

**DISPOSITION AND DEVELOPMENT AGREEMENT
FOR ENCINAL TERMINALS PROJECT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT FOR ENCINAL TERMINALS PROJECT (“**Agreement**” or “**DDA**”), dated as of March 3, 2022 (the “Effective Date”), is entered into by and between the City of Alameda, a municipal corporation and California charter city (“**City**”), and North Waterfront Cove, LLC, a California limited liability company (“**Developer**”). City and Developer are sometimes collectively referred to in this Agreement as the “**Parties**,” and individually as a “**Party**.”

RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Article 10 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

B. The Developer is the owner of approximately 25.91 acres of real property, consisting of approximately 17.33 acres of land and 8.58 acres of submerged lands, located along the Oakland Estuary, north of Entrance Road, commonly known as Encinal Terminals, with an address of 1521 Buena Vista Avenue, City of Alameda, County of Alameda (APNs 72-0382-001, 72-0382-002 and 72-0383-003), as more specifically described in Exhibit A, attached hereto (“**Encinal Terminals Parcel**”).

C. The City holds in trust approximately 6.4 acres of land-locked property located adjacent to the Encinal Terminals Parcel, identified as assessor’s parcel number 072-0382-009, as more specifically described in Exhibit B, attached hereto (“**City Parcel**”, and together with the Encinal Terminals Parcel, the “**Property**”). The City currently leases the City Parcel to Developer pursuant to that certain Amended and Restated Lease dated January 6, 1984 (as amended, the “**Lease**”).

D. Developer proposes to develop the Project on the Property. The Project is a transit oriented mixed-use project that includes the development of certain waterfront park improvements and other public infrastructure on portions of the Encinal Terminals Parcel, and the development of housing and other private uses on portions of the City Parcel. Accordingly, the Project requires a reconfiguration of public and private lands within the Property.

E. The City Parcel consists of filled former tidelands that are subject to the public trust for commerce, navigation and fisheries (“**Public Trust**”). The Encinal Terminals Parcel consists in part of former uplands that have been dredged and are now submerged, and uplands that are on the waterfront or are otherwise useful to the Public Trust, but that are not, or may not be, subject to the Public Trust. In order to complete the Project, the Parties wish to enter into an agreement with the State of California, acting by and through the State Lands Commission (“**SLC**”) to exchange lands and settle boundary disputes in a manner that improves the configuration of Public Trust lands at the site (“**State Exchange Agreement**”). The State Exchange Agreement will accomplish this through a series of conveyances among the parties (“**Public Trust Exchange**”) that will terminate the Public Trust in the portions of the Property conveyed to Developer (“**Trust Termination Lands**”) and place in the Public Trust the portions of the Property conveyed to the City (“**Public Trust Lands**”). This Agreement provides the terms and conditions by which the Parties may convey lands to effectuate the Public Trust Exchange in phases (each a “**Phase**”), in accordance with the State Exchange Agreement and the phasing plan set forth in the Tidelands Exchange Master Plan, as more specifically described in the Phasing Plan shown in Exhibit C attached hereto.

F. Developer understands and agrees that the Project must be consistent with the Project Approvals and 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 the Master Plan.

G. Consummation of the transactions contemplated in this DDA will permit Developer to develop and construct the Project consistent with the Project Approvals. Construction of the Project will (1) provide new market rate and affordable housing units during an unprecedented housing crisis; (2) place the waterfront and adjacent submerged lands in public ownership, for the use and enjoyment of the People of California; (3) remove blight, rehabilitate dilapidated and inaccessible wharves, and remove obstructions and pollutants from Alaska Basin that interfere with its use and enjoyment by the public; (4) provide new public open space along an improved and accessible public shoreline which will be maintained in perpetuity at no cost to the City, (5) provide commercial recreational opportunities and employment opportunities for residents of the City created by the businesses in the commercial space within the Project; (6) ensure the productive use of underdeveloped property and foster orderly growth and quality development in the City; (7) proceed in accordance with the goals and policies set forth in the City of Alameda General Plan (“**General Plan**”), implement the City’s stated General Plan policies, and transition old industrial vacant lands to mixed use, waterfront development; and (8) provide substantially increased property tax and sales tax revenues to the City.

H. The Trust Termination Lands to be conveyed to Developer include approximately 4.5 acres of the City Parcel. The Public Trust Lands to be conveyed to City include: (1) approximately 13.2 acres of submerged lands, of which 0.6 acres shall be improved with a publicly accessible and improved wharf; (2) approximately 4.25 acres of waterfront land for the Bay Trail and waterfront promenades and plazas; and (3) a minimum of 2.2 acres of land to be used for public roads through the center of the site from Clement Avenue to the northern waterfront edge of the site, and .25 acres of land for Clement Avenue right-of-way, each as more specifically described in the Phasing Plan. This Agreement also provides for the termination of the Lease with respect to the Public Trust Lands being exchanged in each Phase so that Developer may deliver said property to the City free and clear of any encumbrances.

I. On July 17, 2007, City adopted Resolution Nos. 14134 and 14135 certifying the Final Environmental Impact Report for the Northern Waterfront General Plan Amendment (“**Northern Waterfront EIR**”) pursuant to the California Environmental Quality Act (“**CEQA**”), and on December 19, 2017, City adopted Resolution No. 15337 certifying a Focused Supplemental Environmental Impact Report for the Project (“**Focused Supplemental EIR**”, and together with the Northern Waterfront EIR, “**EIR**”).

J. On January 18, 2022, the City Council, at a duly noticed public hearing, and after consideration of all matters in the record, including without limitation City staff’s report on this Agreement, the Planning Board’s recommendations thereon, all other evidence heard and submitted at such public hearing found that approval of the Agreement is in compliance with CEQA. The City determined that no further environmental review under CEQA was required in order to approve this Agreement based on CEQA Guidelines Section 15182 and 15183 and has made the required CEQA findings in connection with the certified EIR that has served as the environmental documentation under CEQA for the City’s consideration of approval of this Agreement and the Project.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and obligations of the Parties set forth herein, the Parties 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. Within ten (10) days of the mutual execution of this Agreement, Developer shall record the DDA Memorandum substantially in the form attached as Exhibit D in the public records with the Alameda County Recorder (the “**Official Records**”) against the Property.

Section 1.2 Term. The term of this Agreement (“**Term**”) shall commence on the Effective Date and terminate on the earliest of: (a) the date which is fifteen (15) years after the Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; (c) the date of any termination of that certain Development Agreement (Encinal Terminals Project), the Effective Date of which is March 3, 2022 (“**Development Agreement**”); (d) 24 months after the Effective Date, if the State Exchange Agreement has not been fully executed by that date; (e) the date of any termination of the State Exchange Agreement; or (f) the date of issuance by the City of the final certificate of occupancy for the Project (“**Expiration Date**”).

Section 1.3 Extension of the Term. Subject to the termination provisions in this Agreement, including without limitation Section 1.2, the term of this DDA shall automatically be extended to conform to any extension of the term of the Development Agreement.

ARTICLE 2 CONSIDERATION

Section 2.1 Consideration. In consideration for the City’s conveyance of the Trust Termination Lands, Developer shall provide the Public Trust Improvements, and shall convey the Public Trust Lands to the City, through the State of California, pursuant to the State Exchange Agreement. The City has determined that Developer’s conveyance of the Public Trust Lands, its agreement to complete the Public Trust Improvements, and its release of its rights and claims under the Lease, equals or exceeds the value of the Trust Termination Lands to be conveyed to Developer.

ARTICLE 3 PHASING OF IMPROVEMENTS AND PUBLIC TRUST EXCHANGE

Section 3.1 Property Exchange. The Parties agree to exchange the Trust Termination Lands and the Public Trust Lands (collectively, as and when exchanged, the “Exchange Lands”) in accordance with the terms and conditions of the State Exchange Agreement and this Agreement.

Section 3.2 Phasing of Public Trust Exchange. The obligations of the Developer and the City to complete each Phase of the conveyances set forth in the State Exchange Agreement are subject to the satisfaction, prior to the Close of the property comprising each Phase, of the conditions contained herein. The Developer and the City agree that each will, in good faith, endeavor to remove all said contingencies and conditions that are within Developer and City’s respective control

Section 3.3 Phasing Plan. The conveyance of the Trust Termination Lands to Developer shall occur in four Phases, with each Phase conditioned on Developer’s completion of construction of certain Public Trust Improvements, in accordance with the Phasing Plan (Exhibit C). Construction of the Public Trust Improvements within each of the four public improvement areas (each a “**PIA**”), shown on the Phasing Plan, and the conveyance of the Trust Termination Lands within each of the three Tidelands Transfer Areas (each a “**TTA**”) shown on the Phasing Plan as shown in Exhibit C, will occur as follows, in all cases subject to the conditions precedent for closing as provided herein:

- (a) Upon completion, and acceptance by the City, of all of the Public Trust Preparatory Improvements, and the Public Trust Improvements within PIA-C, Developer shall convey PIA-C to the City, and the Public Trust will be terminated in the Trust

Termination Lands owned by Developer, in accordance with the State Exchange Agreement (“**Phase 1**”).

(b) Following or concurrently with the closing of Phase 1, the Parties may proceed with the closing of any of Phases 2, 3 and 4, in any order, in accordance with the following:

- (i) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-EREP, City shall convey TTA-EREP to Developer and Developer shall convey PIA EREP to City, in accordance with the State Exchange Agreement;
- (ii) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-AB, City shall convey TTA-AB to Developer and Developer shall convey PIA-AB to City, in accordance with the State Exchange Agreement.
- (iii) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-NW, City shall convey TTA-NW1 and TTA-NW2 to Developer and Developer shall convey PIA-NW to City, in accordance with the State Exchange Agreement.

ARTICLE 4 CLOSING

Section 4.1 Opening Escrow. Following completion and approval by the City of all Public Trust Improvements for the applicable Phase, Developer shall deliver written notice to the City and SLC that it is ready to proceed to Close the Public Trust Exchange for said applicable Phase and provide a proposed Closing Date, which Closing Date shall be no less than 60 days from the date such written notice is delivered to the City (each, a “**Closing Notice**”). The Closing of any Phase shall be completed through an escrow and the applicable Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement and the State Exchange Agreement as to each Phase.

Section 4.2 Close of Escrow. Subject to the satisfaction of the applicable conditions precedent set forth in Section 4.3 below, each escrow shall close in accordance with the terms set forth in the State Exchange Agreement. In all events the Parties shall use their best efforts to close on the exchange of the Property comprising each Phase no later than the proposed Closing Date identified in the Closing Notice. On the applicable Closing Date, the parties shall convey deeds and all other necessary documents as contemplated in the State Exchange Agreement, or required by Escrow Holder, with respect to the applicable portions of the Property.

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 Closing Date of the following conditions, unless waived by the City in its sole discretion:

- (i) All conditions to City's obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied.
- (ii) Developer has submitted to the City, and the City Manager has approved, the organizational documents of the entity intending to take title to the portion of the Property in the applicable Phase;
- (iii) There are no uncured Developer Events of Default.
- (iv) Developer, if it is an assignee approved by City in accordance with this Agreement, has executed an assignment and assumption of this Agreement as it pertains to the applicable Phase, and City has approved the form of the assignment and assumption;
- (v) Developer has reimbursed the City for all costs incurred in negotiating and executing the State Exchange Agreement, and for all fees and costs incurred by the City in connection with the closing for the portion of the Property comprising the Phase, including, without limitation, any attorneys' fees, and any premiums paid for a title policy required by the State Exchange Agreement.
- (vi) Developer has granted to the City a public access easement over the entirety of the Perimeter Pathway, defined below, in a form approved by the City.
- (vii) Developer has executed an agreement to provide for labor peace, mutually agreed to by Developer and Building Trades Council of Alameda County, generally consistent with the standards set forth in Resolution 15740 or as otherwise exempted from this project stabilization agreement requirement by the City, through a subsequent act of the Alameda City Council. No construction work may commence until such a labor peace agreement has been executed or an exemption has been granted by the City.
- (viii) That certain lease of the City Property dated _____ ("**City Property Lease**") has been terminated, or Developer has deposited into escrow a duly executed counterpart of a termination of lease ("**Termination of Lease**") terminating the City Property Lease, in a form approved by the City.

(b) Conditions Precedent to Developer's Obligation. The obligation of the Developer to consummate the transactions hereunder shall be subject to the fulfillment on or before the Closing Date for the applicable Phase ("**Phase Closing Date**") of the following conditions, unless waived by the Developer in its sole discretion:

- (i) All conditions to City's obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied.
- (ii) Developer has received confirmation from the Escrow Holder that the Escrow Holder is irrevocably committed (upon payment of the applicable

title premium and the Close of Escrow) to issue the a title policy to Developer subject only to the Permitted Exceptions;

- (iii) There has been no material adverse change between the date of this Agreement and the applicable Closing Date in the physical condition of the applicable Trust Termination Lands for the Phase that would render said property unsuitable for the development of said property pursuant to the Project Approvals as applicable to that Phase;
- (iv) There are no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which did not exist as of the date of this Agreement and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for dwelling units subject to the Project Approvals within the applicable Trust Termination Lands being conveyed;
- (v) There is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Trust Termination Lands for the Phase or the development of said property pursuant to the Project Approvals;
- (vi) All of the representations and warranties of the City contained in this Agreement are true and correct in all material respects as of the Closing Date;
- (vii) There are no uncured City Events of Default;
- (viii) The City has provided Developer with approved copies of all right of entries, encroachment permits and/or temporary construction easements reasonably necessary to construct any on-site or off-site improvements that are located on the City Property or on off-site property owned by the City, and are allocated to the applicable Phase (the “**Rights of Entry**”); and
- (ix) The Project Approvals shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum.

