

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_

New Series

DECLARING SIX SUBMERGED PARCELS ON THE ALAMEDA SIDE OF THE OAKLAND INNER HARBOR TIDAL CANAL ("TIDAL CANAL") SURPLUS PROPERTY AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE AND SALE AGREEMENTS, DEEDS AND ALL OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND VARIOUS PURCHASERS TO SELL 6 PARCELS ON THE TIDAL CANAL AT FAIR MARKET VALUE

WHEREAS, on September 15, 2015, the City Council directed City staff to pursue a real estate transaction whereby the U.S. Army Corps of Engineers ("Army Corps") would transfer, at no cost, the Alameda side of the Oakland Inner Harbor Tidal Canal ("Tidal Canal") to the City and the City would then sell most of the parcels to adjacent private property owners, maintaining ownership of the center open water parcel; and

WHEREAS, on December 6, 2016, the City Council approved Final Map for Tract 8337 which subdivided the property into 99 individual parcels, but did not create parcels adjacent to six residential properties on Fernside Boulevard on which were Public Access Pathways; and

WHEREAS, on October 1, 2019, the City Council provided final approval of the design concepts for the Public Access Pathways, and directed staff to create six submerged parcels for the remaining six property owners on the estuary adjacent to the public pathways at 3227, 3229, 3267, 3301, 3335, and 3341 Fernside Boulevard ("Submerged Parcels"); and

WHEREAS, on September 26, 2022, the Planning Board unanimously approved Resolution PB-22-19 recommending City Council approve the proposed Tentative Map to create seven new parcels - six as described above and one remainder parcel to be retained by the City and finding that the location, purpose, and extent of the disposition of the Submerged Parcels would be in conformity with the City's General Plan; and

WHEREAS, on October 18, 2022, the City Council approved Resolution No. 15985 approving the proposed Tentative Map for Tract 8570 to create seven new parcels; and

WHEREAS, on October 3, 2023, the City Council approved the Final Map for Tract Map 8570, (Portion) Oakland Inner Harbor Tidal Canal containing the six Submerged Parcels and one remainder parcel; and

WHEREAS, the City is authorized and empowered to enter into agreements for the acquisition and disposition of real property in the City of Alameda; and

WHEREAS, Article XVI of the California Constitution prohibits the City from selling property for less than its fair market value as such would be a gift of public funds; and

WHEREAS, before disposing of real property the City must comply with the Surplus Land Act; and

WHEREAS, the City has obtained an appraisal report from Watts, Cohn and Partners, Inc. a licensed appraisers who determined the fair market value of the Submerged Parcels and the City intends to dispose of these parcels at fair market value after it has complied with the Surplus Land Act; and

WHEREAS, on September 20, 2016, in accordance with the California Environmental Quality Act (CEQA), the City adopted an Initial Study/Negative Declaration ("IS/ND") for the parcelization and acquisition of the Alameda side of the Oakland Inner Harbor Tidal Canal which addressed all potential environmental impacts associated with the proposed transfer and subsequent transfers into private ownership, amendments to the Estuary District Zoning, and the proposed subdivision map application. The IS/ND concludes that the proposed project would not cause any potentially significant environmental impacts, and accordingly, no mitigation measures would be required as part of the project. No further review is required pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15162 because the environmental effects of the project were considered and disclosed in the IS/ND and there have been no changes to the project or the circumstances in which it is undertaken that would result in new significant or substantially more severe environmental effects than was identified in the previously adopted IS/ND. Any proposed future improvements along the Tidal Canal will be subject to separate review and discretionary approval by the City.

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

Section 1. The City Council hereby declares that the Submerged Properties are "surplus land" and not necessary for the City uses, within in the meaning of the Act. The subject submerged Lots 2 and 3 are located adjacent to 3227 and 3229 Fernside Boulevard, respectively. The subject Lots 4 and 5 are situated adjacent to 32 and 3267 Fernside Boulevard. The subject submerged lots contain between 2,710 and 4,52301 square feet. These four lots are partially affected by an easement for public purposes (PAE): public, vehicular and emergency access and for a scenic/view corridor. The 35-foot and 18-foot easement areas affect the adjacent northern and southern portion of each parcel. The subject Lots 6 and 7 are located adjacent to 3335 and 3341 Fernside Boulevard. These two lots are partially affected by a scenic easement for a scenic/view corridor. The 10-foot easement area affects the adjacent northern and south portion of each parcel. The public access easements on Lots 2, 3, 4 and 5 range from 498 to 956 square feet. The scenic/view easements on Lots 6 and 7 are 504 square feet. The subject parcels are zoned E - Estuary District by the City of Alameda. The subject lots have been improved with docks, piers and other improvements over the course of time by the adjacent residential property owners. The City acquired the property from the Army Corps to facilitate a transfer to private ownership and to bring the existing docks and other structures up to code. Given the location, submerged status, zoning, current use and

small size of the parcels, the City has determined it would be impractical to develop them for City uses.

Section 2. The proposed sale does not include any proposed construction or development. Future uses of the subject property would be consistent with the General Plan and the E, Estuary District zoning regulations, and would be restricted to water-dependent uses, subject to future discretionary review and approval by the City.

SECTION 3. The City Manager is hereby directed to send a notice of availability to the entities designated in Government Code Section 54222 ("Designated Entities") by electronic mail or by certified mail.

SECTION 4. The City Council hereby delegates to the City Manager the authority to: execute Purchase and Sale Agreements containing the price and terms for the City's sale of individual parcels from the City to private purchasers at fair market value, substantially in the form attached as Exhibit A; execute deeds transferring the City's fee title interest in said parcels, substantially in the form attached as Exhibit B; and to execute auxiliary documents and to perform any and all acts necessary or desirable to consummate the disposition of the City's fee title interest in portions of the Submerged Parcels to private purchasers at fair market value.

Section 5. If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Ordinance is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Ordinance.

