CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AUTHORIZING THE CITY MANAGER TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT DDA-_____ AND ALL OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND ALAMEDA POINT PARTNERS, LLC TO SELL AND LEASE APPROXIMATELY 68 ACRES OF REAL PROPERTY AT THE SITE A DEVELOPMENT AT ALAMEDA POINT;

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

WHEREAS, the City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of the former NAS Alameda consistent with the NAS Alameda Community Reuse Plan (the "**Reuse Plan**") adopted by the Alameda Reuse and Redevelopment Authority ("**ARRA**") in 1996 and subsequently amended in 1997, and by encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding the City's property tax base; and

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

WHEREAS, by operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, ceased to exist on February 1, 2012. Accordingly, the ARRA, by Resolution No 55, dated January 31, 2012, authorized the ARRA Executive Director to assign to the City of Alameda all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to the City accepting such Assignment; (ii) Department of Defense designation of the City as the local reuse authority for NAS Alameda; and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA; and

WHEREAS, pursuant to City of Alameda Resolution No. 14654, dated February 7, 2012, the City authorized the City Manager to accept the Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to the Department of Defense designating the City as the local reuse

authority for NAS Alameda and the Navy executing documents necessary to implement the City as successor to ARRA; and

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

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

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

WHEREAS, the amended Zoning Ordinance for Alameda Point required that a specific plan be adopted for the Waterfront Town Center zoning sub-district. In conformance with the Zoning Ordinance, the City Council adopted the Town Center specific plan on July 15, 2014 ("**Town Center Plan**"); and

WHEREAS, the City is the fee title owner of (or has the right to acquire under that certain No-Cost Economic Development Conveyance Agreement of Portions of the former NAS Alameda with the United States Navy) that certain portion of Alameda Point known as Site A which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway located between the Seaplane Lagoon and the West Atlantic entrance to Alameda Point at Main Street (the "**Property**"); and

WHEREAS, on or about May 1, 2014 the City issued a request for qualifications seeking a developer to develop the Property. Alameda Point Partners, LP a Delaware limited partnership ("**Developer**") has demonstrated to the City its experience with successfully developing properties similar to the Property, as demonstrated by its statement of qualifications submitted to the City on June 16, 2014. On December 1, 2014, pursuant to City Council authorization, the City and the Developer entered into the Exclusive Negotiations Agreement (the "**ENA**") for purposes of negotiating this Agreement; and

WHEREAS, the Site A project is a 68-acre mixed-use development at Alameda Point, which consists of approximately: 800 residential units (including 200 affordable

units), 600,000 square feet of commercial uses, 15 acres of parks and open spaces, on-site and off-site infrastructure, and a ferry terminal (the "**Project**"); and

WHEREAS, in furtherance of the Reuse Plan, the City desires to convey fee title to specified portions of the Property and lease interest in specified portions of the Property to Developer through execution of a Disposition and Development Agreement ("**DDA**") for the future development of the Project and for the creation of economic opportunity; and

WHEREAS, through the DDA, the City is imposing occupancy and affordability restrictions on portions of the Project in compliance with the City's Inclusionary Housing Ordinance, the Renewed Hope Settlement Agreement, and the City's Density Bonus Regulations; and

WHEREAS, the DDA and the Affordable Housing Implementation Plan which is attached to the DDA as Exhibit M will also constitute the Inclusionary Housing Agreement required under the City's Inclusionary Housing Ordinance and the Affordable Housing Implementation Plan required under the Density Bonus Regulations; and

WHEREAS, the DDA is being adopted in an effort to implement a local strategy to increase jobs, create economic opportunity, and generate tax revenue for all levels of government and as such the City has voluntarily complied with the procedures for noticing , hearing, documentation, and findings with reference to Government Code Section 52201; and

WHEREAS, pursuant to Government Code Section 52201, the City has prepared a report (the "**Report**") regarding the sale and lease of the Property, the notice and availability for inspection of which was given to the public in the manner prescribed by law.

WHEREAS, the City Council has conducted a duly noticed public hearing on the DDA in accordance with Government Code Section 52201(a)(1) for the purpose of receiving public input and comments on the DDA and the Report and the transactions described therein; and

WHEREAS, the City Council finds that the economic interests of the City's residents and the public health, safety and welfare will be best served by entering into the DDA; and

WHEREAS, continued use and development of the Property in accordance with the DDA is anticipated to provide substantial benefits and contribute to the provision of needed infrastructure for area growth; and

WHEREAS, by Resolution No. 14891 the City Council previously certified the Final Alameda Point Environmental Impact Report ("**FEIR**") (State Clearinghouse No. 201312043) under the California Environmental Quality Act ("**CEQA**"), California Public Resources Code Section 21000 et seq. and adopted written findings and a Mitigation

Monitoring and Reporting Program ("**MMRP**") on February 4, 2014, for the Alameda Point Project, including the Town Center Plan which contains the project site; and

WHEREAS, the City Council having certified the FEIR for the Alameda Point Project and the Town Center Plan containing the project site, staff has prepared an Environmental Checklist for Streamlined Review, which documents the application of the criteria for streamlining in Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 and concludes, based on substantial evidence, that no further review under CEQA is required; and

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda ("**City Council**") that after hearing all qualified and interested persons and receiving and considering all relevant evidence, finds and determines as follows:

Section 1.

An Environmental Impact Report for the proposed development of Alameda Point was certified by the City Council in February 2014 pursuant to CEQA. An environmental compliance checklist pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 was prepared and the City has determined that no further environmental review is necessary as part of the approval of the DDA, Lease Agreements and Trust Lease Agreement.

Section 2.

a. Pursuant to Government Code Section 52201(b)(1) the sale or lease of the Property as described in the DDA will assist in the creation of economic opportunity at Alameda Point because the transfer will effectuate the Reuse Plan by facilitating the Project which:

1. Includes facilities, improvements, programs and activities that support and promote job-generating uses within Site A and Alameda Point, in general, and help to replace the approximately 18,000 jobs lost by the departure of the United States Navy in 1997.

2. Develops and renovates 600,000 square feet of permanent commercial space, including specialty manufacturing, light industrial, retail, and hotel uses, resulting in approximately 1,472 permanent commercial jobs.

