company
AS TENANT

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INDEX OF EXHIBITS

Exhibits

TRUST LEASE AGREEMENT

BASIC LEASE INFORMATION

Lease Date:	Dated as of _____, 2015 for reference purposes only
Landlord:	City of Alameda, a charter city and municipal corporation
Landlord's Address:	City of Alameda Alameda City Hall, Rm 320 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4700 Attn: City Manager Notice Copy to: City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Ave. Alameda, CA 94501 Tel: (510) 747-4750 Attn: City Attorney
Tenant:	Alameda Point Partners, LLC, a Delaware limited liability company
Tenant's Address:	c/o SRM Ernst Development Partners 2220 Livingston Street Suite 208 Oakland, CA 94606 Telephone: 510-219-5376 Facsimile: 510-380-7056 Email: jernst@srmernst.com ***With copies to:*** Thompson Dorfman Partners 39 Forrest Street, Suite 201 Mill Valley, CA 94941 Telephone: 415-381-3001 Facsimile: 415-381-3003 Email: bd@thompsondorfman.com ***And to:*** Madison Marquette 909 Montgomery Street Suite 200 San Francisco, CA 94133 Telephone: 415-277-6828 Facsimile: 415-217-5368 Email: pam.white@madisonmarquette.com

Building and Premises:	The premises subject to this Trust Lease shall consist of the Property described in Exhibit A, attached hereto (the "**Premises**"), located within the Property and on the Tidelands Parcel (each defined in Recital A) consisting of Building 113 and Building Pad 1 and Building Pad 2 identified in Exhibit A. "**Building**" as used in this Trust Lease, shall refer to, as applicable, Building 113 and, after its construction, any other Building constructed on the Premises or Partial Premises (as defined in Article 3) delivered to Tenant during the Term consistent with the Development Plan.
Permitted Uses:	Permitted Uses are described in Section 3.6.
Length of Term:	Sixty-six (66) years from the Commencement Date unless earlier terminated pursuant to the terms of this Trust Lease ("**Term**"). Under no circumstance shall the Term exceed sixty-six (66) years.
Commencement Date:	This Trust Lease shall commence upon the Commencement Date, as set forth in the Commencement Letter.
Expiration Date:	This Trust Lease shall expire on that date which is Sixty –Six (66) years after the Commencement Date unless earlier terminated pursuant to the terms of this Trust Lease.
Extension Option:	None
Rent:	Base Rent and Additional Rent are described in Article 5. Hold Over Rent is described in Article 21.
Taxes and Utilities:	Tenant shall pay all costs for services and utilities to the Premises, as defined in the Trust Lease. Tenant shall pay all taxes (including possessory interest taxes) levied on or against the Premises or its personal property.
Security Deposit:	N/A
Parking:	No parking is provided as part of this Trust Lease. Parking for the Premises shall be addressed via nearby public parking facilities.
Brokers:	N/A

TRUST LEASE AGREEMENT

THIS TRUST LEASE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and ALAMEDA POINT PARTNERS, LLC, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information, the Exhibits and this Trust Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Trust Lease**". Capitalized terms used in this Trust Lease have the meaning given them in the Disposition and Development Agreement ("**DDA**") between the Landlord and Tenant dated _____, 2015, unless otherwise defined herein. The Landlord and Tenant are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Trust Lease with reference to the following facts:

1. RECITALS.

A. Landlord is the fee title owner or has the right to acquire that certain portion of Alameda Point known as Site A which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway (the "**Property**") and is shown on **Exhibit A-1**. A portion of the Property consists of former tide and submerged lands and is or will be held by Landlord in trust for the people of California (the "**Tidelands Parcel**"). The Premises is located on the Tidelands Parcel portion of the Property. The Tidelands Parcel and other tide and submerged lands within the boundaries of the City, formerly owned by the State of California ("**State**"), were granted by the State to the City by Chapter 348 of the Statutes of 1913. That statute, as amended, most recently by Chapter 734 of the Statutes of 2000 (the Naval Air Station Alameda Public Trust Exchange Act, or "**Exchange Act**") is referred to herein as the "**Granting Act.**" The Granting Act authorizes the City to enter into leases of the granted lands for terms not to exceed 66 years.

B. Beginning in 1930, the City, as authorized by the Granting Act, conveyed certain tidelands at Alameda Point, including the Tidelands Parcel, to the United States Navy ("**Navy**") for purposes of establishing NAS Alameda. The base closed operationally in 1997 and the property was made available for disposal pursuant to the Defense Base Closure and Realignment Act of 1990. The Navy approved a No-Cost Economic Development Conveyance (EDC) for most of the lands comprising NAS Alameda including the Property and the Tidelands Parcel. On June 6, 2013, the Navy transferred 1,379 acres of land to the City, including portions of the Property and the Tidelands Parcel, as the first phase of the EDC. The remainder of the Property and the Tidelands Parcel will be transferred to the City in later phases of the EDC.

C. Pursuant to the Exchange Act, the City and the State, acting by and through the State Lands Commission, entered into that certain Naval Air Station Alameda Title Settlement and Exchange Agreement dated February 18, 2014 ("**Exchange Agreement**"). The Exchange Agreement includes a boundary settlement by which the parties agreed that certain lands within the NAS Alameda site, including the Tidelands Parcel, will be subject to the public trust for commerce, navigation and fisheries ("**Public Trust**") once they are conveyed out of federal ownership, and that the City will hold those lands subject to the Public Trust and the terms and conditions of the Granting Act ("**Statutory Trust**"). The Public Trust and the Statutory Trust are referred to collectively herein as the "**Trust.**"

D. Pursuant to the terms and conditions contained in the Disposition and Development Agreement between the Landlord as City and Tenant as Developer dated of even date herewith ("**DDA**"), Landlord agreed to transfer fee title to the Property and lease portions of the Tideland Parcel to Tenant in phases, upon a schedule mutually agreed to by the Parties and incorporated into the DDA (each a "**Phase**").

E. Pursuant to the terms and conditions contained in the DDA, the Tenant is obtaining title to the portions of the Property defined in the DDA as the Transfer Property and the Lease Property unimproved and is responsible for all costs association with the infrastructure improvements necessary to develop the Property consistent with the terms of the DDA, which infrastructure is estimated to cost $88 million. In addition to the infrastructure improvements to be installed by the Tenant, Tenant will pay Ten Million Dollars ($10,000,000) toward the cost of construction of a ferry terminal ("**Ferry Terminal Payment**") that will provide access to the Tideland Parcel and the Property. In addition, the DDA requires Tenant to construct the first phase of a permanent Seaplane Lagoon Plaza or waterfront promenade park , as part of Phase 1 as defined in the DDA. The Ferry Terminal Payment as well as the Developer's obligations to construct infrastructure that benefits the Tideland Parcel are collectively referred to herein as the "**Consideration**".

F. The Tidelands Parcel comprises approximately 12% percent of the area of Site A, but the infrastructure and improvements to be installed by the Tenant will provide significant benefits to the Trust and a substantial portion of the improvements will be located on Trust lands, including the ferry terminal, the Seaplane Lagoon Plaza/waterfront promenade park, and an initial phase of the sports complex. In addition, the extension of Ralph Appezzato Memorial Parkway between Main Street and the Ferry Point, and the construction of permanent Main Street improvements along frontage of the Property, while not on the Property, will substantially benefit the Trust by creating new access to Trust lands located in and around the Seaplane Lagoon and connecting those lands to the Trust land Main Street Trust corridor that was created as part of the Exchange.

G. The Tidelands Parcel will be leased, if at all, pursuant to this Trust Lease.

H. The Parties anticipate that the Tenant will take possession of the Premises subject to this Trust Lease after providing the Landlord with an Election Notice in accordance with the terms of this Trust Lease.

In consideration of the foregoing and the promises and other provisions of this Trust Lease, the Parties agree as follows:

2. DEMISE.

2.1. Possession. In consideration for the rents and all other charges and payments payable by Tenant and other consideration provided to City under this Trust Lease, and for the agreements, terms and conditions to be performed by Tenant in this Trust Lease, Landlord and Tenant enter into this Trust Lease Agreement. On the Commencement Date, after receipt of an initial Election Notice from the Tenant pursuant to Section 3.2, the Landlord will (a) deliver possession of the Premises or the Partial Premises (as defined in Section 3.2 below) set forth in

the Election Notice to Tenant for Tenant's exclusive use and enjoyment for the Term hereinafter stated and (b) provide Tenant and its licensees and invitees with non-exclusive access to nearby public rights-of-way over adjacent lands owned by Landlord ("**Premises Access**") consistent with the Development Plan for Site A approved by the City Council on June 16, 2015 ("**Development Plan**"). The Landlord shall retain possession of the all portions of the Premises (subject to the provisions of the DDA) until the applicable Delivery Date for any such portion of the Premises occurs.

2.2. Operating Memoranda.

(a) Landlord and Tenant acknowledge that the provisions of this Trust Lease require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties to this Trust Lease. Landlord and Tenant desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of certain items covered in general terms under this Trust Lease. If and when, from time to time during the term of this Trust Lease and during any time that the City of Alameda is the Landlord under this Trust Lease, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Landlord and Tenant which, after execution, shall be attached to this Trust Lease as addenda and become a part hereof. This Lease may expressly describe some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(b) Operating Memoranda that implement the provisions of this Trust Lease or that provide clarification to existing terms of this Trust Lease, including, for example, the legal description of the Premises, or the incorporation of DDA terms after the expiration or termination of the DDA, may be executed on Landlord's behalf by the City Manager of the City of Alameda, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not materially change material terms of this Trust Lease: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Trust Lease. Any substantive or significant modifications to the terms and conditions of performance under this Trust Lease shall be processed as an amendment of this Trust Lease in accordance with applicable law, and must be approved by ordinance of the City Council.

3. PREMISES AND PERMITTED USES.

3.1. Premises. The Premises demised by this Trust Lease are generally described in **Exhibit A-2**, (Leased Premises in Tidelands Parcel), which sets forth the addresses and square footages of each Building and the approximate metes and bounds and square footages of each building pad, as well as a site map showing the Premises. The Premises are located on the Tidelands Parcel. The Building contains the square footage specified in **Exhibit A-2** and the building pads contain the square footages specified in **Exhibit A-2**; as such Exhibit A-2 may be updated by mutual agreement of the parties upon Tenant's delivery of an Election Notice, provided, however, that any statement of square footage set forth in this Trust Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less.