Section 6. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

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Presiding Officer of the Council

Attest:

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Lara Weisiger, City Clerk

**TIDAL CANAL PARCEL  
PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

**CITY OF ALAMEDA,**

a charter city and municipal corporation  
AS SELLER

and

**XXX**

AS BUYER

Residential Parcel: **YY**

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### *Exhibits*

- A FINAL MAP
- B FORM OF QUITCLAIM DEED
- C DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)



## **TIDAL CANAL PARCEL PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT OF PURCHASE AND SALE (“**Agreement**”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ (the “**Effective Date**”), by and between the CITY OF ALAMEDA, a charter city and municipal corporation (“**City**” or “**Seller**”), and The Family (“**Buyer**”), whose address is \_\_\_\_\_, Alameda, CA 94501. Seller and Buyer are collectively referred to herein as the “**Parties**”. The Parties have entered into the Agreement with reference to the following facts:

### **RECITALS**

A. On October 20, 1884, the Superior Court of Alameda granted to the U.S. Army Corps of Engineers, a federal agency acting under the U.S. Department of Defense (the “**Corps**”), by judicial decree No. 3590, ownership of a strip of land connecting the cities of Alameda and Oakland for purposes of dredging and excavating a tidal canal out of uplands, which property became known as the Oakland Inner Harbor Tidal Canal (the “**Tidal Canal**”).

B. Between approximately 1884 - 1905, the Corps excavated, dredged, and created the Tidal Canal, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay. The Corps has retained ownership of the Tidal Canal since its creation.

C. As a result of accretion and development over the past century, the outer edge of the Tidal Canal on the Alameda side now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners.

D. Over the past century, the Corps has issued various approvals and authorizations to adjacent property owners to use portions of the Tidal Canal through real estate licenses, leases and regulatory permits.

E. In 1990, the U.S. Congress authorized the Corps to transfer the Tidal Canal to the City of Alameda through the Water Resources Development Act of 1990. The Corps has been negotiating with the City of Alameda to transfer the Alameda side of the Tidal Canal out of federal ownership.

F. Starting in 2000 and continuing until present day, the Corps instituted a moratorium on issuing regulatory permits for any repairs, upgrades, improvements or new construction within the Tidal Canal (the “**Permitting Moratorium**”). The Permitting Moratorium has prevented necessary repairs and improvements to existing structures and docks along the waterfront, which has negatively affected adjacent property owners and the City’s code enforcement program.

G. To lift the Permitting Moratorium and to remove the existing cloud on title along the Tidal Canal, the City has agreed to accept ownership of the Alameda-side of the Tidal Canal from the Corps, subject to certain conditions, with the intention of immediately transferring portions of the property to the adjacent property owners at fair market value.

H. The Corps desires to transfer the Alameda-side of the Tidal Canal to the City, and has agreed to take all steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) prior to transfer to facilitate the subsequent transfer of portions of the property to the adjacent property owners. The Tentative Map #8337 subdivides the Army Corps land into ninety-nine (99) individual parcels. The Army Corps will retain five lots: the Oakland side of the Tidal Canal (Unsurveyed Remainder Area 1), property adjacent to the federally owned Navy Operational Support Center (Parcel 3) bridge footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98), and the Park Street Bridge (Parcel 99). The City will retain the open water on the Alameda side (Lots 2 and 96) (the “**Open Water Parcels**”), which will be preserved for open navigation through the Tidal Canal. The City will offer at fair market value the remaining 92 lots (Lots 4 through 96) consisting of eight (8) commercial parcels (the “**Commercial Appurtenant Parcels**”) and eighty-four (84) residential parcels (the “**Residential Appurtenant Parcels**”) to the adjacent property owners.

I. In 2016, the Corps completed the Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act (42 U.S.C. 4321).

J. August 2016, the Corps completed a Finding of Suitability of Transfer, which provides documentation that the Tidal Canal is environmentally suitable for transfer by deed.

K. On October [REDACTED], 2016, the City entered into a Memorandum of Understanding with the Corps (“**MOA**”) with respect to the transfer of the Residential Appurtenant Parcels from the Corps to the City and the subsequent and immediate transfer of those parcels to the adjacent property owners. It is estimated that the Corps will convey the Residential Appurtenant Parcels to the City on December 13, 2016 (the date upon which the Residential Appurtenant Parcels are conveyed to the City by the Corps is referred to as the “**Army Corps Conveyance Date**”). The Estimated Closing Date for this Agreement (as defined at Section 8.3 below) is therefore December 13, 2016.

L. On July 11, 2016, the Planning Board of the City of Alameda recommended that the City Council adopt a Final Negative Declaration, introduced as Ordinance Amending Chapter 30 of the Alameda Municipal Code Section 3-4.21 E, Estuary District, and approve Tentative Map #8337 (PLN16-0240) for a ninety-nine (99) lot subdivision located along the Oakland Inner Harbor Tidal Canal from approximately one thousand eight hundred (1,800) feet northwest of the Park Street Bridge to approximately two thousand three hundred (2,300) feet south of High Street.

M. On or before the Army Corps Conveyance Date, the City caused to be recorded in the Official Records of the County of Alameda, a final subdivision map creating, inter alia, a single parcel designated as **Parcel XX** (the property which is the subject of this Agreement), as shown on Exhibit A (the “**Final Map**”) attached hereto and incorporated herein by this reference.

N. The City has obtained an appraisal dated August, 2016 of the fair market value of the Residential Appurtenant Parcels (appraised as unimproved land) from Sara Cohn, MAI of Watts, Chon and Partners, Inc. (the “**Appraisal**”).

O. On September 20, 2016, the City Council unanimously: (i) approved the Negative Declaration for the project; (ii) approved and adopted the Tentative Subdivision Map; (iii) amend the Estuary Zoning District; (iv) approved the transfer of fee title of the Residential Appurtenant Parcels from the Army Corps to the City; (v) approved the sale of the Residential Appurtenant Parcels from the City to various buyers at the fair market value; and (vi) authorized the City Manager to execute all documents and to take such action as necessary and desirable to consummate the transaction.

