

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ALAMEDA, a California charter city

and

MidPen Housing Corporation, Alameda Point Collaborative, Building Futures With Women and
Children, Operation Dignity

Alameda Point - Rebuilding the Existing Supportive Housing (RESHAP)

Dated as of October 5, 2023

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DISPOSITION AND DEVELOPMENT AGREEMENT
FOR ALAMEDA POINT - REBUILDING THE EXISTING SUPPORTIVE HOUSING
(RESHAP)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**" or "**DDA**") is entered into as of October 5, 2023 ("**Effective Date**") by and between the City of Alameda, a California charter city (the "**City**"), and MidPen Housing Corporation, a California nonprofit public benefit corporation ("**MidPen**"), Alameda Point Collaborative, a California nonprofit public benefit corporation ("**APC**"), Building Futures With Women and Children, a California nonprofit public benefit corporation ("**Building Futures**"), and Operation Dignity, a California nonprofit public benefit corporation ("**Operation Dignity**"). Each of APC, Building Futures and Operation Dignity is referred to herein as a "**Collaborating Partner**", and collectively, "**Collaborating Partners**". MidPen and the Collaborating Partners are referred to herein as the "**Developer**". MidPen and each of the Collaborating Partners are expected to form limited partnerships to which certain development obligations will be assigned in which the managing general partner is a limited liability company in which (1) MidPen or an affiliate in which MidPen has a Controlling Interest is a member/manager and (2) one or more of the Collaborating Partners or an affiliate in which the Collaborating Partner has a Controlling Interest is also a member/manager, which limited partnerships are identified herein as "**Developer Affiliates**." The City and the Developer are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Agreement with reference to the following facts:

RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Section 16.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

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

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

D. In 2003 the City adopted a General Plan Amendment for Alameda Point, which added Chapter 9 (Alameda Point) to the General Plan, in order to implement the community's

vision for the reuse of Alameda Point consistent with the goals of the Reuse Plan and other City of Alameda policy documents.

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

F. The ARRA, by Resolution No. 55, dated January 31, 2012, authorized the ARRA Executive Director to assign to the City all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, and pursuant to City of Alameda Resolution No. 14654, dated February 7, 2012, the City accepted the assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement.

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

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

I. On February 4, 2014, the City Council certified the Environmental Impact Report ("**EIR**") adopted written findings, a Statement of Overriding Considerations ("**Alameda Point SOC**"), and a Mitigation Monitoring and Reporting Program ("**Alameda Point MMR**"), and adopted General Plan amendments, Zoning Ordinance amendments (Alameda Municipal Code 30-4.24), a Transportation Demand Management Plan for Alameda Point ("**TDM Plan**"), and a Master Infrastructure Plan ("**MIP**") (collectively, the "**Planning Documents**") required to implement the Reuse Plan for Alameda Point. This DDA is intended to implement the goals and policies described in the General Plan, Zoning Ordinance, TDM Plan, and MIP.

J. On March 21, 2017, the City Council adopted the Main Street Neighborhood Specific Plan ("**Main Street Neighborhood Plan**"). This DDA is intended to implement the goals and policies described in the Main Street Neighborhood Plan.

K. On November 30, 2021, the City Council adopted a comprehensive update of the General Plan and Zoning Ordinance which included amendments to the policies, standards and requirements for development at Alameda Point, and certified the environmental impact report for the update of the General Plan ("**General Plan Amendment EIR**") under CEQA and adopted written findings, a Statement of Overriding Considerations ("**General Plan Amendment SOC**"), and a Mitigation Monitoring and Reporting Program ("**General Plan Amendment MMR**").

L. In November 2022, the City of Alameda adopted its Housing Element of the General Plan for the 2023-2031 cycle, which committed the City of Alameda to construction of 1,425 housing units between 2023 and 2031 on City owned land at West Midway, RESHAP, and Site A of Alameda Point.

M. The City is the fee title owner of that certain portion of Alameda Point consisting of 7.93 acres, and bounded by West Midway Avenue, Pan Am Way, Avenue B and Ardent Way, as more particularly described in Exhibit A and shown on the map of the Property attached hereto as Exhibit B (the "**Property**").

N. The City currently leases certain property located within Alameda Point consisting of 34 acres to individual members of the Collaborating Partners pursuant to the terms of long term legally binding agreements ("**Existing Leases**") for 201 housing units and administrative offices in existing former Navy structures ("**Existing Structures**"). In addition to the Existing Leases, the City currently leases to APC certain property located within Alameda Point for the Ploughshares Nursery and The Farm, which leases are intended to remain in effect and unchanged by this Agreement. The Existing Leases were entered into pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 which requires that reasonable accommodations be made on closing military bases to meet the needs of the homeless and sets forth procedures and standards describing how such accommodations are to be made.

O. On December 15, 2015, pursuant to City Council authorization, the City and the Developer entered into the Exclusive Negotiations Agreement (the "**ENA**") for purposes of negotiating this Agreement.

P. The City and Developer entered into that certain Disposition and Development Agreement for Alameda Point- Rebuilding the Existing Supportive Housing (RESHAP), dated as of July 5, 2018 as clarified by that First Operating Memorandum dated for reference purposes as of July 31, 2019 (the "**Original DDA**"). The Original DDA contemplated the development of an approximately 9.7 acre property to be conveyed by the City to Developer Affiliates formed by MidPen and one or more of the Collaborating Partners, upon which the Developer Affiliates would construct 267 units of affordable housing replacing 201 existing affordable housing units operated by the Collaborating Partners pursuant to the Existing Leases and constructing 66 new affordable housing units as well as approximately 40,000 square feet of Commercial Space ("**Original Project**").

Q. The Original Project as contemplated in the Original DDA was conditioned upon the development of certain backbone infrastructure and site improvements by the market rate developer of an adjacent property, including property subject to one or more Existing Leases.

R. The City issued a request for qualifications for the market rate developer to develop the property adjacent to the Original DDA property including the development of the backbone infrastructure necessary for the Original Project. The City entered into an Exclusive Negotiating Rights Agreement with the West Midway Developer on May 19, 2020, the City Council approved a term sheet for the Disposition and Development Agreement with the West Midway Developer on July 5, 2022 ("**West Midway Term Sheet**"), and the City intends to enter into a disposition and development agreement with the West Midway Developer concurrently with this Agreement.

S. The West Midway Term Sheet contemplates that the West Midway Developer will develop the Market Rate Project on the property initially intended to be transferred to Developer for the Original Project in the Original DDA and that the Developer will now develop the Project on the Property.

T. The West Midway Term Sheet also contemplates that the West Midway Developer will develop 478 residential units, requiring an increase in the number of affordable housing units identified in the Original DDA necessary to comply with the Renewed Hope Settlement Agreement, the City's Inclusionary Housing Ordinance and to comply with the requirements of Government Code Section 37364.

U. The City and Developer have agreed to terminate the Original DDA upon the Effective Date of this Agreement and enter into this Agreement to reflect the new location of the Project, increase in affordable housing units to be developed, change the Milestone Schedule, and other related modifications that differ from what was contemplated in the Original DDA.

V. The Developer's plan for the Property includes the replacement of the 201 existing housing units, of which 198 are affordable and 3 are manager's units currently being provided pursuant to the Existing Leases with 201 newly constructed housing units as well as a minimum of an additional 108 newly constructed housing units for a minimum of 309 housing units although the Developer intends to submit applications to the City to increase the total number of newly constructed housing units so the total number of affordable housing units constructed by the Developer is no less than 40% of the total number of housing units to be constructed by the Developer and the West Midway Developer. All of the housing units will be supportive affordable housing except that a maximum of eight of the housing units will manager's units.

W. The City and the Developer acknowledge that replacement of the Existing Structures with the Project as contemplated in this Agreement meets the goals of the Base Closure Community Redevelopment and Homeless Assistance Act and the terms of the Existing Leases related to the provision of affordable housing meeting the needs of the homeless.

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

Y. Pursuant to the terms of this Agreement, the City will convey and provide other specified rights to the Property to Developer Affiliates, and the Developer Affiliates will develop and construct a high quality, affordable supportive housing project that will serve extremely low-income, very low-income, and low-income residents by providing housing and supportive services that will help to break the cycle of homelessness and establish stability and opportunity in the lives of residents and create a cohesive, pedestrian-friendly, and inviting community. The Developer proposes to develop the following specified improvements consistent with the Main Street Neighborhood Plan and the Planning Documents (collectively, the "**Project**"):

1. Two-Hundred One (201) replacement residential units in newly constructed buildings replacing the 201 units currently located in the Existing Structures (the "**Replacement Units**");

2. A minimum of One-Hundred Eight (108) new residential units in newly constructed buildings ("**New Residential Units**" and with the Replacement Units, collectively, the "**Residential Units**");

3. Approximately 40,000 square feet of non-residential space for community serving commercial and administrative office uses ("**Commercial Space**"); and

4. Replacement of the existing Midway Shelter with up to fifty-four (54) emergency beds for BFWC in newly constructed buildings ("**Emergency Shelter**").

The Developer intends to implement the Project in up to four (4) separate phases (each a "**Phase**"). Each Phase is more particularly described in the Phasing Plan attached as Exhibit C.

Z. In accordance with the terms of the Agreement and as consideration for the City conveying the Property, the Collaborating Partners shall be obligated to release the Existing Leases from the Existing Structures and all encumbrances on the Existing Structures as set forth in this Agreement and the Release Agreement attached hereto.

AA. The City and the Developer understand that as a condition to development of the Project on the Property certain backbone infrastructure and site improvements must be constructed, consisting of demolition, geotechnical mitigation, environmental mitigation, rough grading, certified building pads, construction of backbone streets and utilities stubbed to the Property consistent with the MIP (collectively, the "**Backbone Infrastructure**" and more specifically described in Exhibit D-1 and D-2) prior to conveyance of the Property to Developer Affiliates. The Parties intend that the Backbone Infrastructure will be developed by the West Midway Developer in accordance with the terms of the disposition and development agreement entered into with the City concurrently with this Agreement.

BB. The New Residential Units are being constructed in compliance with the Renewed Hope Settlement Agreement with the units, exclusive of the managers' units, to be affordable to extremely low, very low and low income households. The New Residential Units are being constructed in exchange for the West Midway Developer paying for and installing the Backbone Infrastructure and as such are intended to serve as the inclusionary units required for the development of the adjacent property under the City's Inclusionary Housing Ordinance.

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

1. The conveyance of fee simple ownership of the Property in phases to Developer Affiliates;

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

DD. This Agreement provides for the Collaborating Partners to terminate the Existing Leases in accordance with the terms of this Agreement and the Release Agreement and to deliver the property covered by the Existing Leases to the City free and clear of any encumbrances.

EE. Through this Agreement, the City is imposing occupancy and affordability restrictions on the Project in compliance with the Renewed Hope Settlement Agreement, the City's Inclusionary Housing Ordinance and Government Code Section 37364.

FF. On May 8, 2023, the Planning Board approved the Development Plan (the "**Development Plan**"). The Planning Board also recommended that the City Council approve the Development Agreement (defined below), made a determination that the EIR and General Plan Amendment EIR adequately analyze the impacts of the Project and that no further environmental review under CEQA is required based on Public Resources Code Sections 21083 and 21162 and CEQA Guidelines Sections 15162 and 15183 ("**RESHAP PB CEQA Approval**"), adopted written findings and a Mitigation and Monitoring Reporting Program for the Project ("**MMR Program**"), specifying mitigation measures applicable to the Project, and readopted the Alameda Point SOC and the General Plan Amendment SOC.

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

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

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

JJ. In connection with the approval of this Agreement, the City Council has made findings as required by Government Code Section 54221(f)(1)(A) that the Project is exempt surplus land.

KK. MidPen and the Collaborating Partners have represented that they have the necessary experience, skill, and ability to carry out their respective commitments contained in this Agreement.

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

ARTICLE 1.

TERM OF THE AGREEMENT

Section 1.1 Termination of Original DDA. The Parties mutually agree that the Original DDA, as that term is defined in Recital P, is hereby terminated as of the Effective Date of this Agreement. The Parties agree that their respective rights and obligations under the Original DDA are hereby terminated and both Parties shall have no further liability to each other

under the Original DDA or with respect to the Original DDA. The Parties shall execute such documents as are necessary to release the Original DDA from the property.

Section 1.2 Effective Date. The Effective Date of this Agreement is stated in the first paragraph of this Agreement and represents that date which is thirty (30) days after the date the Ordinance approving this Agreement is adopted by the City Council. This Agreement shall be executed by the City within ten (10) days after the Effective Date and a DDA Memorandum substantially in the form attached as Exhibit F (the "**Memorandum**") will be recorded in the public records with the Alameda County Recorder (the "**Official Records**") against the Property owned by the City as of the Effective Date.

Section 1.3 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) October 5, 2033 (the "**Expiration Date**") which is ten (10) years from the Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; or (c) the date of issuance by the City of the final Certificate of Completion for the last Phase of Vertical Improvements ("**Term**").

Section 1.4 Extension of the Term. Except as a result of the express extension rights set forth in this Section 1.4, the Term of this Agreement shall not extend beyond the Expiration Date, unless and until the City Council, in its sole discretion, approves such an extension amending the Agreement to provide for a term beyond the initial Term.

(a) In the event that the Backbone Infrastructure has not been completed by the Outside Date set forth in the Milestone Schedule and there is no existing Developer Event of Default under this Agreement, the Term of this Agreement shall be automatically extended by the number of months of delay in the completion of the Backbone Infrastructure to account for the delay in the completion of the Backbone Infrastructure, provided, however, no such extension shall exceed a total of five (5) years. By way of example, if the Outside Date for the completion of the Backbone Infrastructure in the Milestone Schedule is June 2025 but the actual projected completion date for the Backbone Infrastructure is extended to January 2027, the Term of this Agreement will be extended by 19 months to account for the delay in the completion of the Backbone Infrastructure. Nothing in this Section 1.4 shall be construed to limit the scope or duration of those obligations that expressly survive the expiration or termination of this Agreement.

(b) The City Manager may grant extensions of the Term in addition to any extension pursuant to Section 1.4(a) in the event that MidPen and the Collaborating Partners demonstrate to the City Manager's satisfaction that they are making progress toward Completion of the Vertical Improvements, provided, however, any such extension shall not be for longer than one (1) year and cumulatively any such extensions granted by the City Manager pursuant to this section shall not exceed five (5) years. Any such extension granted pursuant to this Section shall be memorialized in an Operating Memorandum in accordance with Section 15.16.

Section 1.5 Force Majeure. In addition to the extensions set forth in Section 1.4, either Party has the right to extend the applicable Milestone Schedule (and all subsequent Milestone Schedule dates) by Force Majeure. Force Majeure shall mean delay caused by any of the following: strikes, lock-outs or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from

changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in section 66452.6(f) of the California Government Code; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

The extension of time for force majeure events shall be from the time the Party claiming the extension provides written notice to the other Party in accordance with Section 15.1 of the event that gave rise to such period of delay which notice shall specify the Milestone Dates that are being extended. The extension of time shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time the applicable Milestone Dates (and all subsequent Milestone Schedule dates affected by the force majeure event) will be adjusted to account for the extension period, provided however no Party may request or claim extensions pursuant to this Section 1.5 for a cumulative period in excess of five (5) years.

Section 1.6 Milestone Schedule. During the Term, MidPen, the Collaborating Partners, and the City will each be required to perform certain tasks and to fulfill certain obligations as set forth in this Agreement, the Exhibits and other implementing documents. A schedule of the deadlines for performance of various conditions and requirements under this Agreement is set forth in the Milestone Schedule attached as Exhibit G. Major Milestone Dates shall be the Outside Phase Closing Dates, the dates for commencement and completion of relocation of the residents of the Existing Structures and the Commencement and completion of Construction of each Phase. Major Milestone Dates may be (a) extended pursuant to Sections 1.4 or 1.5 or (b) modified by an amendment to this Agreement approved by the Developer and the City in accordance with Section 15.14. All deadlines set forth in the Milestone Schedule that are not considered Major Milestone Dates are considered "**Progress Milestone Dates**." The Parties shall make commercially reasonable efforts to meet the Progress Milestone Dates but failure to meet a Progress Milestone Date shall not be considered an Event of Default pursuant to Sections 14.3 and 14.4 unless, as a result of such failure, it would be impossible for a Major Milestone Date (as such date may be extended pursuant to Sections 1.4 or 1.5) to be met. If a Party fails to meet a Progress Milestone Date, either Party can require the other Party to meet and confer regarding the impact to the Milestone Schedule of such failure with the goal of the Parties reaching mutual agreement on adjustments to the Progress Milestone Dates in the Milestone Schedule. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party.

ARTICLE 2.

LAND PAYMENT

Section 2.1 Land Payment. In accordance with the terms of this Agreement, the City will convey to the Developer Affiliates the Property or applicable portion thereof improved with

the Backbone Infrastructure in exchange for the Collaborating Partners terminating the Existing Leases, relocating at their own costs the current occupants of the Existing Structures to the Project subject to the covenants and conditions in this Agreement and removing any encumbrances, on the property subject to the Existing Leases. The City has determined that the Collaborating Partners' release of their rights and claims under the Existing Leases as well as the Developer's agreement to meet the requirements contained in the Renewed Hope Settlement Agreement and meet the Inclusionary Housing Ordinance requirements for the Main Street Neighborhood with the City equals or exceeds the value of the Property to be conveyed to the Developer Affiliates. The Developer and the City have determined that the Property is to be conveyed pursuant to this Agreement for One Dollar (\$1.00) (the "**Land Payment**") for each Phase.

ARTICLE 3. **FINANCING AND PHASING PLAN**

Section 3.1 Financing Plan. MidPen has submitted to the City a financing plan for the Project ("**Project Financing Plan**") dated March 8, 2021 which Project Financing Plan shall be updated when each Financing Plan is submitted to the City pursuant to this Section 3.1 for each Phase. The City shall use good faith efforts to assist Developer in submission of funding applications for each Phase.

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

(1) A breakdown of the number of Affordable Units to be developed and rented within the Phase including the number of Affordable Units to be rented to Very Low Income Households, Extremely Low Income Households and Low Income Households.

(2) An updated "sources and uses" breakdown of the costs of constructing the Phase, and an updated operating proforma for the Phase. Such updated sources and uses breakdown and operating proforma shall reflect MidPen's then current expectations for funding sources and development costs.

(3) Copies of funding commitments for any financing source, including loans and grants, in amounts sufficient to demonstrate that the Phase is financially feasible and copies of any funding commitments for all other financing required to develop and operate the Phase. If at the time of submission of the Phase Financing Plan, MidPen or the applicable Developer Affiliate does not have commitments from all sources of financing, the Phase Financing Plan shall include information on MidPen's actions to obtain such financing commitments and MidPen's estimate of the likelihood of receiving such financing commitments.

(4) A Tax Credit Reservation from TCAC and a letter of intent from an investor for equity funding for the Phase in an amount that when combined with the other sources of financing committed to the Phase demonstrates that the Phase is financially feasible,

or if MidPen has not applied for tax credits at the time of submission, the Phase Financing Plan shall include MidPen's projected date for submitting an application for tax credits, the requirements for submitting an application that is likely to score sufficient points to receive a Tax Credit Reservation and MidPen's estimation of the feasibility of meeting those requirements within the time frame set out in the Phase Financing Plan.

(5) Any other information reasonably requested by the City that would assist the City in determining that MidPen and each applicable Developer Affiliate has the financial capability to pay all costs of constructing the Phase and operating the Phase

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

Section 3.2 Review of Phase Financing Plan Updates By City. Upon receipt by the City of the proposed Phase Financing Plan, the City Manager shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date the City Manager receives the proposed plan or update, which approval shall not be unreasonably withheld. If the proposed plan or update is not approved by the City Manager, then the City Manager shall notify MidPen in writing of the reasons for disapproval and the required revisions to the previously submitted plan or update. MidPen shall thereafter submit a revised plan or update within thirty (30) days of the notification of disapproval. The City Manager shall either approve or disapprove in writing the submitted revised Phase Financing Plan within thirty (30) days of the date such revised plan or update is received by the City. The City Manager shall approve the initial or revised plan or update if (i) it contains the elements described in the definition of the Phase Financing Plan as applicable, contained in Section 3.1 above, (ii) demonstrates sufficient funding to pay the total development costs of the Phase, as applicable and all other applicable obligations of the Developer under this Agreement. If the City disapproves the revised proposed Phase Financing Plan, this Agreement may be terminated pursuant to Article 14 or at the election of the City, the time for submittal and approval of Phase Financing Plan may be extended. If, at the time of submission of the Phase Financing Plan, the Developer does not have commitments for all financing required to pay for the costs of constructing the Phase and a Tax Credit Reservation, the City Manager, in his or her sole discretion, may conditionally approve the Phase Financing Plan, in which event, the City's conditional approval will require that MidPen submit amendments to the Phase Financing Plan demonstrating progress on obtaining the necessary financing within time frames to be determined by the City based on information provided by MidPen in the submitted Phase Financing Plan. The City shall not be obligated to convey the applicable portion of the Property to a Developer Affiliate until the City has unconditionally approved a Phase Financing Plan.