3.2. Tenant Election Notice. At any time after the Phase 1 Closing Date pursuant to the DDA, Tenant may deliver to Landlord, notice ("**Election Notice**") of Tenant's intention to take possession of all or such portion of the Premises as are specified in the applicable Election Notice, provided that any partial portion of the Premises specified in the Election Notice shall include not less than the full portion of at least one of (a) the Premises identified as Building 113, (b) Building Pad 1, or (c) Building Pad 2, as each is approximately depicted in **Exhibit A-2**. Any such partial premises may be collectively and/or individually referred to herein as the "**Partial Premises**". Each Election Notice shall state the date upon which Tenant expects to take possession of the Premises or any Partial Premises (each such date shall be a "**Delivery Date**" with respect to the applicable Partial Premises), and each Delivery Date shall occur not more than ninety (90) days after the date of the Election Notice corresponding to the Premises or Partial Premises that is the subject of the Election Notice, except with respect to Building 113 in which event such Delivery Date shall occur one hundred eighty (180) days after the date of the Election Notice unless Landlord notifies the Tenant that Building 113 is ready for earlier delivery. An Election Notice including any of Building Pad 1 or Building Pad 2 shall also include evidence to the Landlord that Tenant has obtained the Additional Approvals – Vertical (as that term is defined in the DDA excepting a Final Map) for the construction of the Vertical Improvements required for the Building Pad that is part of the Premises by the DDA and the Development Plan and included in such Election Notice ("**Improvements**").

3.3. Tenant Fails to Improve Premises After Commencement Date.

(a) Landlord is willing to lease the Premises to Tenant based upon Tenant's covenants and assurances to improve the Building or construct the Improvements on the Premises required by the Development Plan and DDA in accordance with and subject to all the terms, covenants and restrictions of the DDA and the Development Plan.

(b) If Tenant fails to commence and then diligently prosecute to completion construction of the Improvements required by the DDA and the Development Plan, within the time period required in the Milestone Schedule attached to the DDA, as such Milestone Schedule may be extended in accordance with the terms of the DDA, Landlord can declare a Tenant Default and exercise any of the remedies set forth in Section 18.2. During the Term, Tenant shall own all of the Improvements and all appurtenant fixtures, machinery and equipment installed therein. At the expiration or earlier termination of this Trust Lease, title to the Improvements shall vest in Landlord without further action of any party and without compensation or payment to Tenant.

3.4. Possession. Upon each Delivery Date for each Partial Premises, Tenant shall accept the applicable Partial Premises and any improvements thereon, in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord except those expressly set forth in the DDA, and subject to the applicable Permitted Exceptions (defined in the DDA) and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises or any improvements thereon. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Premises, any improvements contained thereon or infrastructure for the conduct of Tenant's business, except those expressly set forth in the DDA. Landlord shall not be liable for any latent or patent defects in the Building and/or on the Premises. Tenant shall be responsible for requesting an inspection

and obtaining a Certificate of Occupancy from the City of Alameda for the Building. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 7.1 below), and any other requirements mandated by the Certificate of Occupancy inspection.

3.5. Landlord's Reserved Rights. Landlord hereby reserves the right, and at any time and from time to time, without the same constituting an actual or constructive eviction, to change the arrangement and/or location of the Premises Access and other parking areas, drive isles, landscaping, curb cuts and paved and unpaved portions of the areas adjacent to the Premises; provided that such changes are consistent with the Development Plan. In connection with any of the foregoing activities, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Building and Premises and shall not, without the prior written approval of Tenant: do anything which would have a material and adverse effect on access to the Building, Premises or Premises Access. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Trust Lease.

3.6. Permitted Uses.

(a) Permitted Uses – Generally. Except as expressly set forth in Section 3.6(b), Tenant shall use the Building and Premises during the Term solely for those uses permitted in the Trust, the Development Plan approved on _____, 2015, the Town Center Plan adopted on July 15, 2014, and the DDA, all as consistent with this Trust Lease and for no other purpose ("**Permitted Uses**"). For purposes of this Section 3.6 **only**, if there is a conflict between the above documents as it relates to permitted uses, the Trust shall govern over the Development Plan which shall govern over the Town Center specific plan which shall govern over the DDA. Notwithstanding anything to the contrary in this Trust Lease, no use of the Building and/or Premises shall be made which: (i) is prohibited by federal, state or local law, ordinance or regulation; (ii) would cause a cancellation of fire insurance required under this Trust Lease, or (ii) would constitute a residential occupancy.

(b) Building 113. Under the Exchange Agreement, Building 113 has been designated a non-conforming, non-trust building that may be used for non-Trust purposes for the remainder of its useful life, which under the Exchange Agreement runs until the earlier of (i) September 27, 2040 or (ii) such time as the building is altered to enlarge its footprint or building envelope ("**Non-Conforming Period**"). During the Non-Conforming Period, Building 113 may be used for uses consistent with the Development Plan (whether or not such use is consistent with the Trust). Following the Non-Conforming Period, the uses of Building 113 shall be consistent with Section 3.6(d) below.

(c) Other Building and Premises. Areas not within public access areas, new buildings or structures permitted to be constructed in accordance with the DDA, the Town Center Plan and pursuant to any other applicable approval, and, following the Non-Conforming Period, Building 113, may be used for uses consistent with the Statutory Trust (or otherwise permitted under the Exchange Act) and the Development Plan, subject to the approval of Landlord in its sole and absolute discretion. Subject to the foregoing and without limiting the discretion of Landlord to disapprove a use, permitted uses may include full service or casual dining restaurants open to the general public; visitor-serving retail or recreational uses; visitor entertainment; and rental for events, fundraising, conferences, meetings and parties; maritime-

related uses, including ancillary office related thereto; public access; open space; and parking for approved uses.

(d) Residential Uses. Residential uses are prohibited under this Trust Lease.

(e) Regulatory Approvals Required. Nothing in this Trust Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City of Alameda for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. In approving a Permitted Use, improvement or other activity under this Trust Lease, Landlord is acting in its capacity as owner and trustee of the Building and Premises only, not in its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City of Alameda or other regulatory agency.

(f) Construction Activities. Tenant may use the Premises for construction activities related to the construction of the Improvements under this Trust Lease and the DDA; provided however, that such activities shall not unreasonably interfere with the ability of the public to access and use any areas of the Tidelands Parcel designated for open space and public access that have been opened to the public.

(g) Telecommunications Towers. At no time shall Tenant have the right to install, operate or maintain telecommunications towers on the roof or exterior areas of the Building and Personal Wireless Services Facilities within the meaning of the Telecommunications Act of 1996.

(h) Intentionally Omitted.

(i) Title to Improvements. During the Term, Tenant shall own all of the Improvements and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures, and other personal property of subtenants) and in the Building. At the expiration or earlier termination of this Trust Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and personal property of Tenant and its subtenants), and any fixtures, installed in the Building will automatically vest in Landlord without further action of any party, and without compensation or payment to Tenant.

4. TERM.

4.1. Term. The term of this Trust Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing ninety (90) days after Tenant has delivered to Landlord an Election Notice with respect to the Premises or the first of any Partial Premises ("**Commencement Date**"). This Lease shall terminate with respect to the entire Premises, including any Partial Premises with Delivery Dates occurring after the Commencement Date, at midnight on the sixty-sixth (66th) anniversary of the Commencement Date ("**Expiration Date**"), unless sooner terminated as hereinafter provided. Promptly following the receipt of the Tenant's Election Notice, Landlord shall send to Tenant a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date for Tenant's review and written endorsement. If Tenant fails to execute and

deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant.

4.2. DDA Termination. If the DDA is terminated for any reason prior to the completion of the Seaplane Lagoon Park improvements required pursuant to the Development Plan and the Infrastructure Package incorporated in the DDA, this Trust Lease shall also terminate unless the City, at the time of DDA termination is holding completion assurances for the Phase 1 Infrastructure Package and the City it able pursuant to the completion assurances, to obtain completion of the Seaplane Lagoon Park improvements located within Phase 1.

4.3. No Option to Renew. There is no option to renew this Trust Lease.

5. RENT.

5.1. Base Rent. The base rent for the Term of this Trust Agreement shall be the Consideration described in Recital F ("**Base Rent**"). In no event shall Base Rent be reduced, abated or refunded to Tenant for any reason, including any reduction in the Premises or early termination of this Trust Lease. Landlord acknowledges that the Base Rent for the entire term shall be deemed to have been paid in full upon the Phase 1 Close of Escrow.

5.2. Additional Rent. As used in this Trust Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent and Hold Over Rent, that are due and payable by Tenant under the terms of this Trust Lease including, but not limited to, Tenant's share of Utilities in accordance with Article 9 of this Trust Lease. The term "**Rent**," as used herein, shall mean all Base Rent (Section 5.1), Additional Rent (Section 5.2), Hold Over Rent (Article 21) and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant

5.3. Interest.Any installment of Rent and any other sum due from Tenant under this Trust Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Trust Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) ten percent (10%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

6. OPERATING EXPENSES AND TAXES.

6.1. Definitions. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, the amount payable by Tenant for Taxes and Operating Expenses shall be equitably adjusted for the Tax and Expense Years involved in any such change.

(b) **Taxes** shall mean all taxes, special taxes, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, excluding Landlord's interest in the Premises but including Personal Property Taxes, as defined in Section 6.3, or possessory

interest taxes, as defined in Section 6.4. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Trust Lease or any other lease of space in the Premises or any occupants thereof, on the use or occupancy of the Premises, on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Tenant or the Premises by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Parties on the date of this Trust Lease. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord any refunded or recovered Tax previously paid by Tenant (and the foregoing obligation shall survive the termination or expiration of this Trust Lease).

(c) **"Operating Expenses"** shall mean all costs of the management, operation, maintenance, insurance, repair and replacement of the Premises (including the exteriors, windows and roof of the Building).

6.2. Payment of Operating Expenses and Taxes. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall directly pay when due and before delinquency, all Operating Expenses and Taxes for the applicable Partial Premises. With reasonable promptness after the end of each Tax and Expense Year, Tenant shall submit to Landlord a statement showing the actual amount paid by Tenant with respect to Taxes and Operating Expenses for the past Tax and Expense Year ("**Tenant's Statement**"). The Parties acknowledge that this Trust Lease is intended to be triple net to Tenant. Tenant is responsible for the entire cost of all Utilities, Taxes, maintenance and repair and other costs attributable to the management, operation, maintenance, insurance, repair and replacement of the Premises during the Term.

6.3. Personal Property Taxes. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the applicable Partial Premises or

Tenant's personal property or trade fixtures placed by Tenant in or about the applicable Partial Premises during the Term ("**Personal Property Taxes**").