3. Implements a project labor agreement with the Building Trades of Alameda County that will cover approximately $400 million in construction work, generating approximately 2,570 full-time equivalent construction jobs over the construction life of the Project with preferences for Alameda residents.

4. Includes a $2.5 million commitment to rehabilitate and lease the existing 100,000-square-foot Building 117 for light industrial and manufacturing uses by the end of Phase 1 occupancy. This would be in addition to the development and renovation of 100,000 square feet of retail uses planned for Phase 1, 600,000 square feet

of commercial / retail amenities, a diversity of housing types for a wide range of income levels, and waterfront parks.

b. Pursuant to Government Code Section 52201(b), the City Council hereby finds and determines that the sale or lease of the Property and the resulting development of the Property pursuant to the DDA will assist in the creation of economic opportunity, as that term is defined in Government Code Section 52200.2. The finding and determination is based on the facts and analysis set forth in the Recitals, the DDA Summary Report, the public comment, which includes, but is not limited to:

1. Upon completion, the project to be developed pursuant to the DDA will generate an estimated 1,048 full-time equivalent permanent jobs without further investment of City funds under the terms of the DDA;

2. The DDA will result in an increase in the real property tax revenues to all property tax collecting taxing entities of significantly more than 15%. Currently tax entities are receiving negligible amounts of property tax revenue because the Property is under public ownership. Upon full implementation of the Project, and an estimated $6.9 million of annual property tax revenues will be divided by the tax collecting taxing entities based on their applicable tax rates; and

3. The project will result in the creation of approximately two hundred (200) residential units permanently restricted to occupancy by Very Low Income Households, Low Income Households and Moderate Income Households, which will meet the demonstrated affordable housing need of the City of Alameda, as defined and described in the City's General Plan housing element.

4. The project meets the goals set forth in the adopted sustainable communities strategy and is a project that specifically implements the goals of the adopted sustainable communities strategy.

Section 3.

a. The City Council hereby finds and determines that the conveyance of the Property to the Developer pursuant to the DDA will assist in the elimination of blight, will provide affordable housing. These findings and determinations are based on the facts and analysis set forth in the Recitals and supporting documentation, including:

1. Development of the Property pursuant to the DDA will eliminate blight by replacing underutilized and deteriorating buildings and infrastructure with a high quality, mixed-use "urbanistic" development which will include approximately 800 residential units (including 200 affordable units), 600,000 square feet of commercial uses, 15 acres of parks and open spaces, on-site and off-site infrastructure, and a ferry terminal.

2. Development of the Property will result in local economic opportunity, creation of affordable housing and serve as a catalyst for the

redevelopment of and revitalization of the former NAS Alameda pursuant to the Reuse Plan.

3. The development of the Project on the Property pursuant to the DDA will implement the goals of the Reuse Plan by: (i) developing facilities, improvements, programs and activities that support and promote job-generating uses within Site A and Alameda Point, in general, and helping to replace the approximately 18,000 jobs lost by the departure of the United States Navy in 1997; (ii) developing and renovating 600,000 square feet of permanent commercial space, including specialty manufacturing, light industrial, retail, and hotel uses, resulting in approximately 1,472 permanent commercial jobs; (iii) implementing a project labor agreement with the Building Trades of Alameda County that will cover approximately $400 million in construction work, generating approximately 2,570 full-time equivalent construction jobs over the construction life of the Project with preferences for Alameda residents, and graduates of the Alameda Unified School District; and (iv) including a $2.5 million commitment to rehabilitate and lease the existing 100,000-square-foot Building 117 for light industrial and manufacturing uses by the end of Phase 1 occupancy. This would be in addition to the development and renovation of 100,000 square feet of retail uses planned for Phase 1, 600,000 square feet of commercial / retail amenities, a diversity of housing types for a wide range of income levels, and waterfront parks.

Section 4.

The City Council hereby finds and determines that the execution and implementation of the DDA, the sale of the property to the Developer and the development of the project pursuant to the DDA constitutes a "common benefit" as defined in Government Code Section 37350.

Section 5.

The City has the authority to dispose of the Property in accordance with the terms of the DDA under Government Code Section 52201, authorizing disposition of property for economic opportunities; and pursuant to Government Code Section 37350, authorizing disposition of property for the common benefit of the community.

Section 6.

a. The Disposition and Development Agreement DDA-_____, attached as Exhibit A, is hereby adopted and the City Manager is authorized to sign it on or after the effective date of this Ordinance.

b. The Lease Agreements attached to the DDA as Exhibit L, that provide for the interim use of Buildings 117 and 118 (and certain surrounding land) for commercial space outside of the State tidelands areas before they are transferred to Developer are hereby adopted and the City Manager is authorized to sign them on or after the effective date of this Ordinance.

c. The Trust Lease Agreement attached to the DDA as Exhibit R, that governs the long-term use of land and existing and new buildings within the State tidelands area is hereby adopted and the City Manager is authorized to sign them on or after the effective date of this Ordinance.

Section 7.

If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Ordinance is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Ordinance.

Section 8.

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

* * * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda on the ___ day of June, 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of June, 2015.

_____
Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

_____
Janet C. Kern
City Attorney

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ALAMEDA, a California charter city

and

ALAMEDA POINT PARTNERS, LLC a Delaware limited liability company

Alameda Point - Site A

Dated as of _____, 2015

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DISPOSITION AND DEVELOPMENT AGREEMENT

FOR ALAMEDA POINT- SITE A

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

RECITALS

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

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

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

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

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

F. By operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, ceased to exist on February 1, 2012. Accordingly, the ARRA, by Resolution No 55, dated January 31, 2012, authorized the ARRA

Executive Director to assign to the City all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to the City accepting such Assignment; (ii) Department of Defense designation of the City as the local reuse authority for NAS Alameda; and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

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

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

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

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

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

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

City's agreement to confirm or impose the Tidelands Trust Restriction on certain lands to be acquired by the City pursuant to the EDC Agreement (the "**Exchange Agreement**").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1.
TERM OF THE AGREEMENT

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

portions of the Property owned by the City as of the Effective Date. The City and the Developer shall execute and record in the Official Records an amendment to the Memorandum within ten (10) days after acquiring fee title to any additional portion of the Property.

