LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and ALAMEDA POINT PARTNERS, LLC, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Lease**". Capitalized terms used in this Lease without further definition have the meaning given them in the Disposition and Development Agreement ("**DDA**") between the Landlord and Tenant dated _____, 2015, unless otherwise defined herein. The Landlord and Tenant are sometimes collectively referred to in this Lease as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Lease with reference to the following facts:

1. RECITALS.

A. Landlord is the fee title owner of or has the right to acquire that certain portion of Alameda Point known as "**Site A**" which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway.

B. Certain former tide and submerged lands, including some of the lands within the Property boundaries are or will be held by Landlord subject to a public trust for commerce, navigation and fisheries, once they are conveyed out of federal ownership (the "**Public Trust**"). Those lands within Site A that are subject to the Public Trust are referred to herein as the "**Tidelands Parcel**". The Premises is outside the Tidelands Parcel.

C. Pursuant to the terms and conditions contained and as defined in the DDA, Landlord will transfer fee title to Site A (except for the Tideland Parcel but including the Premises) to Tenant in scheduled phases for development as mutually agreed to by the Parties and incorporated into the DDA. Pursuant to the terms of the DDA and as provided in this Lease, prior to the acquisition of the Premises by Tenant (as defined in the DDA), Tenant has the right to (a) at Tenant's election, lease the Premises from Landlord pursuant to this Lease, by submitting an Election Notice and complying with the terms and conditions set forth in Section 3.2 and (b) assign the Lease to a Permitted Assignee (as defined below). In addition, pursuant to the terms of the DDA and as provided in this Lease, such Permitted Assignee has the right to enter into subleases (the "**Subleases**") to sublease the Premises to third-party subtenants ("**Subtenants**").

D. Landlord and Tenant wish Tenant to lease the Premises, on the terms and conditions set forth in this Lease.

In consideration of the foregoing and the promises and other provisions of this Lease, the Parties agree as follows:

2. Demise.

2.1. Effectiveness of Lease; Demise. In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be

performed by Tenant in this Lease during the Term, Landlord and Tenant enter into this Lease Agreement which shall be immediately effective as of the Effective Date. On the Commencement Date, Landlord will deliver possession of, the Premises to Tenant for Tenant's exclusive use and enjoyment for the Term hereinafter stated and Tenant's rights and obligations under this Lease shall commence as of such Commencement Date. Tenant shall have no right or obligation hereunder, including, without limitation, with respect to the payment of Rent, repair or maintenance of the Premises or any indemnity obligations, until the occurrence of the Commencement Date.

2.2. Subsequent Conveyance. Tenant expects to acquire the Premises at a future date as provided in the DDA (the "**Conveyance**"), subject to Tenant's right to transfer its right to acquire the Premises as provided in the DDA. Notwithstanding anything to the contrary set forth in this Lease, if the Conveyance occurs prior to Tenant's delivery of an Election Notice or if after such Conveyance, Tenant and the owner of the fee interest in the Premises are the same entity, then, upon the Conveyance, Tenant's and Landlord's interest in this Lease shall merge and this Lease shall automatically terminate and be of no further force or effect. If, however, after the Conveyance occurs Tenant and owner of the fee interest are distinct persons or entities, then upon the Conveyance, Landlord's leasehold interest shall be concurrently transferred to the transferee in such Conveyance and this Lease shall continue in full force and effect.

2.3. Operating Memoranda.

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

(b) Operating Memoranda that implement the provisions of this Lease or that provide clarification to existing terms of this Lease, including, for example, the legal description of the Premises, or the incorporation of DDA terms after the expiration or termination of the DDA, may be executed on Landlord's behalf by the City Manager of the City of Alameda, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not materially change material terms of this Lease: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Lease. Any substantive or significant modifications to the terms and conditions of performance under this Lease shall be processed as an amendment of this Lease in accordance with applicable law, and must be approved by resolution of the City Council.

3. Premises and Permitted uses.

3.1. Premises. The Premises demised by this Lease are specified in the Basic Lease Information and are generally depicted in **Exhibit A** hereto, but shall at all times exclude any existing or future public roads or access routes reasonably necessary for access to other buildings owned by Landlord in the vicinity of the Building or for emergency vehicle access, and the inclusion of any public roads or access routes in the Premises at any time shall be subject to approval of the City of Alameda fire marshal. The Building has the address and contains the approximate square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less. The Parties further agree that upon Tenant's delivery of the Election Notice, Tenant and Landlord shall cooperate to prepare a more definite metes and bounds legal description of the Premises generally based on the depiction attached as **Exhibit A** hereto, at Tenant's sole cost and expense. Such legal description, when prepared, shall be deemed incorporated into this Lease by the Parties' execution of an Operating Memorandum which each Party agrees to promptly execute and deliver to each other Party.

3.2. Commencement Date; Delivery of Election Notice.

(a) This Lease shall commence upon the date that occurs six (6) months after the date Tenant delivers a written notice of its election to take possession of the Premises from Landlord (the "**Election Notice**"). Notwithstanding the foregoing, Tenant shall have the right, but not the obligation, in Tenant's sole and absolute discretion, to accelerate the Commencement Date to an earlier date selected by Tenant that shall occur after Tenant delivers the Election Notice and Landlord notifies Tenant in writing that the Premises are ready for early delivery to Tenant and vacant (such date, as may be accelerated, shall be the "**Commencement Date**").

(b) The Election Notice shall include either (i) a copy of the form of any sublease or subleases that Tenant is proposing for the Premises or alternatively, (y) Tenant's general schematic plans and cost estimates for Tenant's proposed Alterations to the Premises totaling not less than two hundred and fifty thousand dollars ($250,000.00), and (z) a statement of the planned use of the Premises, which use shall be consistent with the Permitted Use permitted herein. Any proposed Sublease shall conform to the requirements of Article 13 of this Lease for Subleases. Tenant shall promptly after its execution deliver a copy of any Sublease entered into with a Subtenant to Landlord.

(c) Tenant's Election Notice shall be to lease the whole Building only, as well as the Premises as defined herein (as may be subsequently modified in accordance with Section 3.1, above). Any Election Notice that meets the requirements of this Section 3.2 shall be deemed approved.

3.3. Tenant Fails to Sublease or Improve After Election Request.

If, after Tenant submits a valid Election Notice pursuant to Section 3.2, Tenant fails to enter into a Sublease as required hereunder or (b) fails to commence and then diligently prosecute to completion construction of the improvements described in Tenant's Election

Request, each within twelve (12) months of the Commencement Date, then Tenant shall, in lieu of any other Base Rent due hereunder, promptly pay **directly** to Landlord the Hold Over Rent (as defined in Article 21) starting in arrears from the Commencement Date and continuing until such time as Tenant either: (i) secures a binding executed Sublease for the Premises; or (ii) substantially completes construction of the improvements described in the Election Notice. Nothing in this Section 3.3 shall be interpreted to relieve Tenant of its obligations to maintain, repair and insure the Premises starting on the Commencement Date and throughout the Term of this Lease.

3.4. Possession. On the Commencement Date Tenant will accept the Premises in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Building, Premises or infrastructure for the conduct of Tenant's business. Landlord shall not be liable for any latent or patent defects in the Building and/or on the Premises. Tenant shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy from the City of Alameda. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 7.1 below), and any other requirements mandated by the Certificate of Occupancy inspection. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Building, Premises, or infrastructure, or with respect to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose.

3.5. Permitted Use.

(a) Permitted Uses – Generally. Tenant shall use the Building and Premises during the Term solely for those uses permitted in the Development Plan approved on June 16, 2015, the Town Center Plan adopted on July 15, 2014, and the DDA (collectively, the "**Development Documents**"), all as consistent with this Lease and for no other purpose ("**Permitted Uses**"). Tenant acknowledges and agrees that in no event will the Permitted Uses include any residential use. For purposes of this Section 3.3 only, if there is a conflict between the above documents as it relates to permitted uses, the Development Plan shall govern over the Town Center Plan which shall govern over the DDA.

(b) Regulatory Approvals Required. Nothing in this Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City of Alameda for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. In approving a Permitted Use, improvement or other activity under this Lease, Landlord is acting in its capacity as owner of the Premises only, not in its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City of Alameda or other regulatory agency.

3.6. Termination or Expiration of DDA After Lease Execution and Prior to Conveyance or other Termination or Expiration of Lease.

(a) Prior to Commencement Date. The "**DDA Term**" as used in this Lease shall be the period during which the DDA is in effect, prior to its termination or expiration. If the DDA Term ends after the execution of this Lease but prior to the Commencement Date (as defined in Section 3.2, this Lease shall automatically terminate and be of no further force or effect whatsoever.

(b) After Commencement Date. If the DDA Term ends after the execution of this Lease and after the Commencement Date, then this Lease shall continue in full force and effect without reference to the DDA except as expressly set forth herein. Landlord shall have the right to sell its fee interest in the Premises and assign its interest as Landlord in this Lease (subject to all the terms and conditions herein) at Landlord's sole discretion. If Landlord sells its fee interest in the Premises, Landlord shall assign its interest under this Lease, and Landlord's successor owner of the Premises, assignee or transferee shall be the "Landlord" under this Lease.

(c) Any provisions of the DDA referenced in this Lease shall be deemed to be incorporated into this Lease and the Parties agree to reasonably cooperate to execute an Operating Memorandum to incorporate such terms of the DDA expressly into this Lease as are required for the purpose of the effectiveness and performance of the Parties' rights and obligations under this Lease.

3.7. Telecommunications Equipment. At no time shall Tenant have the right to install, operate or maintain telecommunications or any other equipment on the roof or exterior areas of the Building, except as may be necessary for Tenant's Permitted Use of the Premises (including use of the Premises by Subtenants) and Tenant's installation of such equipment is done in full compliance with Article 10 (Alterations).

4. Term.

4.1. Term.

(a) Lease Term. The term of this Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing upon the Commencement Date and, unless extended or earlier terminated as expressly provided herein, expiring on the Expiration Date. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Tenant fails to execute and deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant. Nothing in this Lease, including with respect to the Term hereof, shall amend or modify the obligations of Developer under the DDA, including with respect to the Milestone Schedule (as such term is defined in the DDA).

4.2. Option to Renew.

(a) Renewal Option. Tenant shall have two (2) options to extend the Term (each a "**Renewal Option**"), for a period of ten (10) years each (each a "**Renewal Term**"). A Renewal Option may be exercised only by Tenant, the Permitted Assignee and may not be exercised by any other sublessee or assignee or by any other successor or assign. Tenant may exercise the first Renewal Option if Tenant has invested (or will, by the end of the initial Term, invest) not less than two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations (as defined in Section 10.1, below), including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**First Renewal Investment**"). Tenant shall submit with its Renewal Notice for the first Renewal Option reasonable evidence that Tenant has made such First Renewal Investment. Tenant may exercise the second Renewal Option if Tenant has invested (or will, by the end of the first Renewal Term, invest) not less than an additional two million five hundred thousand dollars ($2,500,000) toward Permitted Alterations, including all hard and soft costs therefor and landscaping and site work on the Premises consistent with the Development Plan (the "**Second Renewal Investment**"). Tenant shall submit with its Renewal Notice for the second Renewal Option reasonable evidence that Tenant has made such Second Renewal Investment. If Tenant submits a Renewal Notice after the end of the DDA Term, then, in addition to the First Renewal Investment or the Second Renewal Investment, Tenant shall make a one-time payment of $978,965 per acre of the Premises (as such amount is escalated each year from the Lease Date until the date of payment by the increase in the cost of construction as reported by the Engineering News Record Construction Cost Index for the San Francisco Bay Area or similar index if the Engineering News Record index is no longer published) to the City for infrastructure improvements consistent with the Alameda Point Master Infrastructure Plan and Alameda Point Development Impact Fee (Alameda Municipal Code 27-4.5) in connection with the first Renewal Option exercised by Tenant after such end of the DDA Term. A Renewal Option shall be effective only if Tenant is not in Default under this Lease, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term. Tenant shall exercise each Renewal Option, if at all, by written notice ("**Renewal Notice**") from Tenant to Landlord, in a form substantially the same as **Exhibit F**, given not more than twelve (12) months nor less than nine (9) months prior to expiration of the initial Term with respect to the first Renewal Option, and given not more than twelve (12) months nor less than nine (9) months prior to expiration of the first Renewal Term with respect to the second Renewal Option. Any such notice given by Tenant to Landlord shall be irrevocable. If Tenant fails to exercise a Renewal Option in a timely manner as provided for above such Renewal Option (and any remaining subsequent Renewal Option) shall be void.

(b) Terms and Conditions. If Tenant exercises a Renewal Option, the Term shall be extended for an additional period of ten (10) years upon the same terms and conditions as the initial Term (or the Renewal Term, for the second Renewal Option) except that (i) there shall be one fewer Renewal Option available to Tenant at the expiration of the first Renewal Term and no Renewal Option available to Tenant at the expiration of the second Renewal Term, (ii) Tenant shall continue to occupy the Premises in its "as-is" condition without any tenant improvement allowance from Landlord, and (iii) the Base Rent during each Renewal Term (the "**Renewal Rate**") after the expiration or earlier termination of the DDA shall be Fair Market Rent which shall be determined using the process provided in Section 5.1 below.

(c) Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder fees associated with Tenant's exercise of a Renewal Option made by parties claiming through Landlord.

5. Rent.

5.1. Base Rent, Use of Rent and Audit Rights.

(a) Base Rent and Use of Rent for Term During DDA Term. From and after the Commencement Date and until the earlier of the Conveyance or the expiration or termination of the DDA Term, all income received by Tenant from the Premises and expenses incurred by Tenant related to the Premises shall be included in the calculation of Unleveraged Cash Flow as that term is defined in Section 2.3(a)(10) of the DDA. The application of such expenses and revenues to Unleveraged Cash Flow shall be deemed to be Base Rent as provided hereunder and no additional Base Rent shall be payable by Tenant during the DDA Term.

(b) Base Rent for Term After DDA Term Ends. If the DDA Term ends prior to Conveyance, the Base Rent for the Premises commencing upon the expiration or termination of the DDA Term shall be the "Fair Market Rent." For purposes of this Section, "**Fair Market Rent**" means the prevailing rental rate per square foot then being obtained by landlords for buildings or spaces comparable to the Building in its condition as of the Commencement Date, located in the City of Alameda, taking into account (in either case) applicable base years, tenant improvement allowances, free rent periods and other tenant concessions, existing improvements and configuration of the space, any additional rent and all other payments and escalations payable hereunder and by tenants under leases of such comparable spaces as determined by the following process:

(i) Within thirty (30) days after the effective date of the expiration or termination of the DDA Term or as soon thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of the Fair Market Rent ("**Rate Notice**").

(ii) Tenant shall have twenty (20) days ("**Response Period**") after receipt of the Rate Notice to advise Landlord whether or not Tenant agrees with Landlord's determination of the Fair Market Rent. If Tenant does not respond to Landlord in writing within the Response Period, then Tenant shall be deemed to have accepted the Fair Market Rent specified by Landlord in the Rate Notice and Tenant shall be obligated to pay the Fair Market Rent as of the expiration or termination of the DDA Term. If Tenant agrees or is deemed to have agreed with Landlord's determination of the Fair Market Rent, then such determination shall be final and binding on the Parties.

(iii) If Tenant notifies Landlord in writing during the Response Period that Tenant disagrees with Landlord's determination of the Fair Market Rent, then within twenty (20) days after Landlord's receipt of Tenant's written notice, Landlord and Tenant shall each retain a licensed commercial real estate broker with at least five (5) years' experience negotiating commercial lease transactions in the cities of Alameda and Oakland, California and the Fair Market Rent shall be determined as follows:

A. If only one broker is appointed by the Parties during such period, then said broker shall, within twenty (20) days after his or her appointment, determine the Fair Market Rent.

B. If Landlord and Tenant each appoint a broker during such period, then the brokers shall meet and confer during the thirty (30) day period commencing on the date on which the last of the brokers has been appointed ("**Broker Negotiation Period**") to attempt to mutually agree upon Fair Market Rent.

C. If the brokers cannot agree upon Fair Market Rent as of the expiration of the Broker Negotiation Period, the two brokers shall, within twenty (20) days thereafter, attempt to select a third broker meeting the qualifications stated in this Section.

D. If the two brokers are unable to agree on the third broker, either Landlord or Tenant, by giving fifteen (15) days written notice to the other Party, can apply to then Presiding Judge of the Superior Court of Alameda County for the selection of a third broker who meets the qualifications stated in this paragraph.

E. Landlord and Tenant shall each bear one half (1/2) cost of appointing the third broker and paying the third broker's fees. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

F. The third broker shall, within twenty (20) days after his or her appointment, make a determination of Fair Market Rent. The determinations of Fair Market Rent prepared by all three (3) brokers shall be compared and the Fair Market Rent shall be whichever of the determinations by Landlord broker or Tenant's broker is closer to the determination of the third broker (and if they are equally close, the Fair Market Rent shall be the determination of the third broker). Such determination shall be final and binding upon the Parties.

(iv) Promptly following determination of Fair Market Rent pursuant to this Section, the Parties shall execute an Operating Memorandum memorializing such Fair Market Rent. After the Fair Market Rent has been determined, the Base Rent for the Premises shall increase at the annual rate of three percent (3%) per year throughout remaining Term of the Lease.