6.4. Possessory Interest Taxes. The interest created by this Trust Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Trust Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

6.5. Payment. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay the Personal Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either: (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes; or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the applicable Partial Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Trust Lease.

7. COMPLIANCE WITH LAWS.

7.1. Compliance with Laws.Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "**ADA**"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Building, Premises and any Improvements constructed on the Premises by Tenant and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Building and Premises into compliance with applicable ADA requirements and to ensure that the Building and Premises remain in compliance throughout the Term of this Trust Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Trust Lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Premises).

7.2. Compliance with Restrictions. The Premises are located on property known as the former Naval Air Station Alameda, portions of which was conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810, a quitclaim deed dated June 4, 2013 and recorded June 6, 2013 as Series No. 2013-199807 and a quitclaim deed dated June4, 2013, recorded June 6, 2013 as Series No. 2013-199824 of Official Records in the Office of the

County Recorder, Alameda County, California ("**Quitclaim Deeds**") and portions of which are subject to the Trust Lease in Furtherance of Conveyance dated June 6, 2000 as amended by the Amendment No. 1 dated November 28, 2000 and Amendment No. 20 dated March 30, 2009 ("**LIFOC**"). Those portions of the Premises subject to the LIFOC are expected to be conveyed to the City pursuant to a quitclaim deed which will contain covenants, conditions, restrictions, easements and encumbrances. Said Quitclaim Deeds and/or LIFOC conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). The Premises are also subject to a Site Management Plan and shall be subject to CC&Rs as defined in Section 8.2 of the DDA. Copies of the Quitclaim Deeds, LIFOC, Declaration of Restrictions and Site Management Plan have been delivered to Tenant and, concurrently with the execution of this Trust Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199838 and Series No. 2013 - 199837 in the office of the County Recorder, Alameda County, CA (the "**CRUP**"), the National Environmental Protection Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. Copies of the CRUP and the ROD are available for review at Landlord's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deeds, Declaration of Restrictions, the Site Management Plan, the CRUP, the CC&Rs and the ROD, as they affect the Premises, are collectively referred to herein as the "**Restrictions**." Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Trust Lease.

7.3. Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Building and Premises (collectively "**Use Permit**").

8. SECURITY DEPOSIT.

No security deposit is required by Tenant under this Trust Lease.

9. UTILITIES.

9.1. Payments for Utilities and Services. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the applicable Partial Premises, together with all related installation or connection charges or deposits ("**Utilities**"). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay **directly** to Landlord, as Additional Rent, all utility costs associated with the Premises leased by Tenant pursuant to **Exhibit A-2** on or before the date that is thirty (30) days after billing by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods

designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

9.2. No Liability of Landlord.From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, in no event shall Landlord be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the applicable Partial Premises, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises, or arising from the partial or total unavailability of the service or utility to the Premises, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its obligations under this Trust Lease. Nothing in this Section shall relieve Landlord, acting in its capacity as a utility provider of its liability for failing to provide utility services to the Premises.

10. ALTERATIONS.

10.1. Alterations. A material consideration of Landlord entering into this Trust Lease is the agreement by Tenant to make certain alterations to the Premises as required or approved for the Premises in connection with the Development Documents, including, without limitation, the Improvements to be made by Tenant and landscaping and site work consistent with the Development Plan (the "**Permitted Alterations**"). For so long as the DDA is in effect, notwithstanding anything to the contrary, Tenant shall have the right, without the further consent of Landlord to make any Permitted Alterations and, notwithstanding anything to the contrary in this Trust Lease, including in this Article 10 or Article 21, Tenant shall have no requirement to remove any Permitted Alterations during or upon the expiration of the Term. The foregoing shall not exempt or affect Tenant's obligation to comply with applicable laws or secure any necessary permits from Landlord in its capacity as a governmental entity. Alteration Requirements. Any Alterations to the Building or Premises made by Tenant shall be at Tenant's sole cost and expense, and made in compliance with all applicable Laws and (during the term of the DDA) the DDA. Further, Tenant hereby acknowledges that the Premises may be located within or adjacent to the national registered Naval Air Station Alameda Historic District ("**Historic District**") and, if so, Tenant shall comply with all applicable local, state, and federal requirements related to such Historic District. . Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem or other Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due. Landlord's review and approval of any Alterations pursuant to this Trust Lease shall be in its proprietary

capacity as Landlord and no such approvals shall constitute approval by the City of Alameda in its regulatory capacity. Tenant shall be obligated to obtain any permits and approvals from the City and any other governmental entities necessary for the Alterations.

10.2. Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Building or the Improvements) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., contacting Underground Service Alert or similar underground surveying services, potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval in its propriety capacity (which may also require the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.3. Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Building or on the Premises. Tenant shall remove within a reasonable period of time not to exceed thirty (30) days after notice of such lien, any mechanic liens or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Trust Lease for any labor or materials furnished to Tenant in connection with work performed in the Building or on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord and Landlord Related Parties (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

11. INTENTIONALLY OMITTED.

12. ENVIRONMENTAL PROTECTION PROVISIONS.

12.1. Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as

"hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2. Reportable Uses Required Consent.Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Building or Premises (for purposes of this Article 12, referred to collectively herein as "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or Building or transported to or from the Premises or Building without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises or the Building. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises or the Building, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Building. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Building, Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. The provisions of this Section shall not apply to any Hazardous Materials that existed at, on or under the Premises on the Commencement Date.

12.3. Remediation Obligations. If at any time during the Term, any contamination of the Building or Premises by the introduction of Hazardous Materials or the release or disturbance of Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Building and Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant's Contamination in the Building or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's reasonable

discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Building or Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Trust Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid or incurred by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by paid or pending invoices in support of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Building or Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "Tenant's Contamination" shall in no event include any site contamination or conditions at the Premises pre-existing the Term, whether known or unknown. Notwithstanding anything set forth herein, Landlord shall have no responsibility for the remediation or containment of any asbestos or lead dust found within the Building.

12.4. Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Trust Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5. Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Building or Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Building or Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Absent the gross negligence or intention misconduct of Landlord or Landlord Related Parties, Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such

Landlord officer, agent, employee, contractor or subcontractor into the Building or onto the Premises.

12.6. Hazardous Materials Handling Plan. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises applicable to such Delivery Date, Tenant shall or shall cause any proposed subtenant for the applicable Partial Premises to complete, execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit D** attached hereto prior to entering into any sublease. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises or Buildings, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**") which shall be consistent with the Restrictions in Section 7.2. For a period of fifteen (15) days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord's disapproval thereof. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, the Site Management Plan and the Hazardous Materials Handling Plan. Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto in Tenant's possession or control: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant's Permitted Use of the Building and Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.7. Hazardous Materials Indemnity. In addition to any other provisions of this Trust Lease from and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall, and does hereby agree, to indemnify, defend and hold harmless Landlord from any costs, expenses, liabilities, fines or penalties, including but not limited to reasonable attorneys' fees, resulting from Tenant's Contamination .

12.8. Tenant Release.

(a) Effective as of the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, the Tenant, on behalf of itself and

anyone claiming by, through or under the Tenant (including, without limitation, the Tenant Parties) hereby waives its right to recover from and fully and irrevocably releases the Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**Landlord Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Tenant may have or hereafter acquire against any of the Landlord Released Parties arising from or related to:

(i) Claims Related to the Applicable Partial Premises: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Partial Premises, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the applicable Partial Premises as of the applicable Delivery Date and; and (C) any information furnished by the Landlord Released Parties related to the applicable Partial Premises under or in connection with this Trust Lease or the DDA.

(ii) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the Commencement Date from any portion of the NAS Alameda property acquired by the Landlord to the applicable Partial Premises, whether such Incidental Migration occurs prior to or after the applicable Delivery Date.

(b) Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Landlord Released Parties in any way from, or be deemed a waiver of any Claims by the Tenant (or any Tenant Parties) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Landlord Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Delivery Date to the extent such claims are not based on the acts of the Tenant, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (iii) any violation of law by any of the Landlord Released Parties prior to the applicable Delivery Date; (iv) any breach by the Landlord of any of the Landlord's representations, warranties or covenants expressly set forth in this Trust Lease; or (v) the release (including negligent exacerbation) of Hazardous Materials by the Landlord Released Parties at, on, under or otherwise affecting the Premises, which release first occurs after the applicable Delivery Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the Landlord (collectively, the "Excluded Tenant Claims").

(c) Scope of Release. The release set forth in subsection 12.8(a) includes Claims of which the Tenant is presently unaware or which the Tenant does not presently suspect to exist which, if known by the Tenant, would materially affect the Tenant's release of the Landlord Released Parties. The Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Tenant agrees, represents and warrants that the Tenant realizes and acknowledges that factual matters now unknown to the Tenant may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light

of that realization and that the Tenant nevertheless hereby intends to release, discharge and acquit the Landlord Released Parties from any such unknown Claims. Accordingly, the Tenant, on behalf of itself and anyone claiming by, through or under the Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any right the Tenant and anyone claiming by, through or under the Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Tenant's Initials: _____

12.9. Landlords Release of the Tenant.

(a) From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, the Landlord, on behalf of itself and anyone claiming by, through or under the Landlord (including, without limitation, any successor owner of any portion of NAS Property acquired by the Landlord, whether prior to or after the applicable Delivery Date), hereby waives its right to recover from and fully and irrevocably releases the Tenant, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Tenant Released Parties**") from any and all Claims that the Landlord may have or hereafter acquire against any of the Tenant Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Delivery Date from the applicable Premises to any portion of the NAS Property acquired by the Landlord, whether such Incidental Migration occurs prior to or after the applicable Delivery Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Tenant Released Parties in any way from, or be deemed a waiver of any Claims by the Landlord (or anyone claiming by through or under the Landlord, including, but not limited to, any successor owner of the Premises) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Tenant Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Delivery Date to the extent such claims are not based on the acts of the Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Tenant Released Parties after the applicable Delivery Date; (iv) a breach of the Tenant's obligations under this Trust Lease or any other agreement between the Landlord and the Tenant; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials existing as of the applicable Delivery Date by any of the Tenant Released Parties at, on, under or otherwise affecting the Premises or any other portion of the NAS Property acquired by the Landlord, which release first occurs after the applicable Delivery Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Tenant.