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

Section 3.3 Quarterly Reports. In addition to the Phase Financing Plan required above, MidPen shall on a quarterly basis submit to the City for its review a progress report on funding applications for the development of the Project.

Section 3.4 Phasing Plan. Attached as Exhibit C is the parties' Phasing Plan for the Project. Development of the Project is dependent upon the construction of the Backbone Infrastructure in accordance with the West Midway disposition and development agreement.

ARTICLE 4. **DISPOSITION OF PROPERTY AND ESCROW**

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

Section 4.2 Close of Escrow. Subject to the satisfaction of the applicable conditions precedent set forth in Sections 4.3(a) and (b) and any extensions pursuant to Section 1.4 or 1.5 above, escrow shall close no later than thirty (30) calendar days after all conditions precedent to the applicable Closing set forth in Section 4.3 have been met, provided however, in all events the transfer of the portion of the Property applicable to each Phase ("**Transfer Property**") to the Developer Affiliate must occur no later than the Outside Phase Closing Date set forth in the Milestone Schedule (each, an "**Outside Phase Closing Date**") (each such, the "**Closing Date**").

On the applicable Closing Date, the City shall: convey to the applicable Developer Affiliate the applicable portions of the Property pursuant to a Quitclaim Deed substantially in the form of Exhibit I.

Section 4.3 Conditions Precedent to Closing.

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

(1) The Developer Affiliate has submitted to the City and the City Manager has approved the organizational documents for the Developer Affiliate intending to take title to the applicable Phase;

(2) The applicable Developer and the Developer Affiliate shall have executed an assignment and assumption of this Agreement whereby the Developer Affiliate assumes all of the obligations in this Agreement applicable to the applicable Phase, in a form approved by the City Attorney;

(3) The Developer Affiliate shall have obtained binding commitments for the necessary financing (including debt and tax credit equity) for the applicable Phase, consistent with the approved Phase Financing Plan and the construction financing providers are prepared to close simultaneously with the Closing on the Transfer Property;

- (4) There are no uncured Developer Events of Default;
- (5) The DDA Memorandum shall have been recorded against the applicable Phase;
- (6) The Developer Affiliate or MidPen has timely submitted to the City and the City has reviewed and approved all of the submittals required under this Agreement for the applicable Phase, including but not limited to, the approval of the applicable Phase Financing Plan to be submitted prior to the Closing Date. The Developer Affiliate or MidPen shall have submitted to the City within the time set forth in the Milestone Schedule, evidence in the form reasonably satisfactory to the City Manager that any conditions to the release or expenditure of funds described in the applicable approved Phase Financing Plan have been met or will be met at the Closing on any Phase and that such funds will be available at the Closing for the construction of the applicable Phase. Such satisfactory evidence may consist of letters from the funding sources identified in the approved Phase Financing Plan stating that the applicable funds, in the amounts called for in the approved Phase Financing Plan, will be available to the Developer Affiliate for the construction of the applicable Phase at the time of Closing or such later time as called for in the Phase Financing Plan. Only upon delivery of such evidence in form satisfactory to the City Manager shall this condition be deemed met;
- (7) A Final Map for the applicable Phase has been approved and recorded;
- (8) The Developer shall have submitted to the City and the City Manager shall have approved covenants, conditions and restrictions governing the use of the common area of the Property for the benefit of all of the owners and occupants of the Property ("**Project CC&Rs**");
- (9) The Developer Affiliate or MidPen shall have submitted to the City and the City Manager shall have approved the Vertical Improvement Completion Assurances for the applicable Phase;
- (10) The Developer Affiliate or MidPen has submitted all certificates of insurance in form reasonably satisfactory to the City Risk Manager demonstrating compliance with the insurance requirements in Article 13;
- (11) The Developer Affiliate or MidPen shall have obtained all Supplemental Approvals required under Section 5.3, including the payment of the required building permit fees for the applicable phase; and
- (12) Each of the Collaborating Partners shall have executed the Release Agreement substantially in the form attached hereto and shall have obtained releases for any encumbrances on the Collaborating Partner's Existing Structures or the leasehold created by the Existing Lease ("**Encumbrance Releases**"), which Release Agreement and Encumbrance Releases may be deposited in escrow along with escrow instructions signed by both the City and the applicable Collaborating Partner regarding the timing of the recordation of the Release Agreement and Encumbrance Release.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the applicable Outside Closing Date (as such date may be extended pursuant to this Agreement), the City may declare a Developer Event of Default and the City shall have the rights and remedies set forth in Sections 14.2 or 14.4, as applicable.

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

(1) Such Developer Affiliate shall have obtained binding commitments for the necessary financing (including debt and tax credit equity) for the applicable Phase, consistent with the approved Phase Financing Plan;

(2) The Backbone Infrastructure necessary to serve the Phase pursuant to Section 8.3 of this Agreement has been completed;

(3) The Regional Water Quality Control Board and the Navy have either approved development of the applicable Phase in accordance with this Agreement or a No Further Action (“NFA”) Letter has been issued for the applicable Phase allowing development of the Phase in accordance with this Agreement and the Developer Affiliate has agreed to implement any conditions contained in the Regional Water Quality Control Board and the Navy's approval or the NFA necessary to allow development of the Phase in accordance with this Agreement;

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

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

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

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

(8) There is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Phase or the development of the applicable Phase pursuant to the Project Approvals, or that adversely affects the City's ability to perform its obligations under this Agreement;

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

(10) There are no uncured City Events of Default;

(11) The City has provided such Developer Affiliate with the right of entries, encroachment permits and/or temporary construction easements reasonably necessary to construct any off-site improvements allocated to the applicable Phase (the "**Off-Site Rights of Entry**");

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

(13) The completion of any environmental review required by HUD pursuant to NEPA necessary as a result of any federal funds used for the development of the Project.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the applicable Developer Affiliate prior to the applicable Outside Closing Date (as the same may be extended pursuant to the terms of this Agreement), the Developer Affiliate shall have the rights and remedies set forth in Sections 14.2 or 14.3, as applicable.

Section 4.4 Closing Deliverables.

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

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

(2) a duly executed and notarized original of the City Regulatory Agreement in the form substantially similar to Exhibit K attached hereto;

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

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

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

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

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

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

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

(10) if applicable executed escrow instructions providing directions to the Escrow Holder regarding the recordation of the Release Agreement and Encumbrance Releases; and

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

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

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

(2) a duly executed Release and Termination of Leasehold Interest Agreement ("**Release Agreement**") (Exhibit Q);

(3) all fully executed and acknowledged Encumbrance Releases necessary to remove any encumbrances on property leased pursuant to an Existing Lease to the Collaborating Partner that is a member of the Developer Affiliate;

(4) if applicable, executed escrow instructions providing directions to the Escrow Holder regarding the recordation of the Release Agreement and Encumbrance Releases;

(5) a duly executed and notarized City Regulatory Agreement in the form substantially similar to Exhibit K attached hereto;

(6) a duly executed and notarized Project CC&Rs;

(7) two (2) duly executed original counterparts of the General Assignment (Exhibit L);

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

(9) duly executed Vertical Improvement Completion Assurances;

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

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

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

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

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

- (1) applicable building and zoning laws and regulations;
- (2) the provisions of this Agreement as evidenced by the DDA Memorandum;
- (3) the provisions of the applicable Quitclaim Deed;
- (4) the provisions of the quitclaim deed conveying the applicable portion of the Property from the Navy to the City provided such provisions are consistent with and not more onerous than the terms contained in the quitclaim deeds listed on Exhibit P.
- (5) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Quitclaim Deed;
- (6) the Site Management Plan related to hazardous materials as long as the terms of the Site Management Plans are consistent with and not more onerous than the Site Management Plan listed on Exhibit J;
- (7) the terms of any Covenant to Restrict Use of Property Environmental Restrictions applicable to the Transfer Property (the "**CRUP**") provided that the terms of the applicable CRUP are consistent with and not more onerous than the terms of the CRUPs listed on Exhibit P;
- (8) the terms of the Declaration of Covenants, Conditions and Restrictions Providing for Reciprocal Easement, Joint Use and Maintenance dated June 28, 2017, as such Declaration may be amended from time to time ("**Master CC&Rs**");
- (9) liens, encumbrances, clouds and conditions, rights of occupancy or possession shown as exceptions in the Preliminary Title Report including but not limited to exceptions, covenants, conditions and restrictions imposed by the Navy, the State of California or any other regulatory entity. Upon receipt of the Preliminary Title Report, the applicable

Developer Affiliate, MidPen and the City shall cooperate to remove any exceptions that are unacceptable to the applicable Developer Affiliate, provided however, the City shall not be obligated to incur any costs related to the removal of any such exceptions and the applicable Developer Affiliate or MidPen shall not deem any exceptions that are consistent with the Permitted Exceptions set forth in this Section 4.5(a) unacceptable;

(10) any other matters approved by the applicable Developer Affiliate.

Section 4.6 Condition of the Property.

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

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

(c) "As is" Purchase. Except for the representations and warranties and covenants of the City contained in this Agreement and except as set forth in subsection (m) below, the Developer specifically acknowledges and agrees that the City is selling and each Developer Affiliate is buying the Property on an "**as is with all faults**" basis as of the date of the close of escrow, and that the Developer Affiliate is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City or the West Midway Developer (exclusive of any third party subcontractors of the West Midway Developer), as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

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

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

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

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

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

(5) that the Developer has been given the opportunity to consult with the West Midway Developer on the work to be performed on the Property to be conveyed including the right to review any geotechnical reports and studies and any remediation plans prior to the West Midway Developer undertaking such work. The City shall include in the disposition and development agreement with the West Midway Developer that the West Midway Developer shall prepare the geotechnical performance specifications in consultation and coordination with the Developer and that the West Midway Developer will consult and coordinate with the Developer as needed. The City makes no representations or warranties regarding any work performed by the West Midway Developer.

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

(e) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.6 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.6 are an integral part of this Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer or Developer Affiliate without the disclaimers and other agreements set forth in this Section 4.6. Nothing set forth in this Section 4.6 is intended to affect Developer's or Developer Affiliate's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

(f) Developer's Release of the City. Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase and except as otherwise provided herein, the Developer and each of them, on behalf of itself and anyone claiming by, through or under the Developer (including, without limitation, any successor owner of the applicable Phase) hereby waives its right to recover from and fully and irrevocably releases the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents (other than the West Midway Developer Parties, as defined below in section 4.6(m)), volunteers and their successors and assigns (the "**City Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

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

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

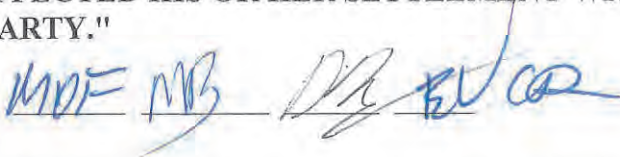
Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the City Released Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer,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

(g) Scope of Release. The release set forth in subsection 4.6(f) includes Claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the City Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted

by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Developer's Initials:



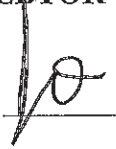
(h) City's Release of the Developer. Effective as of the Closing Date for each Transfer Property and solely with respect to the applicable Transfer Property, the City, on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of any portion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

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

Developer Released Parties at, on, under or otherwise affecting the applicable Transfer Property or any other portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Closing Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Developer.

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

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

City's Initials: 

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

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

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

(m) Developer's Release of West Midway Developer.

Effective as of the Closing Date for each Transfer Property, the Developer and each of them, on behalf of itself and anyone claiming by, through or under the Developer (including, without limitation, any successor owner of the applicable Transfer Property) hereby waives its right to recover from and fully and irrevocably releases the West Midway Developer, and/or its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns and their affiliated and related entities (the "**West Midway Developer Parties**") from any and all Claims that the Developer may have or hereafter acquire against any of the West Midway Developer Parties arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Transfer Property or any improvements thereon, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials that were existing at, on, or under the applicable Transfer Property as of the Transfer Property Closing Date; and (iii) any information furnished by the West Midway Developer Parties related to the applicable Transfer Property.

Developer and each of them agrees and acknowledges that Developer is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines, or other information or material furnished by the West Midway Developer Parties, whether oral or written, express or implied, of any nature whatsoever regarding any such matters or otherwise pertaining to the Transfer Property, including, without limitation, the physical condition of the Transfer Property (including any construction defects, errors, omissions or other conditions, latent or otherwise), improvements and infrastructure installed and constructed thereon. Without limiting the generality, Developer agrees and acknowledges that West Midway Developer and the West Midway Developer Parties specifically disclaim any responsibility for: (a) any opinions or conclusions of any soils engineer retained to perform geotechnical and soils studies or to oversee the soils engineering aspects of developing the Transfer Property; (b) any opinions or conclusions of any civil engineer retained in connection with developing the Transfer Property; (c) any opinions or conclusions of any environmental engineer or consultant retained to perform environmental or Hazardous Materials studies or to oversee any environmental related aspects of developing the Transfer Property; (d) the existence of any pre-historical, historical, paleontological, or archeological deposits on the Transfer Property; and (e) any and all claims, present and future, pertaining to any alleged violations of any state, federal, county or local law, ordinance, order, permit or regulation with respect to the Transfer Property or any related claims or alleged violations. In furtherance of the foregoing, DEVELOPER AGREES AND ACKNOWLEDGES THAT WEST MIDWAY DEVELOPER AND WEST MIDWAY DEVELOPER PARTIES SPECIFICALLY DISCLAIM ALL WARRANTIES IMPLIED BY LAW RELATING TO ANY ASPECT OR ELEMENT OF THE TRANSFER PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the West Midway Developer Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer, including, without limitation, any successor owner of the applicable Transfer Property) with respect to (i) any fraud or intentional concealment or willful

misconduct committed by any of the West Midway Developer Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Transfer Property Closing Date to the extent such claims are based on the acts of the West Midway Developer Parties; or (iii) the release of Hazardous Materials by the West Midway Developer Parties at, on, under or otherwise affecting the applicable Transfer Property.

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

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

Developer's Initials:

MOF NR OK EV OR

The Parties agree that the West Midway Developer and the West Midway Developer Parties are intended third party beneficiaries of the provisions of this Section 4.6 as it relates to the West Midway Developer.

n. Scope of "As Is" Clause and Release: The "As Is" clause set forth in Section 4.6(c) and the release set forth in subsection 4.6(m) expressly do not include or apply to any third-party contractor or subcontractor of the West Midway Developer, and may not be used as a defense of any third party contractor or subcontractor of the West Midway Developer that performed work on such Transfer Property. As used herein, "third party" shall mean a party in which neither West Midway Developer nor any of its members, partners, parents, or subsidiaries or any direct or indirect member, partner or shareholder at any level of ownership of West Midway Developer, or its member, partner or shareholder at any level of ownership of West Midway Developer, or its members, partners, parents, or subsidiaries, holds any financial interest or rights to direct or make decisions with respect to the manager thereof.

Section 4.7 Costs of Escrow and Closing.

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

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

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

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

(b) Transaction and Closing Costs. The Developer Affiliate shall pay the premium for an ALTA Owner's Policy (Form 1970) insuring the Developer Affiliate's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer Affiliate (such as the lien of a Security Financing Interest) (collectively the "**Title Policies**") (including title endorsements) in excess thereof. All other costs of escrow (including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer Affiliate. These costs borne by the Developer Affiliate shall be in addition to the Land Payment.

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

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

- (A) the Quitclaim Deed;
- (B) the City Regulatory Agreement;
- (C) The Project CC&Rs;

- (D) the Notice of City Release of Environmental Claims; and
 - (E) the Notice of Developer Release of Environmental Claims.
- (2) Issue the Title Policy to the Developer Affiliate;
 - (3) Pro rate taxes, assessments and other charges pursuant to Section 4.7 and pay the applicable charges from the applicable funds deposited by the City or the Developer Affiliate;
 - (4) Pay the Closing Costs from the applicable funds deposited by the Developer Affiliate;
 - (5) Deliver the following to the City: conformed copies of the Recording Documents, an original of the General Assignment, and the Vertical Improvement Completion Assurances, and
 - (6) Deliver the following items to the Developer: conformed copies of the Recording Documents, an original of the General Assignment, the original Bill of Sale, the original Title Policy, and the Off-Site Rights of Entry.

In addition to the above, the Escrow Holder shall record the Release Agreement and the Encumbrance Releases in accordance with escrow instructions signed by City and the Collaborating Partner and deposited with the Escrow Holder prior to the Closing.

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

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

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

ARTICLE 5.

CONSTRUCTION OF THE PROJECT

Section 5.1 Basic Obligations. From and after the Closing on each Phase, the applicable Developer Affiliate shall cause construction of the Vertical Improvements in each Phase in accordance with the terms of this Agreement, the approved Development Plan, the Planning Documents, the TDM Plan, the Main Street Neighborhood Plan, the Project Approvals, and any additional applicable approvals, including compliance with the MMR Program related to or required in connection with such construction. The applicable Developer Affiliate shall cause Commencement and completion of construction of the Vertical Improvements within each Phase within the times set forth in the Milestone Schedule and consistent with the terms of the approved Phasing Plan. The applicable Developer Affiliate shall be responsible for all costs associated with the Vertical Improvements for each Phase.

Section 5.2 Construction Pursuant to Approved Construction Documents. The applicable Developer Affiliate shall cause construction of the Vertical Improvements in each Phase in accordance with the applicable Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations), and the terms and conditions of all City and other governmental approvals. Nothing in this section shall preclude or modify the Developer Affiliate's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations.

Section 5.3 Construction Permits and Approvals.

(a) Supplemental Approvals. As a condition precedent to the conveyance of any Phase of the Property, MidPen or the applicable Developer Affiliate shall apply to the City and other applicable governmental entities for, and shall diligently pursue procurement of the Supplemental Approvals for the applicable Phase. MidPen or the applicable Developer Affiliate shall apply for the first Supplemental Approval for each Phase no later than the date set forth in the Milestone Schedule and shall continue to submit applications for additional Supplemental Approvals as necessary to ensure receipt of all of the Supplemental Approvals for each Phase by the date set forth in the Milestone Schedule. MidPen or the applicable Developer Affiliate shall apply for approvals to increase the number of Residential Units to be developed in the Project so that at least 40% of the Residential Units to be developed by the Developer Affiliates and the West Midway Developer are affordable units meeting the requirements of Government Code Section 37364 and the City shall cooperate with MidPen or the applicable Developer Affiliate in processing any such approvals. The City and MidPen shall coordinate the preparation and submission of any Tentative Maps or Final Maps for the Property with the West Midway Developer, to ensure that the appropriate level of mapping is in place before the installation of the Backbone Infrastructure. The City shall cooperate with MidPen on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The City, in its capacity as the property owner and not in its regulatory capacity, (i) will sign any application for a Tentative or Final Map if such application is filed while the City owns any property subject to the Map; and (ii) sign any Tentative Map or Final Map as the owner of the property subject to the Map once such Map is approved in accordance with the City's standard process for approval of Subdivision Maps.

(b) Evidence of Approvals. Within the time set forth in the Milestone Schedule, MidPen or the applicable Developer Affiliate shall submit to the City evidence that all Supplemental Approvals necessary for commencement of construction of Vertical Improvements in the Phase in accordance with this Agreement have been obtained.

(c) Delivery of Evidence. Only upon delivery of such evidence in form reasonably satisfactory to the City, the conditions of this Section 5.3 shall be deemed met. If such evidence is not delivered within the time specified in the Milestone Schedule, this Agreement may be terminated pursuant to Article 14.2 or 14.4, as applicable.

Section 5.4 Vertical Construction Contract.

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

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

(2) Meeting the requirements of Section 5.8; and

(3) Otherwise be in a form consistent with the terms of this Agreement with respect to construction of the applicable Vertical Improvements and shall deliver written verification that the executed Vertical Improvement Construction Contract complies with this Agreement.