Section 1.2 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) _____, 2035 (the "**Expiration Date**") which is twenty (20) years from the Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; or (c) the date of issuance by the City of the final Estoppel Certificate of Completion for the last Phase or Sub-Phase of Vertical Improvements ("**Term**").

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

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

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

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

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

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

(z) To the extent that Developer fails to meet the subsequent Major Milestone Dates applicable to a subsequent Phase or Phases that are in effect immediately prior to exercise of the instant extension right (as such date or dates may be extended pursuant to Section 1.3(b) below), Developer shall pay the portion of the Extension Payment calculated on the number of acres of Property directly related to each such subsequent Major Milestone Date Developer fails to meet, which payment shall be made on the applicable Major Milestone Date Developer failed to meet.

By way of example only:

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

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

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

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

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

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

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

Payment, the City shall use such payment consistent with the uses for the Ferry Terminal Payment set forth in Section 2.2(b).

Notwithstanding anything set forth above, Developer shall not have the right to extend any Major Milestone Date by making an Extension Payment pursuant to this Section 1.3(a) if any of the following has occurred (i) the Developer has previously made five Extension Payments pursuant to this Section 1.3(a) in order to extend Major Milestone Dates by five (5) years or (ii) with respect to any particular Major Milestone Date, the Developer has previously made Extension Payments that have consecutively resulted in a three (3) year extension of that Major Milestone Date.

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

(1) Standard Force Majeure. Standard Force Majeure shall mean delay caused by any of the following: the Navy's delay in transferring a portion of the Property pursuant to the EDC Agreement, except for a delay in the transfer of the portion of the Property containing the Storm Drain Line (as defined in Section 8.15); the State's delay in transferring any portion of the property pursuant to the Exchange Agreement; strikes, lock- outs or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in section 66452.6(f) of the California Government Code; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

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

approve a substitute index that tracks the residential market with as close a geography to the Oakland-Hayward-Berkeley Metropolitan Statistical Area Division as possible.

(3) Except if an event of Economic Force Majeure has been declared, the Developer's inability or failure to timely satisfy the pre-disposition requirements of Section 3.1 (regarding submission and procurement of an approved Phase Update, Sub-Phase Update or Public Financing Plan) and Section 4.3(a)(6) (regarding submission of satisfactory evidence of availability of funds to construct the Project or any Phase of the Project) shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay under this Section 1.3(b) (unless such matter relates to the City's default hereunder).

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

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

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

agreement on adjustments to the Progress Milestone Dates in the Milestone Schedule. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party.

ARTICLE 2.
FINANCIAL TERMS

Section 2.1 Deposit.

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

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

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

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

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

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

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

(a) Sports Complex Payments.

(1) First Sports Complex Payment. Within three (3) Business Days after Developer's receipt of a fully executed original of this Agreement, the Developer shall deposit cash in the amount of Two Million Five Hundred Thousand Dollars **($2,500,000)** (the "**First Sports Complex Payment**") into an escrow ("**Escrow**") opened with the Pleasanton, California office of the First American Title Company ("**Escrow Holder**"). The First Sports Complex Payment shall be released to the City upon the Phase 1 Closing. The First Sports Complex Payment shall be credited toward the Land Payment.

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

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

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

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

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

The Developer further agrees to assist the City with procurement of funds in excess of the Ferry Terminal Payment, if necessary, to complete construction of the Ferry Terminal and appurtenant parking improvements as set forth in more detail in the Development Plan. The

Developer shall not be required to incur any third party costs or agree to additional Project requirements or conditions in satisfaction of the foregoing covenant.

Section 2.3 Contingent Profit Participation.

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

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

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

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

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

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

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

(7) "**Phase Completion**" for each Phase of the Project shall mean the first day of the month following expiration of the 90th day after the completion of the

construction of the Infrastructure Package (as determined pursuant to the applicable Public Improvement Agreement) for the applicable Phase.

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

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

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

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

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

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

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

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

For avoidance of doubt, the Contingent Profit Participation is calculated on a cumulative basis at each Phase Completion taking into account all prior Phases, based on

Unleveraged Cash Flow through such Phase Completion, and only that amount calculated as of the latest Phase Completion is actually due.

(c) Payment of the Contingent Profit Participation. If the Phase Accounting for Phase 1, 2 or 3 determines (through such Phase Completion) the Threshold Return has been achieved, the Developer shall deposit into a segregated account jointly controlled by the City and the Developer (the "**Contingent Profit Participation Account**") an amount equal to (taking into account any prior deposits) the Contingent Profit Participation on or before the day that is thirty (30) days after delivery of the applicable Phase Accounting, provided such deposit does not cause the Developer to receive less than the Required Multiple. Within thirty (30) days of receipt of the Phase Accounting, the City may determine to exercise its Audit rights pursuant to subsection 2.3(f) below, in which case any payment pursuant to this subsection 2.3(c) shall become due and payable on the later to occur of the date otherwise due and the date that is thirty (30) days after receipt of the City's audit by the Developer. The City may withdraw no more than fifty percent (50%) of the amount deposited in the Contingent Profit Participation Account prior to the Final Accounting (as defined below) after giving the Developer notice of such withdrawal and the purposes for such a withdrawal, which purposes will be limited to uses related to the maintenance, development and reuse of Alameda Point.

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

(e) Final Accounting. Within ninety (90) days after Final Completion, Developer shall prepare a reconciliation of the aggregate of any Contingent Profit Participation deposits to the Contingent Profit Participation Account and shall prepare a complete accounting and computations setting forth (i) in the aggregate the Development Costs incurred and the Gross Proceeds, each from the Project Commencement Date through the Final Completion (the "**Final Accounting**") and (ii) the determination whether the Developer has achieved the Threshold Return. If the Final Accounting shows that (i) the Project as a whole has achieved the Threshold Return, and (ii) the deposits to the Contingent Profit Participation Account are, in the aggregate, less than the total amount owed to the City, the amounts deposited in the Contingent Profit Participation Account plus any interest earned (less any prior withdrawals) shall be released to the City and Developer shall pay to the City the deficiency with the Final Accounting to the extent the payment to the City will not cause the Developer to receive less than the Required Multiple. If the Final Accounting shows that the deposits to the Contingent Profit Participation Account exceed the total amount owed to the City, the Contingent Profit Participation based on the Final Accounting, if any, plus a proportionate amount of any interest earned on the deposit (less any prior City withdrawals) shall be released to the City and the remaining amounts in the Contingent Profit Participation Account shall be returned to the Developer. If the aggregate amount of any prior City withdrawals exceeds the Contingent Profit Participation plus a proportionate amount of any interest earned on the deposit, the City shall refund the excess

amount to the Developer within thirty (30) days after the City's receipt of the Final Accounting. The City upon receipt of the Final Accounting may determine to exercise its Audit rights pursuant to subsection 2.3(f) below, in which case any payment pursuant to this subsection 2.3(e) shall become due and payable on the later to occur of the date otherwise due and the date that is thirty (30) days after receipt of the City's audit by the Developer.