P. On October 4, 2016, the City Council approved the second reading of the ordinances to: (i) amend the Estuary Zoning District; (ii) approved the transfer of fee title of the Residential Appurtenant Parcels from the Army Corps to the City; (iii) approved the sale of the Residential Appurtenant Parcels from the City to various buyers at the fair market value; and (iv) authorized the City Manager to execute all documents and to take such action as necessary and desirable to consummate the transaction.

Q. On November 15, 2016, the City Council approved and adopted the Final Map.

R. The undersigned Buyer is the owner of that certain parcel of improved property commonly known as Fernside Boulevard, Alameda, CA 94501 (the “**Buyer’s Parcel**”) which is immediately adjacent to the Property (as defined in Section 1.1 below). To facilitate the lifting of the Permitting Moratorium, to lift the existing cloud on title to existing structures and docks on or about the Property and to provide Buyer with direct access from the Residential Parcel to the water frontage, it is the intent of the Parties hereto that Buyer purchase and the City sell the Property upon the terms and conditions set forth herein.

NOW THEREFORE for good and valuable consideration, including the mutual covenants and promises of the parties, the Parties hereto agree as follows:

1. THE TIDAL CANAL PARCEL. Seller hereby agrees to sell, assign and convey to Buyer, and Buyer hereby agrees to purchase from Seller, all of Seller’s right, title and interest in and to the following, upon all of the terms, covenants and conditions set forth in this Agreement.

1.1 Property. The property that is the subject of this transaction includes all of the following (subject to the exceptions, limitations and disclaimers listed in Section 1.2 below): (a) that certain real property located in the City of Alameda, County of Alameda, known as Parcel XX, as shown on the Final Map attached hereto as Exhibit A; (b) all rights, privileges, easements and appurtenances thereto; (c) the improvements located thereon, if any; (d) all of Seller’s right, title and interest in and to any and all mineral and water rights, easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment thereof; and (e) all of Seller’s interests in any assignable permits, licenses,

certificates, authorizations, variances, waivers and approvals, if any, relating to the property so conveyed (collectively hereinafter referred to as the “**Property**”).

1.2 Certain Improvements and Structural Encumbrances. Seller makes no representations or warranties with regard to any improvements on the Property, either with regard to their physical condition or compliance with government requirements. In addition, Buyer hereby acknowledges that the Property may contain docks, boat houses and other improvements or structural encumbrances for which parties other than Seller may claim ownership interest. Said improvements or structural encumbrances may already be owned by Buyer. It is expressly agreed by the Parties that the Seller shall have no obligation to remove these improvements and/or structural encumbrances prior to the Closing Date or at any time thereafter. Buyer hereby expressly acknowledges that Buyer is fully aware of the improvements and/or structural encumbrances on the Property, if any, whether owned by Buyer or third parties. Buyer hereby expressly agrees to enter into this transaction, execute this Agreement and accept title to the Property in exchange for the Purchase Price, despite the presence of the improvements and/or structural encumbrances, if any, even if said improvements and /or structural encumbrances are owned by parties other than Buyer or Seller. Buyer is also directed to Article 3 below as to Buyer’s duty of inspection and due diligence.

2. PURCHASE PRICE. The Purchase Price for the Property is Ten Thousand and 00/100 Dollars (\$10,000.00) together with closing costs (the “**Purchase Price**”) which is the fair market value of the Property, as determined by the Appraisal on a per parcel basis, plus the closing costs as determined by the Escrow Agent. The Purchase Price shall be paid by Buyer as follows:

2.1 Deposit. Within ten (10) business days of the Effective Date of this Agreement, Buyer shall deliver to Chicago Title Company, 675 N. First Street, Suite 900, San Jose, CA 95112; Attn: Ms. Christina Molotla (“**Title Company**” and “**Escrow Agent**”) an initial earnest money deposit in the amount of Five Hundred and 00/100 Dollars (\$500.00) (the “**Deposit**”). The Deposit paid by Buyer pursuant to the terms hereof shall be held by Escrow Agent, in an interest bearing account insured by the federal government. In the event the purchase and sale of the Property is consummated as contemplated hereunder, the Deposit shall be credited against the Purchase Price Balance at Closing. A copy of this Agreement, duly executed by both Parties which may be signed in counterparts, shall also be deposited with Escrow Agent promptly after execution.

2.2 Balance of Purchase Price. No later than November 14, 2016, Buyer shall deposit with Escrow Agent additional cash by wire transfer of immediately available funds in the amount of Nine Thousand Five Hundred and 00/100 Dollars (\$9,500.00) together with One Thousand and 00/100 Dollars (\$1,000) the estimated closing costs (“**Purchase Price Balance**”). The Seller and Buyer agree that the Seller shall pay for normal closing costs in excess of \$1,000 as further described in Section 8.4.

2.3 Independent Consideration. The Deposit being delivered by Buyer includes the amount of One Hundred and No/100 Dollars (\$100.00) as independent consideration for Seller’s performance under this Agreement (“**Independent Consideration**”), which shall be retained by Seller and, except as otherwise specified herein, shall be nonrefundable to Buyer. If

the Closing occurs, the Independent Consideration shall be applied to the Purchase Price Balance at Closing. The Independent Consideration has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection and termination rights during the Due Diligence Period, and such consideration is adequate for all purposes under any applicable law or judicial decision.

#### 2.4 Obligations and Duties of Escrow Agent.

(a) The duties and obligations of the Escrow Agent are only as herein specifically provided, and are purely ministerial in nature. The Escrow Agent shall incur no liability for any error in judgment, for any act done or step taken or omitted to be taken by it in good faith, for any mistake of fact or law or for any reason whatsoever except for its own willful misconduct or failure to follow an escrow instruction signed by both Seller and Buyer.