(b) The City Manager shall either approve or disapprove the submitted Vertical Improvement Construction Contract within fifteen (15) Business Days from the date the City receives the Vertical Improvement Construction Contract. If the proposed Vertical Improvement Construction Contract is not approved by the City Manager, then the City Manager shall notify the applicable Developer Affiliate in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Construction Contract. The applicable Developer Affiliate shall thereafter submit a revised Vertical Improvement Construction Contract within ten (10) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Construction Contract within ten (10) days of the date such revised Vertical Improvement Construction Contract is received by the City. The City Manager shall approve an initial or revised Vertical Improvement Construction Contract if it meets the standards set forth in subsection (a) of this Section 5.4 and is with a licensed and experienced General Contractor.

(c) If the Vertical Improvement Construction Contract is not approved by the time set forth in the Milestone Schedule, the City may extend the times for submission of the Vertical Improvement Construction Contract or this Agreement may be terminated pursuant to Article 14.2 or 14.4, as applicable.

(d) Following the City Manager's approval of a Vertical Improvement Construction Contract pursuant to this Section 5.4, the applicable Developer Affiliate may, without City approval, make changes to such Construction Contract that are consistent with, and do not cause the Construction Contract to be out of compliance with, this Agreement; provided, however, that the applicable Developer Affiliate shall first provide the City with notice, clearly indicating the nature of the proposed changes, not less than five (5) business days before the applicable Developer Affiliate enters into an instrument effectuating such changes. The applicable Developer Affiliate shall not make any changes to a Vertical Improvement Construction Contract previously approved by the City Manager pursuant to this Section 5.4 that would cause the Construction Contract to be out of material compliance with this Agreement without the prior written consent of the City, which shall not be unreasonably withheld or delayed.

Section 5.5 Construction Assurances To City.

(a) As a condition precedent to the Closing for each Phase and within the time set forth in the Milestone Schedule, the applicable Developer Affiliate shall provide for the benefit of the City assurances of completion of construction of such Phase Vertical Improvements, including but not limited to payment bonds, performance bonds, or other construction related surety bonds or completion guaranties (the "**Vertical Improvement Completion Assurances**") (i) in an amount, with the terms and conditions, and from the providers comparable to those contained in any Completion Assurances that the Developer Affiliate provides to its equity investors or debt providers of financing for the Vertical Improvements under the approved Phase Financing Plan, or (ii) if no such completion assurances are provided pursuant to clause (i), as otherwise approved by the City. The City may be named as a co-obligee on any Completion Assurance provided to the equity investor or lender as satisfaction of this requirement.

(b) The City Manager shall either approve or disapprove the submitted proposed Vertical Improvement Completion Assurances, if any, within fifteen (15) Business Days from the date the City receives the Vertical Improvement Completion Assurances, which approval shall not be unreasonably withheld. The City shall not withhold, delay or condition its approval of a completion guaranty issued by affiliates of the Developer Affiliate that have, in the aggregate, a demonstrable net worth equal to twenty five percent (25%) of the hard construction costs of the applicable Vertical Improvements (as demonstrated by the applicable Phase Financing Plan). If the proposed Vertical Improvement Completion Assurances are not approved by the City Manager, then the City Manager shall notify the Developer Affiliate in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Completion Assurances. The Developer Affiliate shall thereafter submit revised proposed Vertical Improvement Completion Assurances within fifteen (15) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Completion Assurances within fifteen (15) Business Days of the date such revised Vertical Improvement Completion Assurance are received by the City. The City Manager shall approve the initial or revised Vertical Improvement Completion Assurances if they meet the standards set forth in this Section 5.5.

(c) If the Vertical Improvement Completion Assurances are not approved by the City Manager by the time set forth in the Milestone Schedule, the time for submission of the

Vertical Improvement Completion Assurances may be extended by the City or this Agreement may be terminated pursuant to Section 14.2 or 14.4, as applicable. Only upon City Manager's approval of the Completion Assurances shall this condition be deemed met.

Section 5.6 Subdivision Map. As a condition precedent to the conveyance of any Phase of the Property a Final Map for the applicable Phase to be conveyed must be recorded. MidPen and the City will coordinate the applications for any Tentative Map and Final Map with the West Midway Developer as part of the installation of the Backbone Infrastructure. MidPen agrees to cooperate with the West Midway Developer to expeditiously complete the mapping process.

Section 5.7 Developer Affiliate's Responsibility for All Costs of the Applicable Phase of the Project. As between the City and each Developer Affiliate, each Developer Affiliate shall be solely responsible for all pre-development costs and expenses and all development costs and expenses related to the development of the Vertical Improvements for the applicable Phase of the Project. In the event the costs of developing the Vertical Improvements exceed the Developer Affiliate's estimates of such costs in the Phase Financing Plan, the applicable Developer Affiliate shall nonetheless be responsible to complete, at its expense the development of the Vertical Improvements in accordance with and subject to the terms of this Agreement.

Section 5.8 Local Workforce Development.

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

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

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

(A) Included a requirement in each Construction Contract requiring the General Contractor and all subcontractors to use good faith efforts to achieve the Local Hire Goal and Apprentice Goal, which good faith efforts shall include, (1) when permitted,

implementing union hiring hall procedures that request residents from the City of Alameda, and if those are not available, then request residents from Alameda County on a priority basis and (2) requesting qualified referrals from the Alameda Point Collaborative Program; and

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

(b) Each Developer Affiliate's compliance with this Section 5.8 shall be separately calculated/assessed.

Section 5.9 Project Stabilization Agreement. Each Developer Affiliate shall negotiate in good faith a Project Stabilization Agreement with the Building Trades for each Phase of the Project based upon the terms of the Alameda County Measure A1 Project Labor Agreement.

Section 5.10 Compliance with Applicable Law. Each Developer Affiliate shall cause all work performed in connection with construction of the Project to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the applicable Developer Affiliate shall be responsible for the procurement and maintenance thereof, as may be required of the Developer Affiliate and all entities engaged in work on the Property.

Section 5.11 Entry by the City. Each Developer Affiliate shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times upon reasonable notice to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer Affiliate shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 5.12 Progress Reports. Until such time as the final Phase of the Project is entitled to issuance of a Certificate of Completion, MidPen shall provide the City with quarterly progress reports, or more frequently as reasonably requested by the City, regarding the status of the construction of the Project improvements.

Section 5.13 Necessary Safeguards. Each Developer Affiliate shall or shall cause its Contractors to erect and properly maintain at all times, all reasonable and necessary safeguards for the protection of workers and the public.

ARTICLE 6.

AFFORDABLE HOUSING REQUIREMENTS

Section 6.1 Affordable Housing Obligations. The redevelopment of the Property is subject to the requirement under the Renewed Hope Settlement Agreement and the Inclusionary Housing Ordinance 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 (2) 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). Developer has provided to the City a letter from Renewed Hope stating that the New Residential Units meet the requirements of the Renewed Hope Settlement Agreement with respect to the Main Street Neighborhood Plan.

(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. For purposes of the Inclusionary Housing Ordinance, the project is defined as the entirety of the Main Street Neighborhood Plan and the Affordable Housing Units will satisfy the Inclusionary Housing obligation of the market rate units developed within the Main Street Neighborhood Plan Area. The Project will satisfy the Inclusionary Housing Ordinance requirements for units restricted to occupancy by Very Low Income Households and Low Income Households but the Inclusionary Housing Ordinance requirements for units restricted to Moderate Income Households will be satisfied by the West Midway Developer.

Section 6.2 Project Affordable Housing Requirements.

(a) The Project may include a mix of transitional housing and permanent rental housing units restricted to households with gross incomes not to exceed between 30% and 60% of the Area Median Income (“AMI”).

(b) Eligibility for the Alameda Point Collaborative and Building Futures With Women and Children units at the Project will be restricted to households who initially meet the

Department of Housing and Urban Development's definition of Homelessness as defined in the Homeless Emergency Assistance and Rapid Transition to Housing Act. Eligibility for Operation Dignity units will be restricted to formerly homeless and/or currently homeless veterans, and users of other homeless or transitional housing programs currently administered at the Dignity Commons housing site.

(c) To ensure that all Affordable Housing Units constructed as part of the Project are permanently available to and occupied by income eligible households in compliance with this Agreement, the applicable Developer Affiliate hereby agrees to execute and record in the Official Records: (1) a City Regulatory Agreement in substantially the form attached as Exhibit K restricting Very Low Income Homes and the Low Income Homes at the time of conveyance of any Phase of the Transfer Property to the applicable Developer Affiliate. The City Regulatory Agreement shall be recorded against title to the applicable Transfer 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 interferes with the Developer's ability to obtain commercially reasonable debt financing. The applicable Developer Affiliate must demonstrate to the City's reasonable satisfaction that subordination of the City Regulatory Agreement is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Phase. To satisfy this requirement, the applicable Developer Affiliate 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 Phase and adequate financing for the Phase would not be available without the proposed subordination.

(d) This City Regulatory Agreement required under this Section 6.2 shall satisfy the requirement for an "affordable housing plan" ensuring the continuing affordability of housing constructed pursuant to the Inclusionary Housing Ordinance as specified AMC 30-16-10.

ARTICLE 7.

ADDITIONAL DEVELOPER OBLIGATIONS

Section 7.1 Use and Occupancy. Each Developer Affiliate shall use, operate, and maintain, the portion of the Property transferred to such Developer Affiliate and the portion of the Project located on the Transfer Property in accordance with all requirements and standards of this Agreement, the approved Development Plan, the Planning Documents, the TDM Plan and the Main Street Neighborhood Plan, the Supplemental Approvals, and City Regulatory Agreement, and all applicable federal, state and local laws and regulations.

Section 7.2 Project CC&R's. Prior to the first Phase Closing, the Developer shall obtain the City's approval of the Project CC&R's which (a) require each owner of any portion of the Property to maintain its applicable private improvements adjacent to and visible from the public right of way (building facades, signs, sound walls, fences, parking lots drive aisles and open space areas) as well as all common facilities including but not limited to streets and utilities not accepted for maintenance by the City in a first-class condition consistent with other mixed-use residential and commercial centers in the Oakland metropolitan area; and (b) provide the

City with the right to (i) enforce such provisions pursuant to the Project CC&R's and (ii) after applicable notice and right to cure, the right to perform such maintenance and receive a reimbursement of third party expenses. Such maintenance shall include, but not be limited to cleaning, painting, removal of graffiti, repair of vandalism, grounds care, prevention of the accumulation of abandoned property, inoperable vehicles, and waste material, and prevention of unenclosed storage areas.

Section 7.3 Prevailing Wages and Related Requirements. This Agreement has been prepared with the intention that the construction of the Project shall be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code.

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

(b) Each Developer Affiliate, with respect to its Phase only, shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, the Developer Affiliate and the Contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Project and to comply with any other requirements related to public contracting. The Developer Affiliate's obligation to indemnify, defend and hold harmless under this Section 7.3(b) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 7.4 Expansion, Reconstruction or Demolition. No Developer Affiliates shall cause or permit any expansion, reconstruction, or demolition of its Phase of the Project without the prior written approval of the City in accordance with all applicable ordinances, rules and regulations.

Section 7.5 Damage or Destruction. The Developer Affiliates shall promptly notify the City of any Casualty with respect to its Phase occurring during the Term, and shall diligently seek to procure all insurance proceeds that may be available to compensate for such Casualty. Subject to the rights of Permitted Mortgagees (as defined below), to the extent economically feasible as a result of the availability of insurance proceeds plus the applicable Developer Affiliate's deductible or self-insured retention (together with any additional funds the Developer Affiliate elects to provide for such purpose), the applicable Developer Affiliate shall promptly commence and diligently pursue restoration or replacement of the portion of the Property and/or the Project that was damaged by such Casualty during the Term. Subject to the rights of Permitted Mortgagees (as defined below) to the extent economically feasible as a result of the

availability of insurance proceeds plus the Developer Affiliate's deductible or self-insured retention (together with any additional funds the Developer Affiliate elects to provide for such purpose), the restored or replaced property shall be at least equal in value, quality and use to the value, quality, and use of such damaged property immediately before the Casualty.

Section 7.6 Mitigation Monitoring and Reporting Program. Each Developer Affiliate shall comply with the MMR Program adopted by the City, attached hereto as Exhibit E, as that the MMR Program may be amended from time to time, and expressly incorporated with this Agreement by this reference.

Section 7.7 Developer Affiliate's Obligations Regarding Hazardous Materials. Each Developer Affiliate shall comply with its obligations regarding the management and disposal of Hazardous Materials as set forth in more detail in Article 11 of this Agreement.

Section 7.8 Developer Affiliate's Indemnification Obligations. Each Developer Affiliate shall comply with its indemnity obligations as set forth in more detail in Article 12 of this Agreement.

Section 7.9 Developer's Insurance Obligations. The Developer and each Developer Affiliate shall comply with its insurance obligations as set forth in more detail in Article 13 of this Agreement.

Section 7.10 Taxes. From and after each Phase Closing, the Developer Affiliate shall pay when due all real property taxes and assessments assessed and levied on the portions of the Property conveyed to the Developer Affiliate and the Project that are attributable to the period following the Closing and shall remove any levy or attachment made on such portion of the Property. Nothing contained herein shall prevent the Developer Affiliate from applying for and obtaining any property tax exemption available for the Affordable Housing Units.

Section 7.11 Non-Discrimination. Each Developer, as to itself only, covenants that such Developer shall not discriminate against or segregate any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and the Project, nor shall such Developer or any person claiming under or through such Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or employees in the Property and the Project. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 7.12 Applicability. Each Developer or Developer Affiliate, as applicable, shall comply with the provisions of this Article 7 for the applicable time period specified in the various Sections of this Article 7; or if no specified time period is set forth in a particular section, throughout the Term of this Agreement.

Section 7.13 Release of Existing Leases and Relocation of Residents. Each of the Collaborating Partners shall be obligated to release its Existing Lease and relocate any residents residing on the premises covered by such Existing Lease within the time frame set forth in the Milestone Schedule of Performance. Within the time set forth in the Milestone Schedule each of the Collaborating Partners shall provide the City with evidence that the County of Alameda has

consented to the release of the Existing Leases. Within the time set forth in the Milestone Schedule, each Collaborating Partner shall execute and deposit with Escrow (i) a Release Agreement substantially in the form of Exhibit Q attached hereto, (ii) Encumbrance Releases in a form acceptable to the City from all holders of encumbrances on the property subject to the Existing Lease and (iii) escrow instructions signed by the City and the Collaborating Partner setting forth the instructions to Escrow Holder for recordation of the Release Agreement and the Encumbrance Releases, which date shall be consistent with the Milestone Schedule of Performance and the Phasing Plan.

Each of the Collaborating Partners shall submit or cause the Developer Affiliate in which the Collaborating Partner is a member to submit to the City within the time set forth in the Milestone Schedule, an initial plan for relocation of the occupants of the property subject to that Collaborating Partner's Existing Lease based on the RESHAP and West Midway milestone schedules that includes (i) proposed timing for the relocation of the occupants of Alameda Point Collaborative and Operation Dignity units located within the boundaries of RESHAP Phase 2 as designated on the Development Plan that allows for construction of the RESHAP Phase 2 Backbone Infrastructure within the times set forth for commencement of Phase 3C/RESHAP Phase 2A (West Midway DDA Milestone Schedule Number 49) in the West Midway DDA schedule; (ii) proposed timing for the relocation of the occupants of the Collaborating Partners' units within the boundaries of the West Midway Phase 3 as shown on the phasing plan attached to the West Midway DDA; (iii) proposed timing for the relocation of the occupants of the Collaborating Partners' units living outside of the boundaries of the West Midway development area; (iv) proposed temporary replacement housing for the occupants of the property, if applicable; (v) a budget for costs of the temporary relocation as well as proposed financing for the temporary relocation, if applicable; and (vi) a community outreach plan for the affected tenants. The City shall approve or disapprove the plan for relocation within thirty (30) days of receipt of the plan. In the event the City disapproves the relocation plan, the disapproval shall include specific reasons for the disapproval. If the City disapproves the relocation plan, the Collaborating Partner or Developer Affiliate, as applicable, shall submit a revised plan for relocation within thirty (30) days of receipt of the City's disapproval addressing the City's reasons for disapproval. The City shall have fifteen (15) days to review, approve or disapprove the revised plan for relocation, which approval shall not be unreasonably withheld. The approval by the City of a plan for relocation of the occupants of the property covered by the Existing Lease of a Collaborating Partner is a condition precedent to the conveyance of any portion of the Property to a Developer Affiliate in which the Collaborating Partner is a member or partner. Annually on the date set forth in the Milestone Schedule, after the initial relocation plan is approved by the City, the City, the West Midway Developer and the Developer shall meet and confer regarding the RESHAP and West Midway development schedules to determine if adjustments are needed to the relocation plan schedules to ensure that development of the West Midway and RESHAP projects is proceeding in accordance with the respective Milestone Schedules (“**Annual Progress Update**”).

The City agrees that it shall not require the relocation of the occupants of Alameda Point Collaborative and Operation Dignity units located within the boundaries of RESHAP Phase 2 any earlier than is necessary for commencement of Phase 3 of the West Midway Project as set forth in the West Midway milestone schedule. The City agrees to cooperate with the Collaborating Partner holding each Existing Lease to seek temporary relocation housing, if applicable, for any occupants of the Existing Structures that are required to be relocated, but each

Collaborating Partner shall be solely responsible for the relocation of any occupants of the Existing Structures including the payment of any relocation benefits, at its sole costs and City shall have no responsibility for the payment of any relocation benefits or the provision of relocation housing to the occupants of the Existing Structures. A Collaborating Partner may assign its obligations related to relocation of the occupants of the Existing Structures to a Developer Affiliate in accordance with the provisions of this Agreement related to assignments. Should the Collaborating Partner holding an Existing Lease need to relocate its occupants temporarily prior to the completion of the applicable Phase that will provide permanent relocation, the Collaborating Partner shall release its Existing Lease and the City and the Collaborating Partner or Developer Affiliate, as applicable, shall enter into a lease or license agreement for the temporary relocation site that terminates sixty (60) days after the certificate of occupancy is issued for the applicable Developer Affiliate's Project. Each of the Collaborating Partners hereby agrees to indemnify, defend and hold harmless the City and its officers, its elected and appointed officials, board members, commissioners, employees, attorneys, agents and successor and assigns against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of such Collaborating Partner's performance or non-performance under this Agreement, including but not limited to, any relocation obligations to the tenants or occupants of the Existing Structures. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct. Each Collaborating Partner's obligation to indemnify, defend and hold harmless under this Section shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. Failure of any Collaborating Partner to comply with this Section 7.13 shall be a Developer Event of Default and afford the City any and all remedies available to it pursuant to Article 14.

Section 7.14 Removal of Existing Leases for Buildings 92, 101, 613 and 607. Alameda Point Collaborative currently holds the Existing Leases on Buildings 92, 101, 613 and 607 which are used for non-residential purposes. Alameda Point Collaborative shall be obligated to release its Existing Lease of Building 92 within sixty (60) days of Effective Date of this Agreement. In return for this early transfer, the City will compensate Alameda Point Collaborative five hundred thousand dollars (\$500,000) for the loss of rental income ("**Building 92 Compensation**"). The City shall pay Alameda Point Collaborative the Building 92 Compensation within thirty (30) days of the City's sale of Building 92. Alameda Point Collaborative shall release the Existing Leases for Buildings 613 upon the City's written request to vacate in order to begin site preparations on the Property. Alameda Point Collaborative shall release the existing leases for Building 607 and Building 101, upon executing a short term lease for Building 35 or another suitable site with the City as an interim office until such time as Phase 1A of the Project is completed and the service department can relocate to the new building. Notwithstanding anything set forth above, the City shall not be responsible for any relocation benefits which any subtenants of the commercial buildings may have under State or federal law and Alameda Point Collaborative shall indemnify, defend and hold harmless the City and its officers, its elected and appointed officials, board members, commissioners, employees, attorneys, agents and successor and assigns against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Alameda Point Collaborative's performance or non-performance under this Agreement, including but not limited to, any relocation obligations to the tenants or occupants of the commercial buildings. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct.

ARTICLE 8. CITY OBLIGATIONS

Section 8.1 Entitlements. The City shall, upon payment of all applicable fees by the Developer or a Developer Affiliate required by the Development Agreement, process the applications for the Supplemental Approvals for the Project in a timely fashion, and shall cooperate with the Developer or the Developer Affiliate in obtaining any approvals necessary from other governmental entities or public utilities provided, however, the City shall not be required to incur any additional costs other than those cost associated with processing of applications and permits within the City's standard processing procedures unless Developer or the applicable Developer Affiliate agrees to reimburse the City of any costs associated with expedited processing.

Section 8.2 Permits and Approvals.