(c) Audit Rights. After the Commencement Date, Landlord shall be entitled from time to time to audit Tenant's books, records, and accounts pertaining to the collection and calculation of Base Rent by Tenant. Such audit shall be conducted during normal business hours upon five (5) business days' notice at the principal place of business of the Tenant and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. Landlord shall not be entitled to more than one audit for any particular calendar year, unless it shall reasonably appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. Landlord shall provide Tenant with copies of any audit performed ("**Audit Report**").

5.2. Additional Rent. As used in this Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent and Hold Over Rent, that are due and payable by Tenant under the terms of this Lease. The term "**Rent**," as used herein, shall mean all Base Rent (Section 5.1), Additional Rent (Section 5.2), Hold Over Rent (Article 21) and all other amounts payable hereunder from Tenant to Landlord, including any amount payable by Tenant to Landlord for Utilities pursuant to Section 9.1. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

5.3. Interest. Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) seven percent (7%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

6. Operating Expenses and Taxes.

6.1. Definitions. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, the amount payable by Tenant for Taxes and Operating Expenses shall be equitably adjusted for the Tax and Expense Years involved in any such change.

(b) **Taxes** shall mean all taxes, special taxes, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, excluding any personal property of Landlord used in the operation of the Building or Premises or Landlord's interest in the Premises but including Personal Property Taxes or possessory interest taxes which are the subject of Article 9. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Premises or any occupants thereof, on the use or occupancy of the Premises, on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Tenant or the Premises by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Parties on the date of this Lease. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over

different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord any refunded or recovered Tax previously paid by Tenant (and the foregoing obligation shall survive the termination or expiration of this Lease). Notwithstanding anything to the contrary set forth herein, during the DDA Term, Landlord agrees that Landlord will not, in its capacity as the property owner, consent or vote for any special assessments or taxes applicable to the Premises that are not consistent with Section 3.1(c) of the DDA, provided, however, nothing herein shall prevent the Landlord in its capacity as a taxing entity with the power to levy taxes from imposing taxes applicable to the Premises provided such taxes are generally applicable to similar properties in the City.

(c) **"Operating Expenses"** shall mean all costs of the management, operation, maintenance, insurance, repair and replacement of the Premises (including the exteriors, windows and roof of the Building and paved portions of parking areas included in the Premises).

6.2. Payment of Operating Expenses and Taxes. Tenant shall directly pay when due and before delinquency, all Operating Expenses and Taxes for the Premises. With reasonable promptness after the end of each Tax and Expense Year, Tenant shall submit to Landlord a statement showing the actual amount paid by Tenant with respect to Taxes and Operating Expenses for the past Tax and Expense Year ("**Tenant's Statement**"). The Parties acknowledge that this Lease is intended to be triple net to Tenant. Tenant is responsible for the entire cost of all Utilities, Taxes, maintenance and repair and other costs attributable to the management, operation, maintenance, insurance, repair and replacement of the Premises during the Term.

6.3. Personal Property Taxes. Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term ("**Personal Property Taxes**").

6.4. Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the Party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

6.5. Payment. Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. Tenant shall pay the Personal

Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either: (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes; or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

7. Compliance with Laws.

7.1. Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "**ADA**"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Premises into compliance with applicable ADA requirements and to ensure that the Premises remain in compliance throughout the Term of this Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant at the Property, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Building.

7.2. Compliance with Restrictions. The Premises is located on property known as the former Naval Air Station Alameda, portions of which were conveyed to the City by the United States of America, acting by and through the Department of the Navy by quitclaim deeds dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199826 and Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**") and portions of which are subject to the Lease in Furtherance of Conveyance dated June 6, 2000 as amended by the Amendment No. 1 dated November 28, 2000 and Amendment No. 2 dated March 30, 2009 ("**LIFOC**") Said Quitclaim Deed and LIFOC conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises is further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). The Premises is also subject to a Site Management Plan. Copies of the Quitclaim Deed, LIFOC, Declaration of Restrictions and Site Management Plan have been delivered to Tenant and, concurrently with the execution of this Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the office of the County Recorder, Alameda County, CA (the "**CRUP**"), the National Environmental Protection

Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. A copy of the ROD is available for review at Landlord's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions, the Site Management Plan, the CRUP and the ROD, as they affect the Premises, are collectively referred to herein as the "**Restrictions**." Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Lease.

7.3. Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Premises (collectively "**Use Permit**").

8. Security Deposit.

No security deposit is required by Tenant under this Lease during the DDA Term. Upon the expiration or Termination of the DDA Term and the calculation of the Fair Market Rent payable by Tenant, Tenant shall deliver to Landlord a Security Deposit equal to Base Rent payable for one (1) calendar month (the "Security Deposit"). The Security Deposit shall be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy Tenant's breach under this Lease or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord so uses or applies all or any portion of the Security Deposit, then within fifteen (15) days after demand therefore, Tenant shall deposit cash with Landlord in an amount sufficient to restore the deposit to the full amount thereof, and Tenant's failure to do so shall constitute a Default under this Lease. If there are no payments to be made from the Security Deposit as set out in this paragraph, or if there is any balance of the Security Deposit remaining after all payments have been made, the Security Deposit, or such balance thereof remaining, will be refunded to the Tenant after the expiration or earlier termination of this Lease. Tenant hereby waives the benefit of the provisions of California Civil Code Section 1950.7. In the event of an act of bankruptcy by or insolvency of Tenant or the appointment of a receiver for Tenant or general assignment for the benefit of Tenant's creditors, the Security Deposit shall be deemed immediately assigned to Landlord.

9. Utilities.

9.1. Payments for Utilities and Services. Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the Premises, together with all related installation or connection charges or deposits ("**Utilities**"). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay **directly** to Landlord, as Additional Rent, all actual utility costs (without markup) paid by Landlord for use at the Premises on or before the date that is thirty (30) days after billing by Landlord. If any Utilities

are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code Section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

9.2. No Liability of Landlord. Except in the case of the gross negligence or willful misconduct of Landlord or any Landlord Related Party, after the Commencement Date, neither Landlord nor Landlord Related Parties shall be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the Premises, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises, or arising from the partial or total unavailability of the service or utility to the Premises, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its obligations under this Lease.

10. Alterations.

10.1. Permitted Alterations. A material consideration of Landlord entering into this Lease is the agreement by Tenant to make certain alterations to the Premises as required or approved for the Premises in connection with the Development Documents, including, without limitation, any Initial Improvements to be made by Tenant and landscaping and site work consistent with the Development Plan (the "**Permitted Alterations**"). During the DDA Term, notwithstanding anything to the contrary, Tenant shall have the right, without the further consent of Landlord to make any Permitted Alterations and, notwithstanding anything to the contrary in this Lease, including in this Article 10 or Article 20, Tenant shall have no requirement to remove any Permitted Alterations during or upon the expiration of the Term. The foregoing shall not exempt or affect Tenant's obligation to comply with applicable laws or secure any necessary permits from Landlord in its capacity as a governmental entity.

10.2. Other Alterations. Any alterations to the Premises made by Tenant, including the Permitted Alterations (collectively, the "**Alterations**"), shall be at Tenant's sole cost and expense, made in compliance with all applicable Laws and all reasonable requirements requested by Landlord. Tenant shall comply with the construction requirements set forth in Section 6.6 of the DDA (whether during or after the expiration or termination of the DDA Term), and, to the extent not done as part of such construction requirements, the following requirements shall also apply. Prior to starting work, Tenant shall furnish Landlord with plans and specifications (which shall be in CAD format if requested by Landlord); names of contractors reasonably acceptable to Landlord; required permits and approvals; evidence of contractors and subcontractors insurance in amounts reasonably required by Landlord and naming Landlord, Landlord Related Parties (as defined in Section 14.1) and such other persons or entities as Landlord may reasonably request,

as additional insureds; and any security for payment in performance and amounts reasonably required by Landlord. In addition, if any such Alteration requires the removal of asbestos, an appropriate asbestos disposal plan, identifying the proposed disposal site of all such asbestos, must be included with the plans and specifications provided to Landlord. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for Alterations. Landlord agrees to respond to Tenant's request for consent to any Alterations within fifteen (15) business days following Tenant's delivery of such request, accompanied by plans and specifications depicting the proposed Alterations ("**Plans**") and a designation of Tenant's general contractor (and major subcontractors) to perform such work. Landlord's response shall be in writing and, if Landlord withholds its consent to any Alterations, Landlord shall specify in reasonable detail in Landlord's notice of disapproval, the basis for such disapproval. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Plans, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Plans and contains the following statement in bold and capital letters:

> **"THIS IS A SECOND REQUEST FOR APPROVAL OF PLANS PURSUANT TO THE PROVISIONS OF SECTION 10.2 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE PLANS DESCRIBED HEREIN."**

If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Plans in question shall be deemed approved by Landlord in its proprietary capacity only. If Landlord timely delivers to Tenant a notice of Landlord's disapproval of any Plans, Tenant may revise Tenant's Plans and resubmit such Plans to Landlord; in such event the scope of Landlord's review of such Plans shall be limited to Tenant's correction of the items to which Landlord had previously objected. Landlord's review and approval (or deemed approval) of such revised Plans shall be governed by the provisions as set forth above in this Section 10.2. The procedure set forth above for approval of Tenant's Plans will also apply to any change, addition or amendments to Tenant's Plans. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. Upon completion, Tenant shall furnish Landlord with at least three (3) sets of "as built" Plans (as well as a set in CAD format, if requested by Landlord) for the Alterations, completion affidavit and full and final unconditional waivers of liens and will cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Any Alteration shall become the property of Landlord upon the expiration or earlier termination of this Lease, provided that the Conveyance has not occurred, and further provided that Landlord has not required Tenant to remove any Alterations prior to the expiration or sooner termination of this Lease. If Tenant serves a request in writing together with Tenant's request for Landlord's consent to any such Alterations ("**Removal Request**"), Landlord will notify Tenant at the time of Landlord's consent to any such Alterations as to whether Landlord requires their removal. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Tenant. If Tenant fails to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Landlord may do so and may charge the reasonable costs thereof to Tenant. All Alterations shall be made in good and workmanlike manner and in a manner that

will not disturb other tenants and Tenant shall maintain appropriate liability and builders' risk insurance throughout the construction. Tenant shall indemnify, defend, protect and hold Landlord and Landlord Related Parties harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due. Landlord's review and approval of any Alterations pursuant to this Lease shall be in its proprietary capacity as Landlord and no such approval shall constitute approval by the City of Alameda in its regulatory capacity. Tenant shall be obligated to obtain any permits and approvals from the City and any other governmental entities necessary for the Alterations.

10.3. Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Building) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., contacting Underground Service Alert or similar underground surveying services, potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval in its propriety capacity (which shall also require the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.4. Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use at the Premises. Tenant shall remove within a reasonable period of time not to exceed ten (10) days after notice of such lien, any mechanic liens or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Lease for any labor or materials furnished to Tenant in connection with work performed in, on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord and Landlord Related Parties (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

11. Maintenance and Repair of Premises.

11.1. Maintenance and Repair by Tenant.

(a) Tenant Maintenance. Tenant shall, at its sole cost and expense, maintain the Premises in good repair and in a neat and clean operating condition, including making all necessary repairs and replacements. Tenant's repair and maintenance obligations include, without limitation, repairs to all elements of the Building (including the roof, support structures, foundations, windows and exterior of the Building) and outdoor paved areas used for parking. Tenant's obligation to maintain any landscaping at the Premises shall be subject to any limitations on water use imposed by local, state or federal authorities, and Tenant shall not be required to incur any penalties in connection with respect to such water use in an effort to satisfy maintenance obligations under this Lease.

(b) Tenant Repair. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Building caused by Tenant or Tenant's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by: (i) the construction or installation of improvements to the Premises by or on behalf of Tenant; and (ii) the moving of any property into or out of the Building. If Tenant fails to make such repairs or replacement within fifteen (15) days after notice from Landlord, then Landlord may, at its option, upon prior reasonable notice to Tenant (except in an emergency) make the required repairs and replacements and the costs of such repairs or replacement (including a reasonable administrative charge) shall be charged to Tenant as Additional Rent and shall be due and payable by Tenant **directly** to Landlord on or before the date that is thirty (30) days after billing by Landlord.

12. Environmental Protection Provisions.

12.1. Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2. Reportable Uses Required Consent. Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (for purposes of this Article 12, referred to collectively herein as "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or transported to or from the Premises without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor.

12.3. Remediation Obligations. If at any time during the Term, any contamination of the Premises by the introduction of Hazardous Materials or the release or disturbance of Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement

of all amounts reasonably paid or incurred by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by a pending invoice or proof of payment of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "**Tenant's Contamination**" shall not refer to or include any Hazardous Materials that were not clearly introduced to the Premises by Tenant or Tenant Parties during the Term and shall in no event include any site contamination or conditions at the Premises pre-existing the Term, whether known or unknown, provided that the foregoing shall not affect any obligations of Tenant under the DDA during the DDA Term. Notwithstanding anything set forth herein, Landlord shall have no responsibility for the remediation or containment of any asbestos or lead dust found within the Building.

12.4. Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5. Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Absent the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such Landlord officer, agent, employee, contractor or subcontractor into or onto the Premises.

12.6. Hazardous Materials Handling Plan. Upon delivery of the Exercise Notice, Tenant shall execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit D** attached hereto, and Tenant shall, upon the execution of any Sublease, cause each Subtenant who will use any Hazardous Materials at the Premises to execute and deliver to Landlord an Environmental Questionnaire. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**") which shall be consistent with the Restrictions in Section 7.2. For a period of fifteen (15)

days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord's disapproval thereof. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, the Site Management Plan and the Hazardous Materials Handling Plan. Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto in Tenant's possession or control: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant's Permitted Use of the Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.7. Hazardous Materials Indemnity. In addition to any other provisions of this Lease, from and after the Commencement Date, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Landlord Related Parties from and against any loss, damage, cost, expense or liability Landlord may incur directly or indirectly arising out of or attributable to any Tenant's Contamination, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans and (3) all reasonable costs and expenses incurred by Landlord in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees. Tenant's obligation to indemnify, defend and hold harmless under this Section 12.7 shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

13. Assignment and Subletting.

13.1. Assignment.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law: (a) except in connection with Tenant Financing (as defined below), mortgage, pledge, hypothecate or encumber this Lease or any interest therein; (b) assign

or transfer this Lease or any interest herein, or any right or privilege appurtenant thereto or any portion thereof, without first obtaining the written consent of Landlord.

(b) Notwithstanding the foregoing, Tenant shall have the right but not the obligation (the "**Assignment Right**"), either concurrent with the delivery of the Election Notice or at any time thereafter, upon thirty (30) days prior written notice to Landlord (the "**Assignment Notice**"), to assign Tenant's entire interest in this Lease to any transferee permitted under Section 12.4 and 12.5 of the DDA (each a "**Permitted Assignee**"). Any such Assignment Notice shall identify the Permitted Assignee and the date such assignment shall be effective (the "**Permitted Assignment Date**") and include a copy of a written agreement whereby Tenant assigns all its right, title, obligation and interest in this Lease to Permitted Assignee and Permitted Assignee assumes all such right, title, obligation and interest. The Permitted Assignee shall expressly assume and agree to perform all the terms and conditions of this Lease to be performed by Tenant after the Permitted Assignment Date and to use the Premises only for a Permitted Use. On and after the Permitted Assignment Date, provided that the written assignment complies with the requirements in this subsection, Tenant shall be automatically and forever released of any and all liability and obligation under this Lease other than any obligations that arise after the Commencement Date and prior to the Permitted Assignment Date.

Subletting. The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of sublease (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the proposed Sublease between Tenant and the proposed Subtenant. Tenant shall provide Landlord with any additional information or documentation reasonably requested by Landlord within ten (10) business days after receiving Landlord's request. Landlord shall then have a period of thirty (30) days following receipt of such additional information (or 30 days after receipt of Tenant's Sublet Notice if no additional information is requested) within which to notify Tenant in writing that Landlord elects either to approve or disapprove of the sublet, and if, disapproved, the reason for such disapproval. If Landlord fails to respond, upon the expiration of the applicable time period, the Sublease that is the subject of the Sublet Notice shall be deemed approved. Landlord may disapprove of any Sublease only if: (i) the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use or (ii) the Sublease will interfere with the Milestone Schedule or Phasing Plan in the DDA.

13.2. Intentionally Deleted.

13.3. Tenant Financing; Rights of Holders. Notwithstanding anything to the contrary contained in this Article 13, Tenant may obtain financing of improvements to the Premises, including any Alterations, and any of Tenant's obligations under the Development Documents as apply to the Premises (the "**Tenant Financing**").

(a) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any mortgagee of any Tenant Financing.

(b) The lender under any Tenant Financing permitted under this Section 13.3 shall be a "**Permitted Mortgagee**" and shall be entitled to the rights and, if applicable, subject to the obligations of a Permitted Mortgagee under Article 13 of the DDA. In addition, Landlord and Tenant expressly acknowledge that nothing in this Lease shall be deemed a grant by Tenant of a security interest, or other lien, in favor of Landlord, upon any of Tenant's personal property situated in or upon the Premises, and Landlord expressly waives any rights, whether statutory or otherwise, that it may have to any lien against Tenant's personal property as may be required to secure the Tenant Financing, unless said lien is obtained pursuant to a judgment of a court of competent jurisdiction. Landlord further agrees to execute a reasonable form of Landlord lien waiver and nondisturbance agreement as may be required by a Permitted Mortgagee to secure the Tenant Financing.