(b) In the event that Seller and Buyer cannot agree on the disbursement of the Deposit, the Escrow Agent may place the Deposit with a court of competent jurisdiction and request that the court resolve the dispute.

3. BUYER'S INVESTIGATION OF PROPERTY CONDITIONS. Buyer is aware of Buyer's affirmative duty to exercise reasonable care in the acquisition of real property, including but not limited to investigating (with the advice and assistance of an attorney or other professionals as appropriate) the facts that are known to or within the diligent attention and observation of the Buyer including, but not limited to, with respect to the following:

3.1 Property Lines and Boundaries. Fences, hedges, walls, and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines are verifiable only by survey.

3.2 Separate Parcels. Upon conveyance of the Property to Buyer, the Property and the Buyer's Parcel will remain two separate parcels which may be merged into one parcel only in compliance with the Subdivision Map Act (California Government Code Section 66410-66413.5), and at Buyer's sole cost and expense. If Buyer chooses to merge the Property and Buyer's Parcel, such merger must occur after the Closing Date.

3.3 Governmental Requirements, Fees and Permits. The need for governmental permits, inspections, certificates, or other determinations affecting the Property and any improvements located thereon; limitations, restrictions, and requirements affecting the use of the Property; future development, zoning, building, size, governmental permits, and inspections; and application, processing, inspection, and in-lieu fees and expenses associated therewith. Buyer should investigate the need for regulatory permits for new and existing structures. Any such uses or permits may be governed by the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 - 1376).

3.4 Water and Utilities. Water and utility availability and use restrictions; hook-up fees, facility fees, and other costs and expenses associated with the provision of utilities to the Property.

3.5 Environmental Hazards. Potential environmental hazards contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

3.6 Geologic/Seismic Conditions. Geologic/seismic conditions, soil and terrain stability, suitability, and drainage. Some parts of the East Bay have expansive, or adobe, soil which will expand and contract with the wet and dry seasons. This expansion and contraction can cause movement or shifting of structures. Like all regions in the Bay Area, the Property is considered to be subject to high seismic activity. Local moderate seismic activity association with any area faults could produce severe ground shaking.

3.7 Condition of Improvements. The physical condition of any docks, piers or other improvements, the issue of whether such improvements possess necessary permits or authorizations and whether such improvements are located exclusively upon the Property.

3.8 Zoning. Any use or development of the Property must be in conformity with its zoning designation, E, Estuary District, as defined at Section 30-4.21 of the Alameda Municipal Code of Ordinances.

4. RECEIPT OF DISCLOSURE DOCUMENTS. Buyer is hereby advised to thoroughly review all reports and disclosures related to the Property referenced herein or otherwise provided to Buyer (with the advice and assistance of a lawyer or other professionals as appropriate). The following documents in Seller's possession related to the Property (the "**Property Information**") are delivered to Buyer (via the City's website at the following link: <https://alamedaca.gov/tidal-canal-project> or, at Buyer's request, hard copies or electronic copies will be delivered to Buyer) concurrently herewith:

- (a) Final Map;
- (b) Memorandum of Understanding between the City and the Corps;
- (c) 2016 Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act;
- (d) August 2016 Finding of Suitability of Transfer;
- (e) June 2014 Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture (Environmental Baseline Survey);
- (f) May 12, 2015 Summary Report on Oakland Inner Harbor Tidal Canal Environmental Contamination Issues prepared by Russell Resources, Inc.;
- (g) Mitigated Negative Declaration Determination;
- (h) Declaration of Covenant, Conditions and Restrictions;

(i) Appraisal report from Watts, Cohn and Partners, dated August 2016 showing the aggregate fair market value of the Residential Appurtenant Parcels and the Property on a per parcel basis.

(j) Quitclaim Deed between the Army Corps and the City

Seller will provide to Buyer, without charge, a hard copy or pdf of any of the above documents upon written request.

**BUYER HEREBY ACKNOWLEDGES RECEIPT OF ALL OF THE ABOVE-REFERENCED DOCUMENTS**

**Buyer's Initials:**                      /                      /

5. **DUE DILIGENCE PERIOD.** As used in this Agreement, the term “**Due Diligence Period**” shall mean the period commencing on the date Buyer executes this Agreement and **ending at 5:00 p.m. on November 14, 2016.** During said Due Diligence Period, Buyer is encouraged to undertake such investigations of property conditions, to review documents and undertake such other investigations as it deems prudent.

5.1 **Access to Property.** Buyer acknowledges that, prior to the Army Corps Conveyance Date, Seller neither possesses nor controls the Property, the same remaining under the ownership of the Corps. Thus Seller will not have title to, nor possession of any of the Property and therefore has no authority to grant Buyer access to conduct environmental, geotechnical or other tests on the land. The foregoing notwithstanding, Buyer acknowledges that Buyer has direct access and/or actual use and possession of the Property with the actual or implied consent of the Corps. Thus Buyer hereby acknowledges that Buyer has sufficient access to the Property to conduct its due diligence during the Due Diligence Period.

5.2 **Additional Documents.** Seller agrees that any additional documents relating to the Property, beyond those identified in Article 4 above, which come into the possession, custody or control of Seller after the Effective Date but before the Closing Date will be promptly delivered by Seller to Buyer via the City's website at the link as identified at Section 4 above or, at Buyer's request, by hard or electronic copies delivered to Buyer.

5.3 **Due Diligence Satisfaction.** Buyer may, at any time **prior to 5:00 p.m. on November 14, 2016** (the “**Due Diligence Satisfaction Date**”), elect to proceed with the purchase of the Property or terminate this Agreement in its sole and absolute discretion for any reason or no reason, by sending to Seller written notice indicating Buyer's election to terminate the Agreement. In the event of such termination, the Deposit (exclusive of the Independent Consideration) then held by Escrow Agent shall be returned to Buyer. If Buyer fails to deliver such notice **prior to 5:00 p.m. on November 14, 2016** in accordance with the provisions of this Section 5.3, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 5.3. If Buyer so terminates this Agreement, Seller may thereafter offer the Property to a third party purchaser.