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

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

Section 8.3 Backbone Infrastructure. As a condition precedent to the conveyance of any Phase of the Property, the City shall use commercially reasonable efforts to cause to be completed the Backbone Infrastructure in accordance with the MIP, the Main Street Neighborhood Plan, Exhibit D-1 Backbone Infrastructure and Exhibit D-2 Backbone Infrastructure Phasing Map, and the West Midway disposition and development agreement. The Developer agrees to cooperate with the City's efforts to obtain completion of the Backbone Infrastructure including potentially releasing its interest in certain of the Existing Leases prior to conveyance of a Phase of the Property in order to accommodate the development of the Backbone Infrastructure. The City shall perform its usual inspections prior to acceptance of the Backbone Infrastructure.

Section 8.4 Certificate of Completion. Within ninety (90) days after receipt by the Developer Affiliate from the City of certificates of occupancy evidencing that: (a) building occupancy has been granted for all Residential Units for a Phase and/or (b) final building shell approval has been granted for all portions of a building containing any portion of the Commercial Space, the City shall issue a certificate of completion for such building or improvements with respect to the Developer Affiliate's construction obligations pursuant to Article 5 of this Agreement with respect that particular Phase (an "**Certificate of Completion**") in a form recordable in the Official Records.

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

(b) A Certificate of Completion shall not constitute a conclusive determination of the satisfaction of the requirements of Section 7.3 with respect to payment of prevailing wages (if applicable) and related matters (since such determination is within the jurisdiction of the DIR and the California judicial system and not the City), and the applicable obligations of the Developer or Developer Affiliate to indemnify, defend and hold harmless set forth in this Agreement shall expressly survive issuance of a Certificate of Completion.

Section 8.5 City Representations. The City acknowledges that the execution of this Agreement by the Developer is made in material reliance by the Developer on each and every one of the representations and warranties made by the City in this Section 8.5.

(a) Authority. The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 8.5 are subject to and qualified by the effect of: (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (ii) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Property or that adversely affects the City's ability to perform its obligations under this Agreement.

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

(d) Hazardous Materials. To the best of the City's knowledge and except as disclosed herein, the City has received no written notice from any government authority regarding any, and, to the best of the City's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Property, which

violations remain uncured as of the date hereof or on the Closing Date, or releases of Hazardous Materials that have occurred during the City's possession of the Property, excluding Incidental Migration or notice of any litigation regarding the release of Hazardous Materials. The City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. .

ARTICLE 9.

ASSIGNMENT AND TRANSFERS

Section 9.1 Definition of Transfer. As used in this Article 9, the term "**Transfer**" means:

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

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

Section 9.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Project on the Property and subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Collaborating Partners and MidPen are of particular concern to the City, in view of:

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

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

(c) Restrictions on transfer are necessary in order to assure the achievement of the goals, objectives and public benefits of this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 9 as reasonable and as a material inducement to City to enter into this Agreement. It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 9.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 9 shall apply with respect to any portion of the Property until issuance by the City of a Certificate of Completion for such portion of the Property. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City pursuant to Section 9.5. Any Transfer made in contravention of this Section 9.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 9.4 Permitted Transfers. Notwithstanding the provisions of Section 9.3, the following Transfers shall be permitted (subject to satisfaction of all applicable conditions to such Transfer):

(a) Any Transfer creating a Security Financing Interest consistent with the Phase Financing Plan approved by the City pursuant to Section 3.2 (as demonstrated to the City's reasonable satisfaction), or otherwise consistent with the provisions of Section 10.1 and 10.2.

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

(c) Any Transfer consisting of the rental or subletting of a Residential Unit in the normal course of the Developer Affiliate's business operations.

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

(e) Any Transfer to a Developer Affiliate, provided however, any subsequent Transfer by the Developer Affiliate to any other entity other than another Developer Affiliate shall be subject to the restrictions on Transfer set forth in this Article 9.

(f) After Closing, the transfer by the limited partner of a Developer Affiliate of the limited partner's partnership interest to an affiliate of the limited partner provided that either the initial limited partner remains obligated to fund its equity contribution pursuant to the terms of the partnership agreement, or the affiliate assumes the obligations to fund the equity contribution, in accordance with the terms of the partnership agreement (if at the time of the proposed Transfer no equity contribution remains unpaid, then consent shall not be required for the Transfer of the limited partnership interest);

(g) The removal of a general partner of a Developer Affiliate pursuant to the partnership agreement of the Developer Affiliate and the replacement of such general partner with an affiliate of the limited partner, provided that the admission of a non-affiliate of limited partner shall require the reasonable consent of the City;

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

Section 9.5 Other Transfers In City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 9.4 shall be subject to prior written consent by the City in accordance with this Section 9.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, MidPen, the applicable Collaborating Partner or the applicable Developer Affiliate shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of affordable housing developments similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within ninety (90) days of the receipt from MidPen, the applicable Collaborating Partner or the applicable Developer Affiliate all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. If the City should fail to act within such ninety (90) day period the Party requesting the Transfer shall provide the City with written notice of such failure to act which notice shall state in 14-point bold type on the cover page of the notice and on the envelope containing the notice the following:

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

If the City fails to respond to the Party requesting the Transfer's notice containing the above language within ten (10) Business Days of the date of the notice and such notice is delivered to the address and in the manner set forth in Section 15.1 below, the proposed Transfer shall be deemed approved.

Section 9.6 Effectuation of Permitted or Otherwise Approved Transfers. Not less than thirty (30) days prior to the intended effectiveness of a Transfer described in this Article 9 (other than permitted transfers under Section 9.4), the Party requesting the Transfer shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to enable the City to determine that the intended Transfer meets the standards for a Transfer under this Article 9.

(a) Within five (5) Business Days after the completion of any Transfer permitted pursuant to this Article 9, the Party requesting the Transfer shall provide the City with notice of such Transfer.

(b) No Transfer shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City Attorney and in form recordable in the Official Records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of the Developer under this Agreement and any ancillary agreements entered into by the Developer pursuant to this Agreement with respect to the portion(s) of the Property and the Project being transferred; provided, however, that no such transferee shall be liable for the failure of its

predecessor to perform any such obligation prior to transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof shall not be required to give to the City such written agreement until such holder or other person is in possession of the Property, or applicable portion thereof, or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(c) With the regard to all permitted or otherwise approved Transfers in accordance with this Article 9, the City shall provide, within fifteen (15) days of request, a written estoppel to the Developer stating either that Developer has performed any and all obligations required through the date of such Transfer, or, if such is not the case, stating with specificity the obligation(s) which the Developer has failed to perform through the date of such Transfer. In the absence of specific written agreement by the City (which the City may grant or withhold in its sole discretion), no Transfer permitted by this Agreement or approved by the City shall be deemed to relieve the transferor from any obligations under this Agreement. Notwithstanding the foregoing to the contrary, no transferee permitted pursuant to Section 9.4 or approved pursuant to Section 9.5 shall be liable for any Developer Event of Default caused by Developer or any other transferee under this Agreement.

ARTICLE 10.

SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 10.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 10.1. Any security instrument and related interest approved pursuant to Section 10.1(c) is referred to as a "**Security Financing Interest.**" Until the applicable Developer Affiliate is entitled to issuance of a Certificate of Completion for a particular portion of the Property, the Developer Affiliate may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the purpose of securing any approved Security Financing Interest financing the construction of the Vertical Improvements on the applicable portion of the Property.

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

(c) Any mortgage, deed of trust or other real property security interest securing a loan set forth in any approved Project Financing Plan or Phase Financing Plan (or any approved amendment to such plan or update) shall be deemed an approved Security Financing Interest pursuant to this Article 10. The holder of a Security Financing Interest is referred to herein as a "**Permitted Mortgagee.**"

Section 10.2 Permitted Mortgagee Not Obligated to Construct. No Permitted Mortgagee is obligated by, or to perform, any of the Developer Affiliate's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in

conveyances from the City to the Developer Affiliate evidencing the realty comprising the Property or any part thereof be construed so to obligate such Permitted Mortgagee. However, nothing in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 10.3 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 14, delivers any notice or demand to the Developer Affiliate with respect to the commencement, completion, or cessation of the construction of the Project, the City shall at the same time deliver to each Permitted Mortgagee a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the applicable portion of the Project and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to undertake or continue the construction or completion of the applicable portion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to the applicable portion of the Project under this Agreement. The Permitted Mortgagee in that event must agree to complete the applicable portion of the Project, in the manner provided in this Agreement. Any Permitted Mortgagee properly completing the applicable portion of the Project pursuant to this Section 10.3 shall assume all applicable rights and obligations of Developer Affiliate under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Completion for the Project or the applicable Phase from the City.

Section 10.4 Failure of a Permitted Mortgagee to Complete the Project. In any case where six (6) months after default by the Developer Affiliate in completion of construction of the Project under this Agreement, the applicable Permitted Mortgagee, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such Permitted Mortgagee it would otherwise have against the Developer Affiliate under this Agreement.

Section 10.5 Right of City to Cure. In the event of a default or breach by the Developer Affiliate of a Security Financing Interest prior to the completion of the Project, and if the Permitted Mortgagee has not exercised its option to complete the Project or applicable Phase, upon five (5) Business Days' prior written notice to the Developer Affiliate and the Permitted Mortgagee, the City may, in its sole discretion (but with no obligation to do so) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer Affiliate of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the holder to effect such subordination.

Section 10.6 Right of City to Satisfy Other Liens. After the Developer Affiliate has had a reasonable time (but not less than twenty (20) days) to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer Affiliate thereof, and

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

Section 10.7 Permitted Mortgagee to be Notified. Each Developer Affiliate shall insert each term contained in this Article 10 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Permitted Mortgagee of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 10.8 Modifications. If any actual or potential Permitted Mortgagee should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

Section 10.9 Miscellaneous Provisions.

(a) Limitation on Liability. In the event that any Permitted Mortgagee assumes the obligations of a Developer Affiliate under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer Affiliate's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

(b) Termination. Notwithstanding any other provision of this Agreement to the contrary, if any Developer Event of Default shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement and/or to exercise its rights under Section 14.5 or 14.6, the City shall not be entitled to terminate this Agreement or to exercise its rights under Section 14.5 or 14.6 unless (i) the City has provided the Permitted Mortgagee with notice of default pursuant to Section 10.3 and (ii) within the applicable cure period set forth in Section 10.3, such Permitted Mortgagee shall fail to either:

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

(2) Cure (Non-Monetary). If the Developer Event of Default is not of the type described in clause (1) above, either, in such Permitted Mortgagee's sole discretion, (x) cure such Developer Event of Default, if the same is capable of being cured within the applicable cure period, or (y) commence, or cause any trustee under the Security Financing Interest to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the applicable portion of the Property pursuant to judicial foreclosure, non-judicial foreclosure or deed-in-lieu process ("**Foreclosure**"); provided that except as extended by clause

(3) below, such Foreclosure shall be completed within a maximum of eighteen (18) months following the commencement of such proceeding. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring title to all or any portion of the Property, thereafter, undertake its obligations (if any) with respect such portion of the Property pursuant to Section 10.3.

(3) Inability to Foreclose. If a Permitted Mortgagee is prohibited from commencing or prosecuting a Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 10.9(b)(2) above, for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Developer Event of Default required by Section 10.9(b)(1) above and shall continue to perform and/or cure all such obligations as and when the same fall due.

(c) Failure of Permitted Mortgagee to Complete Improvements. Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the Completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 10.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 10.9(b), the City may, at its option, upon thirty (30) calendar days' written notice to the Developer and such Permitted Mortgagee either: (a) purchase the Security Financing Interest by payment to the Permitted Mortgagee of all amounts thereunder, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Security Financing Interest; or (b) exercise its rights under Section 14.5 or 14.6 with respect to the applicable portions of the Property.

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

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

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

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

(h) Bankruptcy Affecting the Developer. The Developer and City hereby agree that this Agreement (including the rights under Section 14.5 and 14.6 contained herein), and each Quitclaim Deed shall contain and consist of covenants running with the land and that neither this Agreement, nor any Quitclaim Deed shall be subject to rejection in bankruptcy and Developer hereby waives its rights to reject this Agreement and/or any Quitclaim Deed in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement, or any Quitclaim Deed in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement or Quitclaim Deed, as applicable, and the portions of the Property corresponding thereto to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Agreement shall not terminate and each Permitted Mortgagee shall, become the Developer hereunder as if the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within fifteen (15) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

(i) New Agreement with Permitted Mortgagee.

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

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

(B) Payment of Due and Unpaid Sums. Such Permitted Mortgagee or requesting party shall pay to the City at the time of the execution and delivery of the New Agreement those sums specified in Section 10.9(b) which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any reasonable attorneys' fees and experts' fees and court

costs and court expenses (including attorney's and expert's fees) to which the City shall have been subjected by reason of the Developer Event of Default; and

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

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

(A) Response to Request for New Agreement. The City shall have provided written notice to such Permitted Mortgagee requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement, with a copy to each other Permitted Mortgagee; and

(B) Perform and Observe All Covenants. The Permitted Mortgagee shall, subject to the provisions of Section 10.9(a) and (b), perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee and failure to do so shall, after notice and opportunity to cure, be a Developer Event of Default under this Agreement.

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

ARTICLE 11.

HAZARDOUS MATERIALS

Section 11.1 Obligations Regarding Hazardous Materials.

(a) Existing Property Environmental Conditions. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to Hazardous Materials that existed on the applicable Phase of the Property prior to the Phase Closing Date ("**Existing Phase Environmental Conditions**") affecting such Phase: as between the applicable Developer Affiliate and the City, the Developer Affiliate shall comply with any recorded covenants related to the Existing Phase Environmental Conditions, comply with the Site Management Plan and, as between the City and the Developer Affiliate, the Developer

Affiliate shall be responsible for addressing any additional remediation required at a formerly closed site by any regulatory agency due to reevaluation in accordance with applicable law by any regulatory agency of the applied remediation strategy or any change in law or regulation related to the remediation standards, including any change in remediation standards or risk screening levels ("**Regulatory Reopener**"). If the Developer Affiliate effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer Affiliate shall have no further obligation pursuant to this Section 11.1 with respect to the portion of the Property Transferred.

(b) New Releases. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to releases of Hazardous Material at the Phase caused by the Developer Parties, which releases first occur after the applicable Phase Closing Date, excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date ("**New Releases**"): as between the applicable Developer Affiliate and the City, the Developer Affiliate shall keep and maintain any portion of the Transfer Property conveyed to the Developer Affiliate in compliance with, and shall not cause or permit the Transfer Property to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Transfer Property including, but not limited to, soil and ground water conditions. The Developer Affiliate shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Property conveyed, leased or licensed to the Developer Affiliate, or transport to or from such Property or the development any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of residential developments or in accordance with law or this Agreement. The Developer Affiliate shall be responsible for complying with the requirements of the Site Management Plan(s) related to the Property after conveyance of the Property or any portion thereof to the Developer Affiliate.

Section 11.2 Notification To City; City Participation. Each Developer Affiliate shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer Affiliate, the Transfer Property, or the Project pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against the Developer Affiliate, the Transfer Property, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "**Hazardous Materials Claims**"); and (3) the Developer Affiliate's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or the Project that could cause part or all of the Property or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property or the Project under any Hazardous Materials Law. At its sole costs and expense, the City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

Section 11.3 Developer's Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 12.2.

ARTICLE 12. INDEMNIFICATION

Section 12.1 General Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's or the Contractor's performance or non-performance of its work under this Agreement, or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by the Developer or its Contractors. This defense, hold harmless and indemnity obligation contained in this Section 12.1 shall not extend to any claim arising solely from any Indemnified Party's gross negligence or willful misconduct or from breach of this Agreement by the City. If the Developer effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. The Developer's obligation to indemnify, defend and hold harmless under this Section 12.1 shall survive termination of this Agreement as to any acts occurring prior to termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action, so long as within the above parameters.

Notwithstanding the foregoing to the contrary, provisions of this Section 12.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 12.2 below.

Section 12.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens damage, cost, expense or liability any Indemnified Party may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by Indemnified Parties in connection with clause (1) including but not limited to reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 12.2 shall not extend to any claim arising solely from any Indemnified Party's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 12.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer.

Section 12.3 No Limitations Based Upon Insurance. The indemnification, defense and hold harmless obligations of the Developer under this Article 12 and elsewhere in this Agreement (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such

insurance) which the Developer is required to carry under this Agreement. In claims against any of the Indemnified Parties by an employee of the Developer, or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Developer or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable.

ARTICLE 13. **INSURANCE REQUIREMENTS**

Section 13.1 Required Insurance Coverage. Except as otherwise provided in Section 13.11, during the Term the Developer shall maintain or cause to be maintained and kept in force, at the sole cost and expense of the Developer or the Contractors the insurance applicable to the Project and required under this Article 13.

Section 13.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000) with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Ten Million Dollars (\$10,000,000) general aggregate limit covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 12.1. Such insurance in excess of One Million Dollars (\$1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 13.3 Vehicle Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than Two Million Dollars (\$2,000,000) (combined single limit) including any automobile or vehicle whether hired or, if applicable, owned by the Developer. However, if Developer does not own any vehicles, this vehicle liability insurance requirement shall not apply, and Developer shall instead demonstrate to City that it maintains hired and non-owner automobile insurance coverage in its general liability insurance policy.

Section 13.4 Workers' Compensation Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with Article I of Chapter 4 of Part I of Division 4 of the California Labor Code.

Section 13.5 Personal Property and Property Insurance. Developer shall maintain in full force throughout the Term, property insurance covering all of its personal property, furniture, furnishings, trade fixtures, and equipment from time to time located in, on, or upon the Property for 100% of the 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 of Loss") fire and casualty insurance policy, with deductible of five thousand dollars (\$5,000). Additionally, after conveyance of any portion of the Property to the Developer and continuing

through the Term, the Developer shall maintain or cause to be maintained and kept in force, property insurance covering all real property conveyed to Developer and the Vertical Improvements, in form appropriate for the nature of such property, for 100% of the 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 of Loss”) fire and casualty insurance policy, with deductible, if any, reasonably acceptable to the City Risk Manager.

Section 13.6 Construction Contractor's Insurance. The Developer Affiliate shall cause the General Contractor to maintain insurance of the types as commercially available and reasonable and in at least the minimum amounts described in Sections 13.2 (exclusive of the cross-reference to Section 12.1), 13.3, and 13.4, and shall require that such insurance shall meet all of the general requirements of Sections 13.8 and 13.9. Except with respect to construction of tenant improvements, the Developer Affiliate shall also cause the General Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors in an amount of not less than Five Million Dollars (\$5,000,000) with a maximum deductible of One Hundred Thousand Dollars (\$100,000) with coverage continuing for ten years after completion of construction.

Section 13.7 Pollution Liability Insurance Policy.

(a) Within the time set forth in the Milestone Schedule and as a condition precedent to any conveyance hereunder, the Developer shall procure and maintain to the reasonable satisfaction of Developer and the City, at its cost, a real estate environmental liability insurance policy (a "**Pollution Liability Insurance Policy**") covering pre-existing conditions for a period of twenty (20) years, as commercially available, that names the Developer as the named insured with the right to control the policy, and the City as an additional insured. The Pollution Liability Insurance Policy shall meet the requirements of Section 13.9, shall include a minimum limit of Five Million (\$5,000,000) per claim and in the aggregate coverage limit and a maximum deductible of One Hundred Thousand Dollars (\$100,000) or other amount reasonably agreed by the City, and shall provide the following types of coverage:

- (1) Pollution Legal Liability;
- (2) On-Site and Off-Site Clean-Up Costs;
- (3) Non-Owned Disposal Site;
- (4) In-Bound and Out-Bound Contingent Transportation
- (5) Legal Defense Expense
- (6) Business Interruption for Developer, including to the extent reasonably available, soft-costs and construction delays.

(b) Prior to the close of escrow of each Transfer Property the Developer and the City shall meet and confer to determine if the amount of Pollution Liability Insurance Policy limits for the particular Transfer Property is appropriate for the existing physical and financial conditions for that Transfer Property. Any changes to the minimum amount of Pollution Liability Insurance Policy will be based on mutual agreement of the Developer and City based on actual site conditions, the results of environmental testing, the reasonable availability of such insurance and the costs of such insurance.

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

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

Section 13.8 General Insurance Requirements. With the exceptions of the Pollution Liability Insurance Policy, the insurance required by this Article 13 shall be provided under an occurrence form, and the Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the General Contractor's insurance requirement set forth in Section 13.6, which shall be maintained until the Developer Affiliate is entitled to issuance of a Certificate of Completion for the applicable Phase and the Pollution Liability Insurance Policy, which shall be maintained as specified in Section 13.7). Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two and one-half (2.5) the occurrence limits specified above.