13.4. No Release. No assignment, Sublease or other transfer other than the Permitted Assignment shall release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue to be fully liable hereunder. Each Subtenant or assignee (including Permitted Assignee) shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease. The assignment or Sublease, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or Subtenant, then Tenant shall hold such sums in trust in the segregated account for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sum shall not constitute an acceptance by Landlord of attornment by such assignee or Subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each assignment, Sublease or transfer agreement and an agreement of compliance by each such Subtenant or assignee.

13.5. Limitations on Transfer Reasonable. Given the long term and complex relationship between the Landlord and Tenant established by the DDA, Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Lease or any other interests herein, to Sublease the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to Sublease the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

14. Indemnity and Waiver of Claims.

14.1. Indemnification.

(a) From and after the Commencement Date, Tenant shall indemnify, defend and hold harmless Landlord and its City Council, boards, commissions, officers, employees and agents ("**Landlord Related Parties**") against and from all liabilities, obligations, damages,

penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "**Losses**"), arising from: (a) the use of, or any activity done, permitted or suffered in or about the Premises; (b) any activity done, permitted or suffered by Tenant or any Tenant Party in or about Premises; (c) any act, neglect, fault, willful misconduct of Tenant or Tenant Parties; or (d) from any breach or default in the terms of this Lease by Tenant or any Tenant Party, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Landlord or Landlord Related Parties. If any action or proceeding is brought against Landlord and/or Landlord Related Parties by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord Related Parties from responsibility for, waives its entire claim of recovery for and assumes all risks of: (i) damage to property or injury to person in or about the Premises from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties; or (ii) loss resulting from business interruption or loss of income at the Premises.

(b) Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties against and from all Losses, arising (a) prior to the Commencement Date and (b) after the Commencement Date if arising from any gross negligence or intentional misconduct by Landlord and/or Landlord Related Parties If any action or proceeding is brought against Tenant and/or Tenant Parties by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

14.2. Waiver of Claims. Except in the event of the gross negligence or willful misconduct of Landlord or Landlord Related Parties, Landlord shall not be liable to Tenant or any Tenant Party with respect to the Premises after the Commencement Date and Tenant hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises after the Commencement Date from any cause. Without limiting the foregoing, except in the event of the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement of rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the Premises. The Parties agree that in no case shall either Party, or any Landlord Related Party or Tenant Party, be responsible or liable on any theory for any injury to the other Party's, Landlord Related Party's or Tenant Party's business, loss of profits, loss of income or any other form of consequential damage.

14.3. Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any

insurance carrier of its obligations under any policies required to be carried by either Party pursuant to this Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

15. Insurance.

15.1. Tenant's Insurance

(a) Property Insurance. Tenant shall continuously keep the Premises and all improvements thereon insured during the Term for the mutual benefit of Tenant and Landlord and Landlord Related Parties as required by this Section 15.1(a).

(i) Such insurance shall include Landlord as named insured and Tenant as an additional insured and shall provide coverage on virtually an all risk basis, including the peril of flood but not including earthquake unless such insurance is available at commercially reasonable rates, as determined in Tenant's sole discretion.

(ii) Such insurance shall be on a replacement cost basis in an amount not less than the then current one hundred percent (100%) replacement cost of the Building and improvements at the Premises, and with a deductible subject to the approval of Landlord.

(iii) Such insurance shall include coverage for the demolition of a damaged structure and for increased costs of reconstruction arising from or caused by changes in building codes and other laws.

(iv) Such insurance shall also include comprehensive boiler and machinery coverage for all objects, including but not limited to boilers, pressure vessels, pressure piping and other major components or any centralized heating, air conditioning and cooling system and elevator system.

(b) Liability Insurance. Tenant shall obtain and maintain or cause its subtenants to obtain and maintain in full force at all times that the Premises is subject to this Lease, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars ($2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord or Landlord Related Parties covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord or Landlord Related Parties; and (v) name Landlord and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.

(c) Personal Property Insurance. Tenant and/or its subtenants shall obtain and maintain in full force and effect personal property insurance on all of their personal property, furniture, furnishings, trade fixtures and equipment from time to time located at the Premises ("**Tenant's Property**"), and any Alterations (as defined in Article 10) in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause or Loss") fire and casualty insurance policy. Landlord shall have no interest in the insurance upon Tenant's Property or Alterations and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Landlord will not carry insurance on Tenant's Property or Alterations.

(d) Worker's Compensation Insurance; Employer's Liability Insurance. Tenant and its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, worker's compensation insurance with not less than the minimum limits required by law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000.00).

(e) Pollution Legal Liability. Commercial Pollution Legal Liability Insurance with coverage limits of not less than Ten Million Dollars ($10,000,000).

(i) Commercial Pollution Legal Liability. Tenant shall use commercially reasonable efforts to maintain a Commercial Pollution Legal Liability Insurance with coverage limits of not less than One Million Dollars ($1,000,000) annual aggregate covering claims arising out of or related to Tenant's Contamination during the term of this Lease.

A. Such policy shall name Tenant and each of its sub-tenants as a named or additional insured and shall name the City as an additional insured.

B. Such policy may be placed on a multi-year basis, provided, however, in no event shall the term exceed five (5) years and, if placed on a multi-year basis, the required coverage shall be a One Million Dollar ($1,000,000) annual aggregate and a Three Million Dollar ($3,000,000) general aggregate for the term of such policy.

C. If Tenant obtains the Pollution Legal Liability policy required by Section 16.7¶(a) or (d) of the DDA (the "**DDA PLL Policy**"), such DDA PLL Policy shall satisfy the requirements of this Section 15.1(e)(i) for the term of the "new releases" coverage provided by DDA PLL Policy.

(ii) Contractor's Pollution Legal Liability. Tenant shall cause the general contractor retained for the rehabilitation of the Premises shell improvements to obtain and maintain Contractor's Pollution Liability Insurance covering the general contractor and all subcontractors in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction. Any such policy shall name the City as an additional insured.

(f) Business Interruption Insurance. Tenant shall maintain in full force and effect during the Term of this Lease, Business Interruption Insurance with a limit of liability representing loss of at least approximately twelve (12) months of income.

(g) Automobile Liability. Tenant and/or its subtenants shall obtain and maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability. Such policy shall be in an amount of not less than One Million Dollars ($1,000,000) combined singled limit.

15.2. Requirements For All Policies. Each policy of insurance required under Section 15.1 shall: (a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's or its Subtenant's sole cost and expense, and (c) require at least thirty (30) days' written notice (ten (10) day's written notice for non-payment of premium) to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state of California. Any deductible amount under such insurance shall not exceed $50,000. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty days prior written notice of any cancellation or modification.

15.3. Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article is in full force and effect, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form. In addition to the foregoing, Tenant shall provide to Landlord, upon request, copies of the actual insurance policies for the insurance required to be carried by Tenant pursuant to this Lease, including any endorsement affecting the additional insured status and evidence that premiums therefor have been paid.

Subrogation Waiver. Tenant hereby grants to Landlord and Landlord Related Parties, on behalf of itself and any insurer providing comprehensive general and automotive liability insurance to Tenant pursuant to this Lease, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord and/or Landlord Related Parties by virtue of the payment of any loss under such insurance. Tenant further agrees to include a subrogation waiver in each of its subleases requiring a similar waiver by its subtenants and their insurers in favor of Landlord and Landlord Related Parties.

15.4. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under Section 15.1 through Section 15.4, inclusive, such failure shall be a Default. If such Default continues after notice and expiration of any applicable cure period provided in this Lease, such Default shall be a Default entitling Landlord, at its election and in addition to such remedies as may otherwise be available under this Lease, to procure and maintain the required coverage. Tenant shall reimburse Landlord for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable **directly** to Landlord as Additional Rent and shall be due on or before the date that is thirty (30) days after billing by Landlord, failing which payment Landlord may exercise any and all remedies available to it under this Lease, at law or in equity. The failure by Landlord to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

16. Damage or Destruction.

16.1. Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property (as defined at Section 15.1(c)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction and the estimated time for repairing said damage.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction.

(c) **"Insured Loss"** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant's Property or Alterations which was caused by an event required to be covered by the insurance described in Article 15, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the Building or improvements owned by Landlord (including Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) **"Hazardous Material Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 13.1), in, on, or under the Premises which requires repair, remediation, or restoration.

16.2. Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.3. Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, upon Tenant's written election, this Lease shall terminate and be of no force or effect except for those obligations specified in this Lease that expressly survive the expiration or termination of this Lease. If not so terminated, Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

16.4. Abatement of Rent. In the event of Premises Partial Damage, Premises Total Destruction or Hazardous Material Condition, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. All other obligations of Tenant

hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

16.5. Limit on Claims.Tenant shall have no claim against Landlord for any Losses (as defined in Section 14.1) suffered by Tenant not caused by: (i) a breach of this Lease by Landlord; or (ii) the gross negligence or intentional misconduct of Landlord or Landlord Related Parties. Tenant and Landlord each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such sections or laws apply to any Losses. The Parties intend that the provisions of this Lease control in lieu of such laws.

17. Condemnation.

If the whole or if any material part of the Premises or Building under this Lease are taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises or Building unsuitable, in Landlord's reasonable opinion, for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking and any repairs by Tenant or its subtenants would be untenantable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations or if such Taking will make more than twenty-five percent (25%) of the Premises unusable by Tenant or Subtenants for the Permitted Use for a period greater than twelve (12) months, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The terminating Party shall provide written notice of termination to the other Party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in Tenant's or Subtenants' ability to use the Premises for the Permitted Use. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's leasehold interest in the Premises, and/or the value of Tenant's fixture, equipment and personal property (specifically excluding components of the Premises which exist prior to the Commencement Date or were paid for by Landlord), or Tenant's loss of business goodwill, provided that such award does not reduce any award otherwise allocable or payable to Landlord.

18. Default.

18.1. Events of Default. The occurrence of any of the following shall constitute a "**Default**" by Tenant if Tenant fails to cure such event within ten (10) days after written notice from Landlord:

(a) Tenant fails to pay Base Rent and Additional Rent in violation of Section 5.1 and Section 5.2.

(b) Tenant uses or permits the Premises to be used for purposes or activities that are in violation of the Permitted Uses contained in Section 3.3.

(c) Tenant fails timely to deliver any subordination document or estoppel certificate required to be given under this Lease within the applicable time period specified herein below.

(d) Tenant violates the restrictions on assignment, sublet or transfer set forth in Article 13.

(e) Tenant abandons the Premises as defined in Section 1951.3 of the California Civil Code.

(f) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(g) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (g) above, in which case Tenant's notice and cure period shall be extended to thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

(h) Tenant is in Default under the Disposition and Development Agreement after written notice and the expiration of the applicable cure period.

18.2. Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Subject to the rights of a Permitted Mortgagee (as set forth in Section 13.3), terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to:

(i) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;

(ii) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;

(iii) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided discounted to the then present value;

(iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "**Worth at the Time of Award**" of the amounts referred to in parts (i), (ii) and (iii) above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (A) the greatest per annum rate of interest permitted from time to time under applicable law, or (B) the Prime Rate plus 5% as determined by Landlord.

For purposes of this Section 18.2, "**Unpaid Rent**" shall include but not be limited to, (i) Base Rent payable by Tenant but not collected prior to termination; and (ii) Additional Rent and Hold Over Rent which remains due and owing as of the date of Termination.

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

(c) Should Tenant or its agents, employees, invitees or subtenants use the any portion of the Premises designated for parking in violation of this Lease, Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to tow away any vehicle involved in such violation and charge the cost of towing and storage to Tenant, which cost shall be immediately payable upon demand by Landlord as Additional Rent. Except to the extent caused by the gross negligence or intentional misconduct of Landlord or Landlord Related Parties, neither Landlord nor any Landlord Related Party shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located at the Premises, whether pursuant to this Lease or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any

parking spaces or any portion of the Premises or any vehicles parked thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above.

(d) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, subject to the rights of a Permitted Mortgagee (as defined in Section 13.3), to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above.

(e) Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of a Default, subleased or leased by Tenant to others, Tenant hereby appoints Landlord to act as Tenant's agent under such circumstances and Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Base Rent, Additional Rent, Hold Over Rent and any other rents due hereunder without in any way affecting Tenant's obligations to Landlord hereunder except with respect to the reduction of such amounts due from Tenant. Said sums collected in excess of rents due hereunder will be treated as Additional Rent payable by Tenant to Landlord until the time when any such Default is cured. Such agency, being given for security, is hereby declared to be irrevocable.

18.3. No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4. Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Lease following its termination as a result of Tenant's breach.

18.5. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6. Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to

do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 189.6, the full amount of the costs and expense incurred or the payments so made or the amount of the Losses so sustained shall be immediately be owed by Tenant to Landlord. Tenant shall promptly pay **directly** to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of seven percent (7%) per annum, or the highest rate permitted by applicable law.

18.7. Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19. Limitation of Landlord Liability.

(a) Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor Landlord) shall be limited to the value of the Premises. Tenant shall look solely to Landlord's interest in the Premises for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

(b) If Tenant believes a material breach of this Lease has occurred, Tenant shall first notify Landlord in writing of the purported breach, giving Landlord thirty (30) days from receipt of such notice to cure the breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that thirty (30) day period, begin to cure within thirty (30) days and thereafter diligently prosecute such cure to completion within a period not to exceed ninety (90) days, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this Lease; (ii) prosecuting an action for damages within the limitations set forth in Section 19 (a) above; (iii) seeking specific performance of this Lease; or (iv) any other remedy available at law or equity. .

20. Surrender of Premises.

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's personal property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair consistent with the condition of the Premises on the Commencement Date (as may have been improved pursuant to the requirements of the DDA or this Lease), ordinary wear and tear, damage caused by casualty or condemnation, and damage caused by Landlord or any Landlord Related Party excepted, provided, however, if this Lease is terminated as a result of the Conveyance, this Section shall not apply. If Tenant fails to remove any of Tenant's property, or to restore the Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or perform such restoration of the Premises. Landlord shall not be

responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

21. Holding Over.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease with respect to such Premises, occupancy of the Building and/or Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease. In addition, Tenant shall pay **directly** to Landlord, in monthly installments, a hold over rent equal to two hundred percent (200%) of the Base Rent payable by Tenant in the last month prior to such termination ("**Hold Over Rent**"). No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord and Landlord Related Parties from and against any and all losses or liability resulting from delay in Tenant so surrendering the Premises including, without limitations, any loss or liability resulting from any claim against Landlord and/or Landlord Related Parties made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

22. Notice.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the Party's respective Notice Address (es) set forth in the Basic Lease Information ("**Notice Address**"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either Party may, at any time, change its Notice Address (other than to a post office box address) by giving the other Party three (3) days prior written notice of the new address.

23. Labor Provisions. Tenant hereby agrees to comply with the following in its use of the Premises after the Commencement Date:

23.1. Equal Opportunity. During the Term, and with respect only to persons in the Building(s) and at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the

following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through its subleases, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 23.1.

23.2. Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

23.3. Prevailing Wages and Related Requirements. Nothing in this Lease constitutes a representation or warranty by Landlord regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after the Commencement Date. From and after the Commencement Date, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code. Tenant's obligation to indemnify, defend and hold harmless under this Section 23.3(b) shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

24. Miscellaneous.

24.1. Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California. Any suit brought to defend or enforce the terms of this Lease shall be filed with the courts of the County of Alameda, State of California. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such courts.

24.2. Severability. If any Section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other Sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

24.3. Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing Party shall be entitled to recover from the non-prevailing Party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

24.4. Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing Party ("**Force Majeure**"). The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension provided however that under no circumstances may a Party request an extension for a cumulative period in excess of one (1) year. For purposes of this Lease, except as expressly provided in this Lease, the definition of Force Majeure shall be as set forth in this Section 24.4, and definitions set forth in other agreements between Landlord and Tenant, including but not limited to the Development Documents, shall be inapplicable with regards to actions required pursuant to this Lease.

24.5. Signs. Except with respect to temporary signage advertising the availability of the Premises for lease, Tenant shall not place, or suffer to be placed, any sign upon the exterior of the Building or elsewhere on the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the exterior of the Building or on the Premises by or for Tenant or its subtenants shall be subject to the provisions of this Lease. Tenant shall maintain or caused to be maintained any such signs installed on the exterior of the Building or on the Premises.

24.6. Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker(s) specified in the Basic Lease Information in the negotiating or making of this Lease. Each Party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified Party in conjunction with any such claim or claims of any other broker or brokers to

a commission in connection with this Lease as a result of the actions of the indemnifying Party. Provided that this Lease is fully executed by the Parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

24.7. Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the Term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes in which case Landlord shall notify Tenant as soon as reasonably possible of such entry. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord one set of keys therefor. Upon written request, all keys must be returned to Landlord at the expiration or termination of this Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving Alameda Point may be located within the Building or on the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Premises by Tenant and Tenant Parties.