(c) Mutual Conditions Precedent. The following are mutual conditions precedent to the Parties’ obligation to close any Phase of the Public Trust Exchange, unless waived by both Parties, each in their sole discretion:

- (i) The Parties shall have executed the State Exchange Agreement with the SLC, and all conditions to the SLC’s obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied; and
- (ii) A community facilities district (“**CFD**”) or municipal services district (“**MSD**”) shall have been established to cover the costs of maintaining the Public Trust Improvements within the Project, including appropriate capital reserves. In addition, a geologic hazard abatement district (“**GHAD**”) or similar district, shall also have been formed to cover future

costs for sea level rise adaptive measures or maintenance of other related Public Trust Improvements. Developer shall prepare and submit to the City all documentation necessary for formation of any CFD or MSD and GHAD for the Project. The City shall work in good faith to facilitate the formation of any CFD and GHAD. Developer shall be solely responsible for all costs, including the City's costs, to establish any CFD or GHAD for the Project.

- (iii) Developer shall have completed all Public Trust Improvements for the applicable Phase in accordance with the terms of this Agreement, the Subdivision Improvement Agreement, and the Public Trust Improvement Plans (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations);
- (iv) The City, in its sole discretion, shall have approved the condition of title and the physical condition of the Public Trust Lands, including the condition of any Public Trust Improvements on those lands, to be conveyed in the applicable Phase; and
- (v) Developer shall have obtained approval from the City of a final parcel map or conveyance map that includes the applicable Phase.

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 to Escrow Holder all documents that the City is required to deposit for the Closing under the State Exchange Agreement, and each of the following, if applicable:

- (i) A duly executed original of all required Rights of Entry;
- (ii) A duly executed original counterpart of the Termination of Lease, if applicable;
- (iii) 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;
- (iv) An executed closing statement reasonably acceptable to the City; and
- (v) 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 the Property comprising each Phase, Developer shall deliver to Escrow Holder all documents Developer is required to deposit for such Closing for each Phase under the State Exchange Agreement, and each of the following, if applicable:

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

- (ii) A fully executed assignment and assumption agreement required by Section 4.3(a)(iv), if applicable;
- (iii) A duly executed counterpart of the Termination of Lease required by section 4.3(a)(viii), if applicable;
- (iv) An executed closing statement reasonably acceptable to Developer;
- (v) Such affidavits and other documents that are consistent with this Agreement and which are and reasonably required by the Escrow Holder; and
- (vi) Funds in the amount to cover all closing costs and fees, the premium for any title policy required by the State Exchange Agreement, and any unpaid amounts owed to the City as reimbursement for the City's costs incurred in connection with the State Exchange Agreement or the Closing for the portion of the Property comprising the applicable Phase.

Section 4.5 Condition of Title. The legal description of the Exchange Lands to be conveyed by City shall be approved by State Lands, the City and Developer prior to closing on the portion of the Property comprising the applicable Phase. At closing, the Trust Termination Lands shall be free of all encumbrances except for the Permitted Exceptions, and the Public Trust Lands shall be free of all encumbrances except for those approved by the City in its sole discretion.

Section 4.6 Costs of Escrow and Closing. City and Developer agree that the issuance of all title policies, the determination of Closing costs, and all matters related to the recording of documents necessary to complete a Closing of an applicable Phase shall be governed by the terms set forth in the State Exchange Agreement and any escrow instructions agreed to in writing by the City and Developer. Notwithstanding the foregoing, Developer shall be solely responsible for all costs, expenses and fees relating to each Closing.

Section 4.7 Condition of the Property to be Conveyed.

- (a) Natural Hazards Disclosure. Developer will provide at each Closing a Natural Hazards Disclosure applicable to that portion of the Property comprising the Phase.
- (b) Hazardous Materials Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), each Party has provided the other with copies of the documents in its possession related to hazardous materials affecting the Exchange Lands (the "**Hazardous Materials Documents**") as set forth in Exhibit F. To the best of each Party's knowledge, the Hazardous Materials Documents depict the condition of the Exchange Lands with respect to the matters covered in such documents as of the date of such documents and as of the date of this Agreement. Neither Party is liable or bound in any manner by any oral or written statements, representations or information pertaining to the Exchange Lands furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.
- (c) Investigation. Each Party and its agents have had the right and adequate opportunity to enter onto the Exchange Lands for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Exchange Lands and to undertake tests related to the existence of Hazardous Materials on the Exchange Lands.

(d) “As-Is” Exchange. Except for the express representations and warranties and covenants of each Party contained in this Agreement, and except to the extent provided in any SIA, each of the Parties specifically acknowledges and agrees that it is accepting the Exchange Lands acquired by it on an “as is with all faults” basis, and is not relying on any representations or warranties of any kind whatsoever, express or implied, from the other as to any matters concerning those lands, including without limitation:

- (i) 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);
- (ii) the quality, nature, adequacy, and physical condition of soils, geology and groundwater;
- (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Exchange Lands;
- (iv) the development potential of the Exchange Lands, and the Exchange Lands’ use, habitability, merchantability, or fitness, suitability, value or adequacy of the Exchange Lands for any particular purpose;
- (v) the zoning or other legal status of the Exchange Lands or any other public or private restrictions on the use of the Exchange Lands;
- (vi) the compliance of the Exchange Lands 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;
- (vii) the presence or absence of Hazardous Materials on, under or about the Exchange Lands or the adjoining or neighboring property; and
- (viii) the condition of title to the Exchange Lands.

(e) Warranties and Reliance. Except for the representations and warranties and covenants of each Party contained in this Agreement, and except as provided in any SIA:

- (i) Each Party affirms that it has not relied on the skill or judgment of the other Party or any of its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents or volunteers to select or furnish the Exchange Lands for any particular purpose;
- (ii) Neither Party makes any warranty that the Exchange Lands are fit for any particular purpose;
- (iii) Each Party 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 Exchange Lands and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Exchange Lands to be acquired by it (including,

without limitation, whether such lands are 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);

- (iv) As of the Closing of the portion of the Property comprising each Phase and with respect to that Phase only, each Party, as to the Exchange Lands to be acquired by it, undertakes and assumes all risks associated with all matters pertaining to the lands' 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 4.7©, except for the express representations and warranties and covenants of each Party contained in this Agreement, and except as provided in any SIA, each Party specifically acknowledges and agrees that as between themselves, neither Party shall have any responsibility for the suitability of the Exchange Lands for the development of the Project.

(f) Acknowledgment. Each Party acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.7 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.7 are an integral part of this Agreement; and (3) neither Party would have agreed to exchange the Exchange Lands without the disclaimers and other agreements set forth in this Section 4.7. Nothing set forth in this Section 4.7 is intended to affect either Party's right to enforce the other Party's obligations under this Agreement or seek remedies for a breach thereof.

(g) Release. Effective as of the Closing Date for each Phase and solely with respect to the Exchange Lands included in such Phase, each Party, on behalf of itself and anyone claiming by, through or under it (including, without limitation, any successor owner of the applicable Exchange Lands) hereby waives its right to recover from and fully and irrevocably releases the other Party, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**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 it may have or hereafter acquire against any of the Released Parties arising from or related to:

- (i) Any presence of Hazardous Materials that were existing at, on, or under the Exchange Lands acquired by the Party as of the applicable Phase Closing Date; and
- (ii) The Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the Exchange Lands acquired by the Party, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.
- (iii) The condition, valuation, salability or utility of the Exchange Lands acquired by the Party, but excluding Claims relating to the Public Trust Improvements.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Released Parties in any way from, or be deemed a waiver of any Claims by a Party (or anyone claiming by, through or under said Party, including, without limitation, any successor owner of the applicable Exchange Lands) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date; (iii) any violation of law by any of the Released Parties prior to the applicable Phase Closing Date; (iv) any breach by a Party of any of its obligations under this Agreement, including without limitation its indemnification obligations or any breach of its representations, warranties or covenants expressly set forth in this Agreement; (v) any breach by a Party of any of its obligations under any SIA, (vi) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the transferring Parties at, on, under or otherwise affecting the applicable Exchange Lands after the applicable Phase Closing Date or (vii) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the transferor Party (collectively, the “**Excluded Claims**”).

(h) Scope of Release. The release set forth in subsection 4.7(g) includes Claims of which each Party is presently unaware or which each Party does not presently suspect to exist which, if known by said Party, would materially affect that Party’s release of the Released Parties. Each Party specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, each Party agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to itself may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and each Party further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that each Party nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown Claims. Accordingly, each Party, on behalf of itself and anyone claiming by, through or under it, hereby assumes the above-mentioned risks and hereby expressly waives any right it and anyone claiming by, through or under it, 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: _____

City’s Initials: _____

(i) Effective as of the Closing Date for the portion of the Property comprising each Phase and solely with respect to the portion of the Exchange Lands included in such Phase, each Party specifically acknowledges and agrees that, as between themselves, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date, neither Party shall be responsible for any required remediation of any such Hazardous Materials on the Exchange Lands transferred to the other Party.

(j) The Parties hereby agree that nothing in this Section 4.7 shall release the Parties from their obligations under this Agreement, including, without limitation, Developer’s Hazardous Materials indemnification obligation.

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 this Article 4 shall expressly survive termination of this Agreement and shall expressly survive each Closing. The Parties have fully reviewed the disclaimers and waivers set forth in this Agreement with their respective counsel and understand the significance and effect thereof.

ARTICLE 5 HAZARDOUS MATERIALS

Section 5.1 Obligations Regarding Hazardous Materials. For purposes of this Article, a "**New Release**" means a release of Hazardous Material in, on, under or emanating from any portion of the Public Trust Lands, which release first occurs after the Phase Closing Date on which the City acquired title to the affected Public Trust Lands, but excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date. Developer shall not cause or permit a New Release that would cause the Public Trust Lands to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or environmental conditions, including, but not limited to, soil and ground water conditions. Developer shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Public Trust Lands that is leased or licensed to, or otherwise used by, Developer or its agents or invitees, or transport to or from such Public Trust Lands any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of residential developments or in accordance with law or this Agreement.

Section 5.2 Notification To City. Developer shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of any: (1) enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer, the Property, or the Project pursuant to any Hazardous Materials Law; (2) claims made or threatened by any third party against Developer, the 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**"); or (3) discovery by Developer 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 5.3 Developer's Hazardous Materials Indemnification. Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 7.2.

ARTICLE 6 CITY OBLIGATIONS

Section 6.1 Entitlements. The City shall, upon payment of all applicable fees by Developer, process the applications for the Supplemental Approvals for the Project in a timely fashion, and shall

cooperate with Developer in obtaining any necessary approvals from other governmental entities or public utilities which require City participation as a co-applicant; provided, however, the City shall not be required to incur any additional costs other than those costs 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 6.2 Permits and Approvals.

- (a) City Assistance. The City shall provide reasonable cooperation to Developer in processing 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. Nothing in this Agreement is intended to limit the discretion of the City in its consideration of any permit, application, allocation, mapping or other Supplemental Approval required for the Project. Developer must comply with the City's and other government entities' regulatory and administrative processes.
- (c) Residential Permitting. Developer shall not seek, and the City shall not issue, any residential building permits for vertical construction on any portion of the City Parcel until after Developer has acquired title to said portion thereof.

Section 6.3 City Representations. The City acknowledges that the execution of this Agreement by Developer is made in material reliance by Developer on each and every one of the representations and warranties made by the City in this Section 6.3.

- (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 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 6.3 are subject to and qualified by the effect of: (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (ii) 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. To the City's knowledge, 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 City Parcel or that adversely affects the City's ability to perform its obligations under this Agreement.
- (c) Commitments to Third Parties. To the City's knowledge, 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 Developer or would materially interfere with Developer's ability to develop and improve the Property that has not been disclosed to Developer.
- (d) Hazardous Materials. Except as disclosed herein, to the City's knowledge, the City has received no written notice from any government authority regarding any 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 City Property, or releases of Hazardous Materials that have occurred during the City’s possession of the City Property, excluding Incidental Migration. To the City’s knowledge, 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. City makes the representations in this Section 6.3(d) as of the Effective Date, and as of each Phase Closing Date except to the extent the City has given Developer reasonable advance written notice prior to the Phase Closing Date that the representations are no longer accurate.

ARTICLE 7 DEVELOPER’S OBLIGATIONS

Section 7.1 General Indemnification. Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties against all third party Claims arising out of Developer’s performance or non-performance under this Agreement, including but not limited to, any Claims arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by Developer. 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. Notwithstanding the foregoing to the contrary, provisions of this Section 7.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 7.2 below.

Section 7.2 Hazardous Materials Indemnification. Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties from and against all third party Claims directly or indirectly arising out of or attributable any Hazardous Materials that (A) as of the Phase Closing Date, are located at, on, over, under, or flowing through any portion of the Encinal Terminals Parcel to be conveyed as Public Trust Lands in that Phase, and (B) are located at, on, over, under, or flowing through any portion of the Trust Termination Lands to be conveyed in that Phase, except that this clause (B) shall not apply to any claim arising solely from a release occurring after the Phase Closing Date that is caused by Indemnified Party’s gross negligence or willful misconduct. Claims include, 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 clause (1), including but not limited to reasonable attorneys’ fees.

Section 7.3 Scope of Indemnification. Developer’s indemnification obligation shall apply to Claims that reasonably fall or are otherwise determined to fall within this indemnity even if the Claims may be groundless, fraudulent, or false. If a Claim is made against an Indemnified Party that may be within the scope of this indemnity, that Indemnified Party shall provide notice to Developer of the Claim within a reasonable time after learning of the Claim; provided, however, that an Indemnified Party’s failure to provide the notice will not affect the Developer’s obligations except to the extent of prejudice caused by the lack of notice. Developer’s defense obligation will arise when an Indemnified Party tenders the Claim to the Developer and will continue until finally resolved. The Indemnified Party’s defense costs will be due and payable within 30 days after the Indemnified Party delivers to the Developer an invoice for the costs.