(f) Audit Rights. The City shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Gross Proceeds, Development Costs and the Contingent Profit Participation. Such audit shall be conducted during normal business hours upon five (5) business days' notice at the principal place of business of the Developer and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. The City shall not be entitled to more than one audit for any particular calendar year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. The City shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Contingent Profit Participation, Developer shall immediately deposit in the Contingent Profit Participation Account if the audit is prior to the Final Accounting or pay directly to the City if the audit is after the Final Accounting, any such deficiency with interest at the greater of seven percent (7%) or the rate set forth in California Code of Civil Procedure Section 685.010, determined as of and accruing from the date that said payment should have been made. In addition, if Developer's Interim Statements shall have been determined to have understated the City's Contingent Profit Participation in any calendar year by more than five percent (5%), the Developer shall pay, in addition to the interest charges referenced above, all of the City's reasonable costs and expenses connected with the audit or review of Developer's accounts and records. All such payments shall be paid by the Developer within ten (10) days of receipt of written notice to Developer of such underpayment.

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

ARTICLE 3.
FINANCING PLAN

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

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

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

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

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

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

(5) A description, certified by a managing partner or member of the Developer setting forth the amount, nature and providers of any Completion Assurances to be

provided by the Developer to equity investors and/or lenders to obtain the equity and debt financing described in Sections 3.1(a)(2) above.

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

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

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

(b) Sub-Phase Update. The Developer shall submit to the City an update to the Project Financing Plan with respect to each Sub-Phase (each a "**Sub-Phase Update**") for the City's review and approval pursuant to Section 3.2 prior to the earlier to occur of (i) the proposed transfer of such Sub-Phase to an unaffiliated buyer or (ii) the issuance of the first building permits for Vertical Improvements for such Sub-Phase, that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Sub-Phase that was previously included in the Project Financing Plan:

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

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

(3) A description of any joint ventures, partnerships or conveyances that the Developer proposes to enter into in order to provide equity funds for acquiring, developing and constructing the Vertical Improvements for the applicable Sub-Phase of the Project, including copies of any then executed joint venture, partnership and/or conveyance agreements. Such description and agreements shall be made available for the City's review at a

meeting between the Developer, City staff and City's designated consultant. The City shall cause such description to be reviewed under Section 3.2 solely to determine the validity of the agreement and the proposed amount, terms and timing of the equity funding to be provided for the Sub-Phase of the Project under such agreements, and not for review or approval of any other business or financial terms. The Developer shall retain any agreements and the City shall retain the description and summaries of the agreements confirming the identity of the parties. Any documents retained by the City shall be subject to potential public disclosure pursuant to the California Public Records Act and/or the City's Sunshine Ordinance.

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

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

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

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

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

The Developer shall submit to the City within the time set forth in the Milestone Schedule a Public Financing Plan that includes a proposal as to how the burden of the annual Public Agency Contributions will be apportioned among the land uses in the Project; subject to the following: (i) the amount apportioned to any market rate residential units (townhomes, condominiums or single family homes) shall, when taking into account the annual Public Agency Contributions, ad-valorem tax levies, all other overlapping tax and assessment debt, excluding projected homeowner's association dues, shall not exceed one and nine-tenths percent (1.9%) of the reasonably expected sales prices of such for sale housing; (ii) there shall be no apportionment of the annual Public Agency Contributions to any publicly-owned property; (iii) there shall be no apportionment of the annual Public Agency Contribution on properties developed with Very Low Income and Low Income Homes (as those terms are defined in the Affordable Housing Implementation Plan) and (iv) the amount of the annual Public Agency Contributions apportioned to any other property in the Project shall be reasonable in relation to the expected value of such other property, as determined by the Developer's and City's financial advisors for such districts. The first levy of special taxes or assessments for the annual Public Agency Contributions on any specific parcel in the Project shall occur in the fiscal year in which a parcel is expected to receive a certificate of occupancy of Vertical Improvements; provided that the levies to fund the annual Public Agency Contributions described in clauses (iii) and (iv) of the second sentence of this Section 3.1(c) shall commence no later than the fiscal year following the City's acceptance for permanent maintenance of the flood control improvements for the applicable Phase described in the Infrastructure Package.

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

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

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

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

Section 3.2 Review of Financing Plan Updates By City. Upon receipt by the City of the proposed Phase Update, Sub-Phase Update, or Public Financing Plan the City Manager shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date the City Manager receives the proposed plan or update. If the proposed plan or update is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted plan or update. The Developer shall thereafter submit a revised plan or update within thirty (30) days of the notification of disapproval. The City Manager shall either approve or disapprove in writing the submitted revised Phase Update, Sub-Phase Update, or Public Financing Plan within thirty (30) days of the date such revised plan or update is received by the City. The City Manager shall approve the initial or revised plan or update if (i) it contains the elements described in the definition of the Phase Update, Sub-Phase Update, or Public Financing Plan as applicable, contained in Section 3.1 above, (ii) demonstrates sufficient funding to pay the total development costs of the Project, Phase or Sub-Phase, as applicable and all other applicable obligations of the Developer under this Agreement; and (iii) the Public Financing Plan provides annual funding for transportation demand services and programs, levee maintenance, municipal services and community benefits in an amount not less than the greater of (x) the Public Agency Contributions set forth in Section 3.1(c) and (y) the amounts determined to be necessary pursuant to the rate and method prepared for the formation of an assessment or special tax district, if available at the time of the submission of the Public Financing Plan.