Section 13.9 Additional Requirements. The insurance policies required pursuant to this Article 13 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds the City and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "**Additional Insureds**"). All insurance policies shall contain:

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

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

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

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

(e) all insurance companies providing coverage pursuant to this Article 13, shall be insurance organizations authorized by the Insurance Commissioner of the State of

California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII".

Section 13.10 Certificates of Insurance. The Developer shall provide certificates of insurance to the City Risk Manager, in form and with insurers reasonable acceptable to the City Risk Manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 13.11 Alternative Insurance Compliance. During such time that a Permitted Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth in Article 13, the Developer may satisfy the insurance requirements of this Article 13, other than the Pollution Liability Insurance Policy by meeting the requirements of such Permitted Mortgagee; provided that Developer shall provide at least five (5) Business Days prior written notice to the City specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for the Developer to comply with **both** the City's and investor's insurance requirement; and (z) the alternative insurance requirement the Developer intends to comply with.

ARTICLE 14.

DEFAULT AND REMEDIES

Section 14.1 Application of Remedies. This Article 14 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 14.2 No Fault of Parties.

(a) Bases For No Fault Termination. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other: if despite the responsible Party's good faith and diligent efforts, a condition precedent set forth in Section 4.3 is not satisfied or, when applicable, waived by the benefitting Party, prior to the date for such satisfaction/waiver (as such date may be extended pursuant to this Agreement), unless such failure is caused by the default of a Party, in which case Section 14.3 or 14.4 shall apply.

(b) Termination Notice; Effect of Termination. Upon the happening of an event described in Section 14.2(a):

(1) The Parties shall meet and confer in good faith for a period not to exceed sixty (60) calendar days in an effort to agree upon a mutually acceptable amendment to this Agreement to address the failed condition which amendment may include designating either MidPen or a different Collaborating Partner to assume the obligations to acquire or develop a particular Phase; and

(2) If the parties fail to reach agreement pursuant to Section 14.2(b)(1) or if MidPen or a different Collaborating Partner fail to assume the obligations to acquire or develop the particular Phase of the Project at issue, at the election of either Party, this Agreement may be terminated with respect to all Phases not previously conveyed to a Developer Affiliate by written notice to the other Party.

Upon a termination pursuant to this Section 14.2, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to: (1) any payments made by the Developer to the City prior to the termination pursuant to Article 2 shall remain the property of the City; (2) any funds remaining in Escrow pursuant to Article 4 shall be returned to Developer, (3) the delivery of plans and documents as set forth in Section 14.7; and (4) the survival of certain terms of this Agreement as provided in Section 14.8.

Section 14.3 Fault of City.

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

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

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

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

(b) Notice and Cure; Remedies. Upon the happening of an event described in Section 14.3(a), the Developer or Developer Affiliate shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default, and the Developer shall be entitled to the following rights and remedies:

(1) Prior to the First Phase Closing. With respect to a City Event of Default occurring prior to the first Phase Closing, the Developer shall be entitled to: (A) terminate in writing this entire Agreement; or (B) seek specific performance of this Agreement against the City. The above remedies shall constitute the exclusive remedies of the Developer for a City Event of Default occurring prior to the first Phase Closing.

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

Section 14.4 Fault of Developer.

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

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

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

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

(4) A Collaborating Partner fails to deliver a Release Agreement or release the Existing Leases within the time and as required pursuant to this Agreement or a Collaborating Partner violates the terms of any Release Agreement.

(5) A Collaborating Partner fails to relocate any of the tenants of the Existing Structures within the time set forth in the Milestone Schedule in a manner consistent with the applicable laws.

(6) The Developer attempts or completes a Transfer except as permitted under Article 9.

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

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

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

(10) A Collaborating Partner or MidPen shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) or suffered a

sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event.

(11) A Collaborating Partner or MidPen shall have voluntarily suspended its business, or the Collaborating Partner or MidPen shall have been dissolved or terminated.

(b) Notice and Cure; Remedies. Upon the happening of any event described in Section 14.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (9) (10) or (11) of Section 14.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer has caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement.

If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies: If the Developer Event of Default is caused by MidPen, during the cure period described above, the Collaborating Partners may propose to the City a replacement for MidPen to assume MidPen's obligations under this Agreement. The City shall approve or disapprove any such replacement for MidPen in accordance with the procedures set forth in Section 9.5. Any proposal to replace MidPen shall also include information on how the replacement entity will cure the Developer Event of Default.

If the Developer Event of Default is caused by a Collaborating Partner, during the cure period set forth above, any other Collaborating Partner or MidPen can offer to assume the defaulting Collaborating Partner's rights and responsibilities pursuant to this Agreement. If a Collaborating Partner or MidPen assume the defaulting Collaborating Partners rights and responsibilities under this Agreement, the City shall accept such assumption as a cure for the Developer Event of Default if (i) the assuming Collaborating Partner or MidPen cure the existing default caused by the defaulting Collaborating Partner and (ii) the defaulting Collaborating Partner assigns its Existing Leases to MidPen or the assuming Collaborating Partner.

(1) Prior to First Phase Closing Date. With respect to a Developer Event of Default occurring prior to the first Phase Closing Date, the City shall be entitled to (A) terminate in writing this entire Agreement and (B) exercise the rights and remedies described in Section 14.7. The above remedies shall constitute the exclusive remedies of the City for a Developer Event of Default occurring prior to the Closing on the first Phase of the Property.

(2) Between First Phase Closing Date and Prior to Certificate of Completion. With respect to a Developer Event of Default occurring after the first Phase Closing Date but prior to the issuance of a Certificate of Completion for the final Phase, the City shall be entitled to: (A) terminate in writing this Agreement with respect to those portions of the Property that have not been conveyed to a Developer Affiliate if such Developer Event of Default is the result of any failure of conditions or obligations required to be met for the conveyance of Phases of the Property; (B) seek specific performance of any Vertical Improvement Completion Assurance if such Developer Event of Default is the result of a default of the provisions of Article 5; (C) exercise the rights and remedies described in Sections 14.5, 14.6 and 14.7; and/or (D) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement, provided, however, in no event shall the City be entitled to seek or receive consequential damages. Notwithstanding anything set forth herein, the City shall not be entitled exercise any of its remedies set forth above against a Developer Affiliate that has accepted conveyance of a portion of the Property unless such Developer Event of Default is caused by such Developer Affiliate.

(3) After Certificate of Completion. With respect to a Developer Event of Default occurring after the Developer is entitled to a Certificate of Completion for the final Phase of the Project, the City shall be entitled to: (A) prosecute an action for damages against the Developer, provided, however, in no event shall the City be entitled to seek or receive consequential damages; (B) seek specific performance of this Agreement against the Developer; and/or (C) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

Section 14.5 Right of Reverter/Power of Termination. If this Agreement is terminated pursuant to Section 14.4(b)(2) following the Closing on any portion of the Property and prior to the time when the applicable Developer Affiliate is entitled to issuance of a Certificate of Completion for the final Phase of the Project, then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of any portion of the Property conveyed to the Developer Affiliate not subject to (i) a Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance ("**Revested Parcel**") with all improvements on the Revested Parcel, and revert in the City the estate previously conveyed to the Developer Affiliate by the City with respect to the Revested Parcel. The City's rights under this Section 14.5 shall terminate and be of no further force and effect once the Developer is entitled to a Certificate of Completion for the final Phase of the Project.

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

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

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

(b) Upon revesting in the City of title to the Revested Parcel as provided in this Section 14.5, the City shall, in a commercially reasonable manner resell the Revested Parcel to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Project on the Revested Parcel or such other improvements acceptable to the City. Upon such resale of the Revested Parcel, the proceeds thereof shall be applied as follows:

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

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

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

(c) The rights established in this Section 14.5 are to be interpreted in light of the fact that the City will convey the Property to the Developer Affiliate for development and not for speculation.

Section 14.6 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter, and take possession of the Property not subject to (i) a Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance with all improvements thereon, if this Agreement is terminated pursuant to Section 14.4(b)(2) after the first Phase Closing Date and prior to the time when the applicable Developer Affiliate is entitled to issuance of a Certificate of Completion for the final Phase of the Project (the “**Option**”). The City's rights under this Section 14.6 shall terminate and be of no

further force and effect once the Developer is entitled to a Certificate of Completion for the final Phase of the Project.

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

(c) To exercise its right to repurchase, reenter and take possession with respect to the Property not subject to (i) a Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance, the City shall pay to the applicable Developer Affiliate in cash an amount equal to any payments made by the Developer Affiliate to the City in cash pursuant to Sections 2.2 of this Agreement, plus the lesser of the (1) actual cost and (2) the fair market value of the improvements constructed on the Property subject to the Option by the Developer Affiliate at the time of the repurchase, reentry, and repossession, less any gains or income withdrawn or made by the Developer Affiliate from the portion of the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

Section 14.7 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 14.2(a) or Section 14.4, then the Developer or the Developer Affiliate shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project.

Section 14.8 Survival. Upon termination of this Agreement under this Article 14, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 14.9 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

ARTICLE 15. **GENERAL PROVISIONS**

Section 15.1 Notices, Demands and Communications.

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

time of any electronic delivery, the notice or communication shall be deemed delivered as follows:

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

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

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

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

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

If to Developer to: MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: President
Telephone: 650-356-2900
Fax Number: 650-357-9766

With copies to: Alameda Point Collaborative
677 W. Ranger Avenue
Alameda, CA 94501
Attn: Executive Director
Telephone: 510-898-7800

With copies to: Building Futures With Women and Children
1840 Fairway Drive
San Leandro, CA 94577
Attn: Executive Director
Telephone: 510-357-0205

With copies to: Operation Dignity
318 Harrison Street, Suite 302
Oakland, CA 94607
Attn: Executive Director
Telephone: 510-287-8465

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

Section 15.2 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commissioner, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to the Developer, or any successor in interest, in the event of a City Event of Default.

Section 15.3 Time of the Essence. Time is of the essence in this Agreement.

Section 15.4 Title of Parts and Sections. Any titles of the Sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 15.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 15.6 Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force.

Section 15.7 Legal Actions. Any legal action under this Agreement shall be brought in the Alameda County Superior Court or the United States District Court for the Northern District of California. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee, or beneficiary against any other party, beneficiary, or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

Section 15.8 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer by the Developer except as permitted in Article 9. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 15.9 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction.

Section 15.10 Provisions Not Merged With Quitclaim Deed. None of the provisions of this Agreement shall be merged by the Quitclaim Deed or any other instrument transferring title to any portion of the Property, and neither the Quitclaim Deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 15.11 Entire Understanding of the Parties. This Agreement and any subsequent agreements contemplated by this Agreement to be entered into by the Parties constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 15.12 Approvals.

(a) City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, without further approval by the City Council, and any such action shall be in writing, provided, however, any such actions that would extend a Major Milestone Date (other than as allowed in Section 1.4 or 1.5) must be approved by the City Council.

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

Section 15.13 Authority of Developer. MidPen and the Collaborating Partners executing this Agreement on behalf of the Developer do hereby covenant and warrant, each as to itself only, that:

(a) Each is a duly authorized and existing California nonprofit public benefit corporation;

(b) Each is and shall remain in good standing and qualified to do business in the State of California;

(c) Each has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

(d) The execution and delivery of this Agreement were duly authorized by proper action of each Collaborating Partner and MidPen, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

(e) The persons executing this Agreement on behalf of each Collaborating Partner and MidPen have full authority to do so; and

(f) This Agreement constitutes the valid, binding and enforceable obligation of each Collaborating Partner and MidPen.

Section 15.14 Amendments. This Agreement may be amended only by means of a writing signed by the Parties, and pursuant to a resolution approved by the City Council, except that amendments expanding the Property to which this Agreement applies shall be approved by ordinance adopted by the City Council.

Section 15.15 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 15.16 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties agree to cooperate with each other with regard to changes that may be needed in this Agreement as a result of the proposed development of the adjacent properties by the West Midway Developer and the development of the Backbone Infrastructure. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(a) Operating Memoranda that implement the provisions of this Agreement or that provide clarification to existing terms of this Agreement or revise Progress Milestone Dates may be executed on the City's behalf by its City Manager, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Agreement or alter any Major Milestone Dates: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 15.14, and must be approved by resolution of the City Council.

ARTICLE 16.
DEFINITIONS AND EXHIBITS

Section 16.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) **"Affordable Housing Units"** means the Very Low-Income Units and Low-Income Units developed in accordance with this Agreement subject to the City Regulatory Agreement.

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

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

(d) **"Backbone Infrastructure"** has the meaning given in Recital AA.

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

(f) **"Casualty"** means any damage or destruction to the Project in excess of One Hundred Thousand Dollars (\$100,000), which amount shall be adjusted in accordance with increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, **"CPI-U"**), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, **"CPI-W"**), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority shall be used for making the computation.

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

(h) **"Certificate of Completion"** means a certificate defined in Section 8.4.

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

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

- (k) **"City Event of Default"** has the meaning given in Section 14.3.
- (l) **"City Manager"** means the Alameda City Manager or the City Manager's designee.
- (m) **"City Released Parties"** has the meaning given in Section 4.6.
- (n) **"Closing"** means the close of escrow through which the City will convey its fee estate or any portion thereof in each Phase of the Property to the Developer.
- (o) **"Commencement of Construction or Commenced"** shall mean the performance of any work on any Phase of Vertical Improvements on the Property including clearing, grading, or other preliminary site work.
- (p) **"Completion Assurances"** means any payment and performance bonds, labor and materials bonds, or completion guarantees from a Developer Affiliate or other persons or entities, irrevocable letters of credit, or other legal instruments providing assurances and remedies for the completion of any Phase of Vertical Improvements by the Developer Affiliate.
- (q) **"Contractors"** means, collectively, the General Contractor and any other contractors or subcontractors retained directly or indirectly by a Developer Affiliate, the General Contractor, or any tenant in connection with the construction of any Phase of the Vertical Improvements, including the initial tenant improvements within the Project.
- (r) **"CPI Increase"** means increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, **"CPI-U"**), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, **"CPI-W"**), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation.
- (s) **"Day"** means calendar day unless otherwise specified.
- (t) **"DDA Memorandum"** means the memorandum of this Agreement, substantially in the form of the attached Exhibit F, to be recorded as provided in Section 1.2.
- (u) **"Developer"** means collectively, MidPen Housing Corporation, a California nonprofit public benefit corporation, Alameda Point Collaborative, a California nonprofit public benefit corporation, Building Futures With Women and Children, a California nonprofit public benefit corporation, and Operation Dignity, a California nonprofit public benefit corporation or any successor permitted pursuant to the terms of this Agreement.
- (v) **"Developer Affiliate"** means for each Phase, a limited partnership in which the managing general partner is a limited liability company in which (1) MidPen Housing Corporation or an affiliate in which MidPen Housing Corporation has a Controlling Interest is a member/manager and (2) one or more of the Collaborating Partners or an affiliate in which the Collaborating Partner has a Controlling Interest is also a member/manager.

- (w) **"Developer Event of Default"** has the meaning given in Section 14.4.
- (x) **"Development Agreement"** means that certain development agreement between the City and the Developer pursuant to Government Code Section 65864.
- (y) **"Development Plan"** means the plan setting forth the parameters of the Project approved by the Planning Board on May 8, 2023, consistent with the Alameda Municipal Code Section 30-4.13 (j), the Planning Documents, and the Main Street Neighborhood Plan attached as Exhibit H hereto.
- (z) **"DIR"** means the California Department of Industrial Relations.
- (aa) **"EDC Agreement"** means the Memorandum of Agreement For the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority, dated as of June 6, 2000, as amended.
- (bb) **"Effective Date"** has the meaning set forth in Section 1.2.
- (cc) **"EIR"** has the meaning set forth in Recital I.
- (dd) **"ENA"** means the Exclusive Negotiation Agreement entered into by the City and the Developer as of December 15, 2015, as amended December 7, 2016.
- (ee) **"Encumbrance Release"** means releases for any encumbrances on the Collaborating Partner's Existing Structures or the leaseholds created by the Existing Leases.
- (ff) **"Escrow Holder"** means the Pleasanton, California office of First American Title Insurance Company, or such other title company or qualified escrow holder upon which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in Article 4 of this Agreement.
- (gg) **"Existing Lease"** means those certain leases between a Collaborating Partner, the City and the County for portions of City owned property.
- (hh) **"Financing Plan"** shall mean the Project Financing Plan as such terms are defined in Section 3.1.
- (ii) **"General Contractor"** means a licensed and experienced general contractor approved by the City pursuant to Section 5.4 and with which the Developer enters into the Construction Contracts for construction of the Project.
- (jj) **"Hazardous Materials"** means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

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

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

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

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

(oo) **"Indemnification Obligations"** has the meaning given in Section 12.3.

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

(qq) **"Land Payment"** has the meaning given in Section 2.1.

(rr) **"Major Milestone Dates"** means the Outside Phase Closing Dates, the dates for commencement and completion of relocation of the residents of the Existing Structures and the Vertical Improvement Completion Dates set forth in the Milestone Schedule.

(ss) **"Milestone Schedule"** means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit G, and as may be modified from time to time pursuant to Section 1.6.

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

(uu) **"Mitigation Monitoring and Reporting Program"** or **"MMR Program"** has the meaning set forth in Recital FF and is attached as Exhibit E.

(vv) **"Operating Memorandum"** has the meaning given in Section 15.16.

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

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

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

(zz) **"Pollution Liability Insurance Policy"** has the meaning given in Section 13.7.

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

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

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

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

(eee) **"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.*

(fff) **"Residential Units"** has the meaning given in Recital Y.2.

(ggg) **"Security Financing Interest"** has the meaning given in Section 10.1.

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

(1) design review approval for the improvements included in the applicable Phase;

(2) a building permit;

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

(iii) **"Term"** has the meaning given in Section 1.3.

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

(kkk) **"Transfer"** has the meaning given in Section 9.1.

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

(mmm) **"Vertical Improvement Construction Contracts"** means the Construction Contract between the Developer and the General Contractor for construction of the Phase of the Vertical Improvements, as submitted by the Developer and approved by the City pursuant to Section 5.4.

(nnn) **"West Midway Developer"** means BC West Midway LLC, a Delaware limited liability company.