Section 7.4 Developer Representations. The Developer acknowledges that the execution of this Agreement by City is made in material reliance by City on each and every one of the representations and warranties made by Developer in this Section 7.4.

(a) Authority. Developer 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. Developer has taken all necessary or appropriate actions, steps 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 Developer, enforceable against it in accordance with its terms. The representations and warranties of Developer in the preceding sentence are subject to and qualified by the effect of: (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (ii) 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. To Developer's knowledge, 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 that adversely affects Developer's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. To Developer's knowledge, the Developer 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 City or would materially interfere with City's ability to use the Public Trust Lands for their intended purposes, that has not been disclosed to City.

(d) Hazardous Materials. Except as disclosed herein, to Developer's knowledge, the Developer has received no written notice from any government authority regarding any, and to Developer's knowledge, without any duty of investigation, there are no, violations with respect to any Law, whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the date hereof, or releases of Hazardous Materials that have occurred during Developer's possession of the Property, excluding Incidental Migration. To Developer's knowledge, Developer 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. Developer makes the representations in this Section 7.4(d) as of the Effective Date, and as of each Phase Closing Date except to the extent the Developer has given City reasonable advance written notice prior to the Phase Closing Date that the representations are no longer accurate.

Section 7.5 Survival. Developer's obligations under this Article shall survive termination of this Agreement.

ARTICLE 8 DEFAULT AND REMEDIES

Section 8.1 Application of Remedies. This Article 8 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 8.2 Breach by 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**”:

- (i) The City fails to convey any requisite portion of the Property within the time and in the manner specified in Article 4 and Developer is otherwise entitled to such conveyance after satisfaction of all conditions precedent to City’s obligation to do so;
- (ii) The City breaches any other material provision of this Agreement; or
- (iii) The material breach of any of the City’s representations or warranties set forth in this Agreement.

(b) Notice and Cure. Upon the happening of an event described in Section 8.2(a), 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.

(c) Remedies. 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 Developer shall be entitled to (1) terminate the Agreement by written notice to City or (2) seek specific performance of this Agreement against the City. The foregoing remedies shall constitute the exclusive remedies of Developer for a City Event of Default. In no event shall Developer be entitled to damages.

Section 8.3 Breach by 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**”:

- (i) Developer fails to close within the time and in the manner specified in Article 4 after satisfaction of all conditions precedent to Developer’s obligation to do so;
- (ii) Developer fails to deliver a Termination of Lease or release the Lease within the time and as required pursuant to this Agreement or Developer violates the terms of the Termination of Lease;
- (iii) Developer attempts or completes an Assignment or Transfer except as permitted under Section 9.1;
- (iv) Developer breaches any material provision of this Agreement;

- (v) Developer is in material breach of any representation or warranty of Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement;
- (vi) A court having jurisdiction has made or entered any decree or order: (A) adjudging Developer to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of Developer seeking any arrangement for 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 Developer in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of a Developer;
- (vii) Developer has assigned its assets for the benefit of its creditors 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 has been returned or released within ninety (90) days after such event; or
- (viii) Developer has voluntarily suspended its business, or Developer has been dissolved or terminated.

(b) Notice and Cure. Upon the happening of any event described in Section 8.3(a), the City shall first notify Developer in writing of its purported breach or failure. 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 Developer has commenced the cure within such thirty 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 (vii) or (viii) of Section 8.3(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure.

(c) Remedies. Upon a Developer Event of Default, the City shall be entitled to (i) terminate in writing this Agreement and/or (ii) exercise any other remedy against Developer permitted by law or under this Agreement; provided, however in no event shall the City be entitled to seek or receive consequential damages.

Section 8.4 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 8.2 or Section 8.3, then 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 8.5 Survival. The provisions of this Article shall survive termination of this Agreement. Upon termination of this Agreement, 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 8.6 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 9 MISCELLANEOUS

Section 9.1 Transfer and Assignment.

(a) No party shall delegate or assign this Agreement or any rights or duties hereunder (including without limitation by the merger or consolidation of a party with any third person) (“**Assignment**”) without the prior written consent of the other, which consent shall not be unreasonably conditioned, withheld or delayed; provided that in no event shall Developer assign its rights and obligations under this Agreement to a third party unless that third party has acquired title to all of the Public Trust Lands within the Encinal Terminal Parcel that have not already been exchanged pursuant to this Agreement.

(b) Developer shall not transfer or convey Developer’s title in any portion of the Public Trust Lands within the Encinal Terminals Parcel to any third party (“**Transfer**”) without the consent of the City, which consent shall not be unreasonably conditioned, withheld or delayed; provided that in no event shall Developer make a Transfer unless (i) all of the Public Trust Lands within the Encinal Terminals Parcel that have not already been exchanged are included in the Transfer, (ii) the Transfer is authorized under the Development Agreement, and (iii) the Transfer is conditioned on the Assignment to and assumption by transferee of all of Developer’s rights and obligations under this Agreement.

(c) Developer may transfer its interest in any portion of the Trust Termination Lands acquired by Developer after a Closing, provided that the Transfer is authorized under the Development Agreement.

(d) Nothing in this Section 9.1 shall limit the grant or dedication of a utility easement, public right of way, maintenance easement, or access easement in the Public Trust Lands reasonably necessary for the development of the Project.

Section 9.2 Developer shall ensure that at least 50% of the non-townhome market rate units shall be mapped through the subdivision process to allow for home ownership, and developer shall ensure that all residential buildings are designed with operable windows, to the extent allowed under the Building Code, to facilitate natural air flow and ventilation.

Section 9.3 This Agreement creates no rights as a third-party beneficiary or otherwise in any person not a party.

Section 9.4 Notices. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if served personally; by United States Mail, postage prepaid, registered or certified mail, return receipt requested; by overnight delivery by reputable service with proof of delivery; or sent by electronic mail as follows:

- (a) If to City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700

Email: manager@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: 510-747-4750
Email: cityattorney@alamedacityattorney.org
- (b) If to Developer: North Waterfront Cove, LLC
12667 Alcosta Boulevard, Suite 170
San Ramon, CA 94583
Attn: Michael S. O'Hara, Director of Forward Planning
Telephone: 925-380-1223
Email: mohara@timlewis.com
- With a copy to: North Waterfront Cove, LLC
3500 Douglas Boulevard, Suite 270
Roseville, CA 95661
Attn: Tim Lewis
Telephone: 916-787-3410
Email: tlewis@timlewis.com
- With a copy to: Buchalter
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra
Telephone: 415-227-0900
Email: aguerra@buchalter.com

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this section. Notice by electronic mail shall be deemed given upon receipt by the noticed Party representative (whether or not opened or read). Each Party representative noticed by email shall provide acknowledgement of receipt as soon as reasonably possible. An auto-reply from the noticed Party representative shall be deemed an acknowledgement of receipt by that representative. If another method of service is permitted and used, the notice shall be deemed given on the date delivered in person, or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to (or delivery was refused at) the address of the receiving Party, as applicable.

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 9.5 Entire Agreement. This Agreement, including the attached exhibits, and the State Exchange Agreement constitute the entire agreement between the parties relating to the conveyance of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Developer and City.

Section 9.6 Arbitration of Disputes. Any controversy or claim arising out of this Agreement or a breach thereof may, by mutual written agreement of the Parties, be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

Section 9.7 Further Acts. In addition to the acts and deeds stated herein and contemplated to be performed, executed and delivered by the respective parties hereto, each of the parties hereto agrees to cooperate with each other and perform, execute and deliver or cause to be performed, executed and delivered all such further acts, deeds and assurances as may be reasonably necessary to consummate the transaction contemplated hereby.

Section 9.8 Severability of Provisions. This Agreement shall not be severable or divisible; provided, however, that a judicial or administrative determination by any jurisdiction of the invalidity or unenforceability of any one or more of the provisions hereof, or any one or more of the provisions of any instrument or Exhibit related hereto or referred to herein shall not invalidate the remaining provisions of this Agreement or any instrument or Exhibit related hereto or referred to herein, or the application of such provision(s) to persons or circumstances other than those with respect to which it is determined to be invalid or unenforceable, all the provisions of the same being deemed for purposes of the aggregate validity thereof to be separate. It is the intent and belief of the parties that each and every provision of applicable law required to be inserted in this Agreement should be and is hereby deemed to be inserted and that this Agreement in all respects comports with applicable law. If any provision(s) required to be inserted in this Agreement by law is/are not inserted, or not inserted in correct form, then this Agreement shall forthwith, upon the request of either party be deemed amended so that such provision(s) required by law is/are deemed inserted herein in correct form without prejudice to the rights of either party.

Section 9.9 Calculation of Time. If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required herein must be performed expires on a Saturday, Sunday or legal holiday (as determined in the jurisdiction in which the Property is located), then such time period shall be automatically extended to the close of business on the next regular Business Day.

Section 9.10 Reservation of Rights. Notwithstanding anything to the contrary in this Agreement, until such time as the Lease is terminated with respect to each Phase, any and all rental income earned from the Existing Encinal Terminals Parcel shall be deemed earned by, and remitted to, Developer and City shall at no time have any right to said rental income.

Section 9.11 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as

otherwise provided in this Agreement. 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 9.12 Governing Law. 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 9.13 Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

Section 9.14 Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

Section 9.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which, assuming they have not been modified, shall be deemed an original and shall be binding upon the parties hereto.

Section 9.16 Authority to Sign. Each person executing this Agreement on behalf of either party does hereby personally represent and warrant that he or she had the authority to execute the Agreement on behalf of and to fully bind such party.

Section 9.17 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Developer, or any successor in interest, in the event of a City Event of Default.

Section 9.18 Time of the Essence. Time is of the essence in this Agreement.

Section 9.19 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.

Section 9.20 Approvals.

(a) 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.

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

Section 9.21 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 9.22 Board Approval/Ratification. This Agreement shall be subject to approval/ratification by the Alameda City Council.

ARTICLE 10 DEFINITIONS

Section 10.1 “**Approved Construction Documents**” means the construction plans and specifications submitted by a 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.

Section 10.2 “**Business Day**” means a day on which the offices of the City are open to the public for business.

Section 10.3 “**CEQA Approvals**” means the documentation prepared under the California Environmental Quality Act for the Project certified by the City, including, but not limited, to the EIR.

Section 10.4 “**City Council**” means the Alameda City Council.

Section 10.5 “**City Manager**” means the Alameda City Manager or the City Manager’s designee.

Section 10.6 “**Closing**”, “**Close**”, and/or “**Closing Date**” means the date one or more deeds is recorded in which the City will convey its fee interest or any portion thereof in each Phase of the City Parcel to Developer and Developer will convey its fee interest or any portion thereof in each Phase of the Encinal Terminals Parcel to City in accordance with the State Exchange Agreement.

Section 10.7 “**DDA Memorandum**” means the memorandum of this Agreement, substantially in the form of the attached Exhibit D, to be recorded as provided in Section 1.1.

Section 10.8 “**Density Bonus Application**” means that certain density bonus application for the Project as approved by the City Council by Ordinance No. 3312.

Section 10.9 “**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.

Section 10.10 “**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.

Section 10.11 “**Hazardous Materials Laws**” means any applicable federal, state or local laws, ordinances, or regulations related to any Hazardous Materials.

Section 10.12 “**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.

Section 10.13 “**Indemnified Parties**” means, collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

Section 10.14 “**Master Plan**” means that certain Tidelands Exchange Master Plan as approved by the City Council on February 1, 2022 via Ordinance No. 3312.

Section 10.15 “**Permitted Exceptions**” means the following liens, encumbrances, clouds and conditions, rights of occupancy or possession, as they may relate to the Trust Termination Property:

- (a) Applicable building and zoning laws and regulations;
- (b) The provisions of the applicable deed;
- (c) Any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of any deed;
- (d) Liens, encumbrances, clouds and conditions, rights of occupancy or possession shown as exceptions in the Preliminary Title Report that are marked as “accepted” in Exhibit G. Developer and the City shall cooperate to remove any exceptions shown on the Preliminary Title Report that are not marked as “accepted” in Exhibit G, provided however, the City shall not be obligated to incur any costs related to the removal of any such exceptions. The Parties agree that the removal of any exceptions related to the Public Trust shall be accomplished through the Trust Exchange, and such exceptions are Permitted Exceptions for purposes of closing;
- (e) Any exceptions created by this Agreement or the Project Approvals; and
- (f) Any other matters approved by Developer.

Section 10.16 “**Phasing Plan**” means the Phasing Plan attached as Exhibit C hereto.

Section 10.17 “**Preliminary Title Report**” means the preliminary title report for the Property attached as Exhibit G hereto.

Section 10.18 “**Project**” means the transit-oriented residential mixed-use development proposed by Developer as described in the Master Plan and other Project Approvals.

Section 10.19 “**Project Approvals**” means collectively, the CEQA Approvals, the Master Plan, the Density Bonus Application, and Supplemental Approvals.

Section 10.20 “**Public Trust Improvements**” means, collectively, the Public Trust Preparatory Improvements and the Public Trust Surface Improvements.

Section 10.21 “**Public Trust Preparatory Improvements**” mean (a) all structural improvements required to provide seismic stability of the Public Trust Lands in accordance with State building codes; (b) all ground improvements, including deep soil mixing, within and/or adjacent to the Public Trust Lands; (c) removal of portions of the wharf; and (d) a temporary, sixteen-foot wide asphalt public pathway along the Alaska Basin and Estuary sides of the Property, connecting the Southwest corner of the Project to the Fortman public shoreline access (“**Perimeter Pathway**”), which will provide a continuous trail around the perimeter of the Project. The final plans for the Preparatory Improvements shall

be approved by the City and included as part of the Subdivision Improvement Agreement, as described in Article 3.