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

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

ARTICLE 4.
DISPOSITION OF PROPERTY AND ESCROW

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

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

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

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

Section 4.3 Conditions Precedent to Closing.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Conditions Precedent to the Developer's Obligation. The obligation of the Developer to consummate the transactions hereunder shall be subject to the fulfillment on or

before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the Developer in its sole discretion:

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

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

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

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

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

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

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

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

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

(10) there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable

Phase or the development of the applicable Phase pursuant to the Project Approvals and the Subsequent Approvals, or that adversely affects the City's ability to perform its obligations under this Agreement;

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

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

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

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

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

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

Section 4.4 Closing Deliverables.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) applicable building and zoning laws and regulations;

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

(3) the provisions of the applicable Quitclaim Deed;

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

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

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

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

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

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

(10) any other matters approved by the Developer.

Section 4.6 Condition of the Property.

(a) Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), the City has provided the Developer with copies of the documents in its possession related to hazardous materials affecting the Property (the "**Hazardous Materials Documents**") as set forth in Exhibit U. To the best of the City's knowledge, the Hazardous Materials Documents depict the condition of the Property with respect to the matters covered in such documents as of the date of such documents and as of the Effective Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.

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

(c) "As is" Purchase. Except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that the City is selling and the Developer is buying the Property on an "**as is with all faults**" basis, and that the Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas,

electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

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

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

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

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

(4) as of the Closing of each Phase and with respect to that Phase only, the Developer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency.

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

(e) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.6 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.6 are an integral part of this

Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer without the disclaimers and other agreements set forth in this Section 4.6. Nothing set forth in this Section 4.6 is intended to affect Developer's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

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

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

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

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the City Released Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date; (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in this Agreement; or (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the applicable Phase, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City (collectively, the "**Excluded Developer Claims**").

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

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

Developer's Initials: _____

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

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Developer Released Parties in any way from, or be deemed a waiver of any Claims by the City (or anyone claiming by through or under the City, including, but not limited to, any successor owner of the applicable Phase) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing Date; (iv) a breach of the

Developer's obligations under this Agreement or any other agreement between the City and the Developer; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by any of the Developer Released Parties at, on, under or otherwise affecting the applicable Phase or any other portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Developer.

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

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

City's Initials: _____

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

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

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

Section 4.7 Costs of Escrow and Closing.

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

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

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

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

(b) Transaction and Closing Costs. The Developer shall pay the premium for an ALTA Owner's Policy (Form 1970) insuring the Developer's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer (such as the lien of a Security Financing Interest) (collectively the "**Title Policies**") (including title endorsements) in excess thereof. All other costs of escrow (including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer. These costs borne by the Developer shall be in addition to the Land Payment. The Parties agree that the transfer taxes payable under this Section 4.7(b) with respect to the Close of Escrow for each Phase shall be calculated on the applicable Phase Land Payment Allocation, provided, however, that if the County of Alameda requires a different allocation of transfer tax Developer shall be responsible for making such payment.

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

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

(A) the Quitclaim Deed;

(B) the Public Improvement Agreement;

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

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

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

(2) Issue the Title Policy to Buyer;

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

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

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

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

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

Section 4.8 Real Estate Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission or third-party finder's fees in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The Parties' respective obligations to indemnify defend and hold harmless under

this Section 4.8 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

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

ARTICLE 5.
INFRASTRUCTURE CONSTRUCTION

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

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

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

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

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

(1) The Parties shall negotiate in good faith and use commercially reasonable efforts to agree upon a conceptual design, cost estimate, and delivery schedule for the Ferry Terminal (with a goal of completing the same on or before December 31, 2018) before the date set forth in the Milestone Schedule (the "**Ferry Terminal Plan**"). The Ferry Terminal Plan shall be the Parties' reasonable determination of a conceptual design without requiring detailed architectural drawings and the Parties' best estimate of the schedule and costs based on information available and is not dependent upon receipt of approval for the Ferry Terminal Plan by any third party or receipt of commitments for funding for operations or equipment for ferry

service. Upon approval of the Ferry Terminal Plan, the Milestone Schedule shall be updated to include the schedule for the Ferry Terminal.

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

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

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

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

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

(7) If for any reason the Ferry Terminal is not constructed and Developer remains obligated to fund the Ferry Terminal Payment under the terms of the Ferry Terminal Payment Note, the City and the Developer shall meet and confer on the use of the Ferry Terminal Payment to fund enhanced transit services benefiting the Project, provided, however, if

the City and the Developer cannot agree on such uses, the City shall use the Ferry Terminal Payment to fund enhanced transit services benefiting the Project as determined by the City.

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

Section 5.4 Subsequent Approvals.

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

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

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

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

Section 5.5 Construction Contract.

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

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

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

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

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

(c) If the Construction Contract is not approved by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Article 17. Only upon City

Manager approval of a Phase Construction Contract shall the pre-disposition condition of this Section 5.5 be deemed met.

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

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

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

Section 5.8 Local Workforce Development.

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

(1) Demonstrates to the City's reasonable satisfaction that Local Residents have actually worked twenty five percent (25%) of the construction job hours on the Project and that Alameda Point Collaborative Program referrals have actually worked fifteen percent (15%) of all apprentice construction job hours worked on the Project (If the Local Resident is also a High School graduate of the Alameda Unified School District, hours worked by such Local Resident will count double); or

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

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

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

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

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

Section 5.10 Entry by the City. The Developer shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could

reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

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

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

ARTICLE 6.
VERTICAL CONSTRUCTION

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

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

Section 6.3 Construction Permits and Approvals.