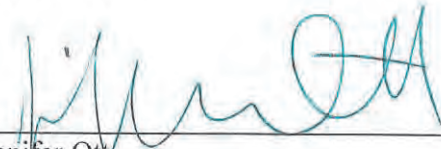
Section 16.2 Exhibits. The following exhibits are attached to (or upon preparation will be attached to) and incorporated into this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D-1	Backbone Infrastructure
Exhibit D-2	Backbone Infrastructure Phasing Map
Exhibit E	Mitigation Monitoring and Reporting Program and Environmental Checklist
Exhibit F	Form of DDA Memorandum
Exhibit G	Milestone Schedule
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	Site Management Plan
Exhibit K	City Regulatory Agreement
Exhibit L	General Assignment
Exhibit M	Bill of Sale
Exhibit N	City Disclosure Documents
Exhibit O-1	Notice of City Release of Environmental Claims
Exhibit O-2	Notice of Developer Release of Environmental Claims
Exhibit P	List of Navy Quitclaim Deeds and CRUPs
Exhibit Q	Release and Termination of Lease

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

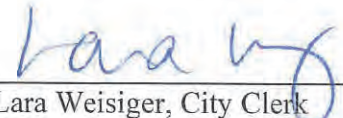
CITY OF ALAMEDA

By: 

Jennifer Ott
City Manager

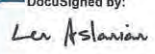
Date: 12/18/2023

Attest:



Lara Weisiger, City Clerk

Approved as to Form:

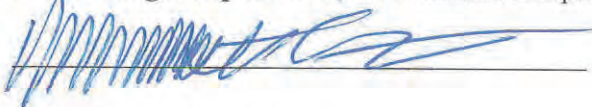
DocuSigned by:


765025E39B184F4...
Len Aslanian
Assistant City Attorney

Authorized by City Council Ordinance No. 3345

Signatures continue on next page

MidPen Housing Corporation, a California nonprofit public benefit corporation

By: 

Name: Matthew O. Franklin

Title: President & CEO

Alameda Point Collaborative, a California nonprofit public benefit corporation

By: 

Name: DOUGLAS BIEBS

Title: EXECUTIVE DIRECTOR

Building Futures with Women and Children, a California nonprofit public benefit corporation

By: 

Name: Elizabeth Varela

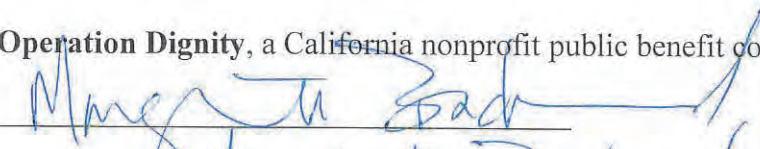
Title: Executive Director

By: 

Name: Cristi Ritschel

Title: Board President

Operation Dignity, a California nonprofit public benefit corporation

By: 

Name: Marguerite Bachand

Title: Executive Director

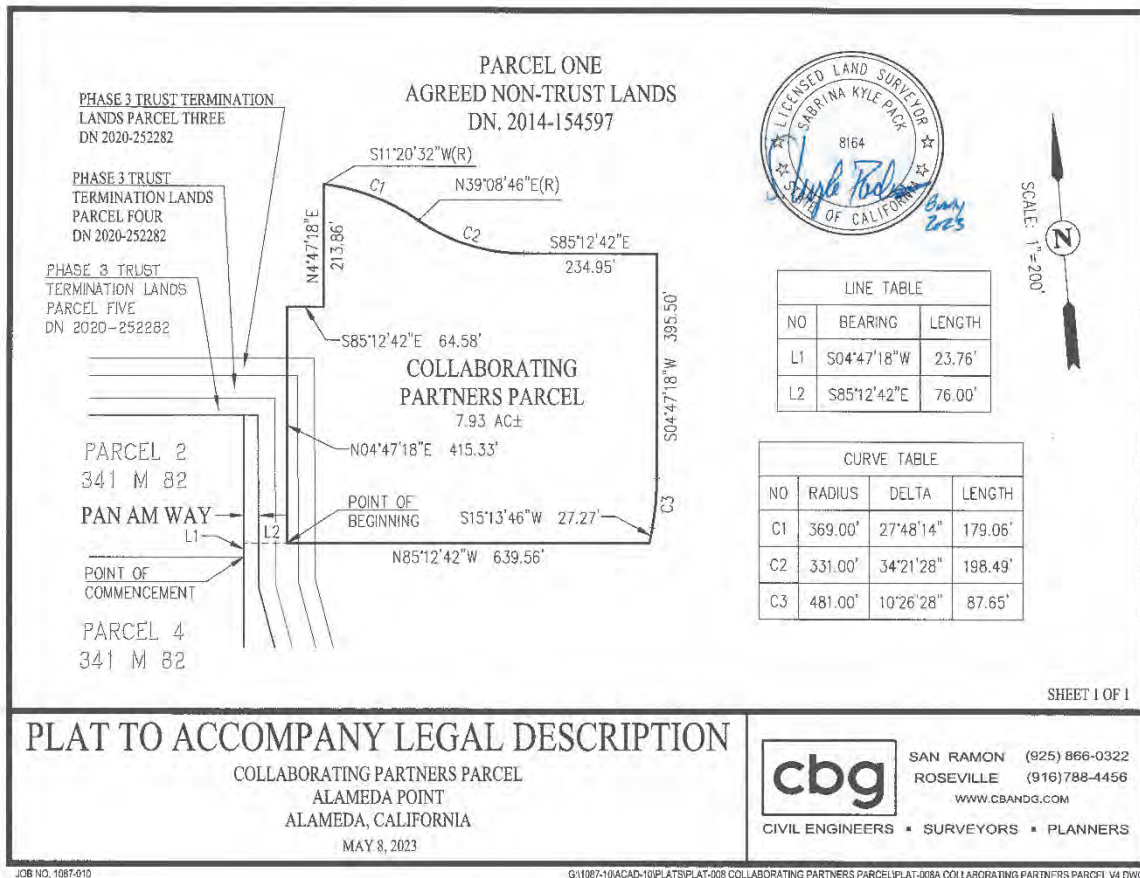
Exhibits:

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Exhibit P	List of Navy Quitclaim Deeds and CRUPS
Exhibit Q	Release and Termination of Lease

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Property referred to in the Agreement to which this Exhibit A is attached is situated in the State of California, Alameda County, City of Alameda and is described as follows:



MAY 8, 2023
JOB NO.: 1087-010

**LEGAL DESCRIPTION
COLLABORATING PARTNERS PARCEL
ALAMEDA POINT
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF
ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL ONE
OF THE PHASE 1 AGREED NON-TRUST LANDS, AS SAID PARCEL ONE IS DESCRIBED
IN THAT CERTAIN PATENT DEED RECORDED JUNE 30, 2014, AS DOCUMENT NO.
2014-154597 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER
OF ALAMEDA COUNTY, AND BEING A PORTION OF PHASE 3 TRUST TERMINATION
LANDS PARCEL THREE AND PARCEL FOUR, AS SAID PARCELS ARE DESCRIBED IN
THAT CERTAIN PATENT DEED RECORDED SEPTEMBER 29, 2020, IN DOCUMENT NO.
2020-252282 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER
OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERN CORNER OF PARCEL 2, AS SAID PARCEL 2 IS
SHOWN AND SO DESIGNATED ON THE FINAL MAP FOR TRACT 8315, ENTITLED
"WEST TOWER AVENUE", RECORDED AUGUST 23, 2016, IN BOOK 341 OF MAPS, AT
PAGE 82, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE EASTERN LINE OF
SAID PARCEL 2, NORTH 04°47'18" EAST 23.76 FEET;

THENCE, LEAVING SAID EASTERN LINE, SOUTH 89°12'42" EAST 76.00 FEET TO
THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, NORTH 04°47'18" EAST 415.33
FEET;

THENCE, SOUTH 85°12'42" EAST 64.58 FEET;

THENCE, NORTH 04°47'18" EAST 213.86 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 369.00 FOOT RADIUS CURVE TO THE
RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 11°20'32" WEST,
THROUGH A CENTRAL ANGLE OF 27°48'14", AN ARC DISTANCE OF 179.06 FEET;

THENCE, ALONG THE ARC OF A REVERSE 331.00 FOOT RADIUS CURVE TO THE
LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 39°08'46" EAST,
THROUGH A CENTRAL ANGLE OF 34°21'28", AN ARC DISTANCE OF 198.49 FEET;

THENCE, SOUTH 85°12'42" EAST 234.95 FEET;

THENCE, SOUTH 04°47'18" WEST 395.50 FEET;

F:\1000 - 1099\1087-010\LEGALS\LG-056A-COLLABORATING PARTNERS PARCEL V4.DOC

LEGAL DESCRIPTION
PAGE 2 OF 2

MAY 8, 2023
JOB NO.: 1087-010

THENCE, ALONG THE ARC OF A TANGENT 481.00 FOOT RADIUS CURVE TO THE
RIGHT, THROUGH A CENTRAL ANGLE OF 10°26'28", AN ARC DISTANCE OF 87.65
FEET;

THENCE, SOUTH 15°13'46" WEST 27.27 FEET;

THENCE, NORTH 85°12'42" WEST 639.56 FEET TO SAID POINT OF BEGINNING.

CONTAINING 7.93 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS
REFERENCE MADE A PART HEREOF.



END OF DESCRIPTION

Sabrina Kyle Pack 8 May 2023
SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

P:\1000 - 1099\1087-010\LEGALS\LG-056A-COLLABORATING PARTNERS PARCEL V4.DOC

EXHIBIT B

MAP OF THE PROPERTY



21510
scale:
date: 06.09.2023

MAP OF THE PROPERTY

RESHAP

cbg

plural

DIGNITY

PLACES

Alameda Point
Collaborative

MidPen
MID-PENINSULA

DL

DL

EXHIBIT C

PHASING PLAN



*This reflects estimated phasing. Final phasing to be dependent on financing.



ILLUSTRATIVE SITE PLAN - PHASING

scale: 1" = 200'-0"
date: 05.08.2023

15

EXHIBIT D-1

BACKBONE INFRASTRUCTURE

EXHIBIT D-1: RESHAP Backbone Infrastructure

All plans and descriptions referenced in this Exhibit reflect the design intent of the Parties and are subject to revision as part of the City and/or relevant agency approval and permitting processes.

RESHAP PHASE 1 INFRASTRUCTURE PACKAGE. The RESHAP Phase 1 Infrastructure package will be designed to support the RESHAP Development Plan approved by the Planning Board on May 8, 2023, which reflect the design intent of the Parties and are subject to revision as part of the City and/or relevant agency approval and permitting processes.

The following is a general description of the backbone infrastructure to be completed to support the development of RESHAP Phase 1. The proposed infrastructure improvements will be consistent with the Alameda Point Master Infrastructure Plan (MIP) and 2020 MIP Amendment.

Site Preparation and Grading. The existing structures, surface improvements, landscaping and utilities are to be demolished within the RESHAP Phase 1 and associated backbone infrastructure areas. Existing foundation piles associated with existing buildings or previously demolished buildings are to be located and cut at an elevation five (5) feet below current existing grade. West Midway Developer shall have no responsibility to remove piles at depths greater than five (5) feet below the existing grade. Upon the completion of the RESHAP Phase 1 demolition, West Midway Developer shall provide the RESHAP Developer with GPS mapping of the pile locations to aid the RESHAP Developer in the design of its underground utilities.

The existing utilities may be either removed or abandoned in place, depending on potential conflicts with the future improvements. The existing utilities that provide service to the adjacent Alameda Point Collaborative and Operation Dignity housing areas will be relocated and rerouted to ensure continued reliable utility service is provided to these areas. This includes relocation of the existing sanitary sewer lift station and force main located near the southern limits of RESHAP Phase 1.

Environmental remediation will be completed as needed and in compliance with regulatory requirements. West Midway Developer shall follow the recommendations in the DRAFT Alameda Point West Midway Stardust Place, Alameda, California, Phase II Environmental Site Assessment prepared by ENGEO Incorporated on June 16, 2023. Soil disturbance activities will be conducted in accordance with the protocols provided in the existing revised SMP prepared for the City of Alameda (Terraphase Engineering Inc., 2020).

The RESHAP Phase 1 and associated infrastructure areas will be graded to provide future building areas at the minimum elevation of 6.9' (City of Alameda datum) in accordance with the 2020 MIP Amendment.

West Midway Developer shall surcharge and conduct sub-surface ground improvements within RESHAP Phase 1 pursuant to the ENGEO geotechnical report and recommendations, to be provided at a later date. West Midway Developer will surcharge the area under the building footprint of the Operation Dignity building. West Midway Developer will not surcharge the area under the Alameda Point Collaborative Building since it will be built on a deep pile foundation system. Surcharge wick drains, where used, will be left in place following surcharge completion.

Post-surcharge site grading within RESHAP Phase 1 will be based on RESHAP's Site Plan. West Midway Developer will sheet grade the site to leveling grades based on the RESHAP Phase 1 Developer's specified pad elevations pursuant to Project BMP's. Weatherization strategies will be discussed with RESHAP developer and City in relation to timing of delivery of graded site.

Storm drain and sewer utility lines shall be constructed five (5) feet into RESHAP Phase 1 at the locations shown on the utility plan, attached hereto as Exhibit G-2, as will be further coordinated

as REHAP Phase 1 designs advance. Elevations of utilities will be coordinated with the RESHAP Developer's Civil Engineer.

West Midway Developer shall install the new water main in Avenue B. The RESHAP Developer will be responsible for EBMUD application processing and construction of any required water main line extensions from Pan Am Way, West Midway Avenue, and/or Avenue B into the RESHAP project site.

Joint Trench conduit (only) for electrical and communications (AT&T and Comcast) will be installed to RESHAP Phase 1 as shown in the yellow area on Exhibit G-8.1 5' from RESHAP property line and vaults will be installed on sidewalks, as will be further coordinated as RESHAP Phase 1 designs advance.

Streets: All streets within each infrastructure package shall be constructed in substantial conformance with the Alameda Point Master Infrastructure Plan ("MIP") and the RESHAP Development Plan.

West Midway Avenue. West Midway Developer will install the portion of West Midway Avenue shown in yellow on Exhibit G-8.1 and in cross section in Exhibit G-4 (see below) adjacent to RESHAP Phase 1 development areas (approximately 350 feet) consistent with the MIP. The improvements will include 2 travel lanes, curb, gutter, landscape parkway and sidewalk on the south side and the 2-way cycle track, sidewalk, and landscape parkways on the north side of the street. The improvements will include removal / abandonment of the aged existing utilities and installation of new utilities, including sanitary sewer, storm drain, street lighting, electrical, and telecommunications. The landscape areas will include construction of stormwater treatment facilities, such as bio-retention basins.

Avenue B. West Midway Developer will install the portion of Avenue B Street shown in yellow on Exhibit G-8.1 adjacent to RESHAP Phase 1 development areas (approximately 275 feet) will be constructed consistent with the West Midway Development Plan. The improvements will include 2 travel lanes, northern parking lane, curb, gutter, landscape parkway and bike / pedestrian widened pathway on the north side only. The parking lane, sidewalk, and landscape parkway on the south side of the street will be deferred to West Midway Phase 3. The improvements will include removal / abandonment of the aged existing utilities and installation of new utility systems, including sanitary sewer, storm drain, EBMUD water main, street lighting, electrical, and telecommunications. The landscape areas will include construction of stormwater treatment facilities, such as bio-retention basins. The improvements will include completing the intersection with Pan Am Way, such as new curb ramps, pavement transitions, signage and striping and closure of the intersection with Sunrise Court.

RESHAP PHASE 2 INFRASTRUCTURE PACKAGE. The RESHAP Phase 2 Infrastructure package will be designed to support the RESHAP Development Plan approved by the Planning Board on May 8, 2023 which reflect the design intent of the Parties and are subject to revision as part of the City and/or relevant agency approval and permitting processes.

The following is a general description of the backbone infrastructure to be completed to support the development of RESHAP Phase 2. The proposed infrastructure improvements will be consistent with the Alameda Point Master Infrastructure Plan (MIP) and 2020 MIP Amendment.

Site Preparation and Grading. The existing structures, surface improvements, landscaping and utilities are to be demolished within the RESHAP Phase 2 and associated backbone infrastructure areas. Existing foundation piles associated with existing buildings or previously demolished buildings are to be located and cut at an elevation five (5) feet below current existing grade. West

Midway Developer shall have no responsibility to remove pile improvements at depths greater than five (5) feet below the existing grade. Upon the completion of the RESHAP Phase 2 demolition, West Midway Developer shall provide the RESHAP Developer with GPS mapping of the pile locations to aid the RESHAP Developer in the design of its underground utilities. The existing utilities may be either removed or abandoned in place, depending on potential conflicts with the future improvements.

Environmental remediation will be completed as needed and in compliance with regulatory requirements. West Midway Developer shall follow the recommendations in the DRAFT Alameda Point West Midway Stardust Place, Alameda, California, Phase II Environmental Site Assessment prepared by ENGEO Incorporated on June 16, 2023. Soil disturbance activities will be conducted in accordance with the protocols provided in the existing revised SMP prepared for the City of Alameda (Terraphase Engineering Inc., 2020).

The RESHAP Phase 2 and associated infrastructure areas will be graded to provide future building areas at the minimum elevation of 6.9' (City of Alameda datum) in accordance with the 2020 MIP Amendment.

West Midway Developer shall surcharge and conduct sub-surface ground improvements within the building footprints shown in RESHAP Phase 2 pursuant to the ENGEO geotechnical report and recommendations, to be provided at a later date. Surcharge wick drains will be left in place following surcharge completion. Post-surcharge site grading within RESHAP Phase 2 will be based on RESHAPs Site Plan. The West Midway Developer shall sheet grade the site to leveling grades based on the RESHAP Developer's specified pad elevations. Weatherization strategies will be discussed with RESHAP Developer and City in relation to timing of delivery of graded site.

Storm drain and sewer utility lines shall be constructed five (5) feet into RESHAP Phase 2 at the locations shown on the utility plan, attached hereto as Exhibit G-2, as will be further coordinated as REHAP Phase 2 designs advance. Elevations of utilities will be coordinated with the RESHAP Developer's Civil Engineer. West Midway Developer shall install new water main lines in Avenue B and Ardent Way. RESHAP will be responsible for the EBMUD water connection application processing and construction of any required main water line extensions from West Midway Avenue, Avenue B, and/or Ardent Way.

Joint Trench conduits (only) for electrical and communications (AT&T and Comcast) will be installed to RESHAP Phase 2 as shown in the yellow area on Exhibit G-8.3 5' from RESHAP property line and vaults will be installed on sidewalks, as will be further coordinated as REHAP Phase 1 designs advance.

West Midway Avenue. West Midway Developer will install the portion of West Midway Avenue shown in yellow on Exhibit G-8.3 adjacent to RESHAP Phase 2 development areas (approximately 300 feet), which will be reconstructed consistent with the MIP. The improvements will include 2 travel lanes, curb, gutter, landscape parkway and sidewalk on the south side and the 2-way cycle track, sidewalk, and landscape parkways on the north side of the street.

The improvements will include removal / abandonment of the aged existing utilities and installation of new utilities, including sanitary sewer, storm drain, street lighting, electrical, and telecommunications. The landscape areas will include construction of stormwater treatment facilities, such as bio-retention basins.

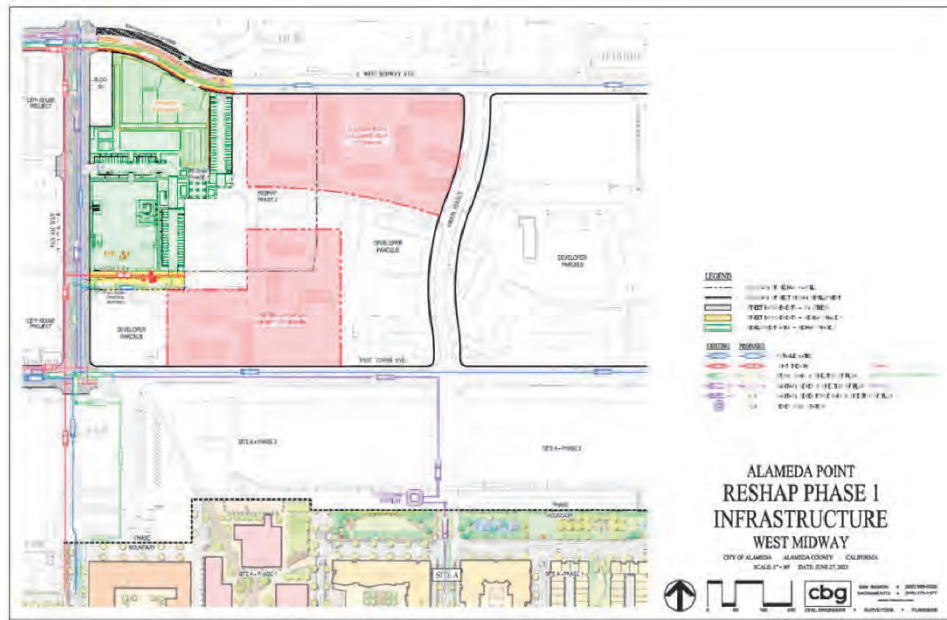
Avenue B. West Midway Developer will install the portions of Avenue B Street shown in yellow on Exhibit G-8.3 adjacent to RESHAP Phase 2 development areas (approximately 450 feet) consistent with the West Midway Development Plan. The improvements will include 2 travel lanes, northern parking lane, curb, gutter, landscape parkway and bike / pedestrian widened pathway

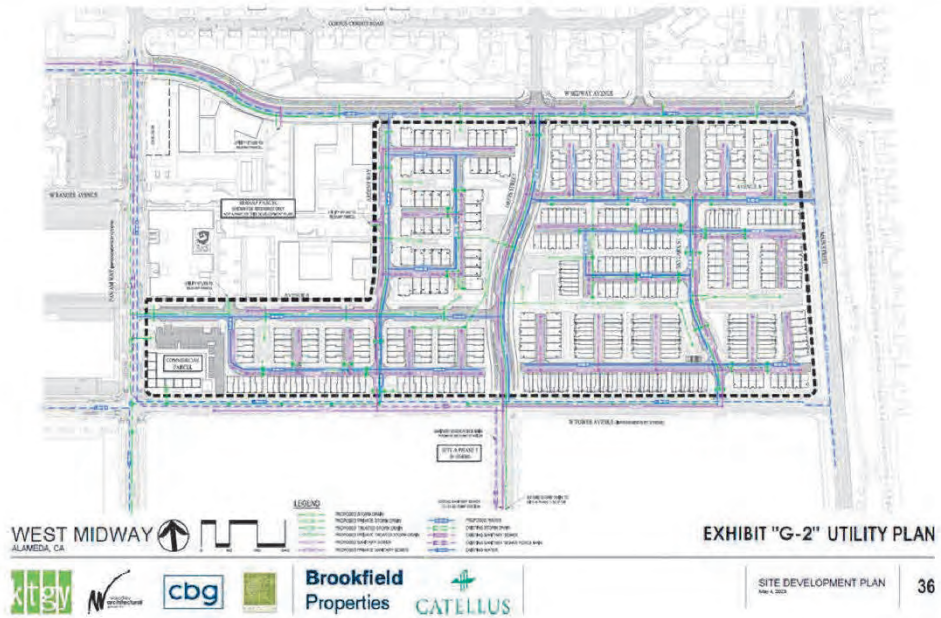
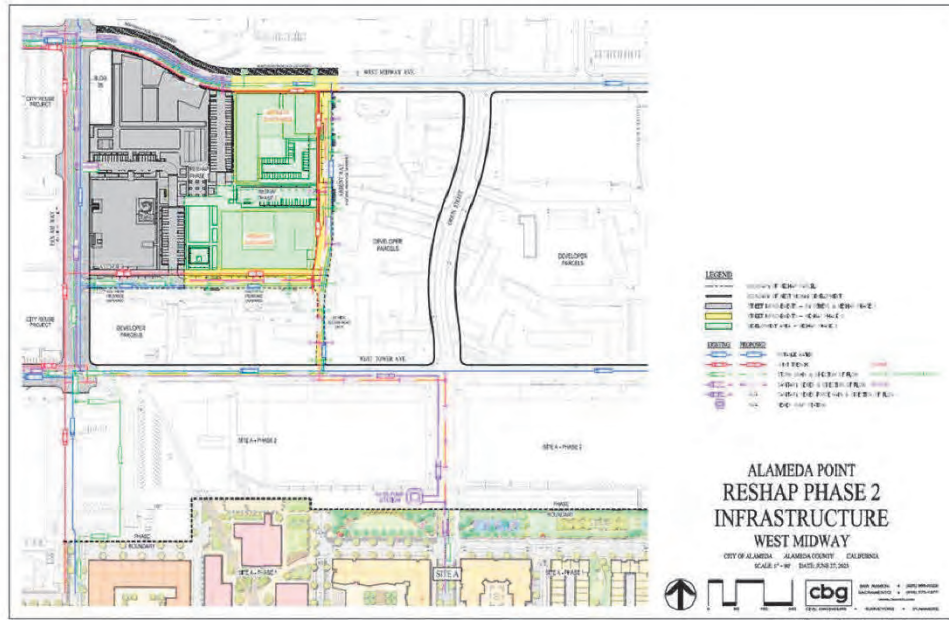
on the north side only. The parking lane, sidewalk, and landscape parkway on the south side of the street will be deferred to West Midway Phase 3.