24.8. Memorandum of Lease. This Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Lease Agreement in the form of **Exhibit G** shall be executed by the Parties concurrently herewith and the Tenant may record the same in the County Recorder's Office of Alameda County. In addition, Tenant and/or Lender may record such instruments as are customary and required by Lender to secure Lender's interest in the Lease.

24.9. Article and Section Titles. The Article and Section titles use herein are not to be consider a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

24.10. Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant does hereby covenant and warrant that: (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation; (b) Tenant has and is duly qualified to do business in California; (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Lease and to perform all Tenant's obligations hereunder; and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof

and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Lease and identifying the person(s) authorized to execute this Lease on behalf of Tenant.

24.11. Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

24.12. Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of its age, the Building may contain asbestos-containing materials ("**ACMs**"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

24.13. Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 10 of this Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Premises.

24.14. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

24.15. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

24.16. Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

24.17. Entire Agreement. This Lease contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or

understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

24.18. Rules and Regulations. Tenant shall faithfully observe and comply with the non-discriminatory rules and regulations attached hereto as **Exhibit E** and incorporated herein by this reference, as the same may be modified from time to time by Landlord. Any additions or modifications to those rules shall be binding upon Tenant's upon Landlord's delivery of a copy to Tenant.

24.19. Relocation Waiver. Tenant acknowledges that upon the expiration or earlier termination of this Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

24.20. Subdivision and Development of Property. Subject to Tenant's rights under the Development Documents, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Premises is located. As a material inducement for Landlord to enter into this Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant's rights under this Lease.

24.21. Environmental and Planning Documents. Tenant acknowledges that its use of the Premises and any Alterations thereto shall comply with the terms, conditions and requirements of the Development Documents which shall include, without limitation, the following: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); (d) the Alameda Point Transportation Demand Management Plan; and (e) the Site Management Plan.

24.22. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Such executed counterparts may be delivered by electronic means, including by facsimile or electronic mail, and such delivery of copies shall have the same force and effect as the delivery of ink original signatures.

24.23. Independent Contractors. The relationship between the Parties is one of Landlord and Tenant acting as independent contractors, and not one of partnership, joint venture, agency,

employment, trust or other joint or fiduciary relationship. This Lease is not for the benefit of any other third party.

[Remainder of this Page Intentionally Left Blank]

Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT

Alameda Point Partners, LLC
a Delaware limited liability company

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

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

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

By: _____

Name: BRUCE DORFMAN

Title: VICE PRESIDENT

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

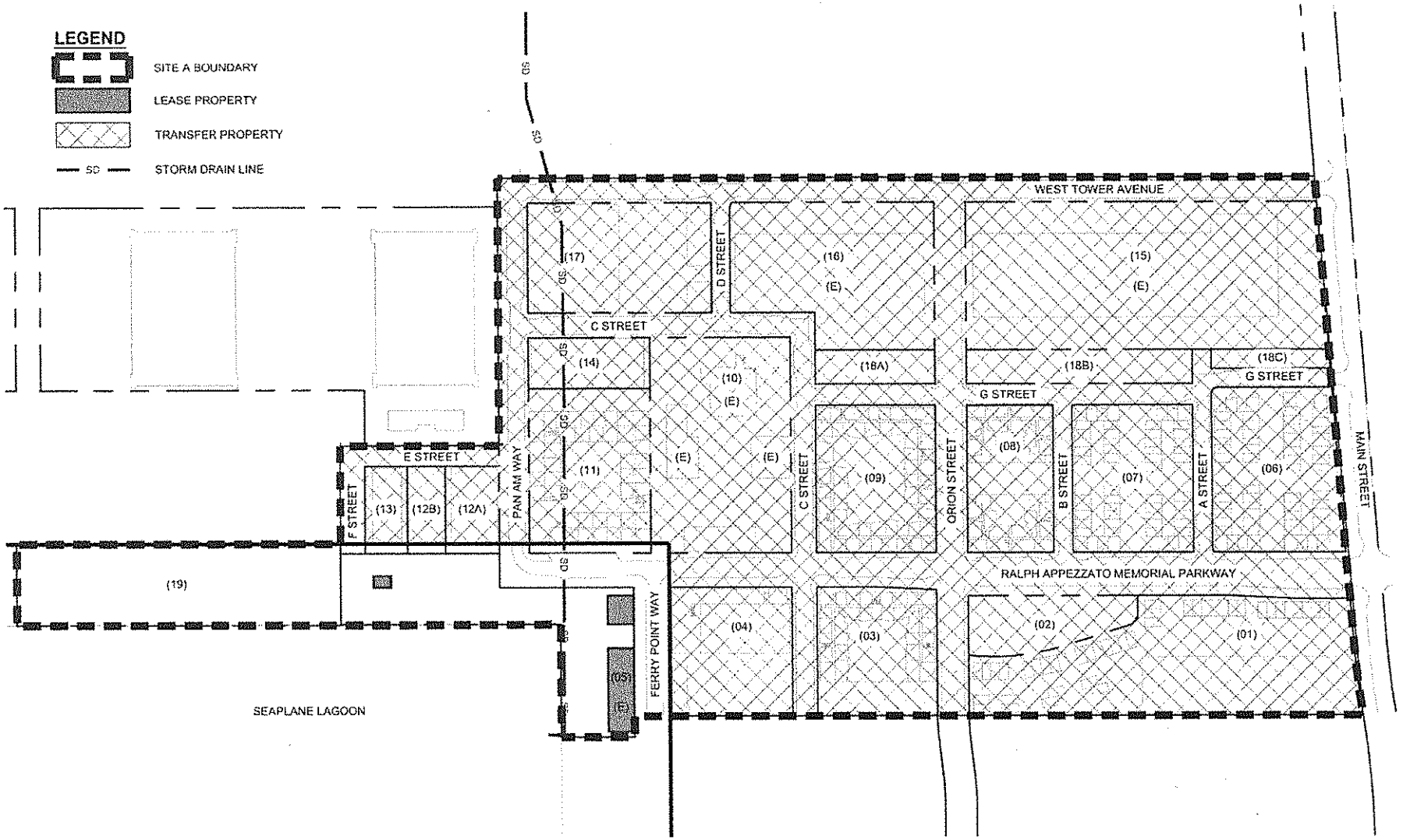
Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

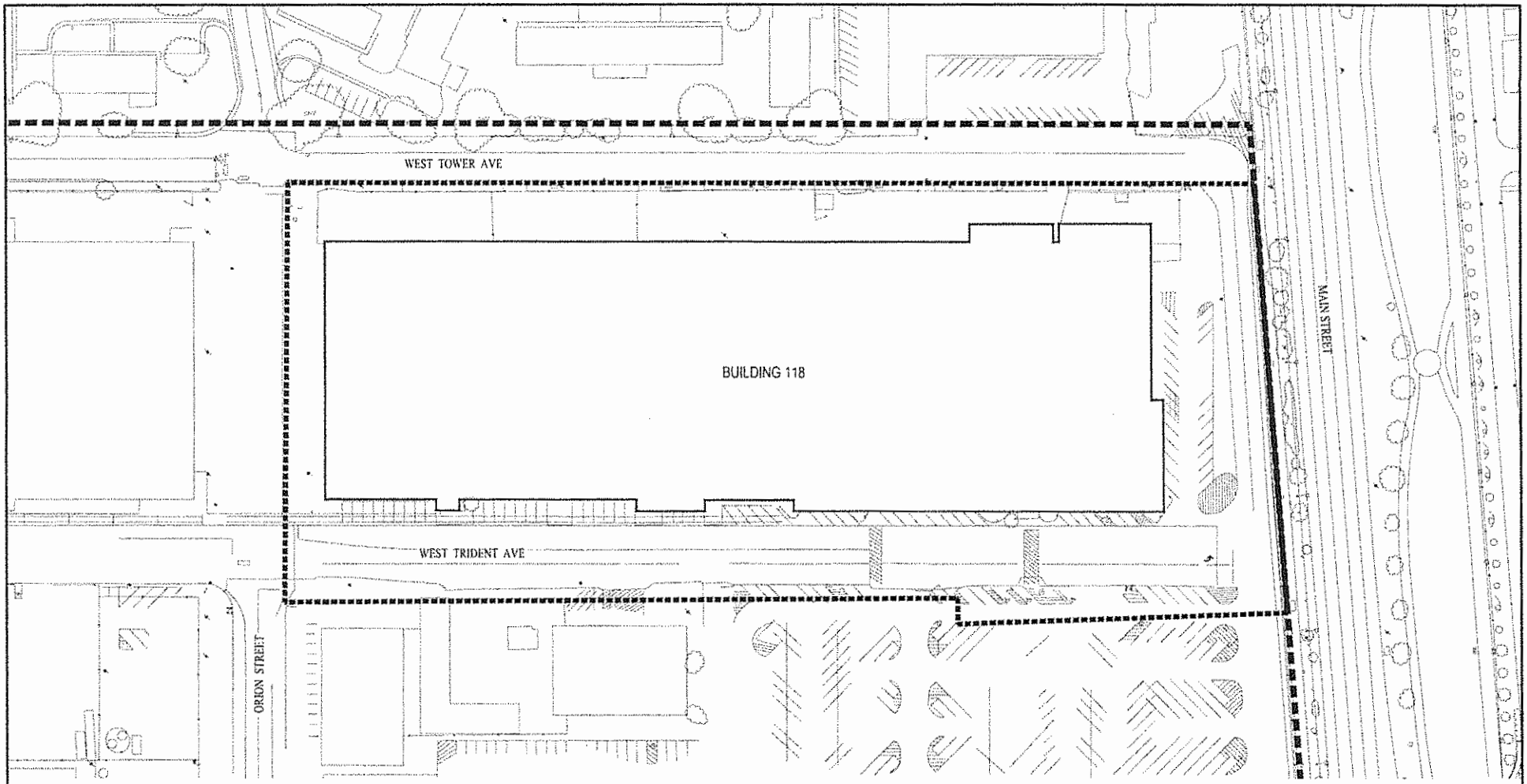
EXHIBIT A
DEPICTION OF PREMISES



MAP OF SITE A PROPERTY

05/29/2015

NOT TO SCALE



LEGEND

SITE A BOUNDARY

APPROXIMATE LEASE PREMISES OF BUILDING 118

ALAMEDA POINT
BUILDING 118
SITE A

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

0' 40' 120' 160'

SCALE: 1" = 40' DATE: JUNE 1, 2015

cbg Carlson, Barbee & Gibson, Inc.

EXHIBIT B
COMMENCEMENT LETTER

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and Alameda Point Partners, LLC, a Delaware limited liability company, as Tenant, for _____ rentable square feet in Building ____ located at _____, Alameda, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Lease is _____;

2. The Expiration Date of the Lease is _____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda By: _____ Name: _____ Title:	Tenant: Alameda Point Partners By: _____ Name: _____ Title: _____

[Exhibit Do not sign]

EXHIBIT C
ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Partners, LLC, a Delaware limited liability company ("Tenant") dated as of _____ ___, 2015 ("**Lease**") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199826 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**");

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**");

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

- Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199837 in the Office of the County Recorder, Alameda County ("**CRUP**");
- Lease in Furtherance of Conveyance Dated June 6, 2000, as amended by the Amendment No. 1 dated November 28, 200 and Amendment No. 2 dated march 30, 2009 ("**LIFOC**"); and
- Site Management Plan for the Premises dated March 29, 2015 ("**Site Management Plan**")

Pursuant to Section 7.3 of the Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Lease.

Signatures on next page.

Alameda Point Partners, LLC
a Delaware limited liability company

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

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

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

By: _____

Name: _____

Title: _____

EXHIBIT D
ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of Hazardous Materials (as defined in Section 13.1 of the Lease and copied for convenience below) in the process proposed on the Premises to be leased. Any such use must be approved in writing by Landlord. Tenant or prospective subtenants should answer the questions in light of their proposed operations in the Building and on or about the Premises. Existing tenants should answer the questions as they relate to ongoing operations in the Building and on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. Hazardous Materials is defined as follows:

"**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, California 94501
(510) 747-4700
Attn: City Manager

1. **General Information.**

Name of Responding Company:_____

Check the Applicable Status:_____

Tenant ☐ Prospective Subtenant ☐ Existing Tenant ☐

Mailing Address:_____

_____

Contact Person and Title:_____

Telephone Number: (___) _____

Alameda Point Address of Proposed Premises to be Leased:_____

_____

Length of Lease Term:_____

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

_____

_____

_____

2. **Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes ☐ No ☐

Hazardous Chemical Products Yes ☐ No ☐

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes ☐ No ☐

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes ☐ No ☐

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes ☐ No ☐

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

_____

_____

_____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes ☐ No ☐

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

_____

_____

3. **Storage Tanks and Pumps.**

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes ☐ No ☐

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

_____

_____

_____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes ☐ No ☐ Not Applicable ☐

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes ☐ No ☐ Not Applicable ☐

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes ☐ No ☐ Not Applicable ☐

If so, describe. _____

_____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes ☐ No ☐ Not Applicable ☐

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes ☐ No ☐ Not Applicable ☐

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. **Spills.**

4.1 During the past year, have any spills occurred on any site you occupy?

Yes ☐ No ☐ Not Applicable ☐

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes ☐ No ☐ Not Applicable ☐

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐ No ☐ Not Applicable ☐

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work_____

_____

_____

_____

5. **Waste Management.**

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes ☐ No ☐

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☐ No ☐

If yes: EPA ID#_____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐ No ☐

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes ☐ No ☐

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes ☐ No ☐

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes ☐ No ☐

If yes, what types and quantities? _____

_____

_____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

_____

_____

_____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

_____

_____

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes ☐ No ☐

If yes, please describe any existing or proposed treatment, processing or recycling methods. ____

_____

_____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. **Wastewater Treatment/Discharge.**

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

_____ storm drain _____ sewer

_____ surface water _____ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes ☐ No ☐

6.3 Is your wastewater treated before discharge?

Yes ☐ No ☐ Not Applicable ☐

If yes, describe the type of treatment conducted.

_____

_____

_____

6.4 Does your business conduct operations outside the building or store materials outside?

Yes ☐ No ☐ Not Applicable ☐

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes ☐ No ☐ Not Applicable ☐

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes ☐ No ☐ Not Applicable ☐

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes ☐ No ☐ Not Applicable ☐

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. **Air Discharges.1**

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes ☐ No ☐

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes ☐	No ☐
Dip tank	Yes ☐	No ☐
Drying oven	Yes ☐	No ☐
Incinerator	Yes ☐	No ☐
Other (please describe)	Yes ☐	No ☐
Boiler	Yes ☐	No ☐

[1] NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

I/C Engine	Yes ☐	No ☐
Emergency Backup Generator	Yes ☐	No ☐
Processes that apply coatings, inks, adhesives or use solvents	Yes ☐	No ☐

7.3 Do you emit or plan to emit any toxic air contaminates?

Yes ☐ No ☐

7.4 Are air emissions from your operations monitored?

Yes ☐ No ☐

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

_____

_____

_____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. **8. Enforcement Actions, Complaints.**

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes ☐ No ☐

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

_____

_____

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ☐ No ☐

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes ☐ No ☐

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes ☐ No ☐

If so, discuss the results of the audit. _____

_____

_____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes ☐ No ☐

Please describe:_____

_____

_____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

_____

a _____

By:_____

Title:_____

Date:_____

EXHIBIT E
PROPERTY RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the non-performance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Property, provided that Landlord shall not enforce the Rules and Regulations in a manner that discriminates against Tenant or Subtenants. In the event of any conflicts between the Rules and Regulations and other provisions of this Lease, the Lease shall control.

1. Except for signs advertising the Premises for lease or sublease, no advertisements, pictures or signs of any sort shall be displayed on or outside the Premises or Building without the prior written consent of Landlord. This prohibition shall include any portable signs or vehicles placed within the parking lot, or on streets adjacent thereto for the purpose of advertising or display. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

2. Storage of forklift propane tanks, whether interior or exterior, shall be in secured and protected storage and enclosure approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Tenant shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

3. Intentionally Omitted.

4. All goods, including materials used to store goods, delivered to the Premises shall be immediately moved into the Building and shall not be left in parking or exterior loading areas overnight.

5. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must uses steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. No parking or storage of such trailers will be permitted in the auto parking areas adjacent to the Building or on the Premises or on streets adjacent thereto.

6. Tenant is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures.

7. Tenant shall not store or permit the storage or placement of merchandise in areas outside or surrounding the Building or outside the Premises. No displays or sales of merchandise shall be allowed in the parking lots.

8. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screen enclosures at locations approved by Landlord.

9. Intentionally Omitted.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. Intentionally Omitted.

13. Tenant shall not overload the floor of the Building.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Tenant hereby acknowledges that Landlord shall have no obligation to Tenant providing guard service or other security measures for the benefit of the Premises or Building. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed.

17. No auction, liquidation, fire sale, going out of business or bankruptcy sale shall be conducted in or about the Premises without the prior written consent of Landlord.

18. No tenant shall use or permit the use of any portion of the Building or Premises for living quarters, sleeping apartments or lodging rooms.

19. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in driveways, service entrances, or areas posted as no parking.

20. If the Building and/or Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Building and/or Premises by Tenant, its agents, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expenses, cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be reasonably approved in writing in advance by Landlord.

