

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

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

This document is exempt from payment of
a recording fee pursuant to California
Government Code Section 27383.

Recorder's Stamp

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
(ENCINAL TERMINALS PROJECT)**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (ENCINAL TERMINALS PROJECT) (this "**First Amendment**") dated as of this ____ day of January, 2025 is entered into by and among the CITY OF ALAMEDA, a municipal corporation ("**City**"), and North Waterfront Cove LLC, a Delaware limited liability company ("**Developer**") regarding the Encinal Terminals project.

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. The City and Developer entered into that certain Development Agreement (Encinal Terminals Project) dated as of March 3, 2022 and recorded on May 9, 2022 as Document No. 2022090828 in the Official Records of the County of Alameda (the "**Development Agreement**").

B. The Development Agreement requires certain milestones, including the adoption of an assessment district or equivalent funding source within 24 months of the effective date (March 2022). On March 7, 2024, the City Manager approved an extension of one (1) year for this interim milestone, extending the deadline for the adopting of an assessment district or equivalent funding source to March 2, 2025.

C. On December 9, 2024, the City Planning Board adopted Resolution No. PB-24-15, recommending a three-year extension of several internal development milestones in the Development Agreement. The basis for such extensions included Developer's good-faith completion of the unique and complicated state tidelands exchange process in furtherance of the proposed development, and economic conditions.

D. On January __, 2025, the City Council adopted Ordinance No. _____, accepting the recommendation of the Planning Board and authorizing this First Amendment.

E. The City and Developer wish to enter into this First Amendment to amend the Development Agreement to implement the three-year extension for those certain milestones.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein.
2. **Defined Terms.** The capitalized terms used herein shall have the meaning set forth in the Development Agreement, unless otherwise specifically provided herein.
3. Subsection b. of Section 3 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

Termination. This Development Agreement shall terminate and be of no further force and effect (subject to Section 3.e) on the earliest of (1) the expiration of the Term; (2) the completion of the Project and all of Developer’s obligations in connection therewith; (3) an action to terminate by the City Council pursuant to Annual Review (see Section 10); (4) termination or cancellation pursuant to AMC Sections 30-94.3, 30-95.2; (5) failure to execute a State Exchange Agreement within 24 months of the Effective Date that provides for a Public Trust Exchange in substantial conformance with the property boundaries described in Exhibit C; or (6) failure to adopt an assessment district or equivalent funding source acceptable to both parties on or before March 3, 2028 for the maintenance of the Public Trust Lands in perpetuity.”

4. Subsection b. of Section 6 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

Permits and Approvals. Developer shall complete all required local, regional, state and federal permitting requirements necessary to begin site clearing and grading (i.e., demolition of existing improvements, mass grading, and construction of temporary Bay Trail) and begin site preparation and construction activities (“**Site Preparatory Work**”) consistent with the Tidelands Exchange Master Plan phasing schedule on or before March 3, 2028.”

5. The following is hereby added as Paragraph i. through Paragraph iv., inclusive, of subsection c. of Section 6 of the Development Agreement:

“i. No later than February 15, 2026, or prior to the closing of an approved transaction under Section 12 of the Development Agreement, whichever is earlier, Developer will enter into a reimbursement agreement with the City that requires

Developer to deposit \$75,000 for reimbursement to the City for staff time and consultant services in furtherance of efforts to form an assessment district or equivalent funding source;

ii. Developer shall request and participate in an informational kickoff meeting with City staff on the formation of the assessment district or equivalent funding source, no later than August 31, 2026;

iii. Developer shall complete and submit to the City a draft Rate and Method of apportionment (RMA) by no later than December 31, 2026;

iv. The first public hearing for the formation of the assessment district or equivalent funding source shall occur no later than June 3, 2027.”

6. The following is hereby added as subsection 1. of Section 6 of the Development Agreement:

“1. **Documentation of Progress and Economic Viability.** No later than September 3, 2025, and every six months thereafter until economic viability has been established, Developer shall submit a biannual report to the City documenting project progress, including: i) all marketing efforts; ii) any other pertinent disposition efforts; and iii) a demonstration of whether the project is commercially viable using the following market condition metrics and 2022 benchmarks described in Planning Board Resolution No. PB-24-15, which benchmarks are hereby incorporated: (t) apartment rents; (u) townhome sales prices; (v) condominium sales prices; (w) absorption rates; (x) capitalization rates; (y) mortgage rates; and (z) constructions costs. This biannual report will be evaluated by an economic consultant of the City’s choosing, with Developer responsible for and bearing the cost of said evaluation.

7. **Effect of this First Amendment.** Except as expressly modified by this First Amendment, the Development Agreement shall continue in full force and effect according to its terms, and Developer and City hereby ratify and affirm all their respective rights and obligations under the Development Agreement. In the event of any conflict between this First Amendment and the Development Agreement, the provisions of this First Amendment shall govern.

8. **Binding Agreement.** This First Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this First Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with this First Amendment or under law.

9. **Recordation.** The Developer shall record a copy of this First Amendment within ten (10) days following execution by the parties.

10. **Counterparts**. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
11. **California Law**. This First Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
12. **Invalidity**. Any provision of this First Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this First Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.
13. **Headings**. The headings used in this First Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this First Amendment.

[Signature page to follow]

IN WITNESS WHEREOF, this First Amendment has been entered into by and between City and Developer as of the date and year first above written.

DEVELOPER
NORTH WATERFRONT COVE LLC

CITY OF ALAMEDA

NORTH WATERFRONT COVE LLC,
a Delaware limited liability company

By: _____
Jennifer Ott
City Manager

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

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

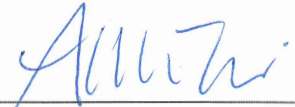
By: 

JAY TIMOTHY LEWIS
Its: President

ATTEST:


By: _____
Lara Weisiger
City Clerk

**RECOMMENDED FOR
APPROVAL:**

By: 

Allen Tai
Planning, Building, and
Transportation Director

APPROVED AS TO FORM:

By: 

Daniel J. Turner
Deputy City Attorney

ACKNOWLEDGMENT

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

State of California
County of Placer)

On 18 December 2024 before me, Tracy Haines, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Tracy Haines (Seal)