(b) Scope of Release. The release set forth in subsection 12.9(a) includes claims of which the Landlord is presently unaware or which the Landlord does not presently suspect to exist which, if known by the Landlord, would materially affect the Landlord's release of the Tenant Released Parties. The Landlord specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Landlord agrees, represents and warrants that the Landlord realizes and acknowledges that factual matters now unknown to the Landlord may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Landlord further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Landlord nevertheless hereby intends to release, discharge and acquit the Tenant Released Parties from any such unknown Claims. Accordingly, the Landlord, on behalf of itself and anyone claiming by, through or under the Landlord, hereby assumes the above-mentioned risks and hereby expressly waives any right the Landlord and anyone claiming by, through or under the Landlord, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Landlord's Initials: _____

(c) Incidental Migration. For purposes of Section 12.8 and Section 12.9 Incidental Migration shall mean the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement and or other incidental transport of Hazardous Materials.

13. ASSIGNMENT AND SUBLETTING.

13.1. Assignment.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law: (a) except in connection with Tenant Financing (as defined below), mortgage, pledge, hypothecate or encumber this Trust Lease or any interest therein; (b) assign or transfer this Trust Lease or any interest herein, or any right or privilege appurtenant thereto or any portion thereof, without first obtaining the written consent of Landlord.

(b) Notwithstanding the foregoing, Tenant shall have the right but not the obligation (the "**Assignment Right**"), either concurrent with the delivery of the initial Election Notice or at any time thereafter, upon thirty (30) days' prior written notice to Landlord (the "**Assignment Notice**"), to assign Tenant's entire interest in this Trust Lease to any transferee permitted under Section 12.4 or 12.5 of the DDA (each, a "**Permitted Assignee**"). Any such Assignment Notice shall identify the Permitted Assignee and the date such assignment shall be effective (the "**Permitted Assignment Date**") and include a copy of a written agreement whereby Tenant assigns all its right, title, obligation and interest in this Trust Lease to Permitted Assignee and Permitted Assignee assumes all such right, title, obligation and interest. The Permitted Assignee shall expressly assume and agree to perform all the terms and conditions of

this Trust Lease to be performed by Tenant after the Permitted Assignment Date and to use the Premises only for a Permitted Use. On and after the Permitted Assignment Date, provided that the written assignment complies with the requirements in this subsection, Tenant shall be automatically and forever released of any and all liability and obligation under this Trust Lease other than the indemnity obligation and any obligations that arise after the after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date and prior to the Permitted Assignment Date.

13.2. Subletting. The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of sublease (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the Sublease between Tenant and the Subtenant.

13.3. Tenant Financing; Rights of Holders. Notwithstanding anything to the contrary contained in Section 13.1, but subject to the provisions of this Section 13.3, Tenant shall have the right during the Term to assign, mortgage or encumber Tenant's leasehold estate created by this Trust Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby (the "**Tenant Financing**").

(a) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any mortgagee of any Tenant Financing.

(b) The lender under any Tenant Financing permitted under this Section 13.3 shall be a "**Permitted Mortgagee**" and shall be entitled to the rights and, if applicable, subject to the obligations of a Permitted Mortgagee under Article 13 of the DDA. In addition, Landlord and Tenant expressly acknowledge that nothing in this Trust Lease shall be deemed a grant by Tenant of a security interest, or other lien, in favor of Landlord, upon any of Tenant's personal property situated in or upon the Premises, and Landlord expressly waives any rights, whether statutory or otherwise, that it may have to any lien against Tenant's personal property as may be required to secure the Tenant Financing, unless said lien is obtained pursuant to a judgment of a court of competent jurisdiction. Landlord further agrees to execute a reasonable form of Landlord lien waiver and nondisturbance agreement as may be required by a Permitted Mortgagee to secure the Tenant Financing.

13.4. No Release. No assignment, Sublease or other transfer other than the Permitted Assignment shall release or discharge Tenant of or from any liability, whether past, present or future, under this Trust Lease, and Tenant shall continue to be fully liable hereunder. Each Subtenant or assignee (including Permitted Assignee) shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Trust Lease. The assignment or Sublease, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Trust Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or Subtenant, then Tenant shall hold such sums in trust in the segregated account for the

benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sum shall not constitute an acceptance by Landlord of attornment by such assignee or Subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each assignment, Sublease or transfer agreement and an agreement of compliance by each such Subtenant or assignee.

13.5. Limitations on Transfer Reasonable. Given the long term and complex relationship between the Landlord and Tenant established by the DDA, Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Trust Lease or any other interests herein, to Sublease the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Trust Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Trust Lease or any interest herein, to Sublease the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

14. INDEMNITY AND WAIVER OF CLAIMS.

14.1. Tenant Indemnification.

(a) From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Landlord and its City Council, boards, commissions, officers, employees, agents and volunteers ("**Landlord Related Parties**") against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Tenant's performance or non-performance under this Trust Lease or arising in connection with entry onto, ownership of, occupancy in, or construction on the applicable Partial Premises by Tenant, its contractors or its subtenants. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the applicable Landlord Related Party's gross negligence or willful misconduct. If Tenant effectuates an assignment permitted pursuant to Article 13 in the manner required by Article 13, then the assigning Tenant shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the assignment. Tenant's obligation to indemnify, defend and hold harmless under this Section 14.1 shall survive termination of this Trust Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. Notwithstanding the foregoing to the contrary, provisions of this Section 14.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 12.7 above.

(b) Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties against and from all Losses, arising from any gross negligence or intentional misconduct by Landlord and/or Landlord Related Parties. If any action or proceeding is brought against Tenant and/or Tenant Parties by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

14.2. Waiver of Claims. Except in the event of gross negligence or willful misconduct of Landlord or Landlord Related Parties or any obligation of Landlord under this Trust Leases, the DDA and the Development Agreement applicable to the applicable Partial Premises (the "**Excluded Obligations**"), Landlord shall not be liable to Tenant or any Tenant Party and Tenant

hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the applicable Partial Premises from any cause. Without limiting the foregoing, except with respect to the Excluded Obligations, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement of rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the applicable Partial Premises or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the applicable Partial Premises or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the applicable Partial Premises. The Parties agree that in no case shall either Party, or any Landlord Related Party or Tenant Party, be responsible or liable on any theory for any injury to the other Party's, Landlord Related Party's or Tenant Party's business, loss of profits, loss of income or any other form of consequential damage.

14.3. Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Trust Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Trust Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

15. INSURANCE.

15.1. Tenant's Insurance. Tenant shall maintain the insurance required by the DDA throughout the Term. Subrogation Waiver. Tenant hereby grants to Landlord and Landlord Related Parties, on behalf of itself and any insurer providing comprehensive general and automotive liability insurance to Tenant pursuant to this Trust Lease, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord and/or Landlord Related Parties by virtue of the payment of any loss under such insurance. Tenant further agrees to include a subrogation waiver in each of its subleases requiring a similar waiver by its subtenants and their insurers in favor of Landlord and Landlord Related Parties.

15.2. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under this Article 15, such failure shall be a Default. If such Default continues after notice and expiration of any applicable cure period pursuant to Article 18, such Default shall be an Event of Default entitling Landlord, at its election and in addition to such remedies as may otherwise be available under this Trust Lease, to procure and maintain the required coverage. Tenant shall reimburse Landlord for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable **directly** to Landlord as Additional Rent and shall be due on or before the date that is thirty (30) days after billing by Landlord, failing which payment Landlord may exercise any and all remedies available to it under this Trust Lease, at law or in equity. The failure by Landlord to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

16. DAMAGE OR DESTRUCTION.

16.1. Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property (as defined at Section 16.1(c)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total and the estimated time for repairing said damage.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction.

(c) "**Insured Loss**" shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which was caused by an event required to be covered by the insurance described in Article 15, irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the Building or improvements owned by Landlord (including Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) "**Hazardous Material Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 12.1), in, on, or under the Premises which requires repair, remediation, or restoration.

(f) "**Premises**", as used in this Article 16, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the damage or destruction.

16.2. Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Tenant shall repair such damage as soon as reasonably possible and this Trust Lease shall continue in full force and effect.

16.3. Total Destruction; Uninsured Loss. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs or a Premises Partial Damage that is not an Insured Loss, upon Tenant's written election (delivered to Landlord within ninety (90) days after the subject loss and made in Tenant's sole and absolute discretion), Tenant may elect to continue this Trust Lease or terminate this Trust Lease. If Tenant elects to terminate, Tenant shall promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord (and Tenant may use any available insurance proceeds to do so) and thereafter this Trust Lease shall terminate and be of no force or effect except for those obligations specified in this Trust Lease

that expressly survive the expiration or termination of this Trust Lease. If Tenant elects to continue this Trust Lease, Tenant shall repair such damage consistent with the Development Plan as soon as reasonably possible (and Tenant may use any available insurance proceeds to do so) and this Trust Lease shall continue in full force and effect. If Tenant fails to promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord and does not commence to repair and diligently pursue repair of damage as required hereunder within twelve (12) months after Tenant's notice of its election to continue this Trust Lease, the Trust Lease shall terminate, subject to this Section 16.3.

16.4. Limit on Claims. Tenant shall have no claim against Landlord for any Losses suffered by Tenant not caused by: (i) a breach of an Excluded Obligation by Landlord; or (ii) the gross negligence or intentional misconduct of Landlord or Landlord Related Parties. Tenant and Landlord each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such sections or laws apply to any Losses. The Parties intend that the provisions of this Trust Lease control in lieu of such laws.

17. CONDEMNATION.

"**Premises**", as used in this Article 17, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the Taking (as defined below). If the whole or if any material part of the Premises or Building under this Trust Lease are taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises or Building unsuitable, in Landlord's reasonable opinion, for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, subject to the rights of Permitted Mortgagees (as defined in Article 13) terminate this Trust Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises are taken and if the Premises remaining after such Taking and any repairs by Tenant or its subtenants would be untenantable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations or if such Taking will make more than twenty-five percent (25%) of the Premises unusable by Tenant or Subtenants for the Permitted Use for a period greater than the twelve (12) months, Tenant shall have the right to terminate this Trust Lease as of the date possession vests in the condemning party. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Trust Lease is not terminated, this Trust Lease shall remain in full force and effect as to the Premises not condemned. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Trust Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's leasehold interest in the Premises, and/or the value of the Tenant's Improvements, fixture, equipment and personal property (specifically excluding components of the Premises which under this Trust Lease or by law are or at the expiration of the

Term will become the property of Landlord, including, without limitations, fixtures and Alterations), or Tenant's loss of business goodwill, provided that such award does not reduce any award otherwise allocable or payable to Landlord.

18. DEFAULT.

18.1. Events of Default. "**Premises**", as used in this Article 18, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the Default, as defined herein. The occurrence of any of the following shall constitute a "**Default**" by Tenant:

(a) Tenant fails to timely pay the Ferry Terminal Payment when due.