21. Intentionally Omitted.

22. Tenant, its employees and agents shall not in any way obstruct the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, or vestibules of Building in a manner that conflicts with applicable laws or safety codes and regulations..

23. Intentionally Omitted.

24. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants thereof, provided that prior to the enforcement of any such new or revised Rules and Regulations against Tenant or any Subtenant, Landlord shall provide Tenant with a written copy of any such changes and additions. Subject to the obligation not to discriminate in its application or enforcement of the Rules and Regulations against Tenant or Subtenants, Landlord may waive any one or more of these Rules and Regulations for the

benefit of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

EXHIBIT F
RENEWAL NOTICE

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and _____, a _____, as Tenant.

Dear _____:

In accordance with Section 4.2 of the above referenced Lease, by this notice Tenant hereby irrevocably exercises its ***[first] [second]*** Renewal Option for the Renewal Term, at the Renewal Rate and upon the terms and conditions specified in Section 4.2.

Sincerely:

_____
[Name of Tenant]
By: _____
Its: _____

[Exhibit: Do Not Sign]

EXHIBIT G
FORM OF MEMORANDUM OF LEASE

Prepared by and after
recording return to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

DOCUMENT EXEMPT FROM RECORDATION FEE
UNDER GOVERNMENT CODE SECTION 27383

MEMORANDUM OF LEASE AGREEMENT

The **CITY OF ALAMEDA**, a charter city and municipal corporation (the "Landlord"), and Alameda Point Partners, LLC a Delaware liability company (the "Tenant"), do hereby declare on this ___ day of _____, 2015 this Memorandum Lease Agreement (this "Memo"):

Pursuant to that certain Lease dated as of _____ ___, 2015 (the "Lease"), the Landlord demised and leased unto the Tenant, and the Tenant leased and demised from the Landlord, that certain property described in the Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Lease.

The term of the Lease commenced as of _____ __, 20__ and shall terminate on _____ __, 20__, unless sooner terminated or extended as provided in the Lease.

1. Except as provided in the Lease and with respect to subleases of the Premises, the Tenant shall not assign or transfer the Lease without the prior written consent of the Landlord in accordance with the Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Lease, the Lease shall control.

3. Upon the earlier of termination or expiration of the Lease, pursuant to the terms thereof, the Landlord shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Lease has been properly terminated or has expired by its terms, then the Landlord and the Tenant agree to execute the Release within 10 days after receipt of a written request for the same by either Party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Lease.

5. This Memo may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[*Signatures to follow*]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Lease Agreement as of the ___ day of _____, 20____.

TENANT
Alameda Point Partners, LLC
a Delaware limited liability company

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

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

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

By: _____

Name: _____

Title: _____

LANDLORD
City of Alameda,
a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam
Interim City Manager

Date: _____

Attest:

_____
Lara Weisiger, City Clerk

Recommended for Approval:

_____
Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

[Exhibit: Do Not Sign]

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

[ADD NOTARY/ACKNOWLEDGEMENTS]

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT M

AFFORDABLE HOUSING IMPLEMENTATION PLAN

AFFORDABLE HOUSING IMPLEMENTATION PLAN
(Alameda Point- Site A Affordable Housing)

This Affordable Housing Implementation Plan (this "Plan") is appended as Exhibit M of that certain Disposition, Development Agreement, dated as of June 16, 2015, as may be amended (the "**DDA**"), by and among the City of Alameda, a California charter city (the "**City**") and Alameda Point Partners, LLC, a Delaware limited liability company (the "**Developer**"). Execution of the DDA is deemed to be an agreement by the Developer to be bound by the terms of this Plan.

RECITALS

A. Under the DDA, the Developer has agreed to redevelop the property more particularly described in Exhibit A of the DDA (the "**Property**") and shown on the site map attached as Exhibit B of the DDA, into a high quality, mixed-use "urbanistic" development which will include 800 Residential Units of new construction and up to 600,000 net new rentable square feet of permitted and conditionally permitted non-residential uses (including but not limited to, retail, commercial, civic and other commercial space) and, which may include the adaptive reuse of some of the existing structures on the Property, and approximately 15 acres of public open space and parks (the "**Project**") to be the catalyst for the revitalization of the Alameda Point district.

B. The Project is a multi-phased mixed used transit oriented development. As part of the Project, the Developer must construct or cause to be constructed a sufficient number of Affordable Housing Units to comply with the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement as further detailed in Article 2 of this Plan. The current Project approvals allow for the construction of 800 Residential Units of which not less than two hundred (200) are required to be Affordable Housing Units permanently restricted to occupancy by Very Low Income Households, Low Income Households and Moderate Income Households.

C. Subject to satisfaction of the conditions in the DDA, the City will transfer portions of the Property in phases directly to the Developer for the construction of the six hundred (600) Market Rate Residential Units and Seventy-two (72) of the Affordable Housing Units that will be permanently restricted for occupancy by Moderate Income Households and will be, to the maximum extent feasible, dispersed throughout the Residential Projects containing Market Rate Residential Units.

D. The Developer is also responsible for the development of one hundred twenty-eight (128) Affordable Housing Units that will be permanently restricted to Very Low Income and Low Income Households. The Developer intends to meets its obligation to develop the Very Low Income and Low Income Homes by partially assigning its obligation to construct the Affordable Housing Development to a Qualified Affordable Housing Developer pursuant to an Affordable Housing Plan Assignment approved by the City. The Developer will remain

responsible to provide the Project Infrastructure for the Affordable Housing Site pursuant to the terms of the DDA and this Plan and for the completion of all Affordable Housing Units.

E. Subject to the satisfaction of the conditions of the DDA and this Plan, the parties contemplate that the City will transfer the Affordable Housing Site directly to the Qualified Affordable Housing Developer to facilitate the construction and operation of the Affordable Housing Development, the construction of which is anticipated to occur in not more than two phases.

F. The purposes of this Plan, as more specifically set forth herein, are to: (1) document, implement and ensure compliance with the requirements of the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance, and the Density Bonus Regulations as they apply to the Project; (2) enumerate the conditions for site control and the transfer of the Affordable Housing Site to the Developer or a Qualified Affordable Housing Developer; (3) provide for the orderly development and operation of the Affordable Housing Development and the Moderate Income Units; and (4) set forth the ongoing requirements for the operation of the Affordable Housing Units.

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions and promises set forth herein and in the DDA, the Parties agree as follows:

ARTICLE 1. TIME OF PERFORMANCE

Section 1.1 Milestone Schedules.

(a) Consistency with DDA Milestone Schedule. The Developer and the City are each required to perform certain tasks and to fulfill certain obligations as set forth in the DDA and this Plan. The schedule of the deadlines for performance of various conditions and requirements under the DDA and this Plan must be consistent with the requirements set forth in the DDA Milestone Schedule and the DDA Phasing Plan, incorporated herein by this reference. The DDA Milestone Schedule and DDA Phasing Plan may only be amended pursuant to the terms of the DDA, including Section 1.3 thereof.

(b) Affordable Housing Development Milestone Schedule. The schedule of the deadlines for the Developer's performance (and pursuant to the Affordable Housing Plan Assignment, the Qualified Affordable Housing Developer's performance) of various conditions and requirements applicable only to the Affordable Housing Development under this Plan are set forth in the Affordable Housing Development Milestone Schedule attached as Attachment A.

ARTICLE 2. AFFORDABLE HOUSING OBLIGATIONS AND PROJECT SPECIFIC IMPLEMENTATION

Section 2.1 Applicable Housing Requirements. The redevelopment of the Property is subject to the requirement under the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance and the Density Bonus Regulations as further set forth below:

(a) Renewed Hope Settlement Agreement. Under the Renewed Hope Settlement Agreement twenty-five percent (25%) of all newly constructed housing units at Alameda Point must be made permanently Affordable as follows: (1) ten percent (10%) of all Residential Units shall be made permanently Affordable to Very Low Income Households and Low Income Household (households with incomes at or below 80% of median income); and (3) the remaining fifteen (15%) of all Residential Units shall be made permanently Affordable to Very Low Income Households, Low Income Households and Moderate Income Households under the criteria set forth in Health and Safety Code Section 33413(b)(2).

(b) Inclusionary Housing Ordinance. Under AMC 30-16-4 at least fifteen percent (15%) of the total units in the Project must be "inclusionary units" restricted for occupancy by Very Low Income Households, Low Income Households and Moderate Households Income Households. Specifically, the Inclusionary Ordinance requires that: (1) four percent (4%) of the units be restricted to occupancy by Very Low Income Households; (2) four percent (4%) of the units must be restricted to occupancy by Low Income Households; and (3) seven percent (7%) of the units must be restricted to occupancy by Moderate Income Households.

(c) Density Bonus Regulations. The Developer has filed an application for a Density Bonus waiver for the Project under the City's Density Bonus Regulations and in consideration for such waiver the Developer has agreed to make at least ten percent (10%) of the total units in the Project affordable to Low Income Households; or at least five percent (5%) of the total units in the Project affordable to Very Low Income Households; or at least ten percent (10%) of the total units in the Project affordable to Moderate Income Households.

(d) Project Specific Requirements. The City has determined that in order to comply with the combined requirements of the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement, not less than twenty-five percent (25%) of the Residential Units to be constructed under the DDA shall be made permanently Affordable as follows: (1) six percent (6%) of all Residential Units shall be made permanently Affordable to Very Low Income Households; (2) ten percent (10%) of all Residential Units shall be made permanently Affordable to Low Income Households; and (3) nine percent (9%) of all Residential Units shall be made permanently Affordable to Moderate Income Households. The Developer agrees and acknowledges that based on the Project approvals contemplating eight hundred (800) Residential Units, the Developer is required to construct not less than 200 Affordable Housing Units in the following proportions:

(1) Forty-eight (48) Very Low Income Units are required to be made available to and occupied by Very Low Income Households.

(2) Eighty (80) Low Income Units are required to be made available to and occupied by Low Income Households.

(3) Seventy-two (72) Moderate Income Units are required to be made available to and occupied by Moderate Income Households.

Section 2.2 Recorded Restrictions.

(a) To ensure that all Affordable Housing Units constructed as part of the Project are permanently available to and occupied by income eligible households at an Affordable Housing Cost in compliance with this Plan, the parties hereby agree to execute and record in the public records with the Alameda County Recorder (the "Official Records"): (1) a City Regulatory Agreement in substantially the form attached as Attachment B restricting Very Low Income Homes and the Low Income Homes at the time of conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer; (2) a City Regulatory Agreement in substantially the form attached as Attachment B restricting the Moderate Income Units that are For-Rent Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Rent Residential Unit; and (3) to record an Affordable Housing Covenant in substantially the form attached as Attachment C restricting the sale of Moderate Income Units that are For-Sale Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Sale Residential Unit. The City Regulatory Agreement or Affordable Housing Covenant shall be recorded against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The parties agree to meet and confer if the priority lien position of the City Regulatory Agreement or Affordable Housing Covenant interferes with the Qualified Affordable Housing Developer's ability to obtain market rate debt financing. The Qualified Affordable Housing Developer must demonstrate to the City's reasonable satisfaction that subordination of the City Regulatory Agreement or Affordable Housing Covenant is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Affordable Development. To satisfy this requirement, the Qualified Affordable Housing Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the senior debt is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Affordable Development and adequate financing for the Affordable Development would not be available without the proposed subordination.

(b) The Developer further agrees that upon sale of any Affordable Housing Units that are For-Sale Residential Units the Developer will require that purchaser enter, execute and record the Affordable Resale Restriction in substantially the form attached as Exhibit E of the Affordable Housing Covenant attached hereto as Attachment C against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City.

(c) This Plan and the recorded restrictions required under this Section 2.2 shall satisfy the requirement for: (1) an "affordable housing agreement" ensuring the continuing affordability of housing pursuant to the Density Bonus Regulations as specified in AMC 30-17; and (2) an "affordable housing plan" ensuring the continuing affordability of housing constructed pursuant to the Inclusionary Housing Ordinance as specified AMC 30-16-10.

ARTICLE 3. CONDITIONS FOR AND DISPOSITION OF AFFORDABLE HOUSING SITE

Section 3.1 Site Conveyance- Affordable Housing Development. The City shall convey to a Qualified Affordable Housing Developer, through an option agreement or purchase and sale agreement, the Affordable Housing Site in accordance with the terms of this Plan and the DDA. The parties agree that the City shall have no obligation to convey the Affordable Housing Site until and unless the Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof) and the Developer or the Qualified Affordable Housing Developer has met the conditions to conveyance set forth in Article 3 of this Plan.

Section 3.2 Conditions to Conveyance of Affordable Housing Site. The conveyance by the City of the Affordable Housing Site for the Affordable Housing Development shall be subject to the satisfaction or waiver by the City of the following conditions:

(a) The City shall have approved the Qualified Affordable Housing Developer. Eden Housing, Inc., a California nonprofit public benefit corporation ("Eden Housing") is hereby approved as the Qualified Affordable Housing Developer, provided however, the Developer may designate an alternative Qualified Affordable Housing Developer if: (1) Eden Housing cannot meet the conditions for conveyance of the Affordable Housing Site set forth in this Plan and the DDA within the time periods required by the Milestone Schedule and the Affordable Housing Development Milestone Schedule; or (2) the Affordable Housing Plan Assignment with Eden Housing is terminated prior to the conveyance of the Affordable Housing Site. The City approval of any alternative Qualified Affordable Housing Developer shall be required prior to conveyance of an Affordable Housing Site to the alternative Qualified Affordable Housing Developer.

(b) If the Qualified Affordable Housing Developer is proposing to develop affordable senior housing within the Affordable Housing Development, the Qualified Affordable Housing Developer shall provide evidence of a fully executed modification or amendment to the Renewed Hope Settlement Agreement as necessary to allow for the development of affordable senior housing at Alameda Point.

(c) The City shall have approved an Affordable Housing Plan Assignment that requires the Qualified Affordable Housing Developer to:

(1) Prepare an Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan;

(2) Provide the City a breakdown of the number of Low Income Homes and Very Low Income Homes it intends to develop and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households;

(3) Obtain all applicable Supplemental City Approvals, including without limitation design review approval in accordance with the Project Approvals (as defined in the DDA);

(4) Develop and construct the Affordable Housing Development in accordance with the applicable Project Approvals and any Supplemental City Approvals and to manage and operate the Affordable Housing Development consistent with the requirements of the DDA, this Plan and the applicable City Regulatory Agreement.

(5) Secure all financing necessary for the development and operation of the Affordable Housing Development consistent with the approved Phase Financing Plan and the Affordable Housing Development Financing Plan, and includes the requirement that the Qualified Affordable Housing Developer obtain Tax Credit Reservations for both phases of the Affordable Housing Development and apply for a commitment of AHSC Program Funds prior to conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer;

(6) Enter into and record a City Regulatory Agreement for the benefit of the City (which shall be binding on the respective successors and assigns of the City and the Qualified Affordable Housing Developer);

(7) Grant to the City an option to acquire the Affordable Housing Site, which option will be evidenced by the Memorandum of Option substantially in the form of Attachment D to be recorded against the Affordable Housing Site at the time of conveyance to the Qualified Affordable Housing Developer. In accordance with the terms of the Memorandum of Option, the City shall be entitled to exercise the option if the Qualified Affordable Housing Developer has failed to meet the performance standards in the City Regulatory Agreement or fails to Commence or Complete Construction of the Affordable Housing Development within the times specified in Affordable Housing Development Milestone Schedule. If the City exercises the Option and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.4 below and the Qualified Affordable Housing Developer has not installed the Deferred Infrastructure prior to the exercise of the option, the Affordable Housing Plan Assignment shall further require that the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. The Affordable Housing Plan Assignment shall further require that if the City exercises the Option and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development (including design) of the Affordable Housing Development on the Affordable Housing Site at no cost to the City;

(8) Deliver to the Developer the Preliminary Development Notice required pursuant to Section 4.3 of this Plan as well as a written Commencement Notice at least six (6) months prior to the date the Qualified Affordable Housing Developer intends to Commence Construction and to provide the Developer with notice of any subsequent revision to the Qualified Affordable Housing Developer's Commencement of Construction date in order to allow the Developer sufficient time to coordinate and complete the applicable Project

Infrastructure required to provide access and utility service to the Affordable Housing Site prior to Commencement of Construction.

(d) The City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan.

(e) The Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof), or Developer's obligation to Complete such infrastructure is covered in a subdivision improvement agreement governing the applicable infrastructure (including any Deferred Project Infrastructure) in which: (1) Developer is obligated to Complete the applicable infrastructure (other than any applicable Deferred Project Infrastructure) on the earlier of (i) the date that the Qualified Affordable Housing Developer Commences Construction of the Affordable Housing Development; or (ii) within the timeframes required under the subdivision improvement agreement; and (2) Developer's obligations to Complete the Project Infrastructure and Deferred Project Infrastructure is subject to Completion Assurances to the City.

Section 3.3 Conveyance to Qualified Affordable Housing Developer.

(a) Upon satisfaction of the conditions set forth in Section 3.2, satisfaction of the conditions for conveyance of Phase I of the Property to the Developer pursuant to the DDA, and other requirements of this Plan, the City shall convey the Affordable Housing Site to the Qualified Affordable Housing Developer at a cost of $100. Within thirty (30) days of satisfaction of the conditions set forth in Section 3.2, the City shall deliver to Escrow a Quitclaim Deed substantially in the form of Exhibit I in the DDA. The City and the Qualified Affordable Housing Developer shall ensure that the document conveying title to the Affordable Housing Site to the Qualified Affordable Housing Developer provide sufficient access to the Developer to enable the Developer to complete the necessary in-tract infrastructure work.