Section 10.22 **“Public Trust Improvement Plans”** means those plans reviewed and approved by the City Public Works and Community Development Department to construct the Public Trust Improvements, which plans shall be included as an exhibit to the applicable Subdivision Improvement Agreement.

Section 10.23 **“Public Trust Surface Improvements”** means surface treatments, railings, curbs, gutters, landscaping, lighting, parking and other improvements depicted in the Master Plan to be constructed on the Public Trust Lands and which are necessary to support the use of the Public Trust Lands consistent with the Master Plan.

Section 10.24 **“Subdivision Improvement Agreement”** or **“SIA”** shall mean one or more agreements between City and Developer, substantially in the form attached as Exhibit E, establishing the terms under which Public Trust Improvements will be completed for each Phase within the Project, including the requirements for the payment and performance bonds covering such improvements and the circumstances under which the City may call on such bonds in the event of a Developer default.

Section 10.25 **“Supplemental Approvals”** means collectively any and all City approvals related to and necessary for development of the Project, consistent with this Agreement, the Project Approvals, and the Approved Construction Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

DEVELOPER

NORTH WATERFRONT COVE LLC, a Delaware limited liability company

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


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

By: _____
JAY TIMOTHY LEWIS
Its: President

Date: _____

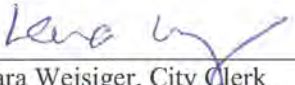
CITY

CITY OF ALAMEDA, a municipal corporation and California charter city

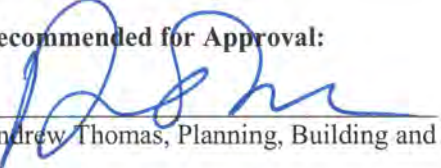
By: 
Gerry Beaudin, Assistant City Manager

Date: 4-21-2022

Attest:


Lara Weisiger, City Clerk

Recommended for Approval:


Andrew Thomas, Planning, Building and Transportation Director

Approved as to Form:


Celena H. Chen, Assistant City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

DEVELOPER

NORTH WATERFRONT COVE LLC, a Delaware limited liability company

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

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

By: 
JAY TIMOTHY LEWIS
Its: President

Date: April 11, 2022

CITY

CITY OF ALAMEDA, a municipal corporation and California charter city

By: _____
Gerry Beaudin, Assistant City Manager

Date: _____

Attest:

Lara Weisiger, City Clerk

Recommended for Approval:

Andrew Thomas, Planning, Building and Transportation Director

Approved as to Form:

Celena H. Chen, Assistant City Attorney

EXHIBIT A

Encinal Terminals Parcel – Legal Description

PARCEL A:

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

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

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

PARCEL B:

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

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

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

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

PARCEL C:

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

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

TOGETHER THEREWITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

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

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

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

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

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

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

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

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

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

3) SOUTH 65°19'28" EAST 126.17 FEET,

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

5) SOUTH 79°54'16" EAST 127.80 FEET,

6) NORTH 09°17'14" EAST 23.74 FEET,

7) SOUTH 80°53'01" EAST 126.13 FEET,

8) SOUTH 80°32'51" EAST 108.02 FEET,

9) SOUTH 09°27'09" WEST 3.12 FEET AND

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

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

PARCEL D:

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

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

072-0382-001 (Affects Parcel B)

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

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

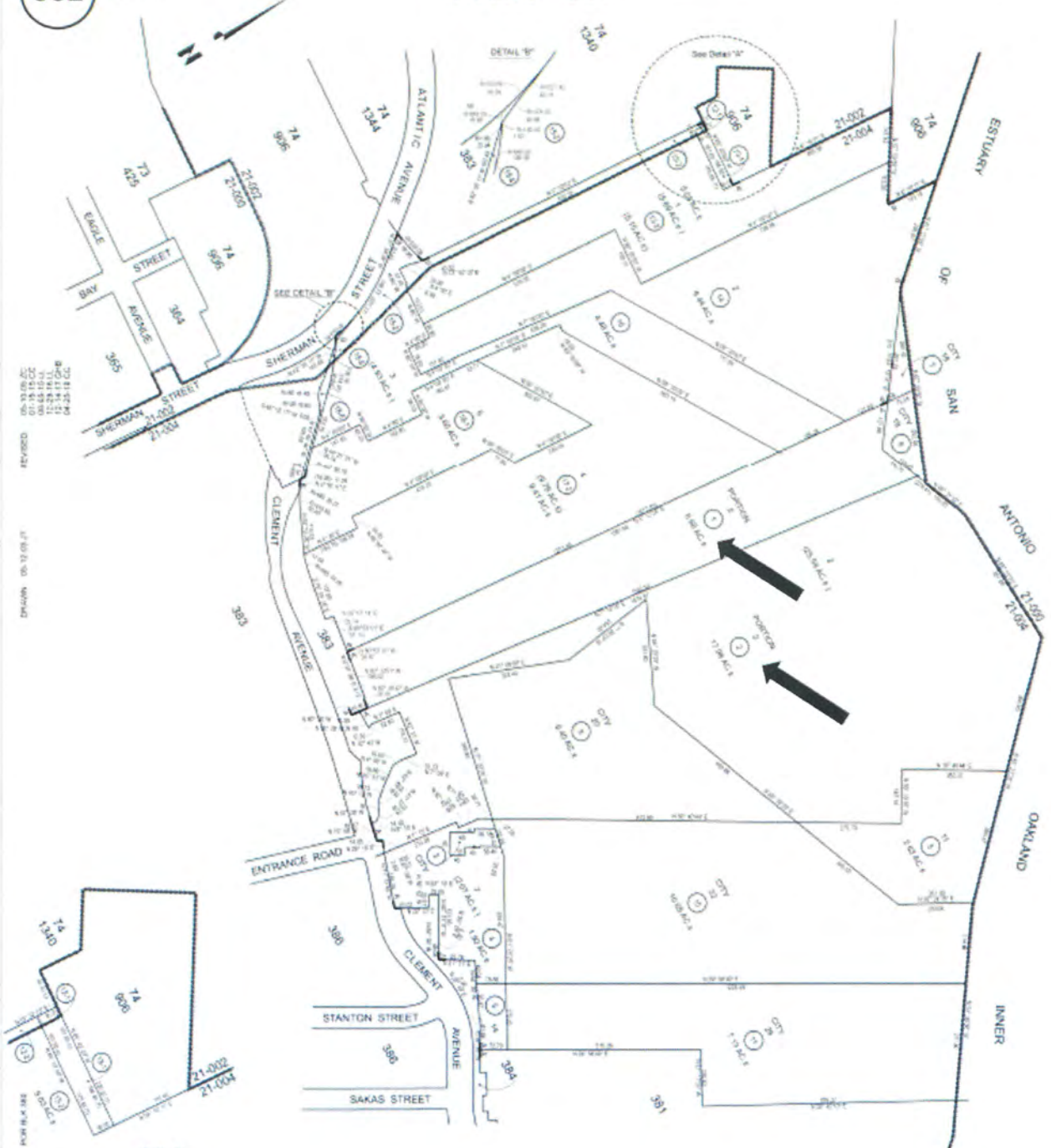
ASSESSOR'S MAP 72

Code Area Nos. 21-002 21-004

382

SCALE 1" = 300'

- (A) P.M.2908 13679-00
- (B) P.M.7374 24419-21



REVISED
 05-13-05 CC
 07-15-05 CC
 08-05-05 CC
 12-14-05 CC
 04-23-06 CC

DRAWN 05-13-05 JT



DETAIL 9"
 Scale 1" = 100'

EXHIBIT B

State Tidelands Parcel – Legal Description

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

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

APN: 072-0382-009

EXHIBIT C

Construction Phasing Plan

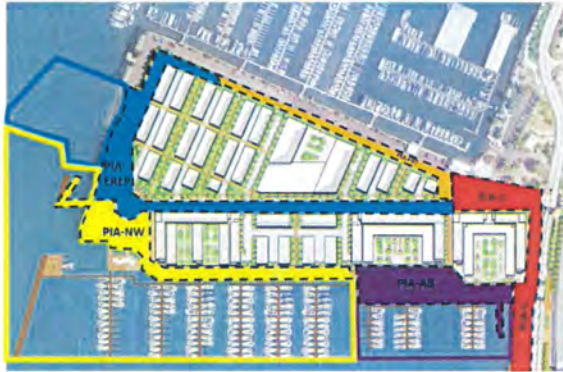


Figure 4.2 Construction Phasing Plan

SITE WIDE PREPARATORY IMPROVEMENTS

Within 36 months of Master Plan adoption, Developer shall commence the site wide preparatory improvements, which shall include demolition of all existing buildings on the property, site-wide mass grading and site-wide soil stabilization to address geotechnical, earthquake and liquefaction risks, and construction of the temporary sixteen-foot wide asphalt public pathway connecting the southwest corner of the site to the Fortman public shoreline public access at the northeastern portion of the site to allow for a continuous Bay Trail around the perimeter of the property, as described in Chapter 2.

CLEMENT PUBLIC IMPROVEMENT AREA (PIA-C)

Within 48 months of Master Plan adoption, developer shall commence construction of PIA-C, which includes the Clement Avenue Bay Trail bulkhead, Entrance Road intersection, relocation of the Fortman Marina driveway and completion of Gateway Park. Upon commencement of construction of PIA-C, Developer may begin construction of the first 125 market rate housing units, which may not include more than 75 townhome units.

ENTRANCE ROAD/ESTUARY PARK (PIA-EREP) AND ALASKA BASIN PARK IMPROVEMENT AREA (PIA-AB)

Within 60 months of Master Plan adoption, Developer shall commence construction of PIA-EREP, which includes construction of the Entrance Road extension and Estuary Park, or PIA AB, which includes the Alaska Basin Waterfront Plaza. Upon commencement of construction of either PIA-EREP or PIA-AB, Developer may begin construction on up to 90 additional market rate housing units, which may not include more than 25 townhome units. Within 84 months and upon commencement of both PIA-EREP and PIA-AB, Developer may begin construction of 90 additional market rate housing units, which may not include more than 25 townhome units. The Fortman-adjacent Bay Trail (PIA-FBT) will be completed with the adjacent residential units.

NORTHWEST PUBLIC IMPROVEMENT AREA (PIA-NW)

Within 108 months of Master Plan adoption, Developer shall begin construction of PIA-NW. Upon commencement of construction on PIA-NW, Developer will receive building permits for up to 100 market rate housing units, which may not include more than 25 townhome units. Provided that Developer has completed, and City has accepted, PIA-C, PIA-EREP and PIA-AB, upon completion and acceptance of PIA-NW, Developer will receive the remaining 104 market rate building permits permitted by the Master Plan.

Conveyance Phasing Plan

Upon completion of the public improvements in each PIA and acceptance of the improvements by the City Engineer, City and Developer shall convey property to one another. All conveyances will occur in accordance with the Exchange Agreement.

- Upon PIA-C acceptance, Developer will convey PIA-C to City.
- Upon PIA-EREP acceptance, Developer shall convey PIA-EREP and the adjacent submerged property to City, and City will convey TTA-EREP to Developer.
- Upon PIA-AB acceptance, Developer will convey PIA-AB and the adjacent submerged property to City, and City will convey TTA-AB to Developer.
- Upon PIA-NW acceptance, Developer will convey PIA-NW and adjacent submerged property to City, and City will

convey TTA-NW1 and TTA-NW-2 to Developer, at which time Developer will receive all remaining 104 market rate building permits permitted by the Master Plan.



Figure 4.3 Conveyance Phasing Plan

Marina

The City of Alameda as trustee may solicit proposals from marina developers to develop and lease submerged lands for a marina with up to 160 berths. Construction and operation of the marina may commence once the City has secured ownership of the submerged lands in PIA-AB and PIA-NW. The timing and decision to proceed with marina construction shall be determined by the City of Alameda City Council.

**EXHIBIT D
FORM OF DDA MEMORANDUM**

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Alameda)
Alameda City Hall, Room 280)
2263 Santa Clara Avenue)
Alameda, CA 94501)
Attention: City Attorney)
)

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

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (“Memorandum”) is made and entered into on this ___ day of _____, 2022 (the “Agreement”) between North Waterfront Cove, LLC, a California limited liability company (“Developer”) and the City of Alameda, a municipal corporation and California charter city (“City”). Developer and City are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

RECITALS

- A. Developer is the owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the “Encinal Terminals Parcel”).
- B. City holds in trust that certain real property described in Exhibit B attached hereto and incorporated herein (the “City Parcel”) and leases the City Parcel to Developer.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties declare as follows

AGREEMENT

1. The Parties have entered into a Disposition and Development Agreement for Encinal Terminal Project dated March 3, 2022 (the “Agreement”), as such may be amended from time to time, under which Developer proposes to develop a transit oriented mixed-use project that includes the development of certain waterfront park improvements and other public infrastructure on portions of the Encinal Terminals Parcel, and the development of housing and other private uses on portions of the City Parcel (the “Project”). The Agreement is a public document and may be reviewed at the office of the City Clerk.
2. In order for Developer to develop the Project, the Project requires a reconfiguration of public and private lands within the Encinal Terminals Parcel and the City Parcel (the “Exchange”).

The Agreement provides the terms and conditions by which the Parties may convey portions of the Encinal Terminals Parcel and the City Parcel to effectuate the Exchange in phases.