(a) Additional Approvals- Vertical. As a condition precedent to the commencement of construction of the Vertical Improvements for any Sub-Phase of the Property the Developer shall apply for, diligently pursue the procurement of and have obtained any

permits and approvals from the City or other appropriate governmental entities or public utilities necessary for commencement of construction of the applicable Sub-Phase of the Vertical Improvements consistent with this Agreement, including any permits and approvals necessary for the construction of the in-tract Infrastructure included in the Infrastructure Phase, including any improvement plans and Public Improvement Agreement required by the City for such in-tract Infrastructure (collectively, the "**Additional Approvals-Vertical**"). The Developer shall apply for the first Additional Approvals-Vertical for the first Sub-Phase of the Vertical Improvements in each Phase no later than the date set forth in the Milestone Schedule and shall obtain the last Additional Approvals-Vertical necessary for completion of the Vertical Improvements for each Phase no later than the date set forth in the Milestone Schedule. The Additional Approvals-Vertical shall include Design Review for the applicable Sub-Phase Vertical Improvements, the recordation of any Final Map that includes the applicable Sub-Phase and foundation, parking or building permits for the Sub-Phase. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals.

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

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

Section 6.4 Construction Contract.

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

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

(2) Meeting the requirements of Section 5.8; and

(3) Otherwise be in a form consistent with the terms of this Agreement with respect to construction of the applicable Vertical Improvements and shall deliver written

verification that the executed Vertical Improvement Construction Contract complies with this Agreement.

(b) The City Manager shall either approve or disapprove the submitted Vertical Improvement Construction Contract within fifteen (15) Business Days from the date the City receives the Vertical Improvement Construction Contract. If the proposed Vertical Improvement Construction Contract is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Construction Contract. The Developer shall thereafter submit a revised Vertical Improvement Construction Contract within ten (10) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Construction Contract within ten (10) days of the date such revised Vertical Improvement Construction Contract is received by the City. The City Manager shall approve an initial or revised Vertical Improvement Construction Contract if it meets the standards set forth in subsection (a) of this Section 6.4 and is with a licensed and experienced General Contractor.

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

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

Section 6.5 Construction Assurances To City.

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

(b) The City Manager shall either approve or disapprove the submitted proposed Vertical Improvement Completion Assurances, if any, within fifteen (15) Business

Days from the date the City receives the Vertical Improvement Completion Assurances. The City shall not withhold its approval of a completion guaranty issued by affiliates of the Developer that have, in the aggregate, a demonstrable net worth equal to twenty five percent (25%) of the hard construction costs of the applicable Vertical Improvements (as demonstrated by the applicable Sub-Phase Update to the Financing Plan). If the proposed Vertical Improvement Completion Assurances are not approved by the City Manager, then the City Manager shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Completion Assurances. The Developer shall thereafter submit revised proposed Vertical Improvement Completion Assurances within fifteen (15) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Completion Assurances within fifteen (15) Business Days of the date such revised Vertical Improvement Completion Assurance are received by the City. The City Manager shall approve the initial or revised Vertical Improvement Completion Assurances if they meet the standards set forth in this Section 6.5.

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

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

ARTICLE 7.
AFFORDABLE HOUSING REQUIREMENTS

Section 7.1 Affordable Housing Obligations.

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

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

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

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

ARTICLE 8.
ADDITIONAL DEVELOPER OBLIGATIONS

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

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

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

Section 8.2 Project CC&R's. Prior to the Phase 1 Closing, the Developer shall obtain the City's approval of the Covenants, Conditions & Restrictions for the Project (the "**CC&R's**") which (a) require each owner of any portion of the Property to maintain its applicable private improvements adjacent to and visible from the public right of way (building facades, signs, sound walls, fences, parking lots drive aisles and open space areas) as well as all common facilities including but not limited to streets and utilities not accepted for maintenance by the

City in a first-class condition consistent with other mixed-use residential and commercial centers in the Oakland metropolitan area; (b) require that each owner of any portion of the Property comply with the TDM Compliance Strategy; and (c) provide the City with the right to (i) enforce such provisions pursuant to the CC&R's and (ii) after applicable notice and right to cure, the right to perform such maintenance and receive a reimbursement of third party expenses. Such maintenance shall include, but not be limited to cleaning, painting, removal of graffiti, repair of vandalism, grounds care, prevention of the accumulation of abandoned property, inoperable vehicles, and waste material, and prevention of unenclosed storage areas.

Section 8.3 Prevailing Wages and Related Requirements. This Agreement has been prepared with the intention that the construction of the Infrastructure Package shall be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code.

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

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

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

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

Section 8.6 Damage or Destruction. The Developer shall promptly notify the City of any Casualty with respect to the Property and/or the Project occurring during the Term, and shall diligently seek to procure all insurance proceeds that may be available to compensate for such

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

Section 8.7 Mitigation Monitoring and Reporting Program. The Developer shall comply with the MMR Program adopted by the City, attached hereto as Exhibit D, as that the MMR Program may be amended from time to time, and expressly incorporated with this Agreement by this reference.

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

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

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

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

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

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

Section 8.14 TDM Compliance Strategy. The Developer, its assignees and successor shall at all times comply with the TDM Compliance Strategy approved by the City, attached

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

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

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

If the Developer elects not to remove the Storm Drain Line at its cost and the Navy has not conveyed the property containing the Storm Drain Line to the City by the Phase 1 Outside Phase Closing Date, the Developer may (i) extend the Phase 1 Outside Phase Closing Date by making

an Extension Payment pursuant to Section 1.3(a) above or (ii) accept conveyance of all of Phase 1 except for Block 11 on or before the Phase 1 Outside Phase Closing Date.

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

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

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

ARTICLE 9.
PHASE 0 ACTIVITIES PLAN AND INTERIM USES

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

Section 9.2 Phase 0 Activities Plan.

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

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

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

(3) the calendar for all Phase 0 Activity events for the first year, which events shall be consistent with the description of Phase 0 Activities attached as Exhibit N and

which shows a minimum of one signature event per year and at least one event per month, as well as ongoing activities, such as a beach volleyball court;

(4) a site plan for all events;

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

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

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

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

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

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

ARTICLE 10.
LEASING OF PROPERTY

Section 10.1 Interim Leases.

(a) In addition to the license rights granted under Article 9 related to Phase 0 Activities, the City hereby agrees that it shall permit the Developer to Lease Buildings 117 and 118 as shown on the Map of the Property attached as Exhibit B prior to conveyance of the Property or any applicable portion, pursuant to the terms of those certain "**Lease Agreements**" in substantially the form attached hereto as Exhibit L-1 and L-2 incorporated herein by this

reference. The Lease Agreements allow the Developer to sublet the portions of the Property covered by the Lease Agreements to third parties in accordance with terms set forth in this Agreement and the applicable lease. The Developer shall provide the City with copies of fully executed subleases within ten (10) days of execution.