(b) At close of escrow conveying the Affordable Housing Site to the Qualified Affordable Housing Developer, the City Regulatory Agreement and the City Option shall be recorded against the Affordable Housing Site.

(c) The City shall deliver title to the Affordable Housing Parcel to the Qualified Affordable Housing Developer in accordance with Section 4.5 of the DDA.

Section 3.4 Affordable Housing Development Financing Plan.

(a) Phase Financing Plan for Affordable Housing Development. In addition to the requirements set forth in Section 3.1(b) of the DDA, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit to the City Manager for approval the Affordable Housing Development Financing Plan for each phase of the Affordable Housing Development which shall contain the following documents and information:

(1) An updated "sources and uses" breakdown of the costs of acquiring the Affordable Housing Site and constructing the Affordable Housing Development, and an updated operating proforma for the Affordable Housing Development. Such updated sources and uses breakdown shall reflect the Qualified Affordable Housing Developer's then current expectations for funding sources and development costs and may be in a form substantially similar to the most recently revised Phase Financing Plan, or in such other form as is mutually agreed upon by the Parties. The sources and uses breakdown shall include a project budget and include a disbursement schedule identifying the source of funds and the timing of disbursement.

(2) As requested by the City, financial information concerning the providers of the funds showing their ability to provide the committed funds;

(3) Any other information that is reasonably necessary to the City in determining that the Qualified Affordable Housing Developer has the financial capability to pay all costs of acquiring, constructing and operating the Affordable Housing Development, as applicable, such as evidence of the availability of equity funds other than tax credit investor equity; and

(4) Project cash flows showing the estimated costs of operating the Affordable Housing Development in accordance with this Plan, the City Regulatory Agreement and other project documents, for not less than fifty-five (55) years after their respective anticipated dates of completion.

(b) The City's time periods for review and approval of the Affordable Housing Development Financing Plan shall be in accordance with the requirements for review and approval of the Phase Financing Plan set forth in Section 3.2 of the DDA.

Section 3.5 AHSC Program Grant.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize funding from the Affordable Housing and Sustainable Communities Program ("AHSC Program") to partially finance the development of the Affordable Housing Development. The AHSC Program is subject to a competitive application process implemented by HCD in coordination with the California Strategic Growth Council. Receipt by the Qualified Affordable Housing Developer of an AHSC Program grant in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.5, the AHSC Program grant shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4 above.

(b) Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for AHSC Program funds to HCD for the Affordable Housing Development. If the Qualified Affordable Housing Developer receives an invitation to submit a full application for AHSC program funds from HCD, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete full application for AHSC Program funds within the time specified by

HCD. If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC program funds from HCD or an AHSC Program grant allocation, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for the AHSC Program funds to HCD for the next available AHSC funding cycle but in no event later than the time specified in the Affordable Housing Development Milestone Schedule.

(c) If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program funds, fails to receive an allocation of AHSC Program funds by the outside date specified in the Affordable Housing Development Milestone Schedule for receipt of an allocation of AHSC Program funds, or the AHSC Program regulations change such that the Qualified Affordable Housing Developer or the Affordable Housing Development does not qualify for AHSC Program funds, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed sixty (60) days to determine if the Qualified Affordable Housing Developer should submit a further applications to HCD in a subsequent concept proposal application rounds or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such sixty (60) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have sixty (60) days to provide the City with a feasible proposal for how it expects to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within sixty (60) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

Section 3.6 Tax Credits.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize Tax Credit Funds to partially finance the Affordable Housing Development, which are subject to a competitive application process implemented by TCAC. Receipt by the Qualified Affordable Housing Developer of a Tax Credit Reservation in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.6, the Tax Credit Reservations shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4.

(b) Phase I Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. If the Developer does not receive a Tax Credit Reservation in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely

and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(c) Phase II Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for a Tax Credit Reservation to TCAC for the second phase of the Affordable Housing Development. If a Tax Credit Reservation is not received for the second phase of the Affordable Housing Development in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(d) If Tax Credit Reservations for Phase I or Phase II of the Affordable Housing Development are not received by the time specified in the Affordable Housing Development Milestone Schedule, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed ninety (90) days to determine if the Qualified Affordable Housing Developer should submit a further application to TCAC in a subsequent preliminary reservation round or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such ninety (90) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have ninety (90) days to provide the City with a feasible proposal for how it intends to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within ninety (90) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

(e) Upon an award of the Tax Credit Reservation from TCAC, the Developer shall or shall cause the Qualified Affordable Housing Developer to exercise diligent good faith efforts to obtain a funding commitment from a tax credit investor for the Tax Credit Funds. Such funding commitment shall be in a form reasonably acceptable to the City. Procurement of the Tax Credit Reservations and acceptable funding commitments for the Tax Credit Funds shall be a condition precedent to the City's obligation to convey the Affordable Housing Site to the Qualified Affordable Housing Developer.

Section 3.7 Other Financing. In addition to the Tax Credit Funds all other financing necessary to construct the Affordable Housing Development, as required and approved by the City in the Affordable Housing Development Financing Plan, shall be closed by the Qualified Affordable Housing Developer prior to, or simultaneously with, the transfer of an Affordable Housing Site. As a condition of conveyance of the Affordable Housing Site, the City shall have received evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds described in the approved Affordable Housing Development Financing Plan as the sources of funds to pay the costs of constructing the Affordable Housing Development have been met or will be met upon the transfer of an Affordable Housing Site.

Section 3.8 Developer Contribution. The Developer shall provide to the Qualified Affordable Housing Developer, a loan or equity contribution (the determination of the form of the assistance shall be at the Qualified Affordable Housing Developer's sole and absolute discretion and the assistance may be funded first to the City and then from the City to the Qualified Affordable Housing Developer) in the amount of Three million Dollars ($3,000,000) for the construction of the Affordable Housing Development. As a condition to the conveyance of the Affordable Housing Site, the Developer shall provide evidence of the Developer Contribution to the City in a form reasonably satisfactory to the City. The Developer agrees to issue a formal binding commitment to the Qualified Affordable Housing Developer prior to submission by the Qualified Affordable Housing Developer of a Tax Credit Application in compliance with Section 3.6 above.

Section 3.9 City Use of Project-Generated Fees. The Developer shall receive a credit toward the Non-Residential Affordable Housing Fee imposed pursuant to AMC Section 27, for the construction of eighty (80) on site affordable housing units in excess of the affordable housing units required by the City's Inclusionary Housing requirements set forth in in this Plan. The Developer shall be obligated to pay the applicable Non-Residential Affordable Housing Fee, in excess of the 80 unit Fee credit, on any Non-Residential development in the Project, which fee shall be calculated using the 2014-15 effective rate. To the extent the Project generates any additional Non-Residential Affordable Housing Fee as a result of increase in the amount of commercial space developed, the City shall use all of the Non-Residential Affordable Housing Impact Fees generated from the Property only for purposes of providing funding assistance to the Affordable Housing Development through the date that commencement of construction of all Affordable Housing Development has occurred. Thereafter, any Non-Residential Affordable Housing Impact Fees generated from development of the Property shall be used to fund the City's general affordable housing.

Section 3.10 Right of Reverter. Subject to Section 17.5 of the DDA, the City shall have the right to reacquire title to the Affordable Housing Site if the Qualified Affordable Housing Developer fails to construct the Affordable Housing Development. If the City acquires the Affordable Housing Site pursuant to the right of reverter, the City shall take title subject to the Regulatory Agreement and the conditions set forth in this Plan. If the City exercises its right of reverter and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.8 below and the Qualified Affordable Housing Developer has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. If the City exercises the right of reverter and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development of the Affordable Housing Development.

ARTICLE 4. CONSTRUCTION OF AFFORDABLE HOUSING UNITS

Section 4.1 Schedule for Developing Affordable Housing Units.

(a) The Developer shall or shall cause the Qualified Affordable Housing Developer to construct and deliver the Affordable Housing Development within the times set forth in the Affordable Housing Development Milestone Schedule which at all times must be consistent with the DDA Milestone Schedule and the DDA Phasing Plan, subject to extension provisions of Section 1.3 of the DDA.

(b) The Developer shall construct and deliver the Moderate Income Units within the times set forth in the DDA Milestone Schedule and the DDA Phasing Plan.

Section 4.2 Timing of Construction

(a) The Developer contemplates that the Project shall be phased with construction and development occurring as set forth in the Phasing Plan contained in the DDA. The parties acknowledge and agree that the first phase of the Project will include the construction of the Affordable Housing Development, which the parties contemplate will be constructed in two phases (but could be combined into one phase). To the extent the Developer and the Qualified Affordable Housing Developer elect to develop Moderate Income Units in the Affordable Housing Development, the Developer shall submit to the City and obtain City approval of an amendment to the Development Plan to authorize the development of Moderate Income Units in the Affordable Housing Development.

(b) The City shall have no obligation to issue building permits for Residential Units in the first phase of the Project after the issuance of the building permit for the three hundred ninety-fifth (395th) market rate Residential Unit (specifically excluding any building permits issued for the construction of permanently restricted Moderate Income Units necessary to meet the Moderate Income Unit requirements) until and unless a Tax Credit Reservation has been received and executed for both phases of the Affordable Housing Development.

(c) If the City ceases to issue building permits for Residential Units after the issuance of the three hundred ninety-fifth (395th) Residential Unit building permit pursuant to Section 4.2 (b) above, the City shall not be obligated to commence issuance of further building permits for Residential Units unless and until: (1) the Qualified Affordable Housing Developer receives and executes a Tax Credit Reservation for both phases of the Affordable Housing Development and the Qualified Affordable Housing Developer has submitted and the City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan ; or (2) the Developer records a Regulatory Agreement on undeveloped residential land in Phase 1 of the Project that will permanently restrict one hundred and seven (107) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 1 of the Project. If and to the extent, the Developer records a Regulatory Agreement on Phase 1 of the Project pursuant to this Section 4.2(c)(2), then the Developer shall be required to record a Regulatory Agreement on undeveloped residential land

in Phase 2 of the Project that will permanently restrict twenty-one (21) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 2 of the Project.

(d) The Developer shall have discretion to determine the exact number of Moderate Income Units to be developed in each market rate Residential Project, provided that the required number of Moderate Income Units provided in each Phase will allow the Developer to meet the Moderate Income Unit requirement for the Project. The Developer shall provide the City with written notice, prior to the conveyance of the first parcel to a vertical developer, or if the Developer intends to complete the vertical development, prior to the issuance of the first building permits for vertical construction, of the Residential Projects designated or anticipated to be designated to include Moderate Income Units. The Developer may update the designation of Residential Projects to include Moderate Income Units at any time as long as the designation in each Phase meets the required number of Moderate Income Units for the Project and is consistent with the DDA Phasing Plan. The Developer shall impose the requirement to provide Moderate Income Units in the Residential Projects designated by the Developer to include Moderate Income Units upon the vertical developers at time of sale or transfer of the parcels so designated and a covenant or other deed restriction acceptable to the City restricting the designated number of Moderate Income Units to be developed on that portion of the Property shall be recorded on each parcel transferred or prior to issuance of a building permit.

Section 4.3 Preliminary Development Notice.

(a) The planning, design and construction of the Affordable Housing Development and the associated Project Infrastructure and Deferred Project Infrastructure required to provide minimum access and utility services for the Affordable Housing Development will require cooperation and coordination between the City, the Developer and the Qualified Affordable Housing Developer, and coordination and cooperation will also be required of them with respect to the construction of other portions of the Project and Project Infrastructure that may, from time to time, also be concurrently under construction. The Qualified Affordable Housing Developer and Developer shall agree to cooperate and to take all acts reasonably necessary to reduce conflicts between the development of the Affordable Housing Development and the associated Project Infrastructure and the development of other portions of the Property and associated Project Infrastructure.

(b) The Affordable Housing Plan Assignment shall require the Qualified Affordable Housing Developer to provide the Developer with a preliminary development notice at the earlier of: (i) twelve (12) months prior to its targeted date for Commencement of Construction on an Affordable Housing Site; or (ii) the date that Qualified Affordable Housing Developer submits its first application for tax credit financing to TCAC (the "Preliminary Development Notice"). The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, the information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Qualified Affordable Housing Developer's anticipated construction start date, preliminary construction schedule, description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads, and anticipated dates for completion of construction of the

Affordable Housing Development, when Deferred Project Infrastructure, including utility hookups and public access, will be required. The Preliminary Development Notice shall be updated on regular intervals, but not less frequently than every three months.

(c) The Qualified Affordable Housing Developer shall notify Developer and the City if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed Completion dates thereof. The Qualified Affordable Housing Developer, Developer and City shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable the Developer to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

(d) Developer shall provide the Qualified Affordable Housing Developer with a reasonable opportunity (of not less than thirty (30) days), to review and comment on draft improvement plans for Project Infrastructure and Deferred Project Infrastructure, provided that nothing herein shall require Developer to delay preparation or approval of improvement plans or construction to accommodate the Qualified Affordable Housing Developer's schedule for design and construction, absent notice and request from the Qualified Affordable Housing Developer and consent thereto by Developer.

Section 4.4 Coordination of Construction and Deferred Project Infrastructure.

(a) The Parties intend that Deferred Project Infrastructure related to the Affordable Housing Site will be completed by Developer in coordination with the development of the Affordable Housing Units on the Affordable Housing Site. Developer's obligation to Complete the Deferred Project Infrastructure will be secured by completion assurances given in accordance with the applicable Subdivision Improvement Agreement, and City shall provide Developer with all access needed to Complete the Deferred Project Infrastructure on the Affordable Housing Site. The Developer shall coordinate the construction of the Deferred Project Infrastructure with the construction of the Affordable Housing Development to ensure that: (1) the Deferred Project Infrastructure is Completed at or before completion of the Affordable Housing Development; (2) the utility laterals serving the Affordable Housing Site are Completed in coordination with the construction of the Affordable Housing Development; and (3) Developer's work does not interfere with or obstruct the Qualified Affordable Housing Developer's work during such construction to the maximum extent reasonably feasible and that the Qualified Affordable Housing Developer's work similarly does not interfere with Developer's work.

(b) Notwithstanding the foregoing, if Developer has Commenced the Project Infrastructure required to serve parcels adjacent to or in the same Phase of the Project and in the vicinity of the Affordable Housing Site, then Developer shall have the right to Commence and Complete the Deferred Project Infrastructure related to the Affordable Housing Site (other than the utility laterals for the Affordable Housing Site) even though design, development or construction of the Affordable Housing Development may not yet have Commenced to the same extent.

(c) Developer shall provide the Qualified Affordable Housing Developer and the City not less than ninety (90) days' notice of its intent to Commence the Deferred Project Infrastructure, and such right shall accrue unless: (1) the City or the Qualified Affordable Housing Developer objects within thirty (30) days following the receipt of Developer's notice; and (2) the City or Qualified Affordable Housing Developer, as applicable, and the Developer agree, within sixty (60) days following the objection, to a payment amount equal to Developer's anticipated cost of completing some or all of the Deferred Project Infrastructure on the Affordable Housing Site (the "Deferred Infrastructure Liquidation Amount"). The City, the Qualified Affordable Housing Developer, and the Developer shall meet and confer in good faith during the 60-day period (or such longer period as may be agreed to by the City, the Qualified Affordable Housing Developer and the Developer) to reach agreement on the Deferred Project Infrastructure Liquidation Amount. Developer shall provide its estimate of such costs, based upon the Deferred Project Infrastructure to be completed and substantiated by qualified contractor bid(s) or estimates(s) specifying the quantity and cost to complete the Deferred Project Infrastructure. If the City, Qualified Affordable Housing Developer and the Developer are able to reach agreement on the Deferred Infrastructure Liquidation Amount, then Developer shall promptly pay this sum to the then current owner of the Affordable Housing Site, either the City or the Qualified Affordable Housing Developer, and thereafter: (i) Developer shall be released from any further obligation to construct that portion of the Deferred Project Infrastructure for which Developer has paid the Deferred Infrastructure Liquidation Amount; and (ii) the City shall release any associated completion assurance given pursuant to the Subdivision Improvement Agreement.