(b) Tenant uses or permits the Building and Premises to be used for purposes or activities that are in violation of the Permitted Uses contained in Section 3.6.

(c) Tenant abandons the Building and Premises as defined in Section 1951.3 of the California Civil Code.

(d) Tenant fails timely to deliver any subordination document or estoppel certificate required to be given under this Trust Lease within the applicable time period specified herein below.

(e) Tenant violates the restrictions on assignment, sublet or transfer set forth in Article 13.

(f) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within ninety (90) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(g) Tenant fails to perform or comply with any provision of this Trust Lease other than those described in (a) through (f) above, in which case Tenant's notice and cure period shall be extended to thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

(h) Tenant is in Default under the Disposition and Development Agreement after written notice and the expiration of the applicable cure period.

18.2. Remedies. Upon the occurrence of any Default under this Trust Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives

notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Subject to the rights of a Permitted Mortgagee (as set forth in Article 13), terminate this Trust Lease and Tenant's right to possession of the Building and Premises as Landlord sole remedy.

(b) Except to the extent caused by the gross negligence or intentional misconduct of Landlord, neither Landlord nor any Landlord Related Party shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located upon or within the Building or Premises, whether pursuant to this Trust Lease or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any portion of the Building or Premises whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above.

(c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, subject to the rights of a Permitted Mortgagee (as defined in Article 13) to terminate this Trust Lease and Tenant's right to possession of the Building and Premises and recover an award of damages as provided above.

(d) Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of a Default, subleased or leased by Tenant to others, Tenant hereby appoints Landlord to act as Tenant's agent under such circumstances and Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Base Rent, Additional Rent, Hold Over Rent and any other rents due hereunder without in any way affecting Tenant's obligations to Landlord hereunder except with respect to the reduction of such amounts due from Tenant. Said sums collected in excess of rents due hereunder will be treated as Additional Rent payable by Tenant to Landlord until the time when any such Default is cured. Such agency, being given for security, is hereby declared to be irrevocable.

18.3. No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Trust Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4. Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Trust Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Trust Lease following its termination as a result of Tenant's breach.

18.5. Remedies Cumulative. Except as expressly set forth herein, no right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other

right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Trust Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Trust Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6. Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Trust Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 18.6, the full amount of the costs and expense incurred or the payments so made or the amount of the Losses so sustained shall be immediately be owed by Tenant to Landlord. Tenant shall promptly pay **directly** to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of seven percent (7%) per annum, or the highest rate permitted by applicable law.

18.7. Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19. LIMITATION OF LANDLORD LIABILITY.

(a) Notwithstanding anything to the contrary contained in this Trust Lease, the liability of Landlord (and of any successor Landlord) shall be limited to the value of the Premises. Tenant shall look solely to Landlord's interest in the Premises for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

(b) If Tenant believes a material breach of this Trust Lease has occurred, Tenant shall first notify Landlord in writing of the purported breach, giving Landlord thirty (30) days from receipt of such notice to cure the breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that thirty (30) day period, begin to cure within thirty (30) days and thereafter diligently prosecute such cure to completion within a period not to exceed ninety (90) days, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this Trust Lease; (ii) prosecuting an action for damages within the limitations set forth in Section 19(a) above; (iii) seeking specific performance of this Trust Lease; or (iv) any other remedy available at law or equity.

20. SURRENDER OF PREMISES.

"**Premises**", as used in this Article 20, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the expiration or termination of this Trust Lease. At the termination of this Trust Lease or Tenant's right of possession, Tenant shall remove Tenant's personal property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Building and Premises, and quit and surrender the Premises to Landlord in a broom clean condition and in a condition otherwise required by the CC&R's (as defined in the DDA). . If Tenant fails to remove any of Tenant's property, or to place the Building and Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or place the Building and Premises in the required condition. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Building and Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

21. HOLDING OVER.

"**Premises**", as used in this Article 21, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the expiration or termination of this Trust Lease. If Tenant fails to surrender all or any part of the Building and Premises at the termination of this Trust Lease, occupancy of the Building and/or Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Trust Lease. In addition, Tenant shall pay **directly** to Landlord, in monthly installments, a hold over rent equal to the Fair Market Rent for the Building and Premises as determined by Landlord ("**Hold Over Rent**"). No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Trust Lease, Tenant shall indemnify, defend and hold harmless Landlord and Landlord Related Parties from and against any and all losses or liability resulting from delay in Tenant so surrendering the Building and Premises including, without limitations, any loss or liability resulting from any claim against Landlord and/or Landlord Related Parties made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

22. NOTICE.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in the Basic Lease Information ("**Notice Address**"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Building and Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is

deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

23. LABOR PROVISIONS.

23.1. DDA Provisions. With respect to the construction of the Improvements and any Permitted Alterations, Tenant hereby agrees to comply with the construction requirements set forth in Section 6.6 of the DDA for the DDA Term. "**Premises**", as used in this Article 23, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the applicable construction.

23.2. Equal Opportunity. During the Term of this Trust Lease, and with respect only to persons in the Building and at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through its subleases, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 23.2.

23.3. Convict Labor. In connection with the performance of work required by this Trust Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

23.4. Prevailing Wages and Related Requirements.

(a) Nothing in this Trust Lease constitutes a representation or warranty by Landlord regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after any applicable Delivery Date.

(b) Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code. Tenant's obligation to indemnify, defend and hold harmless under this Section 23.4(b) shall survive termination of this Trust Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

24. MISCELLANEOUS.

24.1. Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California. Any suit brought to defend or enforce the terms of this Trust Lease shall be filed with the courts of the County of Alameda, State of California. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such courts.

24.2. Severability. If any section, term or provision of this Trust Lease is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Trust Lease shall not be affected thereby, but shall remain in full force and effect.

24.3. Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Trust Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Trust Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

24.4. Force Majeure. During the term of the DDA, the provisions of Section 1.3 shall apply to Tenant's obligations under this Trust Lease. Thereafter, whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing party ("**Force Majeure**"). The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension, provided however that under no circumstances may a Party request an extension for a cumulative period in excess of one (1) year.

24.5. Intentionally Omitted.

24.6. Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker specified in the Basic Lease Information in the negotiating or making

of this Trust Lease. Each party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Trust Lease as a result of the actions of the indemnifying party. Provided that this Trust Lease is fully executed by the Parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

24.7. Access by Landlord.In addition to access provided by this Trust Lease, Landlord shall be allowed access to the Building and Premises at all reasonable times throughout the Term of this Trust Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Building and Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes, in which case Landlord shall notify Tenant as soon as reasonably possible of such entry. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Building and Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord one set of keys therefor. Upon written request, all keys must be returned to Landlord at the expiration or termination of this Trust Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving Alameda Point may be located within the Building or on the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Building and Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Building and Premises by Tenant.

24.8. Memorandum of Lease. This Trust Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Lease Agreement in the form of Exhibit E shall be executed by the Parties concurrently herewith and the Tenant may record the same in the County Recorder's Office of Alameda County. In addition, Tenant and/or Lender may record such instruments as are customary and required by Lender to secure Lender's interest in the Trust Lease.

24.9. Article and Section Titles. The article and section titles use herein are not to be consider a substantive part of this Trust Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

24.10. Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Trust Lease on behalf of Tenant does hereby covenant and warrant that: (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation; (b) Tenant has and is duly qualified to do business in California; (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Trust Lease and to perform all

Tenant's obligations hereunder; and (d) each person (and all of the persons if more than one signs) signing this Trust Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Trust Lease and identifying the person(s) authorized to execute this Trust Lease on behalf of Tenant.

24.11. Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Trust Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Building and applicable Partial Premises throughout the Term.

24.12. Asbestos Notification for Commercial Property Constructed Before 1979.Tenant acknowledges that Landlord has advised Tenant that, because of their age, the Building may contain asbestos-containing materials ("**ACMs**"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

24.13. Lead Warning Statement.Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 11 of this Trust Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Building and Premises, except to the extent already disclosed to the Tenant.

24.14. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Trust Lease.

24.15. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Building and Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

24.16. Time of the Essence. Time is of the essence of this Trust Lease and each and all of its provisions.

24.17. Entire Agreement. This Trust Lease contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Trust Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Trust Lease may be amended or added except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

24.18. Intentionally Omitted.

24.19. Relocation Waiver. Tenant acknowledges that upon the expiration or earlier termination of this Trust Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Trust Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

24.20. Subdivision and Development of Property. Subject to Tenant's rights under the DDA, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Building and Premises are located. As a material inducement for Landlord to enter into this Trust Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant's rights under this Trust Lease.

24.21. Environmental and Planning Documents. Tenant acknowledges that its use of the Building and Premises and any Alterations thereto shall comply with the terms, conditions and requirements of Development Documents, which shall include, without limitation, the following: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); (d) the Alameda Point Transportation Demand Management Plan; and (e) the Site Management Plan.

24.22. Counterparts. This Trust Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Such executed counterparts may be delivered by electronic means, including by facsimile or electronic mail, and such delivery of copies shall have the same force and effect as the delivery of ink original signatures.

24.23. Independent Contractors. The relationship between the Parties is one of Landlord and Tenant acting as independent contractors, and not one of partnership, joint venture, agency, employment, trust or other joint or fiduciary relationship. This Lease is not for the benefit of any other third party.