6. CONDITION OF THE PROPERTY.

6.1 Property Sold in an "As Is" Condition and "With All Faults".

Except for the representations or warranties of Seller expressly set forth in this Agreement, Buyer and Seller mutually acknowledge and agree that, the Property is being sold in an "AS IS" condition and "WITH ALL FAULTS," known or unknown, contingent or existing. Buyer has the sole responsibility to fully inspect the Property, to investigate all matters relevant thereto, including, without limitation, the condition of the Property and to reach its own, independent evaluation of any risks (environmental or otherwise) or rewards associated with the ownership of the Property. Effective as of the Closing, Buyer hereby waives and releases the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from and against any and all claims, obligations and liabilities arising out of or in connection with the physical condition of the Property.

6.2 Waiver of Environmental Conditions. To the fullest extent permitted by law, and except as expressly set forth in this Agreement, Buyer does hereby unconditionally waive and release the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of Hazardous Substances in, on, at, from, under or about the Property or any adjacent property, including, without limitation, any claims under or on account of any environmental law, regardless of whether such Hazardous Substances are located in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing. In addition, Buyer does hereby covenant and agree to defend, indemnify, and hold harmless Seller, its City Council, boards, commissioners, officials and its employees, agents, successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, known or unknown, existing in future, to the extent relating to any Hazardous Substances that are placed, located or released on the Property after the Closing and, with respect to releases, that did not exist on the Property prior to the Closing, including any action or proceeding brought or threatened or ordered by governmental authorities. For purposes of this Agreement, "**Hazardous Substances**" means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

6.3 Waiver of Natural Hazards. Buyer further acknowledges that "Natural Hazards" described in the following California Code Sections (the "**Natural Hazard Laws**") may affect the Property: Government Code Sections 8589.4; 8589.3; Government Code Sections 51183.4, 51183.5 (Fire Hazard Severity Zone); Public Resource Code Section 2621.9 (Earthquake Fault Zone); Public Resource Code Section 2694 (Seismic Hazard Zone); and Public Resource Code Section 4136 (Wildlands Area). Buyer acknowledges and agrees that Buyer has had the opportunity independently to evaluate and investigate whether any or all of such Natural Hazards effect the Property and Seller shall have no liabilities or obligations with respect thereto. Buyer further acknowledges that pursuant to California Civil Code section 1103.1, this transfer is exempt from the natural hazard disclosure requirements set forth in sections 1103 et. seq. Without limiting the foregoing, Buyer acknowledges and agrees that



Buyer knowingly and intentionally waives and releases Seller from any disclosures, obligations or requirements of Seller with respect to Natural Hazards, including, without limitation, any disclosure obligations or requirements under the aforementioned Code Sections or under California Civil Code Section 1102.

6.4 Dredging. Buyer shall be solely responsible for any dredging that may be necessary or desirable for Buyer's use of the Property.

(a) Dredging by the Corps for Operations and Maintenance. The Corps reserves a superior right of access to, over, across and through any and all portions of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels for its operations and maintenance of the Tidal Canal, as authorized by the River and Harbors Act of 1922, Pub. L. No. 67-362, as amended. These rights shall be exercisable in any case in which the Corps is authorized to dredge or clear the Tidal Canal. Pursuant to this reservation, the Corps and its officers, agents, employees, contractors, and subcontractors shall have the right to enter upon the Property to, including but not limited to, conduct investigations, conduct surveys, dredge, and/or clear the Tidal Canal of any obstructions or potential obstructions to navigation. In exercising its right of access, the Corps shall provide the Buyer or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. This reservation of rights runs with the land and is contained in the Quitclaim Deed which conveys the Property from Seller to Buyer.

6.5 Disclaimer and Release of Claims. The Purchase Price reflects that the Property is being purchased by Buyer on an "**As-Is**," "**Where Is**" and "**With All Faults**" basis. Buyer hereby waives and relinquishes all rights and privileges arising out of, or with respect to, any representations, warranties or covenants, whether express or implied, which may have been made or given, or which may be deemed to have been made or given, by Seller or its representatives, except for those representations, warranties and covenants set forth in this Agreement. Buyer has not relied upon and will not rely upon, and Seller expressly disclaims, any representations or warranties with respect to: (a) the presence of any Hazardous Substances in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing; or (b) the matters referenced in Sections 3.1 through 3.8 above (the "**Buyer's Release Claims**").

6.6 Waiver of Unknown Claims. Buyer hereby acknowledges that Buyer is familiar with and understands the meaning of California Civil Code Section 1542 which provides as follows:

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

Buyer waives and relinquishes any right or benefit which Buyer has or may have under Section 1542 of the California Civil Code to the fullest extent that it may lawfully waive such rights and

benefits. In connection with such waiver and relinquishment, Buyer acknowledges that it is aware that it or its consultants may hereinafter discover facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement, but that it is Buyer's intention hereby to fully, finally and forever settle and release all of Buyer's Released Claims, known or unknown, suspected or unsuspected, which now exist or may exist hereafter between Buyer and Seller with regard thereto.

6.7 Waivers Bargained For. Buyer acknowledges and represents that the waivers set forth in this Article 6 have been negotiated and each is an essential aspect of the bargain between the parties.

6.8 Title. Upon and subject to Close of Escrow, Seller shall convey title to the Property to Buyer by quitclaim deed in the form of Exhibit B, subject to the Covenants, Conditions and Restrictions attached as Exhibit C and further subject to any exceptions or restrictions to which the Property is subject upon its conveyance from the Corps to the City.

6.9 Survival. The terms and provisions of this Article 6 shall survive the Closing hereunder until expiration of any applicable statute of limitations.