(d) If the City receives the Deferred Infrastructure Amount, the City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Affordable Housing Developer at time of the conveyance of the Affordable Housing Site. Upon receipt of the Deferred Infrastructure Liquidation Amount, the Qualified Affordable Housing Developer shall be responsible to construct the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount. If the City, Qualified Affordable Housing Developer and the Developer are not able to reach agreement on the Deferred Infrastructure Liquidation Amount within the time frame set forth above, then Developer shall proceed to install the Deferred Project Infrastructure related to the Affordable Housing Site. The Parties agree that completion of the utility laterals and other components of Deferred Project Infrastructure on the Affordable Housing Site in advance of the design development or related construction of the Affordable Housing Development on the Affordable Housing Site may result in the need to move or replace all or part of said Deferred Project Infrastructure. In order to avoid unnecessary costs and duplication of work, in the event the Developer elects to proceed and to install the Deferred Project Infrastructure serving the Affordable Housing Site prior to adequate design development or construction to define and locate said Deferred Project Infrastructure for the Affordable Housing Development, Developer shall Complete all of the Deferred Project Infrastructure except for the utility laterals and any other components of Deferred Project Infrastructure for which Developer does not have sufficient design information from the Qualified Affordable Housing Developer, and the Developer shall pay to the City or the Qualified Affordable Housing Developer a Deferred Infrastructure Liquidation Amount equal to the amount determined by Developer and approved by the City and the Qualified Affordable Housing Developer as the reasonably estimated cost of installing the utility lateral(s) or other deferred components of Deferred Project Infrastructure upon Completion of the remaining

Deferred Project Infrastructure and upon such payment: (i) Developer shall be released from any obligation to Complete such Deferred Project Infrastructure; and (ii) the City shall release any associated completion assurance pursuant to the applicable Subdivision Improvement Agreement.

Section 4.5 Schedule Adjustments. Developer's schedule under this Plan to deliver Project Infrastructure and Deferred Project Infrastructure required to service an Affordable Housing Development shall be subject to modification if and to the extent changes in the type, nature, locations, amount, cost or phasing of Project Infrastructure or Deferred Project Infrastructure are required to respond to the Qualified Affordable Housing Developer's request or to accommodate changes in the Affordable Housing Development from those assumed in the previously approved improvement plans and agreement. Developer shall have the right to reject such proposed Project Infrastructure changes if it would materially and adversely: (1) delay (unless such delay is accepted by the City and the Qualified Affordable Housing Developer) or increase the costs of Project Infrastructure for the Affordable Housing Development; (2) increase the costs to other Residential Projects or their associated Project Infrastructure; or (3) delay or interfere with actual construction of such other Project Infrastructure or such other Residential Projects. If Developer believes any adjustment to the Project Infrastructure or Deferred Project Infrastructure Completion dates related to the Affordable Housing Development is required, it shall provide City and the Qualified Affordable Housing Developer with notice and the detailed reasons therefor, and the Parties shall thereafter proceed in good faith to attempt to mutually agree upon a revised schedule, provided that the Developer shall have the right to modify the schedule as necessary to respond to such materially changed circumstances or information related to the design and development of the Affordable Housing Development.

Section 4.6 Performance.

(a) During the construction of Project Infrastructure and Deferred Project Infrastructure, Developer shall deliver status reports to the City and the Qualified Affordable Housing Developer advising of the status and progress of the preparation of improvement plans and the construction of the Project Infrastructure (or Deferred Project Infrastructure), including a report of any significant delays in the progress of such construction and whether such delays are due to Force Majeure Delay or Affordable Housing Development specific infrastructure changes, and updating, as necessary, the estimated Project Infrastructure Completion date.

(b) Notwithstanding the foregoing provisions of this Plan to the contrary, in no event shall Developer be in default of its obligation to Complete the Project Infrastructure (or Deferred Project Infrastructure) hereunder unless Developer's failure materially and adversely interferes with the Qualified Affordable Housing Developer's obtaining construction financing, permits and/or approvals for development of the Affordable Housing Development, or the construction, use or occupancy of the Affordable Housing Development thereon, materially increases the Qualified Affordable Housing Developer's costs with respect to such Affordable Housing Development, or materially delays the Qualified Affordable Housing Developer's construction or occupancy of the Affordable Housing Development (when compared to the development schedule, including any updates provided or agreed upon in good faith), and such failure continues for more than forty-five (45) days following Developer's receipt of written notice thereof from the Qualified Affordable Housing Developer; provided, however, that if

more than forty-five (45) days is reasonably required to sufficiently complete the Project Infrastructure (or Deferred Project Infrastructure) to eliminate the interference with or delay to the Qualified Affordable Housing Developer's obtaining construction permits or approvals for development or its construction, use or occupancy of the Affordable Housing Development, then Developer's will not be in default hereunder so long as: (1) temporary infrastructure is available to eliminate such interference or delay, including any interference or delay in the Qualified Affordable Housing Developer's obtaining construction permits or approvals for the Affordable Housing Development or, if applicable, a certificate of occupancy, and Developer provides such temporary infrastructure within thirty (30) days following Developer's receipt of the Qualified Affordable Housing Developer's notice described above; (2) Developer continues to so provide such temporary infrastructure until the completion of the Project Infrastructure (or Deferred Project Infrastructure); and (3) Developer diligently pursues completion of the Project Infrastructure (or Deferred Project Infrastructure).

(c) The Qualified Affordable Housing Developer's notice to Developer of Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) must specify, in reasonable detail, the basis for the Qualified Affordable Housing Developer's assertion that Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) constitutes a default in Developer's obligations as described above.

Section 4.7 Comparability of Housing Units.

(a) The Affordable Housing Units and Moderate Income Units shall include a range of sizes generally reflecting the range and numbers of bedrooms of Market Rate Residential Units (the Project as a whole) and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in comparison to the Market Rate Residential Units.

(b) For-Sale Residential Unit that are Moderate Income Units may be smaller in size and have different interior finishes and features than market-rate For-Sale Residential Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined by the Community Development Director. All For-Sale Residential Unit that are Moderate Income Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that the Developer need not provide For-Sale Residential Unit that are Moderate Income Units of more than four bedrooms.

ARTICLE 5. ON GOING OBLIGATIONS FOR AFFORDABLE HOUSING UNITS

Section 5.1 Marketing. Prior to marketing an Affordable Housing Unit, the Developer or Qualified Affordable Housing Developer shall submit to the City: (a) a marketing plan for the applicable Affordable Housing Units; (b) the proposed rental charges and purchase prices for such Affordable Housing Units that are consistent with the requirements of this Plan; and (c) proposed eligibility and income-qualifications of renters and purchasers. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt. If the City disapproves the marketing

plan, it shall state its reasons for such disapproval in writing and with specificity. The Developer or Qualified Affordable Housing Developer shall resubmit a revised marketing plan addressing the City's reasons for disapproval prior to marketing the Affordable Housing Units. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt of a revised market plan.

Section 5.2 Satisfaction of Inclusionary Housing Obligations. The requirements of the Inclusionary Housing Ordinance, Density Bonus Regulations and Settlement Agreement shall be satisfied with respect to the Project if the Developer constructs or causes to be constructed the Affordable Housing Units in compliance with this Plan, and the Affordable Housing is made available to and occupied by income eligible households in compliance with the applicable City Regulatory Agreement and Affordable Resale Restriction. The Developer shall be deemed to have satisfied its obligations under the Inclusionary Ordinance only upon the issuance of a Certificate of Occupancy for the Affordable Housing Development. Units in the Affordable Development in excess of the units required under the Inclusionary Housing Ordinance with respect to the first phase of the Project shall be credited towards the satisfaction of requirements of the Inclusionary Housing Ordinance for future phases of the Project.

Section 5.3 Consistency with Palmer and Non-Applicability of Costa Hawkins.

(a) The Developer has or will submit an application for density bonus pursuant to the City's Density Bonus Regulations.

(b) The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Housing Units developed pursuant to this Plan and subject to the City Regulatory Agreement. This Plan falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all affiliates, successor and assigns, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer's obligations set forth in this Plan related to Affordable Housing Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all agreements it enters into with Affiliates, successor or assigns transferring any portion of the Property:

> "The Disposition and Development Agreement by and between the City of Alameda and Alameda Point Partners, LLC, dated _____ and recorded _____, at _____ implements City of Alameda policies and includes regulatory concessions, incentives and significant public investment in the Alameda Point Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and any successors and assigns, as contemplated by California Government Code Section 65915. In light of the City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand

and agree that the Costa-Hawkins Act does not and shall not apply to the Affordable Housing Units as defined in the Disposition and Development Agreement developed at the Alameda Point Property."

The Parties understand and agree that the City would not be willing to enter into the DDA or this Plan, without the agreement and waivers as set forth in this Plan.

ARTICLE 6. DEFINITIONS

Section 6.1 Definitions. Initially capitalized terms unless separately defined in this Plan have the meanings and content set forth elsewhere in the DDA. In addition to the terms defined elsewhere in this Plan, the following definitions shall apply:

(a) "Affordable" or Affordable Housing Cost" means (i) with respect to a Rental Residential Unit required to be Affordable to a Very Low Income Household a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Rental Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of eighty percent (80%) of the Area Median Income based upon Assumed Household Size and (iii) with respect to Rental Residential Unit required to be Affordable to Moderate Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of one hundred twenty percent (120%) of Area Median Income based upon Assumed Household Size. With respect to a For-Sale Residential Unit, Affordable or Affordable Housing Cost means a purchase price determined such that the homeowner's total annual housing payment does not exceed thirty three percent (33%) of the maximum Area Median Income permitted for the applicable type of Residential Unit, based upon Assumed Household Size. For purposes of such For-Sale Residential Units, the total annual housing payment will include principal and interest on a fixed rate thirty (30) year mortgage with commercially reasonable rates, points, and fees, assuming a five percent (5%) down payment, taxes and assessments and any homeowners association dues.

(b) "Affordable Housing Covenant" means the Affordable Housing Covenant imposing the requirements of this Plan on the Affordable Housing Covenant will be recorded against any portion of the Property at the close of escrow for any portion of the Property transferred to the Developer for market-rate housing on which the Developer will build any For-Sale Residential Units at the time each such site is transferred. The form of the Affordable Housing Covenant is attached hereto as Attachment C, incorporated herein by this reference.

(c) "Affordable Housing Development" means the Residential Project constructed by a Qualified Affordable Housing Developer in one or two buildings and up to two phases on a shared or separate podium on the Affordable Housing Site. The Affordable Housing Development will consist of not less than one hundred twenty-eight (128) Affordable Housing Units to be available to and occupied by Low Income Home and Very Low Income Households.

(d) "Affordable Housing Development Financing Plan" means the financing plan for each of the two construction phases of the Affordable Housing Development which

Developer shall or shall cause the Qualified Affordable Housing Developer to prepare and submit to the City for its approval not later than the date set forth in the Milestone Schedule for the approval of the Affordable Housing Development Financing Plan.

(e) "Affordable Housing Plan Assignment" means a written assignment agreement, in a form to be approved by the City, between the Developer and the Qualified Affordable Housing Developer, meeting the requirements of this Plan and setting forth the transferees express assumption of the obligations to construct the Affordable Housing Development in accordance with the DDA and this Plan. Notwithstanding anything to the contrary in the Affordable Housing Plan Assignment, the Developer shall remain liable for construction of the Affordable Housing Development.

(f) "Affordable Housing Site" means that portion of Site A, referred to as Block 8, depicted in the Affordable Housing Site Map attached hereto as Attachment E incorporated herein by this reference.

(g) "Affordable Housing Units" means one of the two hundred Residential Units required to be Affordable to Very Low Income Households, Low Income Households or Moderate Income Households, developed in accordance with this Plan subject to the City Regulatory Agreement or Affordable Resale Restriction. The Affordable Housing Units shall also serve as the "inclusionary units" for purposes of fulfilling the requirements of the City's Inclusionary Housing Ordinance.

(h) "Affordable Resale Restriction" means the Resale Restriction and Option to Purchase Agreement between a homebuyer and the City in the form attached as Exhibit E to the Affordable Covenant attached hereto as Attachment C and incorporated herein by this reference, which places restrictions on the resale of the For-Sale Residential Unit that is also an Affordable Housing Units to specified eligible purchasers at specified eligible purchase prices, and which provides mechanisms to enforce such restrictions. The Affordable Resale Restriction will be recorded against each For-Sale Residential Unit that is an Affordable Housing Unit at the time of conveyance to an eligible household.

(i) "AHSC Program" has the meaning set forth in Section 3.5 hereof.

(j) "Area Median Income" means the median income for households in Alameda City, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for actual household size or Assumed Household Size as specified in this Plan.

(k) "City Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants imposing the requirements of this Plan. The City Regulatory Agreement will be recorded against the Affordable Housing Site at the close of escrow for the transfer of the Affordable Housing Site and will be recorded against any portion of the Property transferred to the Developer for market-rate housing at the time each such site is transferred. The form of the City Regulatory Agreement is attached hereto as Attachment B, incorporated herein by this reference.

(l) "Commence Construction" or Commencement of Construction means, for

purposes of this Plan, commencement of excavation for or commencement of structural foundations for the Affordable Housing Development, as set forth in the Affordable Housing Development Milestone Schedule.

(m) "Completed" means, for purposes of this Plan , completion of all horizontal infrastructure required by the City in order to enable a Qualified Affordable Housing Developer to obtain a building permit to Commence Construction of the Affordable Housing Development and upon the completion of construction of the Affordable Housing Development, to obtain a permanent certificate of occupancy for the Affordable Housing Units located therein.

(n) "Costa Hawkins Act" means Chapter 2.7 of Title 5 of Part 4 of Division 3 of the California Civil Code.

(o) "Deferred Project Infrastructure" means items of horizontal infrastructure related to the Affordable Housing Site consisting of: (i) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts; and (ii) utility laterals serving the Affordable Housing Site, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

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

(q) "For-Rent or Rental Residential Unit" means a Residential Unit which is not a For-Sale Residential Unit.

(r) "For-Sale Residential Unit" means a Residential Unit which is intended to be offered for sale.

(s) "HCD" means the California Department of Housing and Community Development.

(t) "HUD" means the United States Department of Housing and Urban Development.

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

(v) "Low Income Homes" means Residential Units constructed by a Qualified Affordable Housing Developer on the Affordable Housing Site which are available at an Affordable Housing Cost and rented to Low Income Households.

(w) "Low Income Household" means a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for actual

household size. The term Low Income Household shall be read to include a Very Low Income Household.

(x) "Market Rate Residential Unit" means a Residential Unit which has no restrictions or requirements under this Plan with respect to affordability levels or income restrictions for occupants other than the marketing requirements set forth in Section 5.1.

(y) "Memorandum of Option" has the meaning set forth in Section 3.2(b)(7) hereof.

(z) "Moderate Income Household" means households whose income does not exceed the moderate income limits applicable to Alameda City as published annually by HCD pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision). The term Moderate Income Household shall be read to include a Very Low Income Household and Low Income Household.

(aa) "Moderate Income Units" means Residential Units which are Affordable to and occupied by Moderate Income Households, and which may be For-Sale Residential Units or a Rental Residential Units. The parties contemplate that the Moderate Income Units may be constructed in multiple phases within the market rate residential developments.

(bb) "Phase Financing Plan" means the financing plan for a particular phase of the Development prepared and approved in accordance with the terms of Section 3.1(b) of the DDA.

(cc) "Project Infrastructure" means the infrastructure required to be constructed as part of the Phase I Infrastructure Package described in more detail in Section 5.2 of the DDA.

(dd) "Qualified Affordable Housing Developer" means an organization including governmental or quasi-governmental agencies, nonprofits and limited partnership with the financial capacity and experience and a proven history of developing affordable housing consistent with the character and quality of the Residential Projects, the DDA, the Development Agreement and this Plan, approved by the City pursuant to Section 3.2(a) hereof.

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

(ff) "Residential Project" means a Project containing Residential Units which may also contain other uses permitted under the DDA, the Development Agreement and the Project Approvals.

(gg) "Residential Unit" means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, with or without shared living spaces, such as kitchens, dining facilities or bathrooms.

(hh) "Tax Credit Funds" means the proceeds from the syndication and sale of federal low-income housing tax credits established pursuant to Section 42 of the Internal

Revenue Code of 1986, as amended , in the amount of the Affordable Housing Finance Plan approved by the City.

(ii) "Tax Credit Reservation" means a preliminary reservation letter from TCAC under which TCAC reserves an allocation of 9% or 4% Low Income Housing Tax Credits.

(jj) "TCAC" means the California Tax Credit Allocation Committee.

(kk) "Utility Allowance" means a utility allowance based on the utility allowance schedule published by the City of Alameda Housing Authority or the TCAC.

(ll) "Very Low Income Homes" means Residential Units constructed by a Qualified Affordable Housing Developer on an Affordable Housing Site which are available at an Affordable Housing Cost and rented to Very Low Income Households.