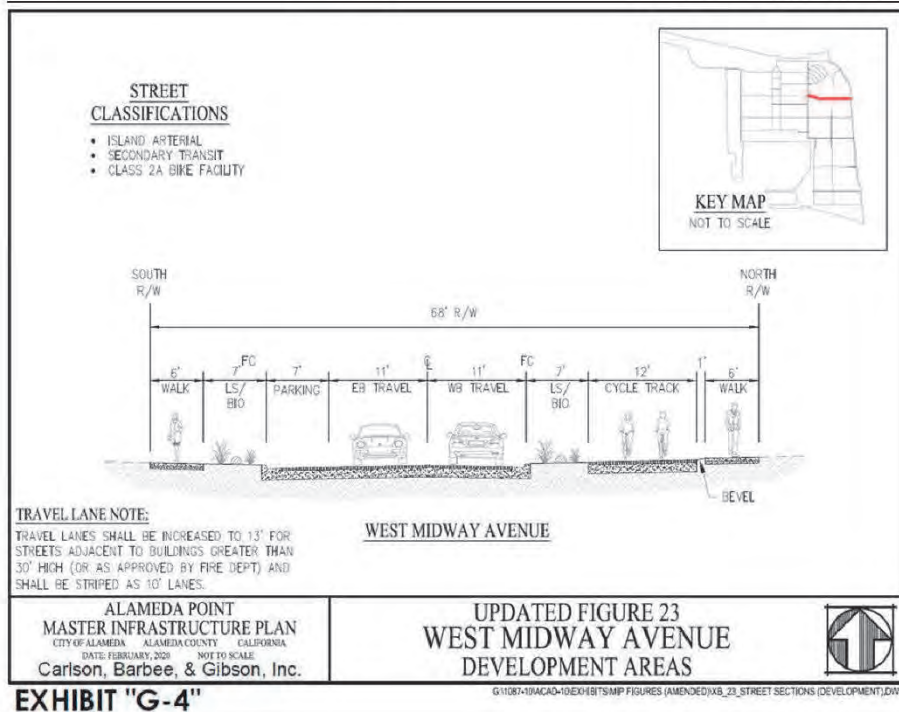
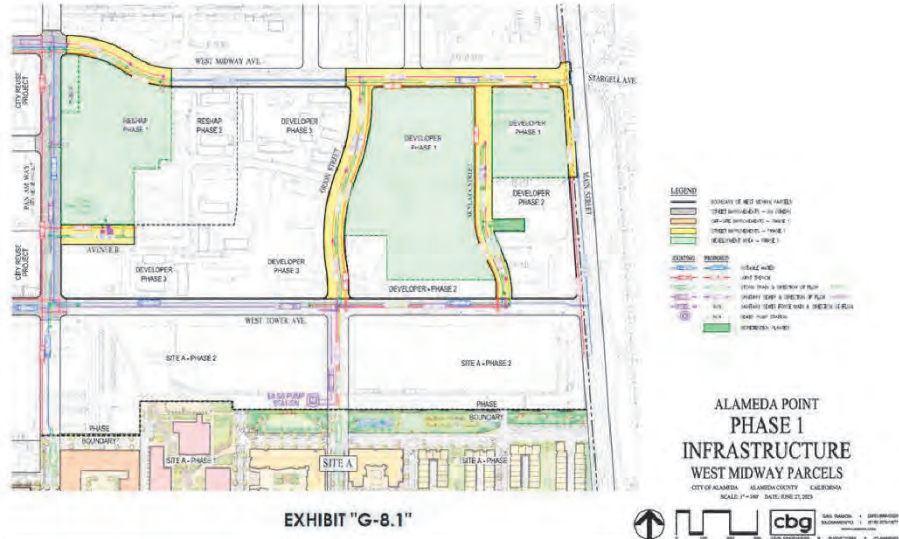
The improvements will include removal / abandonment of the aged existing utilities and installation of new utility systems, including sanitary sewer, storm drain, EBMUD water main, street lighting, electrical, and telecommunications. The landscape areas will include construction of stormwater treatment facilities, such as bio-retention basins.

Ardent Way. West Midway Developer will install the portions of Ardent Way shown in yellow on Exhibit G-8.3 serving the RESHAP Phase 2 development areas (approximately 580 feet) consistent with the West Midway Development Plan. The improvements will include 2 travel lanes, western parking lane, curb, gutter, landscape parkway and bike / pedestrian widened pathway on the west side only. The parking lane, sidewalk, and landscape parkway on the east side of the street will be deferred to West Midway Phase 3. Ardent Way to the south of the RESHAP development areas, extending (approximately 230 feet) to intersect with West Tower Avenue, will be constructed as a 20' wide interim access road. The improvements will include 2 travel lanes only, to support access to maintain the utilities proposed within this corridor.

The improvements will include removal / abandonment of the aged existing utilities as needed and installation of new utility systems, including sanitary sewer, storm drain, EBMUD water main, street lighting, electrical, and telecommunications. The landscape areas will include construction of stormwater treatment facilities, such as bio-retention basins. The improvements will include completing the intersections of Ardent Way with West Midway Avenue and West Tower Avenue, such as new curb ramps, pavement transitions, signage and striping.







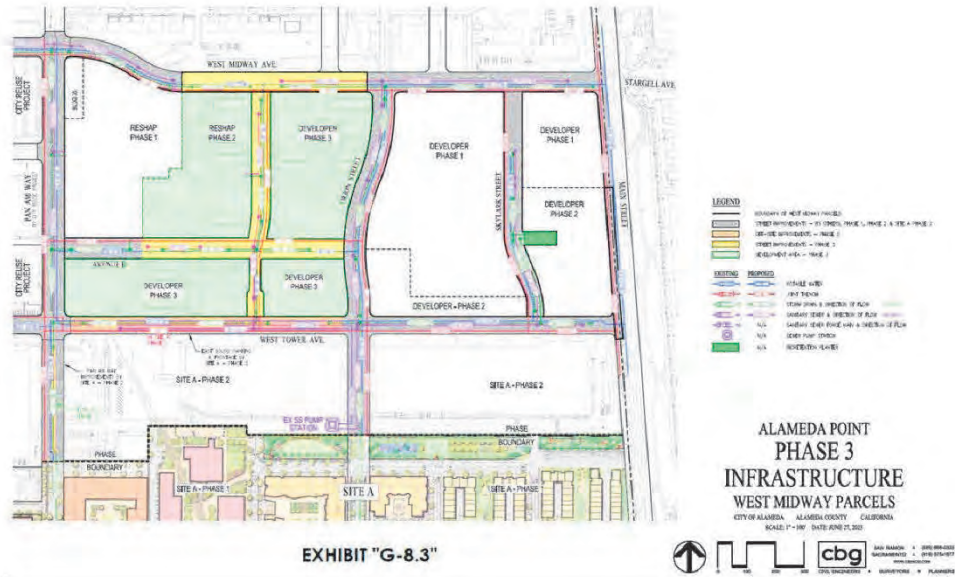
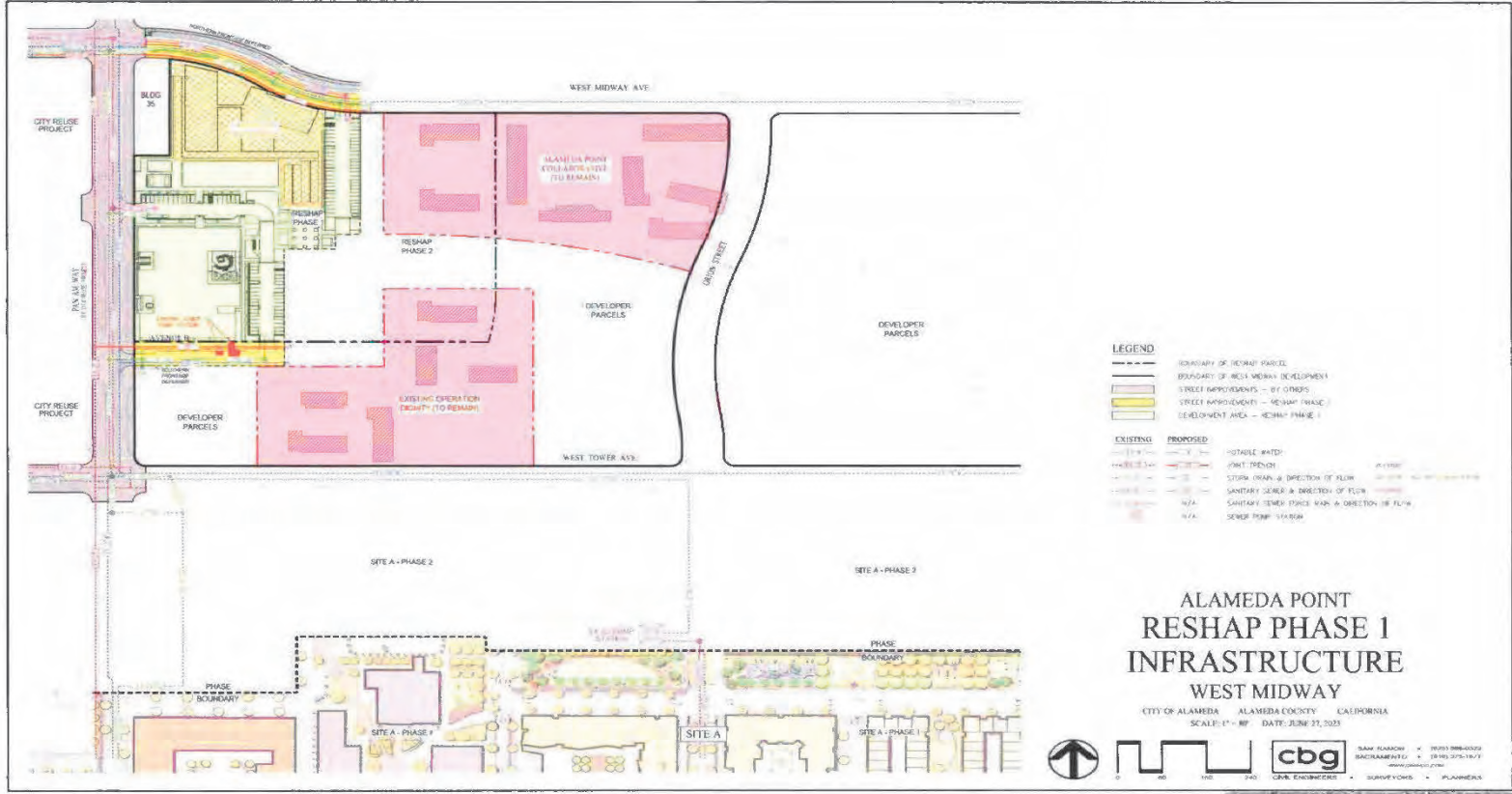
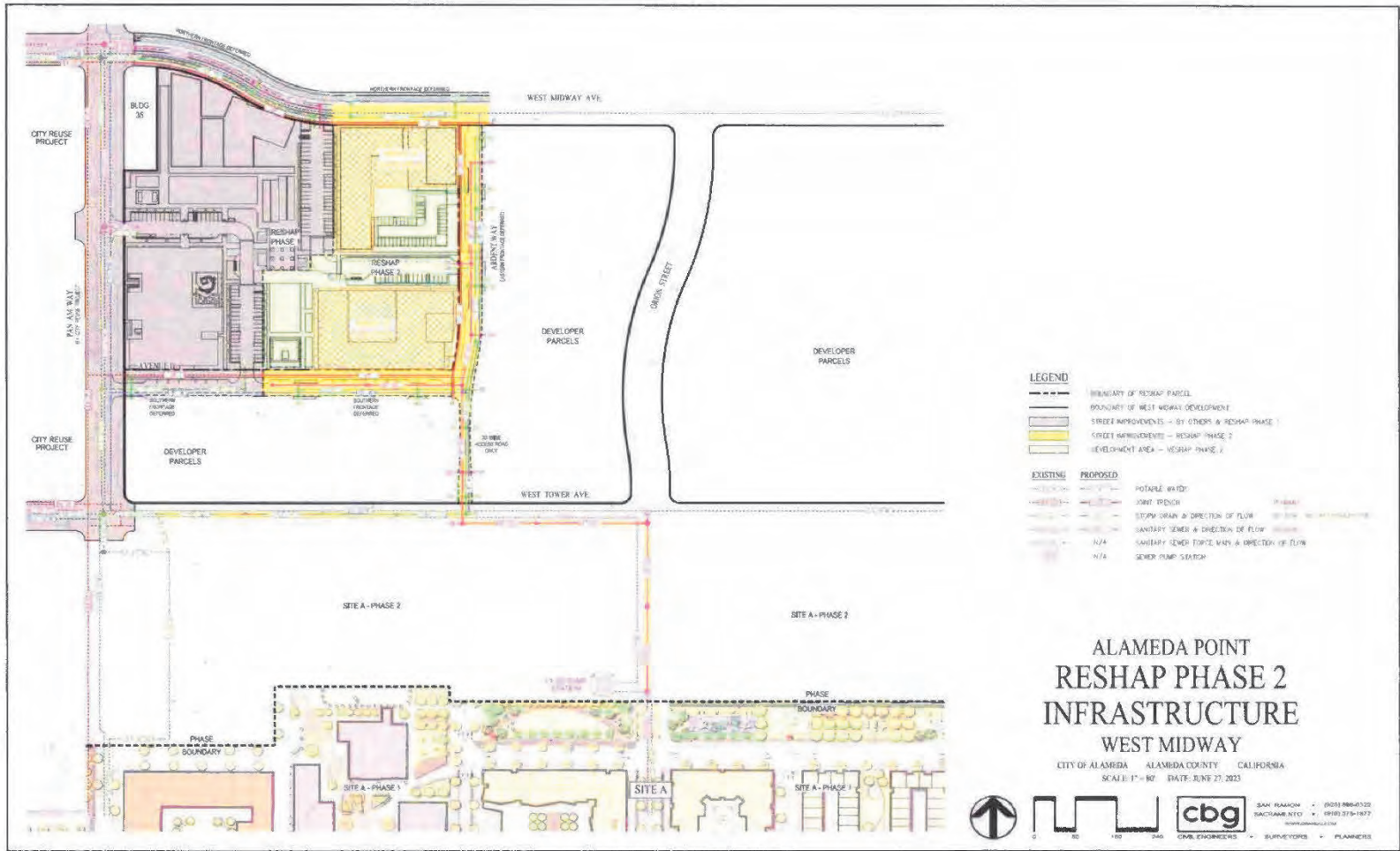


EXHIBIT D-2 BACKBONE INFRASTRUCTURE PHASING MAP





D-1-2

EXHIBIT E

MITIGATION MONITORING AND REPORTING PROGRAM AND ENVIRONMENTAL
CHECKLIST

Exhibit E: RESHAP Project Mitigation Monitoring and Reporting
Program (MMRP)

A-1

RESIAP MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)					
Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
C. Transportation and Circulation: Mitigation Measure 4 C-1 (Construction Management Plan): Project applicant's and construction contractor's shall develop a Construction Management Plan for review and approval by the Public Works Department prior to issuance of any permits. The Plan shall include at least the following items and requirements to reduce traffic congestion during construction: 1. A set of comprehensive traffic control measures shall be developed, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs (if required), lane closure procedures, signs, cones for drivers, and designated construction access routes. 2. The Construction Management Plan shall identify haul routes for movement of construction vehicles that would minimize impacts on motor vehicle, bicycle, and pedestrian traffic, circulation, and safety, and specifically to minimize impacts, to the greatest extent possible, to streets in and around the Alameda Point project site. The haul routes shall be approved by the City. 3. The Construction Management Plan shall provide for notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures would occur. 4. The Construction Management Plan shall provide for monitoring surface streets used for haul routes so that any damage and debris attributable to truck hauling can be identified and corrected by the project applicant.	Project applicant and its contractor(s) obtain approval of Construction Management Plan and implement the plan during construction.	City of Alameda Public Works Department	Public Works Department must review and approve Construction Management Plan.	Prior to issuance of building or grading permit(s); inspect during construction.	
Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.D-2 (Archaeological Resources): Project applicant shall be responsible for implementing the following on-site procedures: If cultural resources are encountered, all activity within 100 feet of the find shall halt until it can be evaluated by a qualified archeologist and a Native American representative. Potentially archeological materials might include obsidian and other flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris, culturally-derived soil ("middens") containing hearth-related rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs) and battered stone tools, such as hammerstones and ruled stones. Historic materials might include stone, concrete, or adobe foundations and walls; tiled roofs or pipes; and deposits of metal, glass, and/or ceramic refuse. If the archeologist and Native American representative determine that the resources may be significant, they shall notify the City of Alameda and shall develop an appropriate treatment plan for the resources. The archeologist shall consult with Native American consultants or other appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in nature. In considering any suggested measures proposed by the archeologist and Native American representative to further mitigate impacts to cultural resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project area while mitigation for cultural resources is being carried out. Pursuant to CEQA Guidelines Section 15126(b), <i>Mitigation Measures Related to Impacts on Historical Resources</i> , the City of Alameda will, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered for projects involving archaeological sites: A. Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between structure and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.	Project applicant and its contractor(s) shall halt work and notify archeologist and Native American representative if materials are discovered. Archeologist and Native American representative shall conduct independent review and prepare treatment plan, if necessary. Project applicant or its contractor(s) shall implement treatment plan and mitigate impacts pursuant to CEQA Guidelines.	City of Alameda Community Development Department	If resources are encountered, verify work is suspended and review and approve the treatment and monitoring plan if archaeological materials are discovered.	If resources encountered, review of treatment and monitoring plan prior to continuation of construction.	