4. This Memorandum shall incorporate herein all of the terms and provisions of the Agreement 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 Agreement, of which this is a memorandum. In the event of any conflict between any provision of the Agreement and any provision of this Memorandum, the provisions of the Agreement shall control.

5. Each party executing this Memorandum on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such Party is a corporation, that such corporation has full right and authority to enter into this Memorandum and perform all of its obligations hereunder.

6. This Memorandum may be executed in any number of counterparts, all of which, together, shall constitute the original Memorandum.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Parties execute this Memorandum as of the day and year first written above.

DEVELOPER:

NORTH WATERFRONT COVE, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

CITY:

CITY OF ALAMEDA,
a municipal corporation and California charter city

By: _____
Name: Gerry Beaudin
Title: Assistant City Manager

Lara Weisiger, City Clerk

Andrew Thomas, Director, Planning, Building and Transportation

Approved as to form:

Celena H. Chen, Assistant City Attorney

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

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

WITNESS my hand and official seal.

Signature _____

* * * * *

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

State of California)

County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

Acknowledgement

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

State of California)

County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

* * * * *

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

State of California)

County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

Acknowledgement

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

State of California)

County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

Acknowledgement

EXHIBIT E
FORM SUBDIVISION IMPROVEMENT AGREEMENT

Recording Requested By:
City of Alameda

When recorded, return to:
City of Alameda
Public Works Department
Robert Vance, City Engineer
950 West Mall Square, Room 110
Alameda, CA 94501

Assessor's Parcel Numbers _____ & _____ & _____

Parcel/ Tract Map _____, _____

Document Exempt from Recording Fee: Government Code Section 6103
SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement (“**Agreement**”) dated as of this ____ day of _____, 2020 (“**Effective Date**”) is entered into by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California (“**City**”), and _____, a _____ (“**Developer**”), with reference to the following facts and circumstances:

RECITALS

A. Developer and the City (as successor-in-interest to Community Improvement Commission of the City of Alameda, a public body corporate and politic (the “**CIC**”)) have entered into that certain _____ [DA/DDA/PROVIDE BACKGROUND], dated _____; and [DELETE SECTION AND RENUMBER IF NO DA/DDA]

B. Developer has presented a proposed Parcel/Tract Map to City, identified as Parcel/Tract Map No. _____. The Parcel/Tract Map of the Subdivision has been reviewed by the City’s Public Works and Planning Directors and found to be in substantial compliance with the Final Development Plan approved by the City Planning Board on ____ [DATE] by Resolution No. PB-____; and

C. On _____ [DATE], the City Planning Board held a duly noticed public hearing and adopted Resolution No _____ recommending approval of a Tentative Map for Parcel/Tract No. ____ with conditions which are on file in the Public Works Department and incorporated herein by this reference; and

D. On _____, the Alameda City Council adopted Resolution No. _____ (“**Resolution of Approval**”) approving Tentative Map for Parcel/Tract No. _____ with conditions which are on file in the Public Works Department and incorporated herein by this reference; and

E. The California Subdivision Map Act (Government Code Section 66410, et seq.) (“**Map Act**”) and the City’s ordinances and regulations relating to the filing and recordation of subdivision and parcel maps (hereinafter the Subdivision Laws) provide that as a condition precedent to the approval of a final map that the Developer must have complied with the Resolution of Approval and have either (1) completed, in accordance with City Standards, all of the improvements and land development work required by the Subdivision Laws and the Resolution of Approval or (2) entered into a secured agreement to the City to complete the improvements and land development within a period of time specified by the City; and

F. Construction of the required Public Infrastructure Improvements, however, has not been completed nor have such improvements been accepted by City. In accordance with the Subdivision Laws and in consideration of the approval of the proposed Parcel/Tract Map and acceptance of the irrevocable offers of dedication of public right-of-way easements and acceptance of the permanent maintenance of the required Public Infrastructure Improvements, the parties desire to establish an agreement binding Developer to complete the required improvements as required by the Subdivision Laws, the Resolution of Approval and the terms and conditions set forth therein and to provide improvement security therefor as required by the Subdivision Laws and approved by the City Attorney.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants, promises and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. **APPROVAL: APPROVAL OF PARCEL/TRACT MAP NO. _____ BY CITY SHALL BE CONDITIONED UPON THE RECORDATION OF THIS AGREEMENT WITH THE ALAMEDA COUNTY RECORDER.**

2. **CONSTRUCTION OBLIGATION:**

a. Developer agrees at Developer’s sole cost and expense to cause all required off-site and on-site Public Infrastructure Improvements identified in the conditions to the approval of the Subdivision and shown on approved Improvement Plans (the “**Work**”) to be prepared and completed to the City’s satisfaction and approved by the City as set forth in Sections 16 and 17 below, within two (2) years from the Effective Date of this Agreement, subject to delays due to Force Majeure Events (as defined in Section 21 below) and extreme weather events as described in Section 22 below. A copy of such conditions and Improvement Plans is on file in the Public Works Department.

b. Except for delays due to Force Majeure Events and extreme weather events, which may extend the time for performance under this Agreement as further described in Sections

21 and 22, no extension of time shall be made, except upon the basis of a written application made by Developer to the Public Works Director, stating fully the grounds of the application and facts relied upon for such an extension. The Public Works Director shall determine whether there is good cause for the extension, and upon a determination of good cause may extend the time for commencement or completion of improvements for a period or periods not exceeding a total of two (2) additional years. The extension shall be executed in writing by the Public Works Director. Any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither such extension nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety. Any extension may be granted without notice to the Developer's surety, shall not affect the validity of the bonds, and shall not relieve the surety's liability on any of the bonds required by this Agreement. In the event an extension is granted, Developer agrees to promptly extend the term of all surety bonds or other surety acceptable to City. All such bonds and/or other surety are subject to review and approval (not to be unreasonably withheld, conditioned, or delayed) by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure Developer's performance, the extension shall be void.

3. **EASEMENTS AND PERMITS: DEVELOPER SHALL, AT DEVELOPER'S SOLE COST AND EXPENSE, IN CONNECTION WITH THE WORK: A) PROVIDE ANY AND ALL RIGHTS OF WAY AND EASEMENTS 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. THE DESCRIPTION AND TITLE TO ANY RIGHTS OF WAY OR EASEMENTS NOT SHOWN ON THE FINAL MAP SHALL BE SUBJECT TO APPROVAL AS TO FORM BY THE CITY ATTORNEY AND SHALL NOT BE SUBJECT TO ANY PRIOR RIGHTS OR LIENS, UNLESS APPROVED BY THE CITY ENGINEER AND THE CITY ATTORNEY.**

4. **PERFORMANCE OF THE WORK: CONSTRUCTION OF THE WORK SHALL COMMENCE WITHIN A REASONABLE TIME. DEVELOPER AGREES TO PERFORM THE WORK IN A WORKMANLIKE AND PROFESSIONAL MANNER, IN ACCORDANCE WITH ALL REQUIREMENTS OF STATE AND LOCAL LAW, INCLUDING THE ALAMEDA MUNICIPAL CODE, PUBLIC WORKS STANDARD SPECIFICATIONS, OR ANY SUBSEQUENT REVISIONS THEREOF, AND ACCORDING TO THE PLANS AND SPECIFICATIONS APPROVED BY THE PUBLIC WORKS DIRECTOR, PREPARED BY _____ ENTITLED "_____" PERMITTED AS PWD _____ AND FILED IN THE OFFICE OF THE PUBLIC WORKS DIRECTOR. DEVELOPER AGREES THAT ALL DETAILS AND NOTES SHOWN ON THE IMPROVEMENT PLANS SHALL BE MADE A PART OF THE IMPROVEMENTS.**

5. **MODIFICATIONS: DEVELOPER MAY MODIFY SUCH PLANS AND SPECIFICATIONS AS THE DEVELOPMENT PROGRESSES SHOULD UNFORESEEN CONDITIONS OCCUR, PROVIDED ADVANCE WRITTEN APPROVAL IS OBTAINED FROM THE PUBLIC WORKS DIRECTOR. CITY 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 CITY FOR ALL COSTS INCLUDING, WITHOUT LIMITATION, PLAN CHECK AND INSPECTION COSTS RESULTING FROM ANY SUCH MODIFICATIONS. DEVELOPER SHALL PROVIDE PERSONAL SUPERVISION OF THE WORK OR HAVE A COMPETENT CONTRACTOR, FOREMAN OR SUPERINTENDENT ON THE WORK AT ALL TIMES DURING WORK PROGRESS WITH AUTHORITY TO ACT FOR DEVELOPER.

6. COMPLIANCE AND INSPECTION: ALL DEVELOPMENT ACTIVITY SHALL BE IN COMPLIANCE WITH CONDITIONS OF APPROVAL OF THE SUBDIVISION AND MEASURES IMPOSED TO MITIGATE ADVERSE ENVIRONMENTAL EFFECTS OF THE PROJECT INCLUDING ANY MONITORING PROGRAM(S). ALL IMPROVEMENTS SHALL BE INSPECTED BY CITY FOR STRICT COMPLIANCE WITH CITY PERMITS, STANDARDS, PLANS, SPECIFICATIONS, PERFORMANCE CRITERIA AND SUBDIVISION REGULATIONS. CONCURRENT WITH THE EXECUTION OF THIS AGREEMENT, DEVELOPER SHALL PAY TO CITY A DEPOSIT TO COVER ONGOING PUBLIC WORKS PLAN CHECK AND INSPECTION COSTS IN ACCORDANCE WITH THE THEN CURRENT CITY OF ALAMEDA MASTER FEE SCHEDULE.

7. ACCESS TO WORK: DEVELOPER SHALL ALLOW CITY'S DULY AUTHORIZED REPRESENTATIVES' ACCESS TO THE WORK AT ALL TIMES AND SHALL FURNISH THEM WITH EVERY REASONABLE FACILITY FOR ASCERTAINING THAT THE METHODS, MATERIALS AND WORKMANSHIP COMPLY WITH THE REQUIREMENTS AND INTENT OF THE APPROVED PLANS. DEVELOPER IS REQUIRED TO GIVE AT LEAST ONE DAY'S ADVANCE NOTICE OF THE DATE UPON WHICH THE WORK IS COMMENCED AND THE DATE UPON WHICH THE 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. CITY SERVICES: DEVELOPER AGREES TO AND SHALL BE FINANCIALLY RESPONSIBLE FOR ALL REQUIRED CITY SERVICES PROVIDED TO THE SUBDIVISION OR TO SUBDIVISION RESIDENTS FOR USE WITHIN THE SUBDIVISION PRIOR TO ACCEPTANCE OF IMPROVEMENTS BY CITY.

9. 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.

10. DEVELOPER RESPONSIBILITY FOR WORK: UNTIL SUCH TIME AS THE IMPROVEMENTS ARE ACCEPTED BY CITY, DEVELOPER SHALL BE RESPONSIBLE FOR, AND BEAR THE RISK OF LOSS TO, ANY OF THE IMPROVEMENTS CONSTRUCTED OR INSTALLED. UNTIL SUCH TIME AS ALL IMPROVEMENTS REQUIRED BY THIS AGREEMENT ARE FULLY COMPLETED, PASSED FINAL INSPECTION AND, IF TO BE DEDICATED TO CITY, ARE

ACTUALLY DEDICATED AND ACCEPTED BY CITY, DEVELOPER WILL BE RESPONSIBLE FOR THE CARE, MAINTENANCE OF, AND ANY REPAIRS OR RECONSTRUCTION TO REMEDY ANY DAMAGE TO SUCH 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 SPECIFIED IN THIS AGREEMENT PRIOR TO THE COMPLETION AND ACCEPTANCE OF THE WORK, EXCEPT TO THE EXTENT RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR ANY CITY PARTIES (AS DEFINED IN SECTION 24.C.).

11. **OBLIGATION TO WARN PUBLIC:** UNTIL FINAL ACCEPTANCE OF THE IMPROVEMENTS, DEVELOPER SHALL GIVE GOOD AND ADEQUATE WARNING TO THE PUBLIC OF EACH AND EVERY POTENTIALLY DEFECTIVE OR DANGEROUS CONDITION WHICH EXISTS OR ARISES IN SAID IMPROVEMENTS, AND WILL TAKE ALL REASONABLE ACTIONS TO PROTECT THE PUBLIC FROM SUCH UNSAFE CONDITION(S).

12. **SALE OR DISPOSITION OF SUBDIVISION:** THIS AGREEMENT RUNS WITH AND ENCUMBERS THE SUBDIVISION, AND THE SALE OR OTHER DISPOSITION OF THE PROPERTY WILL NOT RELIEVE SUCH PARTIES FROM THE OBLIGATIONS SET FORTH HEREIN. IF THE PROPERTY OR ANY PORTION OF THE PROPERTY WITHIN THE SUBDIVISION IS SOLD TO ANY OTHER PERSON, DEVELOPER MAY REQUEST FROM CITY A NOVATION OF THIS AGREEMENT AND A SUBSTITUTION OF SECURITY. UPON APPROVAL OF THE NOVATION BY THE CITY COUNCIL AND SUBSTITUTION OF SECURITIES FROM CITY, WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED, OR DELAYED, DEVELOPER MAY OBTAIN A RELEASE OR REDUCTION OF THE SECURITIES REQUIRED BY THIS AGREEMENT. NOTHING IN THE NOVATION SHALL RELIEVE DEVELOPER OF THE OBLIGATIONS UNDER THIS AGREEMENT FOR THE WORK DONE BY OR ON BEHALF OF DEVELOPER. 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 SUBJECT PROPERTY 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.