[Remainder of this Page Intentionally Left Blank]

Landlord and Tenant have executed this Trust Lease as of the day and year first above written.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: _____

Name: BRUCE DORFMAN

Title: VICE PRESIDENT

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

EXHIBIT A-1

MAP OF SITE A PROPERTY

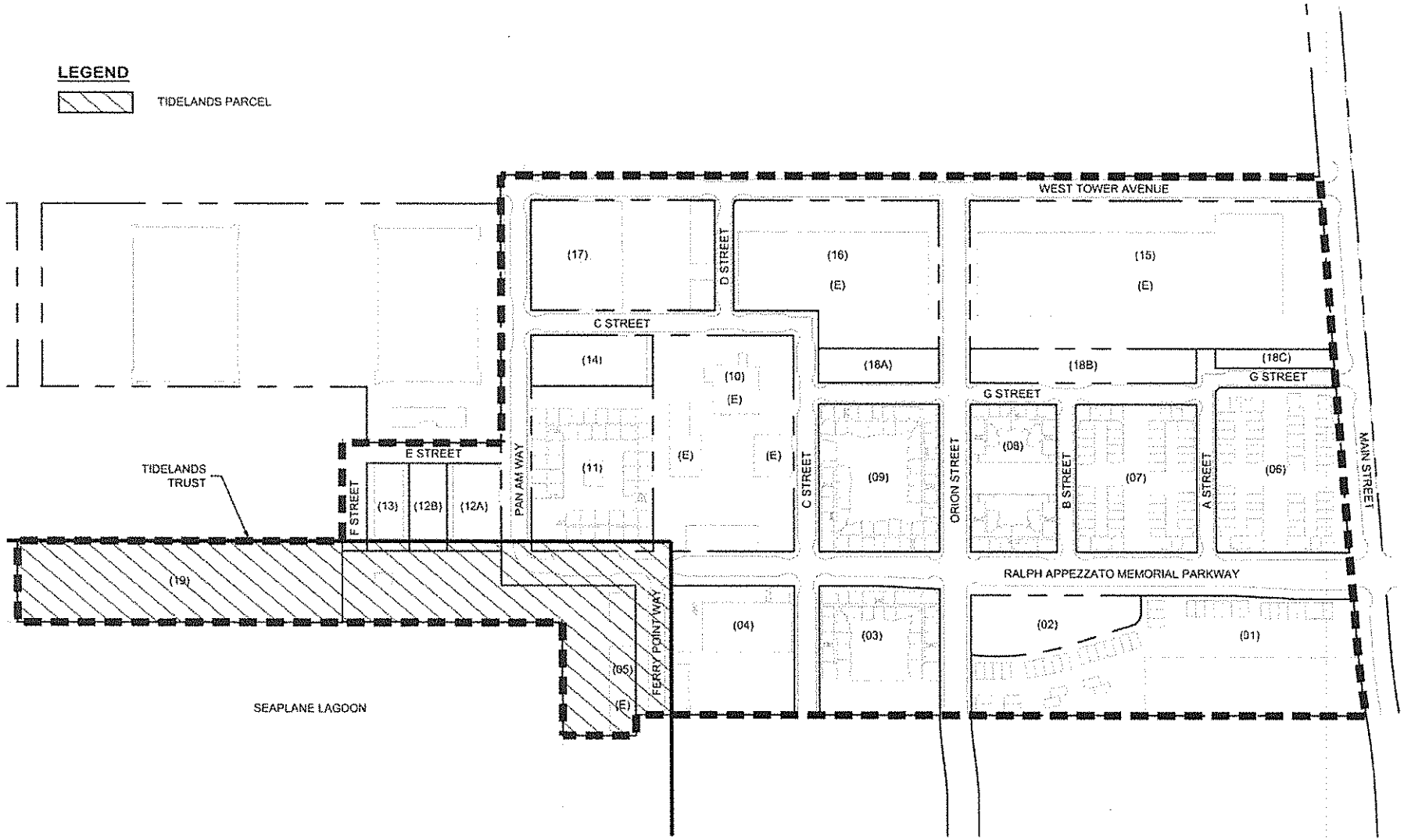


EXHIBIT A - 1

MAP OF SITE A PROPERTY AND TIDELANDS PARCEL

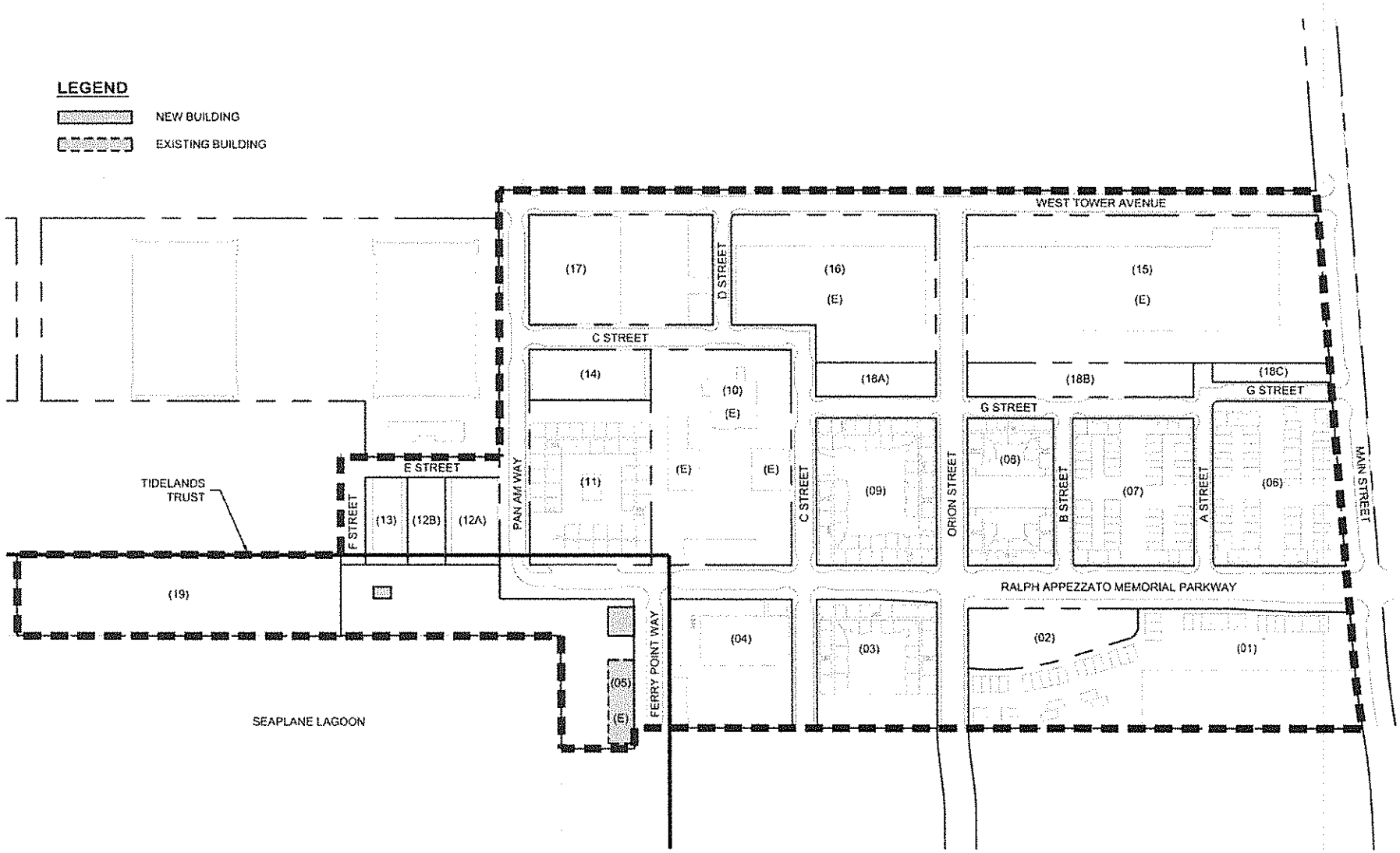
05/27/2015

NOT TO SCALE

EXHIBIT A-2

LEASED BUILDINGS AND PREMISES

- Insert Site Map showing the Building and approximate Premises subject to lease
- Insert list of Building addresses and square footages under lease
- Insert description of the Premises by metes and bounds and square footages under lease.
- Insert description of Building 113 Partial Premises, Building Pad 1 Partial Premises and Building Pad 2 Partial Premises



SITE A - BUILDING FOOTPRINT AREAS TO BE LEASED WITH TIDELANDS

04/29/2015

NOT TO SCALE

EXHIBIT B
COMMENCEMENT LETTER

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and Alameda Point Partners, LLC, a Delaware limited liability company, as Tenant, for _____ rentable square feet in Building ____ located at _____, Alameda, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises or Partial Premises described in the Election Notice attached hereto and agrees:

1. The Commencement Date of the Trust Lease is _____;

2. The Expiration Date of the Trust Lease is _____.

3. The Delivery Date of the Partial Premises described in the Election Notice attached here to is _____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda By: _____ Name: _____ Title:	Tenant: Alameda Point Partners By: _____ Name: _____ Title: _____

[Exhibit Do not sign]

EXHIBIT C

ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Partners, LLC, a Delaware limited liability company ("Tenant") dated as of _____ ___, 2015 ("**Lease**") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deeds from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199807, Series No. 2013-199810 and Series No. 2013-199824 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed") and other future applicable Quitclaim Deeds from the Navy;

- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("Declaration of Restrictions").

- Covenants to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199838 and Series No. 2013-199837 in the Office of the County Recorder, Alameda County ("**CRUP**") and other future applicable CRUPs;

- Lease in Furtherance of Conveyance Dated June 6, 2000, as amended by the Amendment No. 1 dated November 28, 200 and Amendment No. 2 dated march 30, 2009 ("**LIFOC**"); and

- Site Management Plan for the Premises dated March 29, 2013 ("**Site Management Plan**") and other future applicable Site Management Plans.

Pursuant to Section 7.2 of the Trust Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Trust Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Trust Lease.

Signatures on next page

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____
Title: _____

EXHIBIT D

ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of Hazardous Materials (as defined in Section 13.1 of the Trust Lease and copied for convenience below) in the process proposed on the Building and Premises to be leased. Any such use must be approved in writing by Landlord. Tenant or prospective subtenants should answer the questions in light of their proposed operations in the Building and on or about the Premises. Existing tenants should answer the questions as they relate to ongoing operations in the Building and on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. Hazardous Materials is defined as follows:

"**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, California 94501
(510) 747-4700
Attn: City Manager

1. **General Information.**

Name of Responding Company:_____

Check the Applicable Status:_____

Tenant ☐ Prospective Subtenant ☐ Existing Tenant ☐

Mailing Address:_____

_____

Contact Person and Title:_____

Telephone Number: (___) _____

Alameda Point Address of Proposed Premises to be Leased:_____

_____

Length of Lease Term:_____

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

_____

_____

_____

2. **Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes	Yes ☐	No ☐
Hazardous Chemical Products	Yes ☐	No ☐

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes ☐ No ☐

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes ☐ No ☐

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes ☐ No ☐

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

_____

_____

_____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes ☐ No ☐

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

_____

_____

3. **Storage Tanks and Pumps.**

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes ☐ No ☐

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

_____

_____

_____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes ☐ No ☐ Not Applicable ☐

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes ☐ No ☐ Not Applicable ☐

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes ☐ No ☐ Not Applicable ☐

If so, describe. _____

_____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes ☐ No ☐ Not Applicable ☐

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes ☐ No ☐ Not Applicable ☐

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. **Spills.**

4.1 During the past year, have any spills occurred on any site you occupy?

Yes ☐ No ☐ Not Applicable ☐

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes ☐ No ☐ Not Applicable ☐

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐ No ☐ Not Applicable ☐

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work_____

_____

_____

_____

5. **Waste Management.**

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes ☐ No ☐

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☐ No ☐

If yes: EPA ID#_____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐ No ☐

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes ☐ No ☐

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes ☐ No ☐

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes ☐ No ☐

If yes, what types and quantities? _____

_____

_____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

_____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes ☐ No ☐

If yes, please describe any existing or proposed treatment, processing or recycling methods. ____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. **Wastewater Treatment/Discharge.**

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

_____ storm drain _____ sewer
_____ surface water _____ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes ☐ No ☐

6.3 Is your wastewater treated before discharge?

Yes ☐ No ☐ Not Applicable ☐

If yes, describe the type of treatment conducted.