7. CONDITIONS PRECEDENT TO CLOSING. The obligations of Buyer to purchase and Seller to sell the Property are expressly conditioned upon the satisfaction, prior to said closing, of each of the conditions precedent set forth in this Article 7 (the "**Conditions Precedent**"), any of which conditions may be waived by the Party to whose benefit such condition inures. If this Agreement is deemed terminated as a result of the failure or non-occurrence of a Condition Precedent, the Deposit (including the Independent Consideration except as otherwise set forth in Sections 5.3 and 7.2) then held in Escrow shall be returned to Buyer.

7.1 Army Corps Conveyance. The conveyance by the Corps of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels shall have occurred in accordance with the terms and conditions of the MOA and Recital K above. If the Army Corps Conveyance Date has not occurred by January 13, 2017, then this Agreement shall be deemed terminated.

7.2 No Termination by Buyer during Due Diligence Period. Buyer shall not have timely exercised the right to terminate this Agreement before the Due Diligence Satisfaction Date in accordance with Section 5.3. If Buyer terminates in accordance with Section 5.3, the Deposit (less the Independent Consideration) shall be returned to Buyer.

7.3 Commitment for all Residential Appurtenant Parcels. The obligation of the Corps to convey the Residential Appurtenant Parcels to the City, and the City's obligation to convey the Property to Buyer are conditioned upon there being buyers for one hundred percent (100%) of the Residential Appurtenant Parcels. For purposes of satisfying this Condition Precedent, the buyer need not be the owner of the adjacent residential parcel. All Residential Appurtenant Parcels must be under contract and the purchase price (including closing

costs) and documents required to be deposited into escrow shall have all been deposited on or before the Closing Date.

7.4 No Pendency of Legal Challenge. There shall be no pending legal action challenging the conveyance of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels, or any of them, from the Corps to the City, or challenging the reconveyance by the City of said parcels, or any of them, or challenging the validity of this Agreement or any action to be taken by Seller or Buyer pursuant thereto.

7.5 Alameda City Council Approval. The Alameda City Council in its sole and absolute discretion shall approve by at least four (4) affirmative votes to acquire the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels and shall have directed the City Manager to execute any and all documents to consummate the transaction upon terms and conditions the City Council deems appropriate.

## 8. CLOSING.

8.1 Seller Deposits into Escrow. Seller shall deposit the following into Escrow:

(a) Quitclaim deed. A duly executed and acknowledged quitclaim deed conveying the Property to Buyer;

(b) Certificate of Non-Foreign Status. A Non-Foreign Certificate executed by the City (the “**FIRPTA Certificate**”) and a California Form 593-C executed by the City (the “**Cal-FIRPTA Certificate**”);

(c) Escrow instructions. Written escrow instructions to Escrow Agent instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement.

(d) Other Documents. Such other documents and instruments as may be required by the provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

8.2 Buyer Deposits into Escrow. Buyer shall deposit the following into Escrow:

(a) Balance of Purchase Price. Cash or immediately available funds in the amount of the Purchase Price Balance and estimated closing costs by no later than November 14, 2016;

(b) Escrow Instructions. Written escrow instructions to Escrow Holder instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement;

(c) Other Documents. Such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

### 8.3 Close of Escrow.

(a) Closing Date. The Escrow shall close upon the same date as the Army Corps Conveyance Date (which is anticipated to be December 13, 2016) and immediately following such conveyance of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels from the Corps to the City (the “**Closing Date**”). For purposes of satisfying (or causing to be satisfied) a Condition Precedent, Seller may, at its sole and absolute discretion, elect to continue the Closing Date for a period of not to exceed thirty (30) days by giving written notice of the same to Escrow Holder and Buyer.

(b) Closing of Escrow. When the contingencies listed in Section 7.1 have been satisfied or waived in writing by Buyer and Seller and Escrow Agent has received all necessary cash and documents, Escrow Agent shall immediately close Escrow as provided below (the “**Closing**”). The Parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement.

(c) Procedure. Escrow Agent shall close Escrow as follows:

(i) Record quitclaim deed. Record quitclaim deed conveying the Property to Buyer;

(ii) Issue title policy. Issue and deliver to Buyer a CLTA owner’s policy of title insurance in the amount of the Purchase Price showing title to the Property vested of record of the Closing Date with Buyer;

(iii) Pay to Seller. Pay to Seller the funds in Escrow equal to the Purchase Price, reduced by the closing costs to be paid by Seller as hereinafter set forth;

(iv) Closing statement. Prepare and deliver to Buyer and Seller one (1) signed copy of Escrow Agent’s closing statement showing all receipts and disbursements from the Escrow.

8.4 Closing Costs. Buyer shall pay all City and County documentary transfer taxes due on the transfer of the Property from Seller to Buyer, all premium costs and expenses incurred in connection with the issuance of a CLTA owner’s policy of title insurance, together with all escrow fees. The foregoing notwithstanding, the Seller and Buyer agree that Seller shall pay normal closing costs in excess of One Thousand and 00/100 Dollars (\$1,000). However, any extraordinary closing costs such as additional insurance endorsements, title insurance coverage in excess of the Purchase Price or additional services requested by Buyer shall be paid by Buyer.

(a) Each Party shall bear the expense of its own legal counsel. Attorneys' fees and expert consultant fees are not to be considered as normal closing costs and shall be excluded when calculating the share of Closing Costs under Section 8.4 above.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

(a) Due Authority. Seller has obtained approval of the Alameda City Council authorizing the City Manager to execute this Agreement on its behalf.

(b) Litigation. Seller has received no written notice of any pending action or proceeding which challenges the validity of this Agreement or any action taken or to be taken by Seller pursuant hereto.

9.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that the foregoing matters are true and correct in all material respects as of the execution of this Agreement, and will also be true and correct in all material respects as of the Closing.