13. **IMPROVEMENT SECURITY:**

a. To insure full and faithful performance of this Agreement and in accordance with the requirements of the Subdivision Laws, Developer shall file with this Agreement the following security in the type and amounts specified:

(1) Faithful performance security in the sum of \$X,XXX,XXX to cover all costs of public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the cost of improvement.

(2) Labor and materials security in the sum of \$X,XXX,XXX 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 approved estimate for the costs of labor and materials.

b. Developer shall furnish the bonds from a bonding company acceptable to the City Attorney.

14. FORM OF SECURITY: ALL SECURITY SHALL BE OF A TYPE SPECIFIED IN GOVERNMENT CODE SECTIONS 66499(A)(1), (2) OR (3), AND MUST BE SATISFACTORY TO AND APPROVED BY THE CITY ATTORNEY AS TO FORM. IN CONJUNCTION WITH THE SUBMITTAL OF BONDS, DEVELOPER SHALL ALSO FURNISH THE FOLLOWING INFORMATION:

a. 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;

b. A certificate from the Clerk of 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; and

c. Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that City is the owner of record of such funds. City shall be the sole indemnitee 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 witness fees, incurred in enforcing the obligation secured.

15. ACCEPTANCE OF IMPROVEMENTS: NO IMPROVEMENT SHALL BE ACCEPTED BY CITY UNLESS AND UNTIL IT IS FREE OF ALL LIENS AND ENCUMBRANCES (OTHER THAN ENCUMBRANCES CREATED BY OR ON BEHALF OF THE CITY), 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 PARCEL/TRACT MAP AND TO THE SATISFACTION OF THE PUBLIC WORKS DIRECTOR. UPON COMPLETION OF FINAL INSPECTION OF THE IMPROVEMENTS DESCRIBED HEREIN, DEVELOPER SHALL COMPLY WITH SECTION 8180 OF THE CIVIL CODE AND SHALL IMMEDIATELY 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 CITY SHALL BE, BEFORE ACCEPTANCE THEREOF BY CITY, FREE AND CLEAR OF ALL LIENS

AND ENCUMBRANCES OF ANY KIND OR CHARACTER WHATSOEVER (OTHER THAN ENCUMBRANCES CREATED BY OR ON BEHALF OF THE CITY) AND FREE OF ANY AND ALL MATERIAL DEFECTS AND CONDITIONS CREATING A HAZARD TO PUBLIC HEALTH OR PUBLIC SAFETY.

16. Final Acceptance of Work: Acceptance of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act on the City Engineer's recommendation within sixty (60) days from the date the City Engineer certifies that the work has been finally completed, as provided in this Agreement. Such acceptance shall not constitute a waiver of defects by the City. Upon formal final acceptance by the City Council as set forth herein and recordation of the Resolution of Acceptance of Public Improvements, ownership of the improvements constructed pursuant to this Agreement shall vest in the City.

17. **GUARANTEE AND SECURITY**: DEVELOPER GUARANTEES THAT ALL 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 DEVELOPER SHALL REPAIR ANY DEFECTS IN ANY SUCH IMPROVEMENTS AND REPLACE ANY DEFECTIVE IMPROVEMENTS WHICH CANNOT BE REPAIRED AND WHICH OCCUR OR ARISE WITHIN THE 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.

Concurrent with acceptance of Subdivision improvements, Developer shall provide a warranty security equivalent to ten percent (10%) of the improvement security for the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, subject to the limitations of Section 66499.9 of the Map Act.

18. **EXONERATION OF SURETY**: SUBJECT TO SECTION 12 ABOVE, CITY SHALL NOT BE REQUIRED TO EXONERATE ANY SURETY, RELEASE ANY SECURITY RELATING TO SATISFACTORY COMPLETION OF THE IMPROVEMENTS OR ISSUE OCCUPANCY PERMITS UNTIL ACCEPTANCE OF PROPOSED PUBLIC IMPROVEMENTS BY 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 MAINTENANCE AND/OR WARRANTY AGREEMENTS

AND SECURITY THEREFORE, AS WELL AS PAYMENT OF ALL OUTSTANDING FEES, PENALTIES, ACCRUED INTEREST, AND REIMBURSEMENTS DUE CITY.

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 THE APPLICABLE PROPERTY DEVELOPMENT EXCISE TAX, AS WELL AS ALL REQUIRED FEES. NO BUILDING PERMIT SHALL BE ISSUED UNTIL ALL OF THE TRACT IMPROVEMENTS ARE CONSTRUCTED AND ACCEPTED BY THE CITY ENGINEER, EXCEPT AS OTHERWISE PERMITTED BY THE MAP ACT AND AS APPROVED BY THE CITY ENGINEER. THE SUBDIVIDER SHALL PAY ALL APPLICABLE IMPACT FEES AND ALL OTHER FEES DUE TO THE CITY AND RELATED TO THE PARCEL/TRACT MAP AND ASSOCIATED IMPROVEMENTS.

20. DEFAULT OF DEVELOPER: DEFAULT OF DEVELOPER UNDER THIS AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, DEVELOPER'S FAILURE TO TIMELY COMMENCE CONSTRUCTION OF THE DEVELOPMENT; DEVELOPER'S FAILURE TO TIMELY COMPLETE CONSTRUCTION OF THE IMPROVEMENTS; DEVELOPER'S FAILURE TO TIMELY CURE ANY DEFECT IN THE IMPROVEMENTS; DEVELOPER'S FAILURE TO PERFORM SUBSTANTIAL CONSTRUCTION WORK FOR A PERIOD OF THIRTY (30) CONSECUTIVE CALENDAR DAYS AFTER COMMENCEMENT OF THE WORK; 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 THIRTY (30) DAYS; THE COMMENCEMENT OF A FORECLOSURE ACTION AGAINST DEVELOPER OR ANY OWNER OR MEMBER OF ALL OR A PORTION THEREOF OR ANY CONVEYANCE IN LIEU OR IN AVOIDANCE OF FORECLOSURE; OR DEVELOPER'S FAILURE TO PERFORM ANY OTHER OBLIGATION UNDER THIS AGREEMENT. DEVELOPER SHALL TIMELY 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 CONVEYANCE IN LIEU THEREOF.

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 for reasons beyond the commercially reasonable control of such party due to war; insurrection or acts of civil disobedience; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; the pendency of any mediation, arbitration, litigation or other administrative or judicial proceeding affecting the subject property or a party's ability to perform its obligations under this Agreement (excluding financial inability); inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any other causes beyond the commercially reasonable control or without the fault of the party claiming an extension of time to

perform which substantially interferes with such party's performance under this Agreement (collectively, "Force Majeure Events"). An extension of time for any such cause shall only be for the period of the Force Majeure Event, which period shall commence to run from the time of the commencement of the Force Majeure Event. A party claiming an extension due to a Force Majeure Event shall notify the other party in writing within thirty (30) days after commencement of the Force Majeure Event. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the Force Majeure Event, then, unless otherwise agreed by the parties, the extension period shall commence to run only thirty (30) days prior to the giving of such notice.

21. **WEATHER DELAYS: DEVELOPER SHALL NOT BE DEEMED TO BE IN BREACH OF THIS AGREEMENT IF THE CAUSE OF A DELAY IN THE TIME FOR PERFORMANCE IS CAUSED BY EXTREME WEATHER CONDITIONS THAT PREVENT THE WORK FROM BEING PERFORMED PURSUANT TO THE AGREEMENT. SUCH DELAY SHALL BE EVIDENCED BY ACTUAL WEATHER AND RAINFALL SURVEYS AND SUCH DELAYED COMPONENTS OF THE WORK MUST BE SHOWN TO BE CRITICAL PATH ITEMS IN THE COMPLETION OF THE WORK. IF DEVELOPER CLAIMS AN EXTENSION DUE TO EXTREME WEATHER CONDITIONS DEVELOPER SHALL NOTIFY CITY IN WRITING WITHIN THIRTY (30) DAYS AFTER THE COMMENCEMENT OF SUCH EXTREME WEATHER CONDITIONS. IF, HOWEVER, NOTICE BY DEVELOPER IS SENT TO CITY MORE THAN THIRTY (30) DAYS AFTER THE COMMENCEMENT OF SUCH EXTREME WEATHER CONDITIONS, THEN, UNLESS OTHERWISE AGREED BY THE PARTIES, THE EXTENSION PERIOD SHALL COMMENCE TO RUN ONLY THIRTY (30) DAYS PRIOR TO THE GIVING OF SUCH NOTICE.**

22. **REMEDIES IN EVENT OF A DEFAULT: IN THE EVENT OF DEVELOPER'S DEFAULT (BEYOND ANY REASONABLE 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 described in this Agreement and each of them shall totally reimburse City for its reasonable costs and expenses (including reasonable attorneys' 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 Subdivision 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.

23. **INDEMNITY/HOLD HARMLESS:**

a. Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer's employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

b. To the maximum extent permitted by law, Developer shall hold harmless, defend (with counsel acceptable to the City) and indemnify City, its City Council, boards, commissions, officials, employees, agents, and volunteers (collectively, "**Indemnitees**") from and against any claim, action or proceeding against Indemnitees to attack, set aside, void or annul an approval of City concerning the Subdivision property or any portion thereof, which action is brought within the time period provided for in Government Code Section 66499.37. City shall promptly notify Developer of any claim, action or proceeding and City shall cooperate fully in the defense. If City fails to promptly notify Developer of any claim, action or proceeding or if City fails to cooperate in the defense, then thereafter, Developer shall not be responsible to defend, indemnify or hold harmless City.

c. Developer further agrees that it will hold harmless, defend (with counsel acceptable to the City) and indemnify the Indemnitees from and against any and all loss, liability, obligations, expense, claim, lawsuit, judgment, costs (including costs of defense and attorneys' fees) 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 Developer or its agents, servants, employees or contractors in the performance of its duties under this Agreement. The foregoing indemnity shall exclude any indemnified matters to the extent they result from (x) the gross negligence or willful misconduct of the City or its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents (collectively, "**City Parties**"); or (y) the mere discovery by Developer or its agents of any preexisting condition of Hazardous Materials in, on, under or about the Subdivision, so long as Developer or its agents or employees in no way exacerbate such pre-existing condition of Hazardous Materials.

24. **INSURANCE: WITHOUT LIMITING DEVELOPER'S INDEMNIFICATION PROVIDED HEREIN, DEVELOPER SHALL PROCURE AND MAINTAIN AT ALL TIMES DURING THE LIFE 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, UNLESS OTHERWISE ACCEPTABLE TO CITY, 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. Developer's Coverage: Developer shall maintain insurance coverage and limits at least as broad as the following requirements, and the policies 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 (ten (10) days for non-payment of premium) to City by certified mail:

(1) **Workers' Compensation:** Statutory coverage as required by the State of California 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 City Council, boards, commissions, officials, employees, agents and volunteers.

(2) **Liability:** Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence \$2,000,000 aggregate - all other
Property Damage:	\$1,000,000 each occurrence \$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:** Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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The amount of any deductible or self-insured retention over \$5,000 shall be declared to and security posted guaranteeing payment of losses and defense costs.

(4) **Pollution Prevention:** Legal liability required for exposure to hazardous materials in the amount of \$2,000,000 each occurrence.

(5) **Builders Risk:** Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

b. Subrogation Waiver: Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors.

c. Failure to Secure: If Developer at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in Developer's name or as an agent of Developer and shall be compensated by Developer for the costs of the insurance premiums, plus interest at the maximum rate permitted by law, and computed from the date written notice is received that the premiums have not been paid.

d. Additional Insured: City, its City Council, boards, commissions, officials, employees, agents and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

e. Multiple Insured: 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.

f. Primary Coverage: For claims related to this project, Developer's insurance shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance.

g. Failure or Breach by Developer: Any failure by Developer to comply with reporting or other provisions of this Agreement, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.

h. Professional Liability/Engineering Consultants: Developer shall cause any of its geotechnical and civil engineering consultant to maintain professional liability insurance, which includes coverage for the professional acts, errors and omissions of each consultant in the amount of at least \$2,000,000 per occurrence or claim. Such professional liability insurance will have an inception date or a retroactive date coinciding with or prior to the date services are first performed and coverage shall be provided for at least five (5) years after the date the Work or the services are accepted. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Developer must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

i. Contractor's Insurance: Before construction begins, Developer shall provide City with a letter stating its general contractor ("**Contractor**") for the project in the Subdivision. Work on the project may then begin and continue as long as that Contractor is engaged as the Contractor on the job. No other 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. Developer shall cause the Contractor and all subcontractors to provide the following insurance coverages:

(1) On or before the commencement of the agreement between the Developer and Contractor, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs below. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to City by certified mail, Attention: Risk Manager." Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming City, its City Council, boards, commissions, officials, employees, agents and volunteers as additional insured shall be submitted with the insurance certificates.

- Contractor shall maintain the following insurance coverage:
 - Workers' Compensation: Statutory coverage as required by the State of California.
 - Liability: Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
\$2,000,000 aggregate - all other	
Property Damage:	\$1,000,000 each occurrence
\$2,000,000 aggregate	

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

- Automotive: Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence
or	
Combined Single Limit:	\$2,000,000
each occurrence	

- Pollution Prevention: Legal liability required for exposure to hazardous materials in the amount of \$2,000,000 each occurrence.
- Builders Risk: Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

(2) Subrogation Waiver: Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

(3) Failure to Secure: If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Contractor’s name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

(4) Additional Insured: City, its City Council, boards, commissions, officials, employees, agents and volunteers shall be named as an additional insured under all insurance coverages, except worker’s compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

j. Sufficiency of Insurance: The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor’s insurance broker to determine adequate coverage for Contractor. 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.