6.4 Does your business conduct operations outside the building or store materials outside?

Yes ☐ No ☐ Not Applicable ☐

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes ☐ No ☐ Not Applicable ☐

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes ☐ No ☐ Not Applicable ☐

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes ☐ No ☐ Not Applicable ☐

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. Air Discharges.[1]

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes ☐ No ☐

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes ☐	No ☐
Dip tank	Yes ☐	No ☐
Drying oven	Yes ☐	No ☐
Incinerator	Yes ☐	No ☐
Other (please describe)	Yes ☐	No ☐
Boiler	Yes ☐	No ☐
I/C Engine	Yes ☐	No ☐
Emergency Backup Generator	Yes ☐	No ☐
Processes that apply coatings, inks, adhesives or use solvents	Yes ☐	No ☐

7.3 Do you emit or plan to emit any toxic air contaminates?

Yes ☐ No ☐

7.4 Are air emissions from your operations monitored?

Yes ☐ No ☐

[1] NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

_____

_____

_____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. **8. Enforcement Actions, Complaints.**

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes ☐ No ☐

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

_____

_____

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ☐ No ☐

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes ☐ No ☐

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes ☐ No ☐

If so, discuss the results of the audit. _____

_____

_____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes ☐ No ☐

Please describe:_____

_____

_____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

_____

a _____

By:_____

Title:_____

Date:_____

EXHIBIT E

FORM OF MEMORANDUM OF LEASE

Prepared by and after
recording return to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

DOCUMENT EXEMPT FROM RECORDATION FEE UNDER GOVERNMENT CODE SECTION 27383

MEMORANDUM OF LEASE AGREEMENT

The **CITY OF ALAMEDA**, a charter city and municipal corporation (the "Landlord"), and Alameda Point Partners, LLC, a Delaware limited liability company (the "Tenant"), do hereby declare on this ___ day of _____, 2015 this Memorandum Lease Agreement (this "Memo"):

Pursuant to that certain Lease dated as of _____ ___, 2015 (the "Lease"), the Landlord demised and leased unto the Tenant, and the Tenant leased and demised from the Landlord, that certain property described in the Trust Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Trust Lease.

The term of the Trust Lease commenced as of _____ __, 20__ and shall terminate on _____ __, 20__, unless sooner terminated or extended as provided in the Trust Lease.

1. Except as provided in the Trust Lease and with respect to subleases of the Premises, the Tenant shall not assign or transfer the Trust Lease without the prior written consent of the Landlord in accordance with the Trust Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Trust Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Trust Lease, the Trust Lease shall control.

3. Upon the earlier of termination or expiration of the Trust Lease, pursuant to the terms thereof, the Landlord shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Trust Lease has been properly terminated or has expired by its terms, then the

Landlord and the Tenant agree to execute the Release within 10 days after receipt of a written request for the same by either Party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Trust Lease.

5. This Memo may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[Signatures to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease Agreement as of the ___ day of _____, 20____.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

LANDLORD
City of Alameda, a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____ **[Exhibit: Do Not Sign]**

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, _____, 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.

_____
Name: _____
Notary Public

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, _____, 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.

_____
Name: _____
Notary Public

EXHIBIT S

INTENTIONALLY OMMITTED

EXHIBIT T

FERRY TERMINAL NOTE

PROMISSORY NOTE
(Alameda Point Site A, Ferry Terminal Payment)

Principal Amount: [Insert amount equal to $10,000,000 less any amounts previously paid by Developer pursuant to Section 5.2(b)(4) of the DDA.]
Loan Effective Date: [Insert Phase 1 Closing Date.]
Maturity Date: [Insert date that is one year after the Completion Date set forth in the Ferry Terminal Plan.]

FOR VALUE RECEIVED, the undersigned, Alameda Point Partners, LLC, a Delaware limited liability company ("Developer"), promises to pay to the order of the City of Alameda, a California charter city (the "City"), at _____ or such other place as the City may designate to Developer in writing from time to time, the principal sum of _____ Dollars ($_____)**[Insert amount equal to $10,000,000 less any amounts previously paid by Developer pursuant to Section 5.2(b)(4) of the DDA.]**, without interest, pursuant to the terms of this Promissory Note ("Note"). All payments required under this Note shall be made in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private.

ARTICLE I. – DDA

1.01 DDA. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, related to that certain real property commonly referred to as Site A of Alameda Point (the "DDA"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

1.02 Ferry Terminal Payment. This Note is given to evidence Developer's obligation to pay the Ferry Terminal Payment required by Section 2.2(b) of the DDA.

ARTICLE II - TERMS AND CONDITIONS

2.01 Maturity Date; Allocation of Payments:

Maturity Date: The loan evidenced by this Note shall mature upon _____ **[Insert date that is one year after the Completion Date set forth in the Ferry Terminal Plan.]**, which date is subject to extension pursuant to the provisions of Section 1.3 of the DDA (the "Maturity Date"). On or before the Maturity Date, Developer shall pay all principal amounts and other charges as described herein then outstanding to the City.

2.02 Credit for DDA and Surety Bond Payments: All payments made by Developer pursuant to Section 1.3(a)(2) and 5.2(b)(4) of the DDA shall be credited to the amounts due under this Note. Further, all amounts paid by or on behalf of Developer's surety for the design, permitting and Completion of the Ferry Terminal pursuant to a bond provided pursuant to the applicable Public Improvement Agreement shall be credited to the amounts due under this Note.

2.03 Use of Funds Paid Hereunder. All funds paid by Developer pursuant to this Note shall be used for the purposes related to the Ferry Terminal as further set forth in Section 2.2(b) of the DDA.

2.04 Prepayment: Developer shall have the right at any time and from time to time to prepay the principal balance under this Note in whole or in part, upon five (5) business day's prior written notice to the City. No prepayment premium or penalty payment shall be due with respect to any such prepayment.

2.05 Cost of Collection: All costs, expenses, advances and/or attorney's fees incurred by the City relating to the enforcement of this Note shall be immediately owed by Developer to the City and shall be in addition to the principal amount of this Note.

ARTICLE III. TERMINATION OF DDA

3.01 Termination of DDA and Exercise of Right of Reverter/Option to Repurchase. In the event of (a) the occurrence of a Developer Event of Default under the DDA prior to the commencement of construction of the Ferry Terminal and (b) the City's election to terminate the DDA and exercise its rights pursuant to Section 17.5 or 17.6 and the City does reacquire the Property or any portion thereof:

(i) If the foregoing occurs prior to Developer's commencement of construction of any portion of Vertical Improvements, the City re-acquisition of the Property or any portion thereof pursuant to its exercise of its right of reverter or Developer's conveyance of the portion of the Property then owned by Developer to the City shall be deemed a full satisfaction of Developer's obligations under this Note;

(ii) If the foregoing occurs after Developer's commencement of construction of any portion of the Vertical Improvements, upon the City's reacquisition of the Property or portion thereof or the Developer's conveyance of the applicable portion of the Property to the City, Developer shall be entitled to a credit to the amounts due under this Note equal to a percentage of the outstanding principal amount of the Note, which percentage is equal to (A) the total acreage of the Property conveyed to the City (including any prior dedications of parks or rights-of-way) divided by (B) the total acreage of the Transfer Property and the Lease Property.

Notwithstanding the above, if the DDA is terminated after the commencement of construction of the Ferry Terminal, and Developer shall cease to continue construction of the Ferry Terminal pursuant to the DDA, the full amount owed under this Note shall be due and payable immediately.

ARTICLE IV. - GENERAL CONDITIONS

4.01 No Waiver. Amendment: No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (a) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of the City thereafter to insist upon strict compliance with the terms of this Note, or to insist upon strict compliance with the terms of this Note, or (b) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Developer hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part unless the City agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

4.02 Waivers: Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Developer. Developer hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any moratorium, reinstatement, marshaling, forbearance, valuation, stay, extension, redemption, appraisement, exemption now or hereafter provided by the Constitution and laws of the United States of America and the State of California, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note.

4.03 Miscellaneous: Developer's obligations under this Note are subject to the notice and cure provisions of Section 17.4(b) of the DDA. Upon default under the provisions of this Note, the City may declare the outstanding principal amount of this Note and all other charges payable hereunder to be due and payable immediately, and upon such declaration such principal and other sums shall immediately become and be due and payable without demand or notice. The undersigned consents to all renewals, replacements, and extension of the time for payment hereof and waives notice, demand, protest and applicable stature of limitations. Liability under this Note shall be governed by and construed in accordance with the laws of the State of California and the applicable laws of the United States of America. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof.

4.045 Attorney's Fees: In the event that either party institutes litigation for any dispute or default arising from this Note, the prevailing party shall be entitled to recover reasonable attorney's fees. In the case of attorneys' fee payable to the City when the City has been represented by legal counsel employed with the City Attorney's Office, the attorneys' fees shall be measured by the reasonable attorneys' fees that would have been paid by the City had it instead been represented by outside counsel in the matter.

4.05 Notices: Notice of any default under the provisions of this Note shall be sent to the following:

If to Developer to: Alameda Point Partners, LLC
c/o Trammel Crow Residential
39 Forrest Street, Suite 201
Mill Valley, CA 94941
Telephone: 415-381-3001
Facsimile: 415-381-3003
Email: bd@thompsondorfman.com

With copies to: SRM Ernst Development Partners
2220 Livingston Street Suite 208
Oakland, CA 94606
Telephone: 510-219-5376
Facsimile: 510-380-7056
Email: jernst@srmernst.com

With copies to: Madison Marquette
909 Montgomery Street Suite 200
San Francisco, CA 94133
Telephone: 415-277-6828
Facsimile: 415-217-5368
Email: pam.white@madisonmarquette.com

With copies to: Stice & Block, LLP
Attention: Marc Stice
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: (510) 735-0032
Facsimile: (510) 735-0440
Email: mstice@sticeblock.com

4.06 Time of the Essence: Time is of the essence with respect to all obligations of Developer under this Note.

Signatures on the following page.