(a) Organization, Authorization and Consents. Buyer: (i) is a natural person(s) or is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) is and shall remain in good standing and qualified to do business in the state of California; (iii) has the full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the "**Buyer's Documents**"); and (iv) is lawfully able to perform all obligations arising under this Agreement and under the Buyer's Documents, and such performance does not conflict with any obligations of Buyer. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(b) Authorization of Buyer. Buyer has taken all necessary action to authorize the execution, deliver and performance of this Agreement, and upon the execution and delivery of documents to be delivered by Buyer on or prior to the Closing, this Agreement and such documents shall constitute the valid and binding obligation and agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(c) Buyer not an Employee Benefit Plan. Buyer is not an employee benefit plan (a "**Plan**") subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), nor a person or entity acting, directly or indirectly, on behalf of any Plan or using the assets of any Plan to acquire the Property, Buyer is not a "party in interest" (as that

term is defined in Section 3(14)) of ERISA with respect to any Plan that is an investor in Seller, and Buyer's acquisition of the Property will not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

(d) No Violation of Agreements. Neither the execution, delivery or performance of this Agreement by Buyer, nor compliance with the terms and provisions hereof, will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Buyer is bound.

(e) Litigation. Buyer has no knowledge of any pending action or proceeding which challenges the validity of the Agreement or any action taken or to be taken by Buyer pursuant hereto.

#### 10. DISPUTES TO BE RESOLVED BY JUDICIAL REFERENCE.

(a) Any action, proceeding or counterclaim brought by either Party hereto against the other on any matters arising out of or connected with this Agreement shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the “**Referee Sections**”). Each Party hereby acknowledges that in agreeing to resolve any disputes arising hereunder by means of a judicial reference in accordance with the Referee Sections constitutes a waiver of the right to a trial by jury.

(b) Within ten (10) days of receipt by any Party of a written request to resolve any dispute or controversy pursuant to this Article 10, the Parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the Parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter file a lawsuit in Alameda County Superior Court the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., ADR Services, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections.

(c) The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at Law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Agreement. The Parties shall be entitled to conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law. The Parties agree that the Parties and the referee shall use best efforts to ensure that (i) discovery be conducted for a period no

longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (ii) a trial date be set within nine (9) months of the date the referee is appointed.

(d) In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure.

## 11. GENERAL PROVISIONS.

11.1 Capacities. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to find the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

11.2 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11.3 Entire Agreement. This Agreement including all recitals and exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Seller and Buyer, and pursuant to a resolution or ordinance (as applicable) approved and adopted by the Alameda City Council.

11.4 Attorney's Fees. In the event either party to this Agreement institutes an action or proceeding brought pursuant to Article 10 or otherwise, to interpret or enforce the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the referee or court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought on the action or proceeding. In the event Seller is represented in a proceeding by attorneys employed with the City Attorney's Office, any award of attorney fees to Seller shall be measured by the reasonable fees that would have been paid by Seller had it instead been represented by outside counsel.

11.5 Brokers' Commission. Seller and Buyer each represent and warrant to the other that neither Party has dealt with any real estate brokers or finders with respect to the transaction contemplated hereby. Each Party agrees to indemnify 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 claim or claims of any broker or brokers to a commission in connection with this transaction as a result of the actions of the indemnifying party.

11.6 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California. The venue of any action brought pursuant to this Agreement shall be the County of Alameda.

11.7 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

11.8 Time. Time is of essence of every provision herein contained in this Agreement.

11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

11.10 Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, or transmitted by electronic mail addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Seller:                      City of Alameda  
                                         Alameda City Hall  
                                         2263 Santa Clara Avenue  
                                         Alameda, CA 94501  
                                         Tel: (510) 747-4700  
                                         Attn: City Manager

with a copy to:                City of Alameda  
                                         Alameda City Hall  
                                         2263 Santa Clara Avenue  
                                         Alameda, CA 94501  
                                         Tel: (510) 747-4750  
                                         Attn: City Attorney

**(Remainder of page intentionally left blank)**



To Buyer: [Insert]

with a copy to: [Insert]

Notices which are delivered by hand shall be deemed received upon delivery or the date on which delivery is refused; Notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery, or the date on which delivery is refused. The foregoing addresses may be changed by notice to the other Party as herein provided.

11.11 Escrow Instructions. The Parties agree to execute such instructions to Escrow Agent and such other instruments and do such other and further acts as may be reasonably necessary to carry out any of the provisions of this Agreement.

11.12 Construction. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the Parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to “sections” are the Sections of this Agreement, unless otherwise specifically provided.

11.13 Possession. Possession of the Property shall be delivered to Buyer upon Closing.

11.14 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Buyer, or any successor in interest, in the event of a default under or breach of this Agreement by Seller.

11.15 Severability. If any section, term or provision of this Agreement is held invalid by the referee or a court of competent jurisdiction, all other sections, terms or severable provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

*[Signatures follow on next page.]*

IN WITNESS WHEREOF, the Parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

**Signatures Must Be Notarized**

**SELLER:**

City of Alameda,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Jennifer Ott  
City Manager

Date: \_\_\_\_\_

**BUYER:**

The XX Family Trust

By: \_\_\_\_\_  
Name: XX, trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Lara Weisiger  
City Clerk

**Approved as to Form**

By: \_\_\_\_\_  
Michael Roush  
Special Counsel

Authorized by City Council Ordinance No. \_\_\_\_\_

**EXHIBIT A**

**FINAL MAP**

**EXHIBIT B**

**FORM OF QUITCLAIM DEED**

**EXHIBIT C**

**DECLARATION OF COVENANT, CONDITIONS AND RESTRICTIONS**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Fernside Boulevard,  
Alameda, CA 94501

### QUITCLAIM DEED

The undersigned Grantor declares:

\_\_\_\_\_  
**Jennifer Ott, City Manager**

County transfer tax is \$.

City transfer tax is \$.

( X ) computed on full value of property conveyed, or

( ) computed on full value less value of liens and encumbrances remaining at time of sale.