(mm) "Very Low Income Household" means a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

Section 6.2 Attachments: Each Attachment to this Plan is incorporated herein and made a part hereof as if set forth in full

Attachment A:	Affordable Housing Development Milestone Schedule
Attachment B:	Form City Regulatory Agreement
Attachment C:	Form of Affordable Housing Covenant
Attachment D:	Memorandum of City Option
Attachment E:	Legal Description of Affordable Housing Site

Attachment A

Affordable Housing Development Milestone Schedule

ACTION	DATE
AHSC Concept Proposal Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for the AHSC Program Grant to HCD. [§3.5]	The deadline for submission of concept proposal application for funding in March 2016, or such date HCD issues as the deadline for submission of a full application. If the Qualified Affordable Housing Developer's concept proposal application is successful, the Qualified Affordable Housing Developer will submit a full application in April 2016, or such date HCD issues as the deadline for submission of a full application. If Qualified Affordable Housing Developer does not receive a AHSC Program grant allocation in the April 2016 round, or such date HCD issues as the deadline for submission of a full application, then the Qualified Affordable Housing Developer shall submit a timely concept proposal application for funding in March 2017 or some other earlier round if available.
AHSC Full Application. The Qualified Affordable Housing Developer shall submit a timely and complete full application for the AHSC Program Grant to HCD. [§3.5]	The deadline for submission of full applications for funding provided by HCD after submission of the Concept Proposal Application. If the Qualified Affordable Housing Developer's concept proposal application is successful in the March 2017 round, or such date HCD issues as the deadline for submission of a concept application, the Qualified Affordable Housing Developer will submit a full application in April 2017, or such date HCD issues as the deadline for submission of a full application If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program grant allocation in the April 2017 round, then the Qualified Affordable Housing Developer shall meet with the City as required under 3.6(c).
Phase I Tax Credit Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for a 9% Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. [§3.6(b)]	In the first competitive application round of TCAC preliminary reservation application of 2017 and each subsequent preliminary reservation application round up to and including the second competitive round in 2018, and in no event later than July 2018, unless the Developer applies for as is granted extensions under the DDA.
Phase II Tax Credit Application. The Qualified Affordable Housing Developer shall submit a	In the non-competitive application round of TCAC commencing June 2017 and each

timely and complete application for a4% Tax Credit Reservation to TCAC and a tax exempt bond application to CDLAC for the second phase of the Affordable Housing Development. [§3.6(c)]	subsequent preliminary reservation application rounds through October 2018.
Phase I Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the first phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
Phase II Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the second phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
AHSC Award. The Qualified Affordable Housing Developer shall have obtained an award of AHSC Program funds. [§3.5]	No later than June 2018 or such date that HCD awards AHSC program funds from the first full application round in 2018.
Affordable Housing Site Conveyance. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers Affordable Housing Site. [§3.3]	No later than December 31, 2018.
Phase I Building Permit. The Qualified Affordable Housing Developer shall have obtained a Tax Credit Reservation for the first phase of the Affordable Housing Development. [§4.2(b)]	Prior to the issuance of the building permit for the three hundred ninety-sixth (396^{th}) market rate Residential Unit.
Phase II Building Permit. The Qualified Affordable Housing Developer shall have obtained a building permit for the second phase of the Affordable Housing Development. [§4.2(c)]	Prior to the issuance of any building permit for the development of residential or commercial private development for Phase II of the Project.
Phase I Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	Within 180 days of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the second phase of the Affordable Housing Development. [§4.1]	Within 90 days of a 4% tax credit allocation reservation for Phase II of the Affordable Housing Development.

Phase I Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the first phase of the Affordable Housing Development [§4.1]	No later than two years from the date of receipt of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the second phase of the Affordable Housing Development [§4.1]	No later than two years from the date of receipt of a 4% tax credit reservation and CDLAC allocation for Phase II of the Affordable Housing Development.

Attachment B

Form of City Regulatory Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, California 94501
Attention: City Manager

Exempt from recording fees pursuant to
Cal. Gov't Code § 27383

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

APN: _____

[CITY FORM]
AFFORDABLE HOUSING AGREEMENT

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

This Affordable Housing Agreement ("**Agreement**") dated _____ ("**Effective Date**"), is entered into between the **CITY OF ALAMEDA**, a municipal corporation ("**City**") and Alameda Point Partners, a California limited liability company ("**Developer**").

RECITALS

The following recitals are a substantive part of this Agreement.

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto ("**Property**").

B. City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City ("**City Inclusionary Policy**"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

C. The Property is the site of approximately 800 units of residential housing located in the City of Alameda ("Housing Project") and is, therefore, subject to the City Inclusionary Policy. The Housing Project shall be developed by Developer in accordance with City Council Ordinance No. _____ approving the Disposition and Development Agreement dated _____(the "DDA") as depicted on the approved site plans for the Housing Project attached as Exhibit B.

D. The Developer has received a discretionary approval from the City to construct the Housing Project which requires that the Developer reserve at least 25% of the units in the Project for rent to very low-, low- and moderate- income households (each an **"Affordable Unit,"** and collectively, the **"Affordable Units"**) in accordance with the City Inclusionary Policy.

E. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Project, the Developer is required to enter into this Agreement on terms acceptable to the City. This Agreement shall be executed and recorded against the Property prior to the recordation of any parcel map or final map or issuance of any building permit for the Project. The purpose of this Agreement is to set forth the terms and conditions for producing and marketing the Affordable Units in greater specificity and to ensure that the Affordable Units are built as part of the Project. The Developer and City desire by the execution of this Agreement to assure the Property meets the requirements of the City Inclusionary Policy, and that the Affordable Units remain affordable permanently upon the recordation of this Agreement.

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "**Affordable Rent**" is the amount of rent considered as "affordable rent" for very low, low or moderate income households, adjusted for family size appropriate to the unit, less a utility allowance (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not telephone or cable television service), pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 "adjusted for family size appropriate to the unit" shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

1.02 "**Eligible Households**" shall mean households meeting the income restrictions as set forth in Section 2.01.

1.03 "**Area Median Income**" shall mean the median income for households in Alameda County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at

least 18 months, the City shall provide the Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

1.04 "**Applicable Laws**" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Housing Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Developer or the Housing Project.

ARTICLE 2. RENT, INCOME AND OCCUPANCY RESTRICTIONS

2.01 Rent and Income Restrictions. All of the Affordable Units to be located on the Property shall be rented to very low, low or moderate income households whose income does not exceed the limits set forth below:

(a) Very Low Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.

(b) Low Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed eighty percent (80%) of the Area Median Income at an Affordable Rent.

(c) Moderate Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed one hundred twenty percent (120%) of the Area Median Income at an Affordable Rent. *[Note: Delete if no Moderate Income units in the project.]*

[Optional resident manager provision – insert if 100% affordable project or delete if mixed market and affordable project, as applicable] Notwithstanding the foregoing, Developer may, in its sole reasonable judgment, elect to have a full-time property manager residing on the Property, in which event one (1) of the Affordable Units may be designated as a resident manager's unit, and such Affordable Unit shall not be subject to the above affordability restrictions so long as such Affordable Unit is occupied by a full-time on-site manager for the Housing Project.

No less than one (1) person per bedroom shall be allowed. No more than two (2) persons shall be permitted to occupy a studio Affordable Unit, no more than two (2) persons shall be permitted to occupy a one (1) bedroom Affordable Unit, no more than four (4) persons shall be permitted to occupy a two (2) bedroom Affordable Unit, and no more than six (6) persons shall be permitted to occupy a three (3) bedroom Affordable Unit. City may make exceptions to the

foregoing occupancy standards to the extent such exceptions are required by Applicable Laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement.

Not more than once per year, Developer may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Developer may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by HUD and the State of California Department of Housing and Community Development ("**HCD**"). Developer must notify each tenant and City in writing of any increase in monthly rent for an Affordable Unit at least thirty (30) days in advance of the effective rent adjustment date. The written notice of rent increase provided to City shall indicate: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice required shall be considered a default by Developer under this Agreement.

The determination of a status as an Eligible Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. The income of all persons residing in the Affordable Unit shall be considered for purposes of calculating the household income. Developer shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. Developer shall notify City in writing whenever the tenant in an Affordable Unit changes. The notice shall indicate the name and household size of the tenant vacating the Affordable Unit. Once the Affordable Unit is reoccupied, Developer shall notify City in writing of the new tenant's name, household size and income.

Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the occupants of such Affordable Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Affordable Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B. If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph *[Insert (a), (b) and/or (c), as appropriate]*, of this Section 2.01, the occupant may continue to occupy the former Affordable Unit; provided, however, Developer may increase the rental rate for such former Affordable Unit to market rate or the highest rent allowable under regulatory restrictions and Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit. Developer shall send written notice to City with the address and bedroom/bathroom mix of the Affordable Unit designated by Developer as the replacement Affordable Unit.

In lieu of designating another comparable Housing Project unit as the replacement Affordable Unit to meet the income requirements of paragraph *[insert (a), (b) and/or (c), as appropriate]* of this Section 2.01, Developer may designate as an Affordable Unit an occupied unit within the Housing Project that is not currently designated as an Affordable Unit if such unit is then occupied by a tenant meeting the income requirements set forth in paragraph *[insert (a),*

(b) and/or (c), as appropriate], of this Section 2.01. In the event Developer makes such a substitution, Developer shall send written notice to the City with the address and bedroom/bathroom mix of the substituted Affordable Unit, along with the name of the occupant and household size and income of the household occupying the unit.

2.02 Designation of Affordable Units. The initial designation and location of the Affordable Units is set forth in the Site Plan attached hereto as Exhibit C. The appearance, materials, finished quality and amenities of the Affordable Units shall be comparable to the market rate rental units within the Housing Project. Attached hereto as Exhibit D is a list of the materials, amenities and finishes that will be featured in each of the units within the Housing Project, including both the market rate units and the Affordable Units.

2.03 Marketing and Leasing Program.

Developer shall actively market rental of all units within the Housing Project, including the Affordable Units. Prior to lease-up of the Affordable Units, Developer shall provide City with a copy of its marketing program for the Housing Project, which shall include a marketing program for the Affordable Units ("**Affordable Units Marketing Program**"). City shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. Developer shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by City.

Developer is responsible for implementing the Affordable Units Marketing Program actively and in good faith. City may extend the required marketing period in its discretion if Developer delays implementation or otherwise fails to comply with the Affordable Units Marketing Program as approved by City.

2.04 Agreement to Limitation on Rents. The City has provided a waiver of AMC 30-53 for the Housing Project as part of the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Civil Code Sections 1954.52(b) and 1954.53(a)(2) provide that where an owner has received a form of concessions specified in Chapter 4.3, certain provisions of Civil Code Section 1954.51 et seq. (Costa-Hawkins Act) do not apply to the project if the Developer has so agreed by contract. Developer hereby agrees to limit rents as provided in this Agreement in consideration of Developer's receipt of the waiver of AMC 30-53 as the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, and further agrees that the limitations on rents imposed by this Agreement are in conformance with Civil Code Section 1954.51 et seq. (Costa-Hawkins Act).

2.05 Satisfaction of Affordable Housing Requirement. The City Inclusionary Policy shall be satisfied with respect to the Property if the Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Article 2 above, in compliance with the schedule set forth in the DDA.

ARTICLE 3. REPORTING REQUIREMENTS FOR HOUSING PROJECT

3.01 Reporting Requirements. Developer shall submit an annual report and income certification to the City. The report, at a minimum, shall include:

(a) The number of persons per Affordable Unit;
(b) Name of each Affordable Unit Tenant;
(c) Initial occupancy date;
(d) Rent paid per month; and
(e) Gross income per year.

Such information shall be reported to the City substantially in the form of the Certification of Continuing Compliance attached hereto as Exhibit E or in such other format as may be reasonably requested by City.

Annual income recertification shall also contain those documents used to certify eligibility. The City, from time to time during the term of this Agreement, may request additional or different information, if such information is required in order for the City to comply with its reporting requirements, and Developer shall promptly supply such additional or different information in the reports required hereunder. Developer shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Developer, at such time and in such forms as City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Agreement. Upon reasonable advance request for examination by City, Developer, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Developer shall permit City to audit, examine and make excerpts or transcripts from these records at City's sole cost.

The first annual report and annual income certification ("**Initial Report**") shall be submitted to the City within sixty (60) days of the date of the initial rental of all the Affordable Units on the Property. Subsequent annual reports and annual income certifications or recertifications shall be submitted to the City on the anniversary date of submittal of the Initial Report.

3.02 City Approval of Lease Forms. City shall have the right to review and approve Developer's form of lease for the Affordable Units, including disclosures of the affordability restrictions on the Affordable Units, prior to Developer's use of such form.

3.03 Verification of Citizenship or Qualified Alien Status. Developer shall verify the citizenship or qualified alien status of all adult tenants and all adult applicants for tenancy of the Affordable Units as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. § 1621). Developer may charge a new tenancy applicant (but not an existing tenant) a reasonable eligibility verification fee only if approved in writing by the City. On an annual basis at the time of the annual income

recertification, Developer shall verify the citizenship or qualified alien status of all Affordable Unit tenants.

To the extent allowable under applicable regulatory restrictions, the Developer shall verify the citizenship or qualified alien status by causing the tenant or applicants for tenancy of all Affordable Units to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be retained by Developer and shall be disclosed to City upon request.

All eligibility shall be conducted without regard to race, creed, color, gender, religion, age, disability, familial status or national origin of the tenant or applicant for tenancy.

ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

4.01 Maintenance. During the term of this Agreement, Developer shall maintain, or cause to be maintained, the Property, including all improvements thereon, in a manner consistent with the provisions set forth therefor in the Alameda Municipal Code, and shall keep the entire Property free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Developer fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of sixty (60) days from the date of written notice from the City to the Developer, City may perform the necessary corrective maintenance, and Developer shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Property should Developer not reimburse City for such costs within sixty (60) days following City's written demand for reimbursement of such costs. Developer, on behalf of itself, its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from City and Developer's failure to cure or remedy such failure within sixty (60) days of such notice. Any such entry shall be made only after reasonable notice to Developer, and City shall indemnify and hold Developer harmless from any claims or liabilities pertaining to any such entry by City. Failure by Developer to maintain the Property in the condition provided in this Article 4 may, in City's reasonable discretion, constitute a default under this Agreement.

ARTICLE 5. NO TRANSFER

5.01 Prohibition. Except with respect to Permitted Transferees (as defined below), Developer shall not make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property, the Housing Project or this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld.

5.02 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or conveyance of the

Property or Housing Project, or any part thereof, shall not be required in connection with any of the following (the **"Permitted Transfers"**):

(a) The lease of Affordable Units to Eligible Households.

(b) Assignments for financing purposes, and any subsequent transfer to the lender providing such financing by foreclosure or deed in lieu of foreclosure thereunder, subject to such financing being considered and approved by the City.

(c) Transfer of the Property and Housing Project to an affiliate entity which controls, is controlled by or under common control with Developer.

(d) In the event of an assignment by Developer pursuant to subparagraph (c) not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to the City of such assignment or transfer and that such transferee shall be required to assume Developer's obligations under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

5.03 City Consideration of Requested Transfer. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Article 5 provided (a) the Developer delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as Developer, and (c) the assignee or transferee assumes the obligations of the Developer under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth herein and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within forty-five (45) days of its receipt of the Developer's notice and all information and materials required herein.

ARTICLE 6. NO DISCRIMINATION

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

ARTICLE 7. NO IMPAIRMENT OF LIEN

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

ARTICLE 8. DURATION

The covenants contained in Articles 2, 3, 4 and 5 of this Agreement shall be deemed to run with the Property and Housing Project permanently following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity, unless otherwise terminated by the City.

ARTICLE 9. SUCCESSORS AND ASSIGNS

The covenants contained in the Agreement shall be binding upon Developer and its heirs, successors and assigns, and such covenants shall run in favor of the City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard as to whether the City is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Developer's obligations under this Agreement, City and its successors and assigns shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in the Agreement, without regard to technical classification and designation, shall be for the benefit of and shall be enforceable only by the City, and its successors and assigns.

ARTICLE 10. SUBORDINATION AGREEMENT

Except as otherwise expressly provided below, this Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Developer shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to City for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to City, subordinating such mortgages, deeds of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens. Notwithstanding the subordination provisions set forth herein, the City may, in its sole discretion, subordinate this Agreement.

ARTICLE 11. DEFAULT

Any failure by Developer to perform any term or provision of this Agreement shall constitute a "**Default**" (1) if Developer does not cure such failure within thirty (30) days

following written notice of default from City, or (2) if such failure is not of a nature which can be cured within such thirty (30) day period, Developer does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE 12. NOTICES, DEMANDS AND COMMUNICATIONS

Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received: (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To City:	City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 Attention: City Manager
With a copy to:	City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Avenue Alameda, CA 94501 Attn: City Attorney
Authority	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attn: Executive Director

With a copy to: _____

_____

Attention: _____

To Developer Alameda Point Partners

_____

_____

Attention: _____

With a copy to: _____

_____

_____

Attention: _____

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

ARTICLE 13. ATTORNEYS' FEES

In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in any action or proceeding.

ARTICLE 14. RECORDATION OF AGREEMENT

Immediately following the Effective Date, this Agreement and the Notice of Affordability Restrictions on Transfer of Property in the form attached hereto as Exhibit F, shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 15. COMPLIANCE MONITORING FEE

Developer acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis and, therefore, agrees to pay City for a portion of its administrative costs for such monitoring by paying to City an annual monitoring fee in an amount of _____Dollars ($_____) which fee shall be due on the initial date of occupancy and each year on the anniversary date of the initial date of occupancy

ARTICLE 16. INDEMNIFICATION

Except for an award of attorney's fees to Developer, Developer will indemnify and hold harmless (without limit as to amount) the Authority and City and their elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of this Agreement, arising out of or

relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation the construction or sale of any unit in the Project, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the Authority and/or the City, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Article 16 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Article 16 shall remain in full force and effect.

ARTICLE 17. MISCELLANEOUS

Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[The Remainder of this Page is Intentionally Left Blank]

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

CITY:

RECOMMENDED FOR APPROVAL:

CITY OF ALAMEDA, a municipal corporation

_____
Executive Director, Housing Authority

_____
City Manager
[Signature must be notarized]

APPROVED AS TO FORM:

_____
City Attorney

- and -

DEVELOPER::

Alameda Point Partners, a California limited liability company

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

NOTARY ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public