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

[EXHIBIT DO NOT SIGN]

EXHIBIT U
CITY DISCLOSURE DOCUMENTS

Doc #	Document	Link
1.	Finding of Suitability of Transfer for Phase 1 (final, 4/13)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905889131/16720440507/1
2.	Petroleum Data Gap Investigation Report (final, 2/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900771/16720462783/1
3.	Petroleum Management Plan, App C, FL-155A (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900771/16720466513/1
4.	Petroleum Management Plan, App C, FL-200 (update 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900771/16720467839/1
5.	Site Management Plan, App. B, USTs 173 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720595085/1
6.	Site Management Plan, App. B, FL-126 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720593993/1
7.	Site Management Plan, App. B, FL-125 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720591773/1
8.	Site Management Plan, App. B, CAA-B South (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720589663/1
9.	Site Management Plan, App. B, ASTs 173 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720586683/1
10.	Petroleum Management Plan, App C, USTs 398 (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720584313/1
11.	Petroleum Management Plan, App C, OWS 162 (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720582407/1
12.	Petroleum Management Plan, App C, M-07 & GAP 45 (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720580973/1
13.	CAA-3 Corrective Action Summary Report (12/13)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnxkhpx4z/1/1905900653/16720579655/1
14.	Final Site Management Plan, Phase 1 Transfer (3/15)	
15.	Fact Sheet FL-126 (final, 5/14)	
16.	NFA letter FL-126 (7/14)	
17.	Fact Sheet FL-125 (final, 5/14)	
18.	NFA letter FL-125 (7/14)	
19.	Fact Sheet USTs 398 (draft, 12/13)	
20.	NFA letter USTs 398 (10/14)	
21.	Petroleum Program Field Support CAA-3 (final, 8/14)	
22.	Remedial Design OU-2B, Groundwater (preliminary, 5/14)	
23.	Land Use Control Remedial Design OU-2B (draft, 5/15)	
24.	Field Summary Report for OU-2C Drain Lines (final, 7/13)	
25.	Historical Radiological Assessment, Vol. II, Use of General Radioactive Materials (final, 6/07)	
26.	Final Status Survey Report, Building 66 (final, 9/12)	
27.	Final Status Survey Report, Building 113 (final, 10/12)	

28.	Scoping Survey Report, Former Smelter Area(revised final, 8/12)	
29.	Finding of Suitability to Transfer Phase 2 (draft, 5/14)	
30.	Soil Remedial Action Work Plan for OU-2B (final, 7/14)	
31.	Record of Decision for OU-2B (final, 3/15)	
32.	Soil Remedial Action Completion Report OU-2B (draft, 5/15)	

EXHIBIT V-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

EXHIBIT V-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT CODE SECTION 37393 AND ENTITLED TO FREE RECORDING UNDER GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND RETURN TO:

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS

(City)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____ _____, 20___ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("**Developer**"), with respect to the real property more commonly known as Phase ____ of Site A of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, the City on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of the NAS Alameda Property, whether acquired prior to or after the applicable Phase Closing Date), provided Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") a waiver of its rights to recover from and fully

and irrevocably released the Developer Released Parties from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from the Property to any portion of the NAS Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date (the "**Release of Claims**").

The foregoing Release of Claims did not negate, limit, release, or discharge the Developer Released Parties in any way from, and shall not be deemed a waiver of any Claims by the City with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns, (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing, (iv) any breach by Developer of any of Developer's representations, warranties or covenants expressly set forth in the DDA or any other agreement between the City and the Developer, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the Developer Released Parties at, on, under or otherwise affecting any portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by Developer.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims contained in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of any portion of the NAS Alameda Property acquired by the City to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided herby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of any portion of the NAS Alameda Property acquired by the City.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

By: _____

_____
Type or Print Name

Title: _____

ALAMEDA POINT PARTNERS, LLC,

a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability company,
its General Partner

By:_____

_____
_____
_____
_____
_____

Name:_____

_____
_____
_____
_____
_____

Title:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property and Lease Property.]

EXHIBIT B

DEFINITIONS

Hazardous Materials: means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

Incidental Migration: means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

NAS Alameda Property: means the Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility , which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "**Navy**") in 1993 and closed in 1997.

EXHIBIT V-2

NOTICE OF DEVELOPER RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT CODE SECTION 37393 AND ENTITLED TO FREE RECORDING UNDER GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND RETURN TO:

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS

(Developer)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____ ____, 20___ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("**Developer**"), with respect to the real property more commonly known as Phase ____ of Site A of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, Developer on behalf of itself and anyone claiming by, through or under Developer (including, without limitation, any successor owner of the Property), provided the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") a waiver of its rights to recover

from and fully and irrevocably released the City Released Parties from any and all Claims that Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Property: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the Property as of the applicable Phase Closing Date; and (C) any information furnished by the City Released Parties related to the Property under or in connection with the DDA; and

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the NAS Alameda Property acquired by the City to the Property, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date (the "**Release of Claims**").

The foregoing Release of Claims did not negate, limit, release, or discharge the City Released Parties in any way from, and shall not be deemed a waiver of any Claims by Developer with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives, (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date, (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in the DDA, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the Property, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of the Property, or any portion thereof, to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided herby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of the Property or any portion thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

By: _____

_____
Type or Print Name

Title: _____

ALAMEDA POINT PARTNERS, LLC,

a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability company,
its General Partner

By:

_____

_____
_____
_____
_____
_____

Name:

_____

_____
_____
_____
_____
_____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property and Lease Property.]

EXHIBIT B

DEFINITIONS

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EXHIBIT W
APPRAISAL PROCESS

The Gross Proceeds deemed received by the Developer pursuant to Section 2.3(a)(3) for any portion of the Transfer Property transferred to an Affiliated Purchaser or retained by the Developer upon Final Completion (collectively, the "**Valuation Property**") shall be determined as follows:

1. Fair Market Value. As used in this Agreement, the term "**Fair Market Value**" shall mean the purchase price that an unrelated party negotiating at arm's length would pay to purchase the Valuation Property (a) in a bulk sale, (b) in an "improved parcel" condition (with rough grading, adjacent streets completed and all Phase Infrastructure Completed and, utilities subbed to the parcel line), (c) taking into account all then current market factors, (d) adjusting for all conditions specific to the Valuation Property (including, without limitation soils conditions, any special taxes or assessments, potential for Hazardous Materials and recorded land uses covenants and other matters of record), and (e) deducting an amount equal to five percent (5%) of the gross value otherwise determined pursuant to this Exhibit W to account for costs of sale (e.g. legal fees, brokerage fees, transfers tax and other transaction costs).

2. Appraisal Process. Within thirty (30) days following Final Completion, the parties shall each appoint in writing an appraiser, which appraiser shall be associated with a regionally recognized appraisal firm and have at least ten (10) years of appraisal experience with similar large-scale, mixed use, master-planned projects in Northern California. If one party has appointed an appraiser hereunder, and the other party fails to appoint an appraiser hereunder within the time period specified above, the Fair Market Value of the Valuation Property will be established by the determination of the appraiser appointed by such first party acting alone, and such other party hereby consents to the same. The two appraisers shall be instructed to complete their appraisals within thirty (30) days of the appointment of the last appraiser to be appointed and to appraise only the Fair Market Value of the Valuation Property (the "Original Appraisals"). If the Original Appraisals are within ten percent (10%) of each other (i.e., if the lower Original Appraisal is equal to or greater than ninety percent (90%) of the higher Original Appraisal), the mean of the Original Appraisals shall be deemed to be the Fair Market Value of the Valuation Property. If the Original Appraisals deviate by more than ten percent (10%) the parties shall cause the two appraisers previously selected to appoint a third appraiser meeting the criteria set forth above within fifteen (15) days of completion of the Original Appraisals. If the parties fail to appoint a third appraiser within said fifteen (15) day period, either party may request such appointment by the president or executive secretary of the chapter of the American Institute of Real Estate Appraisers located nearest to the Valuation Property. If the president or executive secretary fails to appoint a third appraiser within ten (10) days after request, then either party may petition the presiding judge of the state or federal court sitting in Alameda County where the Valuation Property is located to appoint an appraiser. Once the third appraiser has been selected, such appraiser shall conduct its own independent appraisal based in accordance with the procedures set forth herein. Upon completion of the third appraiser's appraisal, the parties shall select the two appraisals closest in value and the average of those two appraisals shall be utilized for purposes of establishing the Fair Market Value of the Valuation Property. The parties shall bear the fees and costs of any appraiser appointed by such party and bear equal portions of the fees and costs of any third appraiser (including the appointment thereof).

2.1 Appraisal Methodology; Appraisal Date. All appraisers retained pursuant to this Exhibit W shall be instructed that, while all traditional methodologies may be considered, the residual land value (development approach) shall be the primary methodology for determining the fair market value of the Valuation Property. Further, the appraisal date for each portion of the Valuation Property shall be the date of the applicable Phase Completion.

Each party shall be entitled to provide each appraiser selected pursuant to this Exhibit W with relevant data regarding the Valuation Property, including, without limitation, actual or pro forma construction costs (as applicable), reports regarding the condition of the Valuation Property and proposed comparable sale properties/transactions.

3. Further Meet and Confer. The parties are authorized, but not required, to meet and confer regarding and agree upon the Fair Market Value of the Valuation Property until such time as the third appraiser has conclusively determined the Fair Market Value of the Valuation Property.

EXHIBIT X

LIST OF NAVY QUITCLAIMS DEEDS AND CRUPS

QUITCLAIM DEEDS:

1. Quitclaim Deed recorded on 6/6/13, Series No. 2013 J677267.

2. Quitclaim Deed recorded 6/6/13 for Parcel ALA-02, Series No. 2013 199790.

3. Quitclaim Deed recorded 6/6/13 for Parcel ALA-37, ALA-38, ALA-55, ALA-57, ALA-59 and ALA-61, Series No. 2013 199810.

4. Quitclaim Deed recorded 6/6/13 for Parcel ALA-42, Series No. 2013199814.

5. Quitclaim Deed recorded 6/6/13 for Parcel ALA-45, Series No. 2013 199816.

6. Quitclaim Deed recorded 6/6/13 for Parcel ALA-58, Series No. 2013 199825.

CRUPS:

7. Covenant to Restrict Use of Property – Environmental Restriction (re Parcel ALA-36), Series No. 2013 199836.

8. Covenant &Environmental Restriction on Property–recorded 6/6/13 (re Parcel ALA-26), Series No. 2013 199840.

9. Covenant to Restrict Use of Property – Environmental Restriction (re Parcel ALA-58), Series No. 2013 199788.