25. NOTICES: ALL NOTICES, DEMANDS, REQUESTS, OR APPROVALS TO BE GIVEN UNDER THIS AGREEMENT SHALL BE GIVEN IN WRITING AND CONCLUSIVELY SHALL BE DEEMED SERVED WHEN DELIVERED PERSONALLY OR ON THE SECOND BUSINESS DAY AFTER THE DEPOSIT THEREOF IN THE UNITED STATES MAIL, POSTAGE PREPAID, REGISTERED OR CERTIFIED, ADDRESSED TO CITY OR DEVELOPER AS HEREINAFTER PROVIDED.

City: City of Alameda
 City Attorney’s Office
 City Attorney
 2263 Santa Clara Avenue, Room 280

Alameda, CA 94501
510-747-4750

With copy to: City of Alameda
Public Works Department
City Engineer
950 W. Mall Square, Room 110
Alameda, CA 94501
510-747-7900

Developer: [FILL IN]

26. **ATTORNEY'S FEES:** 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 THE BONDS SECURING THIS AGREEMENT.

27. **GOVERNING LAW:** THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED ACCORDING TO CALIFORNIA LAW, AND ANY ACTION TO ENFORCE THE TERMS AND CONDITIONS OF THE AGREEMENT OR FOR THE BREACH THEREOF SHALL BE BROUGHT AND TRIED IN THE COUNTY OF ALAMEDA, CALIFORNIA.

28. **TIME OF ESSENCE:** TIME IS OF THE ESSENCE.

29. **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.

30. **ENTIRE AGREEMENT:** THIS AGREEMENT CONSTITUTES 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 PUBLIC WORKS DIRECTOR.

31. **REFERENCE:** ANY REFERENCE TO A DEPARTMENT MANAGER SHALL INCLUDE HIS OR HER DULY AUTHORIZED DESIGNEE, DEPUTY OR REPRESENTATIVE.

32. **RECORDATION:** UPON REQUEST BY CITY, DEVELOPER AGREES TO EXECUTE AND ACKNOWLEDGE A MEMORANDUM OF THIS AGREEMENT FOR RECORDATION WITH THE ALAMEDA COUNTY RECORDER. BY RECORDATION

OF THIS AGREEMENT OR A MEMORANDUM HEREOF, IT IS THE 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.

33. COUNTERPARTS: THIS AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS (INCLUDING BY FAX, PDF OR OTHER ELECTRONIC MEANS), EACH OF WHICH SHALL BE DEEMED AN ORIGINAL, BUT ALL OF WHICH SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT.

34. AGREEMENT RUNS WITH THE REAL PROPERTY: THIS AGREEMENT PERTAINS TO AND RUNS WITH THE REAL PROPERTY INCLUDED WITHIN PARCEL/TRACT MAP _____ WHICH LAND IS EXPRESSLY AGREED TO BENEFIT FROM THE PRIVILEGES GRANTED TO DEVELOPER UNDER THIS AGREEMENT, AND BINDS THE BENEFICIARIES, HEIRS, ASSIGNS, SUCCESSORS IN INTEREST OF DEVELOPER.

IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

Property owner as stated on Map, CITY OF ALAMEDA
a _____ company a municipal corporation

By: _____

Name: _____ Eric J. Levitt
City Manager

Its: _____

RECOMMENDED FOR APPROVAL:

Robert Vance
City Engineer

APPROVED AS TO FORM:

Celena H. Chen
Assistant City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and only the truthfulness, accuracy, or validity of that document

State of California
County of Alameda

On _____, 20____, 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.

Signature _____(Seal)

EXHIBIT F
LIST OF HAZARDOUS MATERIALS DOCUMENTS

That certain “Encinal Terminals Phase 1 Environmental Site Assessment, prepared by ENGEO Incorporated, Submitted August 18, 2017” is incorporated by reference as though fully set forth herein.

CLTA Preliminary Report Form
(Rev. 11/06)

Order Number: 0192-6580510
Page Number: 1

Updated



First American Title

First American Title Company

**1001 Galaxy Way, Suite 315
Concord, CA 94520**

California Department of Insurance License No. 151

Title Officer:	Brianna Seckner
Phone:	(916)356-7012
Fax No.:	(925)738-4041
E-Mail:	bseckner@firstam.com
Property:	Alameda, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of January 03, 2022 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

NORTH WATERFRONT COVE LLC, A DELAWARE LIMITED LIABILITY COMPANY

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A leasehold estate as created by that certain unrecorded lease dated January 6, 1984, executed by the City of Alameda, a Charter City of the State of California as lessor and Encinal Industries, Inc., a California corporation as lessee, as disclosed by a Memorandum of Lease recorded January 12, 1984 as Instrument No. 84-007439 of Official Records for the term and upon the terms and conditions contained in said lease.

The lessee's interest under the lease has been assigned to North Waterfront Cove LLC, a Delaware limited liability company by assignment disclosed by the Memorandum of Assignment of Ground Lease recorded January 24, 2013 as Instrument No. 2013032814 of Official Records, as to Tract II;

and

A fee as to Parcels A through C of Tract I and an easement as to Parcel D of Tract I

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2022-2023, a lien not yet due or payable.

2. General and special taxes and assessments for the fiscal year 2021-2022.

First Installment:	\$47,011.96, PAID
Penalty:	\$0.00
Second Installment:	\$47,011.96, OPEN
Penalty:	\$0.00
Tax Rate Area:	21-004
A. P. No.:	072-0382-002

Affects: Parcel A of Tract I

3. General and special taxes and assessments for the fiscal year 2020-2021.
First Installment: \$21,646.10, PAID
Penalty: \$0.00
Second Installment: \$21,646.10, OPEN
Penalty: \$0.00
Tax Rate Area: 21-004
A. P. No.: 072-0382-001

Affects: Parcel B of Tract I

4. General and special taxes and assessments for the fiscal year 2020-2021.
First Installment: \$8,250.96, PAID
Penalty: \$0.00
Second Installment: \$8,250.96, OPEN
Penalty: \$0.00
Tax Rate Area: 21-004
A. P. No.: 072-0383-003-01

Affects: Parcel C of Tract I

5. General and special taxes and assessments for the fiscal year 2020-2021.
First Installment: \$0.00, NO TAX DUE
Penalty: \$0.00
Second Installment: \$0.00, NO TAX DUE
Penalty: \$0.00
Tax Rate Area: 21-004
A. P. No.: 072-0382-009

Affects: Tract II

The County Tax Collector could not verify the amounts shown above at this time. Please verify the amounts with the County Tax Collector prior to the close of the contemplated transaction.

6. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

The Following Matters Affect Tract I:

7. An easement for sewers and incidental purposes, recorded September 30, 1887 in Book 328 of Deeds, Page 460.

In Favor of: City of Alameda
Affects: A portion of Parcels C and D

The location of the easement cannot be determined from record information.

8. An easement for sewers and incidental purposes, recorded July 30, 1900 in Book 750 of Deeds, Page 1.

In Favor of: City of Alameda
Affects: A portion of Parcels A and C

The location of the easement cannot be determined from record information.

9. An easement for erecting, maintaining and repairing high power electric lines and incidental purposes, recorded April 25, 1934 as Book 694, Page 220 of Official Records.
In Favor of: City of Alameda
Affects: A portion of Parcels C and D
10. An easement for gas pipe lines and incidental purposes, recorded January 29, 1930 as Book 2329, Page 13 of Official Records.
In Favor of: Pacific Gas and Electric Company, a corporation
Affects: A portion of Parcels C and D

Terms and provisions contained in the above document.

11. Easements for the purposes stated below and incidental purposes, recorded August 13, 1938 as Book 3677, Page 136 of Official Records.
For: Sanitary and drainage sewers
In Favor of: City of Alameda
Affects: A portion of Parcel C

For: Gas transmission and distribution pipe lines
In Favor of: Pacific Gas and Electric Company
Affects: Portions of Parcels C and D

Terms and provisions contained in the above document.

12. An easement for electric conduit and incidental purposes, recorded November 16, 1949 as Book 5937, Page 369 of Official Records.
In Favor of: City of Alameda, a municipal corporation
Affects: A portion of Parcels A, C and D

Terms and provisions contained in the above document.

13. An easement for ingress, egress, utilities and incidental purposes, recorded March 21, 1984 as Document No. 84-053754 of Official Records as modified by recorded on August 8, 1996 as Document No. 96-195904.
In Favor of: Fortman Basin Limited Partners
Affects: A portion of Parcel D
14. The terms and provisions contained in the document entitled Maintenance Agreement recorded March 21, 1984 as Instrument No. 84-053756 of Official Records, which affects Parcel D.
15. The terms, provisions and easements contained in the document entitled "Declaration of Easements" recorded June 6, 1996 as 96-136983 of Official Records.

Document(s) declaring modifications thereof recorded December 28, 2012 as Instrument No. 2012432243 of Official Records.

The location of the easement cannot be determined from record information.

16. An easement for waterline and incidental purposes, recorded August 8, 1996 as Document No. 96-195905 of Official Records.

In Favor of: Fortman Basin Limited Partnership
Affects: A portion of Parcel D

17. An easement for secondary road access easement and incidental purposes, recorded October 24, 1997 as Instrument No. 97282550 of Official Records.

In Favor of: Wind River Systems, Inc., a delaware corporation
Affects: A portion of Parcels A and C

Terms and provisions contained in the above document.

18. An easement for stormwater drainage and incidental purposes, recorded October 24, 1997 as Instrument No. 97-282551 of Official Records.

In Favor of: Wind River Systems, Inc.
Affects: A portion of Parcels C and D

Terms and provisions contained in the above document.

19. The terms, provisions and easements contained in the document entitled "Grant of Access Easement" recorded October 24, 1997 as Instrument No. 97-282552 of Official Records.

Affects: Parcel C

20. The terms and provisions contained in the document entitled "Agreement for Mutual Covenants and Restrictions" recorded October 24, 1997 as Instrument No. 97-282553 of Official Records.

Affects: Parcels A and B

21. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Permit No. 9-97" recorded April 8, 1998 as Instrument No. 98118575 of Official Records.

Affects: A portion of Parcel C

Document(s) declaring modifications thereof recorded December 15, 1998 as Instrument No. 98439987 of Official Records.

An Assignment and Assumption of BCDC Permit recorded November 17, 2017 as Instrument No. 2017254326 of Official Records.

Document(s) declaring modifications thereof recorded April 18, 2018 as Instrument No. 2018077444 of Official Records.

22. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Permit Number M2016.006.00" recorded November 9, 2016 as Instrument No. [2016292938](#) of Official Records.
23. An easement for the purpose of entering upon a portion of the Land as reasonably necessary to satisfy the requirements of Section II.D.10 of San Francisco Bay Conservation and Development Commission Permit No. 9-97, as amended, recorded as Instrument No. [98-439987](#), and incidental purposes, recorded July 21, 2017 as Instrument No. [2017159864](#) of Official Records.
In Favor of: LVA4 Alameda WRW, L.P., a Delaware limited partnership, and
LVA4 Alameda WRW II, L.P., a Delaware limited partnership
Affects: A portion of Parcel C

The location of the easement cannot be determined from record information.

24. The effect of the "Grant of Easements", which granted easement for those purposes set out in Article III, Paragraph A of that certain Declaration of Reciprocal Easements, Covenants and Restrictions recorded March 23, 1999 as Instrument No. [99124936](#), and incidental purposes, recorded November 22, 2017 as Instrument No. [2017258719](#) of Official Records.
In Favor of: LVA4 Alameda WRW, L.P., a Delaware limited partnership
Affects: A portion of Parcel C

The location of the easement cannot be determined from record information.

At the date of recording of the document, the grantor had no record interest in the portion of the herein described Land that is affected by these easements.

25. An offer of dedication for public street, roadway, sidewalks, public landscaping, public pedestrian trail, public bike path and other related uses and incidental purposes, recorded April 08, 2019 as Instrument No. [2019061655](#) of Official Records.
To: the City of Alameda, a California municipal corporation

Corrected Irrevocable Offer of Dedication recorded December 05, 2019 as Instrument No. [2019249356](#) of Official Records.

Affects: Parcels A and C

26. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Permit No. M2003.029.07" recorded June 18, 2019 as Instrument No. [2019115391](#) of Official Records.

Affects: Parcels A and C

27. The terms and provisions contained in the document entitled "Memorandum of Agreement" recorded December 05, 2019 as Instrument No. [2019249897](#) of Official Records.

28. An easement for facilities and incidental purposes, recorded July 22, 2020 as Instrument No. [2020173491](#) of Official Records.
In Favor of: East Bay Municipal Utility District, a public corporation
Affects: Parcels A and C

29. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Amendment No. Two Permit Number M2016.006.02" recorded August 26, 2020 as Instrument No. 2020211213 of Official Records.

Affects: Parcels A and C

30. An unrecorded lease dated January 24, 2013, executed by North Waterfront Cove LLC, a Delaware limited liability company as lessor and Green Horizon Manufacturing, LLC, a California limited liability company as lessee, as disclosed to the Company.

31. Any easements and/or servitudes affecting easement parcel(s) D herein described.

32. Rights of the public in and to that portion of the Land lying within any Road, Street, Alley or Highway.

Affects: Parcels A and C

The Following Matters Affect Tract II:

33. Conditions, restrictions and reservations contained in the legislative grant which conveyed property from the State of California to the City of Alameda, by the act of the legislature of the State of California by state statues chapter 3489 (1913), as amended by chapter 594 (1917), chapter 734 (2000) and chapter 429 (2011).

Violation of the covenants, terms and provisions contained in the legislature of the State of California by state statues chapter 3489 (1913), as amended by chapter 594 (1917), chapter 734 (2000) and chapter 429 (2011), which restricts the conveyance of the land by a deed executed by the City of Alameda.