( ) Unincorporated area; or ( X ) City of Alameda

\_\_\_\_\_  
This QUITCLAIM DEED (hereinafter the “**Deed**”) is for Lot **XX** of Tract **#XX** which is on the Alameda side of the Oakland Inner Harbor Tidal Canal in the City of Alameda, Alameda County, California and is made and entered into, pursuant to City of Alameda Ordinance No. **XX** adopted **XXXX**, by and between the CITY OF ALAMEDA, a charter city and municipal corporation (hereinafter the “**Grantor**” or the “**City**”) and **\_\_\_FAMILY TRUST with XX** as trustee (hereinafter the “**Grantee**”) (each a “**Party**” and collectively the “**Parties**”). The Deed is entered into in furtherance of the Tidal Canal Lot Purchase and Sale Agreement between the Grantor and Grantee dated December 20, 2016 (the “**PSA**”), which is incorporated herein by reference and specifies terms and conditions for the conveyance and acceptance of Lot 95.

**WITNESSETH THAT** the Grantor, for and in consideration of the applicable promises of the Grantee set forth in the PSA, does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM unto the Grantee, its successors and assigns, all rights, title, and interest of the Grantor in and to that certain Lot XX, subject to the PSA, described in Exhibit “A” attached hereto and made a part hereof, as more particularly depicted by the Final Map recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the official records of the County of Alameda (the “Property.”)

**SUBJECT TO** all valid and existing reservations, covenants, conditions, restrictions, improvements and easements, including, but not limited to: pipelines, and public utilities, if any, whether of public record or not;

**TO HAVE AND TO HOLD** the Property granted herein to the Grantee, its successors and assigns, together with all and singular the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, and all the estate, rights, title, interest, or claim whatsoever of the Grantor, either in law or in equity, and subject to the reservations, covenants, conditions, and restrictions set forth in the Deed.

**AND IT IS FURTHER AGREED AND UNDERSTOOD** by and between the Parties hereto that the Grantee, by its acceptance of the Deed, and as part of its consideration for the conveyance made herein, covenants and promises for itself, its successors and assigns, forever, that the Deed is made and accepted upon each of the reservations, covenants, conditions and restrictions in that certain Quitclaim Deed entered into between the United States of America and the City of Alameda dated January \_\_\_\_\_, 2017 (“Army Corps Deed”), recorded in the Official Records of the County of Alameda, which covenants, conditions and restrictions are incorporated herein by reference as if set forth verbatim, all of which shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, by the Grantor and other interested parties, as may be allowed by law; that the reservations, covenants, conditions, and restrictions set forth herein are a binding servitude on the Property and shall be deemed to run with the land; and that the failure to include the reservations, covenants, conditions, and restrictions in subsequent conveyances of the Property or portions thereof will not abrogate the status of these reservations, covenants, conditions, and restrictions as binding upon the Grantor and Grantee, their successors and assigns.

**AND IT IS FURTHER AGREED AND UNDERSTOOD** by and between the Parties hereto that the Grantee, by its acceptance of the Deed, and as part of its consideration for the conveyance made herein, covenants and promises for itself, its successors and assigns, forever, that the Deed is made and accepted upon each of the reservations, covenants, conditions and restrictions in the PSA and in that certain Declaration of Covenants, Conditions, and Restrictions by the City of Alameda, recorded concurrently herewith in the official records of the County of Alameda (“City’s CC&Rs”), recorded concurrently herewith in the official records of the County of Alameda, all of which shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, by the Grantor and other interested parties, as may be allowed by law; that the reservations, covenants, conditions, and restrictions set forth herein are a binding servitude on the Property and shall be deemed to run with the land; and that the failure to include the reservations, covenants, conditions, and restrictions in subsequent conveyances of the Property or portions thereof will not abrogate the status of these reservations, covenants,

conditions, and restrictions as binding upon the Grantor and Grantee, their successors and assigns.

1. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument. However, any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

2. The covenants contained in this Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, (and/or the United States of America as to the covenants in the Army Corps Deed), Grantor's successor and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants contained in this Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

3. Only the Grantor, its successors and assigns shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants, conditions or restrictions contained in this Deed or to subject the Property to additional covenants, easements, or other restrictions.

4. In the event there is a conflict between the provisions of this Deed and the PSA, it is the intent of the parties hereto and their successors in interest that the Deed shall control.

5. This Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

-----NO CONDITIONS FOLLOW-----

*[Signatures on next page.]*



IN WITNESS WHEREOF, the Parties hereto have executed this Quitclaim Deed on this \_\_\_\_\_ day of February 2017.

**GRANTOR:**

City of Alameda,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Jennifer Ott  
City Manager

Date: \_\_\_\_\_

**Approved as to Form**

By: \_\_\_\_\_  
Michael Roush  
Special Counsel

Authorized by City Council Ordinance No.       

[Signatures of Principals Must Be Notarized]

*[Additional Signatures on Next Page]*

By acceptance of this Quitclaim Deed, the herein named Grantee hereby agrees that Grantee, and his or her successors and assigns, is and will be bound by each and every covenant, condition and restriction contained in that certain Declaration of Covenants, Conditions and Restrictions of the City of Alameda, recorded concurrently herewith in the official records of the County of Alameda.

**GRANTEE:**

The XX Family Trust

By: \_\_\_\_\_

Name: \_\_\_\_\_, trustee

Date: \_\_\_\_\_

[Signatures of Principals Must Be Notarized]

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

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary personally appeared Jennifer Ott, City Manager for the City of Alameda who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

\_\_\_\_\_

(Seal)

\_\_\_\_\_

Notary Public in and for said County and State

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, \_\_\_\_\_

(here insert name and title of the officer)

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 (typed or printed), Notary Public in  
and for said County and State

(Seal)



EXHIBIT A

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Alameda, City of Alameda and is described as follows:

[Insert Legal Description]

APN: NONE.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the City Council of the City of Alameda on the \_\_\_\_ day of \_\_\_\_\_ 2024, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

\_\_\_\_\_  
Yibin Shen, City Attorney  
City of Alameda