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

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

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

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

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

ARTICLE 11.
CITY OBLIGATIONS

Section 11.1 Entitlements. The City shall, upon payment of all applicable fees by the Developer required by the Development Agreement, process the applications for the Supplemental Approvals, Additional Approvals-Horizontal and Additional Approvals-Vertical

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

Section 11.2 Permits and Approvals.

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

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

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

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

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

At no third party cost to the City, the City shall assist the Developer with enforcing its rights and the Navy's obligations under CERCLA, the National Defense Authorization Act, the Defense Base Closure and Realignment Act and the applicable quitclaim deed conveying the property from the Navy to the City and in any negotiations with the Navy regarding the performance of the Navy's continuing Hazardous Materials obligations, which assistance shall include attendance at meetings and providing the Developer with existing information related to the City's prior negotiations with the Navy regarding the Navy's pre-transfer remediation of Hazardous Materials.

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

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

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

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

specifies the conditions under which proceeds of assessments, special taxes, or bonds repayable from assessments or special taxes, will be used to acquire the related infrastructure improvements from the Developer. The terms of the acquisition agreement shall be fully satisfactory to the Director of Public Works of the City, and shall be consistent, in general, with the terms of the acquisition agreement entered into by the City with respect to its Community Facilities District No. 13-1.

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

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

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

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

Section 11.7 Estoppel Certificate of Completion. Within ninety (90) days after receipt by the Developer from the City of certificates of occupancy evidencing that: (a) building occupancy has been granted for all Residential Units for a particular building and/or (b) final building shell approval has been granted for all portions of a building containing any portion of the Commercial Element (prior to commencement of normal interior tenant improvements pursuant to separate plans), and (c) acceptance of the applicable Infrastructure Phase pursuant to

the applicable Public Improvement Agreement, including, if applicable, any Major Alameda Point Amenities constructed by the Developer, the City shall issue a certificate of completion for such building or improvements with respect to the Developer's construction obligations pursuant to Article 5 and 6 of this Agreement with respect that particular Phase (an "**Estoppel Certificate of Completion**") in a form recordable in the Official Records of the County.

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

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

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

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

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

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or

investigation that affects the Property or the Property, or that adversely affects the City's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. Except as (i) disclosed in the Preliminary Title Report and (ii) set forth in EDC Agreement, the LIFOC, Exchange Agreement, Renewed Settlement Hope Settlement Agreement, the City has not made any commitment, agreement or representation to any government authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on the Developer or would interfere with the Developer's ability to develop and improve the Property into the Project.

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

ARTICLE 12.
ASSIGNMENT AND TRANSFERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Any Transfer to an Affiliated Purchaser.

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

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

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

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

Section 12.6 Effectuation of Permitted or Otherwise Approved Transfers. Not less than thirty (30) days prior to the intended effectiveness of a Transfer described in this Article 12, the

Developer shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to enable the City to determine that the intended Transfer meets the standards for a Transfer under this Article 12.

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

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

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

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

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

ARTICLE 13.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 13.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 13.1. Any security

instrument and related interest approved pursuant to Section 13.1 (c) is referred to as a "**Security Financing Interest**." Until the Developer is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the purpose of securing any approved Security Financing Interest financing the construction of the Horizontal or Vertical Improvements on the applicable portion of the Property.

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

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

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

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

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

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

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

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

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

Section 13.9 Miscellaneous Provisions.

(a) Limitation on Liability. In the event that any Permitted Mortgagee assumes the obligations of the Developer under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted

Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

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

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

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

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

(c) Failure of Permitted Mortgagee to Complete Improvements. Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the Completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 13.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 13.9(b), the City may, at its option, upon thirty (30) calendar days' written notice to the

Developer and such Permitted Mortgagee either: (a) purchase the Permitted Mortgage by payment to the Permitted Mortgagee of all amounts thereunder, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Permitted Mortgage; or (b) exercise its rights under Section 17.5 or 17.6 with respect to the applicable portions of the Property.

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

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

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

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

(h) Bankruptcy Affecting the Developer. The Developer and City hereby agree that this Agreement (including the rights under Section 17.5 and 17.6 contained herein), each Quitclaim Deed and the Trust Lease shall contain and consist of covenants running with the land and that neither this Agreement, any Quitclaim Deed nor the Trust Lease shall be subject to rejection in bankruptcy and Developer hereby waives its rights to reject this Agreement, any Quitclaim Deed and/or the Trust Lease in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement, any Quitclaim Deed or the Trust Lease in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement, Quitclaim Deed or Trust Lease, as applicable, and the portions of the Property corresponding thereto to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, neither this Agreement nor the Trust Lease shall terminate and each Permitted Mortgagee shall, become the Developer hereunder as if

the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within fifteen (15) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

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

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

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

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

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

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

(A) Response to Request for New Agreement. The City shall have provided written notice to such Permitted Mortgagee requesting the New Agreement within

thirty (30) calendar days after the date of termination of this Agreement, with a copy to each other Permitted Mortgagee; and

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

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

ARTICLE 14.
HAZARDOUS MATERIALS

Section 14.1 Developer's Obligations Regarding Hazardous Materials.

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

(b) New Releases. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to releases of Hazardous Material at the Phase caused by the Developer Parties, which releases first occur after the applicable Phase Closing Date, excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date ("**New Releases**"): as between the Developer and the City, the Developer shall keep and maintain any portion of the Transfer Property and Lease Property conveyed or leased to the Developer or subject to a License Agreement in compliance with, and shall not cause or permit the Transfer Property and Lease Property to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Transfer Property and Lease

Property including, but not limited to, soil and ground water conditions. The Developer shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Property conveyed, leased or licensed to the Developer, or transport to or from such Property or the development any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of mixed-use commercial and residential developments or in accordance with law or this Agreement. The Developer shall be responsible for complying with the requirements of the Site Management Plan(s) related to the Property after conveyance of the Property or any portion thereof to the Developer.

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

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

ARTICLE 15.
INDEMNIFICATION

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

administrative proceeding, arbitration, or enforcement action. Notwithstanding the foregoing to the contrary, provisions of this Section 15.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 15.2 below.