34. An unrecorded lease dated January 6, 1984, executed by City of Alameda, a Charter City of the State of California as lessor and Encinal Industries, Inc., a California corporation as lessee, as disclosed by a Memorandum of Lease recorded January 12, 1984 as Instrument No. 84-007439 of Official Records.

The lessee's interest under the lease has been assigned to North Waterfront Cove LLC, a Delaware limited liability company by the assignment disclosed by the Memorandum of Assignment of Lease recorded January 24, 2013 as Instrument No. 2013032814 of Official Records.

a. Subject to the terms and conditions contained of the above mentioned lease and any amendments thereto.

b. The effect of any failure to comply with the terms and conditions of the unrecorded lease referred to above.

Note: Exception 5b shall be deleted upon First American's receipt of written confirmation from the City of Alameda, the Alameda Unified School District, and/or the California State Lands Commission that there are no breaches or defaults under the terms of the above mentioned unrecorded lease.

c. The possible invalidity of the unrecorded lease referred to above by reason of the violation of the covenants, terms and provisions of the legislature of the State of California by state statutes chapter 3489 (1913), as amended by chapter 594 (1917), chapter 734 (2000) and chapter 429 (2011), which restricts the conveyance of the land by a deed executed by the City of Alameda.

Note: Exception 5c shall be deleted upon First American's receipt of written confirmation from the California State Lands Commission in a form acceptable to us that the hereinabove referred to lease is valid and that there are no violations of the above referenced statutes.

35. Terms and conditions of the Department of Army (DA) Permit No. 14300E35 issued August 7, 1984, as disclosed by a Letter of Modification recorded March 14, 1986 as Series No. 86-061378 of Official Records. Reference is made to said instrument and the off record permit for full particulars.

36. The effect of Ordinance No. 2559, N.S., approved by the City Council of the City of Alameda, adopting the Community Improvement Plan for the Business and Waterfront Improvement Project, recorded June 21, 1991 as Series No. 91-161219 of Official Records.

Notice of Adoption of Amendments thereto recorded July 3, 2000, Series No. 2000-199587 and recorded April 15, 2003, Series No. 2003-220741, and recorded October 19, 2007, Series No. 07-370534 of Official Records.

37. The lack of a right of access to and from the land.

38. Any failure to comply with the terms, provisions and conditions of the lease referred to in Schedule A.

39. The company must be provided an acceptable, executed and acknowledged estoppel certificate from the lessor in the lease set forth in Schedule A certifying that said lease is in full force and effect, the tenant is not in default of any material terms or provisions thereof and the transaction contemplated herein is not a violation of any of the provisions contained therein. Additional requirements may be necessary upon a review of the full unrecorded lease and all amendments thereto.

The Following Matters Affect Both Tracts:

40. Any claim that any portion of the land is below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline or riverbank.

41. Any rights, interests, or easements in favor of the public, which exist or are claimed to exist over any portion of said land covered by water, including a public right of access to the water.

42. Any claim that any portion of the land is or was formerly tidelands or submerged lands.

43. Water rights, claims or title to water, whether or not shown by the Public Records.
44. Rights of parties in possession.

Prior to the issuance of any policy of title insurance, the Company will require:

45. With respect to North Waterfront Cove LLC, a Delaware limited liability company:
 - a. A copy of its operating agreement and any amendments thereto;
 - b. If it is a California limited liability company, that a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) be recorded in the public records;
 - c. If it is a foreign limited liability company, that a certified copy of its application for registration (LLC-5) be recorded in the public records;
 - d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, that such document or instrument be executed in accordance with one of the following, as appropriate:
 - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such document must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
 - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
 - e. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require

46. The Company has been provided copies of the following documents pertaining to the leasehold estate covered in this Report:

An unrecorded Amended and Restate Lease by and between the City of Alameda and Encinal Industries, Inc. dated January 6, 1984,

A Memorandum of Lease by and between the City of Alameda and Encinal Industries, Inc. dated January 6, 1984, recorded January 12, 1984 as Instrument No. [84-007439](#) of Official Records.

An unrecorded Ground Lease Modification and Ground Lease Estoppel executed October 8, 1997 by and between Encinal Industries, Inc. and the City of Alameda.

An Assignment of Lease by and between Encinal Industries, Inc. and Encinal Real Estate, Inc. dated January 22, 1998, recorded January 26, 1998 as Instrument No. [98025888](#) of Official Records.

A letter from the City Manager of the City of Alameda dated November 6, 2003 confirming the extension of the above referenced lease.

A Memorandum of Assignment of Ground Lease by and between Encinal Real Estate, Inc. and North Waterfront Cove LLC dated as of January 24, 2013, recorded January 24, 2013 as Instrument No. [2013032814](#) of Official Records.

We will require copies of any other or subsequent amendments, modifications or assignments pertaining to said lease be provided for review. Other requirements may be made following our review of such documents.

Affects: Tract II

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

1. The property covered by this report is vacant land.
2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None
3. We find no outstanding voluntary liens of record affecting subject property. Disclosure should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any possible security interest in the subject property.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

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

TRACT I:

PARCEL A:

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

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

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

PARCEL B:

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

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

1. SOUTH 41° 13' 49" EAST, A DISTANCE OF 295.87 FEET;
2. SOUTH 53° 15' 31" EAST, A DISTANCE OF 310.00 FEET TO THE TRUE POINT OF BEGINNING;
3. SOUTH 53° 15' 31" EAST, A DISTANCE OF 127.66 FEET TO AN ANGLE POINT;

4. NORTH 68° 31' 35" EAST, A DISTANCE OF 118.76 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL;

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

PARCEL C:

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

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

TOGETHER THEREWITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

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

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

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

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

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

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

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

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

- 2) ALONG THE ARC OF A NON-TANGENT 419.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 31°33'35" EAST, THROUGH A CENTRAL ANGLE OF 06°53'03" AND AN ARC DISTANCE OF 50.40 FEET,
- 3) SOUTH 65°19'28" EAST 126.17 FEET,
- 4) ALONG THE ARC OF A NON-TANGENT 485.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 15°10'29" EAST, THROUGH A CENTRAL ANGLE OF 05°04'45" AND AN ARC DISTANCE OF 43.00 FEET,
- 5) SOUTH 79°54'16" EAST 127.80 FEET,
- 6) NORTH 09°17'14" EAST 23.74 FEET,
- 7) SOUTH 80°53'01" EAST 126.13 FEET,
- 8) SOUTH 80°32'51" EAST 108.02 FEET,
- 9) SOUTH 09°27'09" WEST 3.12 FEET AND
- 10) SOUTH 82°45'42" EAST 26.06 FEET TO SAID POINT OF BEGINNING.

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

PARCEL D:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR UTILITIES AS DESCRIBED ON THAT CERTAIN "DECLARATION OF EASEMENTS" RECORDED ON JUNE 6, 1996 AS DOCUMENT NO. 96136983, AS AMENDED BY THE "AMENDMENT AND SUPPLEMENT TO DECLARATION OF EASEMENTS" RECORDED DECEMBER 28, 2012 AS DOCUMENT NO. 2012432243, OVER THE PORTION OF THE SERVIENT TENEMENT AND THE SUPPLEMENTAL SERVIENT TENEMENT DESCRIBED IN SAID DOCUMENTS LYING WITHIN PARCEL C OF TRACT 7170 FILED FOR RECORD MARCH 7, 2002 IN BOOK 263 OF MAPS, PAGES 52-62, ALAMEDA COUNTY OFFICIAL RECORDS.

TRACT II:

PARCEL 20, PARCEL MAP NO. 2938, FILED JULY 19, 1983 IN BOOK 138, OF PARCEL MAPS, AT PAGES 76 TO 80, INCLUSIVE, ALAMEDA COUNTY RECORDS.

APN: 072-0382-002 (Affects Parcel A of Tract I);
072-0382-001 (Affects Parcel B of Tract I);
072-0383-003-01 (Affects Parcel C of Tract I); and
072-0382-009 (Tract II)

NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

CLTA STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public, records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the public records at Date of Policy.

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;

- d. improvements on the Land;
- e. land division; and
- f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II, [t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.
7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the

Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



Privacy Notice

Effective: October 1, 2019

Notice Last Updated: January 1, 2021

This Privacy Notice describes how First American Financial Corporation and its subsidiaries and affiliates (together referred to as "First American," "we," "us," or "our") collect, use, store, and share your information. This Privacy Notice applies to information we receive from you offline only, as well as from third parties, when you interact with us and/or use and access our services and products ("Products"). For more information about our privacy practices, including our online practices, please visit <https://www.firstam.com/privacy-policy/>. The practices described in this Privacy Notice are subject to applicable laws in the places in which we operate.

What Type Of Information Do We Collect About You? We collect a variety of categories of information about you. To learn more about the categories of information we collect, please visit <https://www.firstam.com/privacy-policy/>.

How Do We Collect Your Information? We collect your information: (1) directly from you; (2) automatically when you interact with us; and (3) from third parties, including business parties and affiliates.

How Do We Use Your Information? We may use your information in a variety of ways, including but not limited to providing the services you have requested, fulfilling your transactions, comply with relevant laws and our policies, and handling a claim. To learn more about how we may use your information, please visit <https://www.firstam.com/privacy-policy/>.

How Do We Share Your Information? We do not sell your personal information. We only share your information, including to subsidiaries, affiliates, and to unaffiliated third parties: (1) with your consent; (2) in a business transfer; (3) to service providers; and (4) for legal process and protection. To learn more about how we share your information, please visit <https://www.firstam.com/privacy-policy/>.

How Do We Store and Protect Your Information? The security of your information is important to us. That is why we take commercially reasonable steps to make sure your information is protected. We use our best efforts to maintain commercially reasonable technical, organizational, and physical safeguards, consistent with applicable law, to protect your information.

How Long Do We Keep Your Information? We keep your information for as long as necessary in accordance with the purpose for which it was collected, our business needs, and our legal and regulatory obligations.

Your Choices We provide you the ability to exercise certain controls and choices regarding our collection, use, storage, and sharing of your information. You can learn more about your choices by visiting <https://www.firstam.com/privacy-policy/>.

International Jurisdictions: Our Products are offered in the United States of America (US), and are subject to US federal, state, and local law. If you are accessing the Products from another country, please be advised that you may be transferring your information to us in the US, and you consent to that transfer and use of your information in accordance with this Privacy Notice. You also agree to abide by the applicable laws of applicable US federal, state, and local laws concerning your use of the Products, and your agreements with us.

We may change this Privacy Notice from time to time. Any and all changes to this Privacy Notice will be reflected on this page, and where appropriate provided in person or by another electronic method. **YOUR CONTINUED USE, ACCESS, OR INTERACTION WITH OUR PRODUCTS OR YOUR CONTINUED COMMUNICATIONS WITH US AFTER THIS NOTICE HAS BEEN PROVIDED TO YOU WILL REPRESENT THAT YOU HAVE READ AND UNDERSTOOD THIS PRIVACY NOTICE.**

Contact Us dataprivacy@firstam.com or toll free at 1-866-718-0097.



For California Residents

If you are a California resident, you may have certain rights under California law, including but not limited to the California Consumer Privacy Act of 2018 ("CCPA"). All phrases used in this section shall have the same meaning as those phrases are used under California law, including the CCPA.

Right to Know. You have a right to request that we disclose the following information to you: (1) the categories of **personal information** we have collected about or from you; (2) the categories of sources from which the **personal information** was collected; (3) the business or commercial purpose for such collection and/or disclosure; (4) the categories of third parties with whom we have shared your **personal information**; and (5) the specific pieces of your **personal information** we have collected. To submit a verified request for this information, go to our online privacy policy at www.firstam.com/privacy-policy to submit your request or call toll-free at 1-866-718-0097. You may also designate an authorized agent to submit a request on your behalf by going to our online privacy policy at www.firstam.com/privacy-policy to submit your request or by calling toll-free at 1-866-718-0097.

Right of Deletion. You also have a right to request that we delete the **personal information** we have collected from and about you. This right is subject to certain exceptions available under the CCPA and other applicable law. To submit a verified request for deletion, go to our online privacy policy at www.firstam.com/privacy-policy to submit your request or call toll-free at 1-866-718-0097. You may also designate an authorized agent to submit a request on your behalf by going to our online privacy policy at www.firstam.com/privacy-policy to submit your request or by calling toll-free at 1-866-718-0097.

Verification Process. For either a request to know or delete, we will verify your identity before responding to your request. To verify your identity, we will generally match the identifying information provided in your request with the information we have on file about you. Depending on the sensitivity of the information requested, we may also utilize more stringent verification methods to verify your identity, including but not limited to requesting additional information from you and/or requiring you to sign a declaration under penalty of perjury.

Notice of Sale. We do not sell California resident information, nor have we sold California resident information in the past 12 months. We have no actual knowledge of selling the information of minors under the age of 16.

Right of Non-Discrimination. You have a right to exercise your rights under California law, including under the CCPA, without suffering discrimination. Accordingly, First American will not discriminate against you in any way if you choose to exercise your rights under the CCPA.

Notice of Collection. To learn more about the categories of **personal information** we have collected about California residents over the last 12 months, please see "What Information Do We Collect About You" in www.firstam.com/privacy-policy. To learn about the sources from which we have collected that information, the business and commercial purpose for its collection, and the categories of third parties with whom we have shared that information, please see "How Do We Collect Your Information", "How Do We Use Your Information", and "How Do We Share Your Information" in <https://www.firstam.com/privacy-policy>.

Notice of Sale. We have not sold the **personal information** of California residents in the past 12 months.

Notice of Disclosure. To learn more about the categories of **personal information** we may have disclosed about California residents in the past 12 months, please see "How Do We Use Your Information" and "How Do We Share Your Information" in <https://www.firstam.com/privacy-policy>.