Section 15.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens damage, cost, expense or liability the City may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the City in connection with clauses (1) , including but not limited to reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 15.2 shall not extend to any claim arising solely from the City's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 15.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 12 in the manner required by Article 12, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer.

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

ARTICLE 16.
INSURANCE REQUIREMENTS

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

Section 16.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars ($2,000,000) with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form

property damage and personal injury, and Five Million Dollars ($5,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Effective Date and covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 15.1. Such insurance in excess of One Million Dollars ($1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

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

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

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

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

Section 16.7 Pollution Liability Insurance Policy.

(a) Within the time set forth in the Milestone Schedule and as a condition precedent to any conveyance hereunder, the Developer shall procure to the reasonable satisfaction of Developer and the City, at its cost, a real estate environmental liability insurance policy (a "**Pollution Liability Insurance Policy**") covering pre-existing conditions with a ten (10) year term that names the Developer as the named insured with the right to control the policy, and the City as an additional insured. The Pollution Liability Insurance Policy shall meet the requirements of Section 16.9(e), shall include a Twenty Five Million ($25,000,000) policy

per claim and in the aggregate coverage limit and a maximum deductible of One Hundred Thousand Dollars ($100,000) or other amount reasonably agreed by the City, and shall provide the following types of coverage:

(1) Pollution Legal Liability;

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

(3) Non-Owned Disposal Site;

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

(5) Legal Defense Expense

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 17.
DEFAULT AND REMEDIES

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

Section 17.2 No Fault of Parties.

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

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

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

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

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

Section 17.3 Fault of City.

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

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

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

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

(4) A City default under the Development Agreement.

(b) Notice and Cure; Remedies. Upon the happening of an event described in Section 17.3(a), the Developer shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such

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

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

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

Section 17.4 Fault of Developer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notice and Cure; Remedies. Upon the happening of any event described in Section 17.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (8) or (9) of Section 17.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer has

caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies:

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

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

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

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

(3) After Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project, the City shall be entitled to: (A) prosecute an

action for damages against the Developer; (B) seek specific performance of this Agreement against the Developer; and/or (C) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

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

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

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

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

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

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

thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

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

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

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

Section 17.6 Option to Repurchase, Reenter and Repossess.

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

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

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

the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

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

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

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

ARTICLE 18.
GENERAL PROVISIONS

Section 18.1 Notices, Demands and Communications.

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

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

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

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

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

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

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

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

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

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

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

Section 18.2 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to the Developer, or any successor in interest, in the event of a City Event of Default.

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

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

Section 18.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

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

Section 18.8 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer by the Developer except as permitted in Article 12. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

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

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

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

Section 18.12 Approvals.

(a) City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, without further approval by the City Council, and any such action shall be in writing, provided, however, any such actions that would extend a Major Milestone Date (other than as allowed in Section 1.3 and 8.15) must be approved by the City Council.

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

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

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

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

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

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

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

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

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

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

Section 18.16 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

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

ARTICLE 19.
DEFINITIONS AND EXHIBITS

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

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

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

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

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

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

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

(g) "**Approved Construction Documents**" means the construction plans and specifications submitted by the Developer and approved by the City in connection with the City's grant of the necessary grading, demolition, building, and related permits for the Project, together with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

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

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

(j) "**Casualty**" means any damage or destruction to the Project in excess of One Hundred Thousand Dollars ($100,000), which amount shall be adjusted in accordance with increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "CPI-U"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "CPI-W"), published in the Monthly Labor Review by the Bureau of Labor

Statistics of the United States Department of Labor, shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority shall be used for making the computation.

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

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

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

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

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

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

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

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

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

(t) "**Completion Assurances**" means any payment and performance bonds, labor and materials bonds, or completion guarantees from the Developer or other persons or entities, irrevocable letters of credit, or other legal instruments providing assurances and remedies for the completion of any Infrastructure Phase or Sub-Phase of Vertical Improvements by the Developer.

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

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

Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(qq) "**Hazardous Material Delay**" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization, and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Property (based on information included in the Hazardous Materials Documents), (B) previously identified at the Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials Documents), except to the extent the Hazardous Materials are associated with an open Petroleum Program site (which are addressed in clause (2) below), or (C) encountered in the construction of any portion of the Infrastructure Package located outside of the Property boundaries, except to the extent the Hazardous Materials are associated with OU-2C's Industrial Waste Line or Storm Drain Lines A, B, or C; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERLCA Hazardous Materials located at the Property to the extent such investigation or remedial action is necessary to permit the land uses identified in the Development Plan; or (3) perform investigation or remedial action for Hazardous Materials that are the result of a Regulatory Reopener.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) a grading permit and demolition permit;

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

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

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

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

(yyy) "**Tidelands Trust Restriction**" means the restrictions imposed on property subject to the public trust that limit the use of such properties to uses consistent with Senate Bill 2049, Chapter 734 of the Statutes of 2000 amending Section 1 of Chapter 594 of the Statutes of 1917

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

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

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

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

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

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

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

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

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D	Mitigation Monitoring and Reporting Program and Environmental Checklist
Exhibit E	Form of DDA Memorandum
Exhibit F	Milestone Schedule
Exhibit G	Infrastructure Package
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	TDM Compliance Strategy
Exhibit K	Existing Leases
Exhibit L	Lease Agreements
Exhibit M	Affordable Housing Implementation Plan
Exhibit N	Description of Phase 0 Activities
Exhibit O	General Assignment
Exhibit P	Bill of Sale
Exhibit Q	Public Improvement Agreement
Exhibit R	Trust Lease
Exhibit S	Intentionally Omitted
Exhibit T	Ferry Terminal Payment Note
Exhibit U	City Disclosure Documents
Exhibit V-1	Notice of City Release of Environmental Claims
Exhibit V-2	Notice of Developer Release of Environmental Claims
Exhibit W	Appraisal Process
Exhibit X	List of Navy Quitclaim Deeds and CRUPs

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

CITY OF ALAMEDA

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott,
Chief Operating Officer, Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

Signatures continue on next page

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

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

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

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

By: _____

Name: BRUCE DORFMAN

Title: VICE PRESIDENT

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