June 2022

A-3

Environmental Checklist for Streamlined Review

RESILAP MMRP

Attachment
A Mitigation Monitoring and Reporting

Preservation in place may be accomplished by, but is not limited to, the following: 1. Planning construction to avoid archaeological sites; 2. Incorporation of sites within tanks, passageways, or other open space; 3. Covering the archaeological sites with a layer of chemically stabilized surface before building permits, curbs, parking lots, or similar facilities on the site; 4. Enclosing the site into a permanent conservation easement. C. When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 70502.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, removal may be an appropriate mitigation. D. Data recovery shall not be required for an historical resource if the lead agency determines that testing or analysis already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the FIB and that the studies are deposited with the California Historical Resources Regional Information Center.					
Mitigation Measure 4.D-2 (Paleontological Resources): If paleontological resources, such as fossilized bones, teeth, shells, tracks, trails, casts, molds, or impressions are discovered during ground disturbing construction activities, all such activities within 100 feet of the find shall be halted until a qualified paleontologist can assess the significance of the find and, if necessary, develop appropriate salvage measures in consultation with the City of Alameda and in conformance with Society of Vertebrate Paleontology Guidelines (SVP, 1995; SVP, 1999).	Project applicant and its contractor(s) shall halt construction within 100 feet of paleontological resources. Project applicants shall retain a paleontologist to assess significance of resources and develop salvage measures. If necessary Project applicant shall incorporate measures upon continuation of construction.	City of Alameda Community Development Department	Consult paleontologist in development of appropriate salvage measures for any paleontological resources found	If resources encountered, review of treatment and monitoring plan prior to continuation of construction	
Mitigation Measure 4.D-3 (Human Remains): In the event of discovery or recognition of any human remains during construction activities, each activity within 100 feet of the find shall cease. The Alameda County Coroner shall be contacted immediately. If the remains are determined to be Native American, and no investigation of the cause of death is required, the Native American Heritage Commission (NAHC) will be contacted within 24 hours. The NAHC will identify and remove the remains or persons it believes to be the "most likely descendant (MLD)" of the deceased Native American, who in turn would make recommendations for the appropriate means of treating the human remains and any grave goods.	Project applicant and its contractor(s) shall halt work and notify coroner and City of Alameda Community Development Department if remains are discovered. NAHC shall assign most likely descendant. Project applicant and its contractor(s) shall hire archaeologist and cease work if site contains Native American remains.	City of Alameda Community Development Department; NAHC; County Coroner	Contact City, NAHC, or County Coroner if human remains are encountered	Ongoing	
Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
E. Biological Resources					
Mitigation Measure 4.E-1-F: (Final Pre-Construction Survey) Potential direct and indirect disturbances to bats shall be identified by locating colonies, and installing mitigation measures prior to construction. Six weeks prior to tree removal, demolition of buildings, enclose, or initiation of construction within 100 feet of trees or structures providing potential bat roosting sites, a qualified bat biologist (e.g., a biologist holding a CDFW collection permit and a Memorandum of Understanding with CDFW allowing the biologist to handle and collect bats) shall conduct pre-construction surveys for bat roosts. No activities that could disturb native roosts shall proceed prior to the completed surveys.	Project applicant will obtain a qualified biologist to conduct pre-construction surveys for bat roosts. Qualified biologist will conduct pre-construction bat surveys six weeks prior to tree removal and building demolition work and shall develop protective measures.	City of Alameda Community Development Department	Review construction specifications to ensure inclusion of protective measures for active bat roosts. Monitor to ensure completion of pre-construction survey.	Prior to issuance of demolition or tree removal permit	This mitigation measure applies in any project requiring removal of trees and/or demolition of buildings.

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Environmental Checklist for Streamlined Review

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Areas	Mitigation Schedule	Notes
Mitigation Measure 4.E-4b: (Bird Strike Mitigation) Prior to the issuance of the first building permit for each new building, or for any exterior renovation that would increase the surface area of glazing by 50 percent or more or that would replace 50 percent or more of existing glazing, the City shall require that the project applicant retain a qualified biologist experienced with bird strike issues to review and approve the design of the building to ensure that it sufficiently minimizes the potential for bird strikes. The City may also consult with resource agencies such as the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, or others, as it determines to be appropriate during this review. The project applicant shall provide to the City a written description of the measures and features of the building design that are intended to address potential impacts on birds. The design shall include: a) a list of the following measures or measures that are equivalent to, but not necessarily identical to, those listed below as new, more effective technology for addressing bird strikes may become available in the future: - Employ design techniques that create "visual noise" via clackings or other design features that make it easy for birds to identify buildings as such and not mistake buildings for open sky or trees; - Decrease continuity or reflective surfaces using "visual marker" design techniques, which techniques may include: - Patterned or tinted glass, with patterns at most 28 centimeters apart; - One-way films installed on glass, with any pattern or pattern or arrangement that can be seen from the outside by birds but appear transparent from the inside; - Geometric facades that effectively divide a window into smaller panes of at most 28 centimeters, and/or; - Details with patterned or abstract designs, with the maximum clear space at most 28 centimeters square; - Up to six feet high on building facades facing the street, decrease reflectivity of glass using design techniques such as plastic or metal screens, light-colored blinds or curtains, frosting or glass, angling glass towards the ground, UV-A films, or coatings and overhangs; - Eliminate the use of clear glass on opposing or immediately adjacent facades of the building without intervening opaque obstacles, such that a bird could perceive its flight path through the glass to be unobstructed; - Minimize reflections in glass using strategies such as angled glass, shades, internal screens, and overhangs; and - Place new vegetation sufficiently away from glazed building facades so that no reflection occurs. Alternatively, if planting of landscapes near a glazed building facade is desirable, plant trees and shrubs immediately adjacent to the exterior glass walls at a distance of less than 3 feet from the glass. Such close proximity will obscure habitat reflections and will minimize fatal collisions by reducing birds' flight momentum. Lighting: In addition to implementation of the City's V.A.I. lighting, MOA, the project applicant shall similarly ensure that the design and specifications for buildings implement design elements to reduce lighting usage, change light direction, and control light. These include, but are not limited to, the following general considerations that should be applied wherever feasible throughout Alameda Park to reduce night lighting impacts on species other than least terns: - Avoid installation of lighting in areas where not required for public safety; - Examine and adopt alternatives to bright, all-night, flood-wide lighting when interior lights would be visible from the exterior or exterior lights must be left on at night, including: - Installing motion sensitive lighting; - Installing task lighting; - Installing programmable timers; - Installing fixtures that use lower-voltage, sodium, and yellow-red spectrum lighting; - Install shields or baffling lights in place of continuously burning lights for any exterior lighting; - Where exterior lights are to be left on at night, install fully shielded lights to contain and direct light away from the sky.	Project applicant shall retain a qualified biologist to review and approve design of buildings for potential impacts on birds related to bird strikes, lighting, and placement of rooftop antennas and other rooftop elements. Project applicant shall provide educational materials to building tenants and occupants, hotel guests, and residents encouraging them to minimize light transmission from windows. Project applicant or City shall document activities undertaken per this mitigation measure. Project applicant or City shall maintain records that include the written descriptions provided by the building developer of the measures and features of the design for each building that are intended to address potential impacts on birds, and the recommendations and memoranda prepared by the qualified biologist experienced with bird strikes.	City of Alameda Community Development Department (CDDW) (S) (R)	Review substantial and documentation of measures and features incorporated to address potential impacts on birds. Ensure that education materials get distributed to building tenants, occupants, hotel guests, and residents appropriately. Ensure proper documentation of activities prescribed by Measure 4.E-4b.	Prior to issuance of building permits	

Mitigation Measures	Implementation Procedures	Responsible Organization	Monitoring and Reporting Schedule	Mitigation Schedule	Notes
Antennae, Masts, Neon Signs, and Rooftop Elements. The City shall ensure, as a condition of approval for every building permit, that buildings minimize the number of and/or locate rooftop antennas and other rooftop equipment, and that rooftop structures or antennas on buildings, in open areas, and at sports and playing fields and facilities do not include gay wires. Educating Residents and Occupants. The City shall ensure, as a condition of approval for every building permit, that the project applicant agrees to provide educational materials to building tenants and occupants, hotel guests, and residents encouraging them to minimize light transmission from windows, especially during peak sleeping and fall migration periods, by turning off unnecessary lighting and/or closing window coverings at night. The City shall review and improve the educational materials prior to building occupancy. Documentation. The project applicant and/or City shall document undertaking the activities described in this mitigation measure and maintain records that include, among others, the written development provided by the building developer of the measures and features of the design for each building that are intended to address potential impacts on birds, and the recommendations and memoranda prepared by the qualified biological expert(s) with bird-strike risk reviews and approvals, the design of any proposed projects to ensure that they sufficiently minimize the potential for bird strikes.					
Mitigation Measure 4E-1c: (Breeding Birds) The City shall require project applicants to conduct pre-construction breeding bird surveys for projects proposed in areas containing, or likely to contain, habitat for nesting birds as a condition of approval for any development-related permit. Specific measures to avoid and minimize impacts on nesting birds include, but are not limited to, those described below: • To avoid and minimize potential impacts on nesting raptors and other birds, preconstruction surveys shall be performed not more than six weeks prior to initiating vegetation removal and/or construction activities during the breeding season (i.e., February 1 through August 31). • To avoid and minimize potential impacts on nesting raptors and other birds, a no-disturbance buffer zone shall be established around active nests during the breeding season until the young have fledged and are self-sufficient, when no further mitigation would be required. • Typically, the size of individual buffers ranges from a minimum of 250 feet for raptors to a minimum of 50 feet for other birds but can be adjusted based on an evaluation of the site by a qualified biologist in cooperation with the USFWS and/or CDFW. • Birds that establish nests after construction starts are assumed to be habituated to and tolerant of the indirect impacts resulting from construction noise and human activity. However, direct take of nests, eggs, and hatchlings is still prohibited and a buffer must be established to avoid nest destruction. • If construction ceases for a period of more than two weeks, or vegetation removal is required after a period of more than two weeks has elapsed from the preconstruction surveys, then new nesting bird surveys must be conducted.	Project applicant shall conduct pre-construction breeding bird surveys. Project applicant shall implement identified avoidance and minimization measures for nesting bird impacts.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of nesting bird avoidance and minimization measures. Monitor to ensure implementation of avoidance and minimization measures during construction.	Prior to issuance of building permit(s), and during construction.	A key mitigation measure is particularly critical for projects located in the North West Tenthredin and the Federal Property. It is applicable to any project on a site that has trees, shrubs, buildings, or other structures, all of which can provide nesting habitat for birds.
Mitigation Measure 4E-1f: (Open Refuse Containers) The City shall prohibit open refuse containers that contain food waste throughout the project area. This prohibition shall be incorporated into the terms and conditions of all City approvals for future development in Alameda Point.	The City will prohibit placement of open refuse containers that contain food waste.	City of Alameda Community Development Department	City to ensure that measure is implemented.	A ban is contained in permit(s).	

Mitigation Measures	Implementation Procedures	Monitoring Responsibilities	Monitoring and Reporting Action	Mitigation Schedule	Notes
E. Air Quality and Greenhouse Gases					
Mitigation Measure 4.E-1a: (Fugitive Dust) The following BAAQMD Best Management Practices for fugitive dust control shall be required for all construction activities within the project area. These measures will reduce fugitive dust emissions primarily during soil movement, grading and demolition activities, but also during vehicle and equipment movement on unpaved project sites: Best Controls that Apply to All Construction Sites 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 2. All haul trucks transporting soil, sand, or other loose material off site shall be covered. 3. All vehicle road and off-road traffic on unpaved public roads shall be minimized and wet pavement street cleaners to keep unpaved roads. 4. All vehicle speeds on unpaved roads shall be limited to 15 mph. 5. All streets, driveways, and sidewalks to be paved shall be completed as soon as possible. Paving shall be done as soon as possible after grading or other soil movement. 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California air board control measure Title 13, Section 2485 of CCR). Clear signage shall be provided for construction workers at all access points. 7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. 8. A publicly visible sign shall be posted with the telephone number and person to contact at the End Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.	Project applicant shall incorporate the BAAQMD BMPs for fugitive dust control in construction specifications. Project applicant shall implement BMPs during construction.	City of Alameda Community Development Department	Review construction specifications for inclusion of BAAQMD BMPs. Monitor to ensure that BMPs are implemented during construction.	Prior to issuance of building permit(s) and ongoing during construction.	
Mitigation Measure 4.E-1b: (Construction Exhaust) The following control measures for construction emissions will be required for all construction activities within the project area: • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points. • The Project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., normal, low-sulfur, and regeneration vehicles) will achieve a Project-wide fleet average 20 percent NO reduction and 45 percent PM reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. (The Level 3 Verified Diesel Emissions Control (VDEC) required under Mitigation Measure 4.F would also comply with this measure.) • Require that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions in NO and PM. • Require all contractors to use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engine.	Project applicant shall incorporate control measures for construction emissions in construction specifications. Project applicant shall implement control measures during construction.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of control measures for construction emissions. Monitor to ensure that construction exhaust measures are implemented during construction.	Prior to issuance of building permit(s) and during construction.	
Mitigation Measure 4.F-1a: (Demolition Controls) Demolition and disposal of any asbestos-containing building material shall be conducted in accordance with the procedures specified by Regulation 11, Rule 2, (Asbestos Demolition, Renovation and Manufacturing) of BAAQMD's regulations.	Project applicant shall incorporate BAAQMD's Regulation 11, Rule 2 procedures in construction specifications. Project applicant shall implement measures as outlined in Regulation 11, Rule 2 of BAAQMD's regulations.	City of Alameda Community Development Department	Review construction specifications to ensure incorporation of BAAQMD's measures for the demolition and disposal of asbestos. Ensure Project applicant complies with Regulation 11, Rule 2 procedures of BAAQMD's regulations.	Prior to and during construction.	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.F-1d: (Fugitive Air Contaminants and PM2.5) The project sponsor(s) will ensure that construction and test equipment includes equipment required and that all off-road construction equipment used for project improvements be equipped with a Level 3 Verified Diesel Emissions Control (VDEC), which would reduce diesel particulate emissions by at least 85 percent.	Project applicant shall incorporate vehicle emissions and PM2.5 emissions into construction equipment specifications. Project applicant shall use off-road construction equipment with a Level 3 Verified Diesel Emissions Control.	City of Alameda Community Development Department	Review construction specifications to ensure that Level 3 equipment and PM2.5 emissions are incorporated. Enforce that Project applicant uses off-road construction equipment with a Level 3 Verified Diesel Emissions Control.	Prior to start of any construction.	
Mitigation Measure 4.F-2: (Greenhouse Gas Reduction Measures) The following measures shall be incorporated into the project design: - Implement a Transportation Demand Management (TDM) program by participation in the Alameda, CA. - All electric residential heating, cooling, and cooking facilities and appliances. - Consider smart meters and programmable thermostats. - Meet State and local Green Building Code standards in all new construction. - Install solar water heaters for all space heating. - Use recycled water when available. - Install low-flow fixtures (faucets, toilets, showering). - Use water efficient irrigation systems; and - Install energy saving and computing services.	Project applicant shall incorporate measures into project design documents.	City of Alameda Community Development Department	Ensure that project design documents incorporate measures outlined in Mitigation Measure 4.F-2.	During design phase.	
4.G. Noise					
Mitigation Measure 4.G-1a: (Construction Hours) Applicant shall require construction activities to find nearest sound sensitive uses, which are in compliance with the Noise Ordinance. Prohibit any activities greater than 95 dBA limited to between 9:00 a.m. and 1:00 p.m. Noisy day (not Friday). No pile driving shall be allowed on weekends and Major holidays.	Project applicant and contractor(s) shall include noise limits into a construction specification. Project applicant and contractor(s) shall comply with the Noise Ordinance and ensure that pile driving activities greater than 95 dBA are limited to between 9:00 a.m. and 1:00 p.m. Monday through Friday.	City of Alameda Community Development Department	Review construction specifications to ensure noise limits are incorporated into construction specifications.	Prior to issuance of permit or building permits; ensure compliance with noise ordinance.	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4-G-1b: (Construction Noise Measures) To reduce daytime noise impacts due to construction, the applicants will require construction contractors to implement the following measures: - Equipment and trucks used for project construction will utilize the best available noise-control techniques described and listed in Appendix A, including: use of shields, silencers, exhausts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible; - Impact tools (i.e., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust will be used, this muffler can lower noise levels from the exhaust 10-15 dBA; Exhaust jackets on the tools themselves will be used where feasible; and this could achieve a reduction of 5 dBA; Quieter procedures will be used, such as drills rather than impact equipment, whenever feasible; - Stationary noise sources will be located as far from adjacent receptors as possible, and they shall be muffled and enclosed with temporary shrouds, incorporate insulation barriers, or other measures to the extent feasible; - Land uses that affect the lowest number of receptors will be scheduled. Mitigation Measure 4-G-1c: (Pile Driving Noise Attenuation Measures) Pile driving activities within 300 feet of sensitive receptors will require additional noise attenuation measures. Prior to commencing construction a plan for such measures will be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures will include as many of the following control strategies as feasible: - Erect temporary plywood noise barriers if they would block the line of sight between sensitive receptors and construction activities, particularly for existing residences in the northern area of the project site and for residences across Main Street; - Implement "quiet" pile driving technology (such as pre-drilling of piles or use of sonic pile drivers), where feasible, in consideration of geotechnical and structural requirements and conditions; and - Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site. Mitigation Measure 4-G-1d: (Complaint Tracking) Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant will submit to the City a list of measures to respond to and track complaints pertaining to construction noise. These measures will include: - Signs will be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a contact number with the City of Alameda in the event of noise complaints. The project applicant will designate an on-site complaint and enforcement manager to track and respond to noise complaints; and - Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity. Mitigation Measure 4-G-2: (Noise Ordinance) During individual project phase design preparation, the City will require a project applicant to comply with the Noise Ordinance and General Plan standards. These measures implement noise control measures to ensure that all non-transportation source operations comply with City standards and will include, but not be limited to, the following: - The proposed land uses will be designed so that noise mechanical equipment (e.g., HVAC units, compressors, generators) and area-source operations (e.g., loading docks, parking lots, and recreational-use areas) are located as far as possible and/or shielded from nearby noise sensitive land uses to meet City noise standards; - On-site landscape maintenance equipment will be equipped with properly operating exhaust mufflers and engine shrouds, in accordance with manufacturers' specifications; - The following activities will be limited to the hours of 7:00 a.m. to 6:00 p.m. unless site-specific analysis confirms that noise impacts to sensitive receptors would be less-than-significant: - Truck deliveries; - Operations of motor-powered landscape maintenance equipment; and - Outdoor use of amplified sound systems.	Project applicant and its contractor(s) shall use best available noise-control techniques described and listed in Appendix A, including: use of shields, silencers, exhausts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible. Project applicant and its contractor(s) shall prepare plan and submit to City; implement during construction. Project applicant and its contractor(s) shall post construction information and track complaints pertaining to construction noise. Project applicant and its contractor(s) shall incorporate operational noise control measures to project design phase documents.	City of Alameda Community Development Department City of Alameda Community Development Department City of Alameda Community Development Department City of Alameda Community Development Department	Requires use of noise-control techniques in building permit; inspect construction site to confirm adherence to noise requirements. Review noise attenuation plan and incorporate plan into building permit; inspect site during construction to confirm adherence to plan. Review construction specifications to ensure compliance; inspection to ensure compliance. City shall ensure that design phase documents of individual projects incorporate operational noise control measures.	Prior to issuance of grading building permit(s); inspect during construction Prior to issuance of grading or building permit(s); inspect during construction Upon issuance of building permit(s) During design phase and prior to issuance of building permit(s)	

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Mitigation Measures	Implementation Procedures	Monitoring Responsibilities	Monitoring and Reporting Action	Mitigation Schedule	Notes
I. Hydrology and Water Quality Mitigation Measure 4.1-1: (Water Quality Measures) Project applicants shall implement the following measures as presented with the extracted water during project construction: - The RWQCB could require compliance with certain provisions in the permit such as treatment of the flows prior to discharge. The project applicant shall discharge the extracted water to the sanitary sewer or storm drain system with authorization of and required permits from the applicable regulatory agencies. In this case, the City of Alameda. - The project applicant shall comply with applicable permit conditions associated with the treatment of groundwater prior to discharge. - If necessary a dewatering collection and disposal method shall be prepared and implemented for the project.	Project applicant will incorporate water quality measures in the construction specifications. Project applicant will obtain and comply with necessary permits from RWQCB and City of Alameda for any activities requiring discharge of extracted water to the sanitary sewer or storm drain system.	City of Alameda Community Development Department, RWQCB	RWQCB and City will review permit application for activities involving discharge or extracted water necessary during construction activities. Upon approval, City will monitor to ensure compliance with permit conditions.	Prior to construction	
Mitigation Measure 4.1-2: (Integrated Pest Management) Project applicants shall implement Integrated Pest Management measures to reduce fertilizer and pesticide contamination of receiving source, as follows: - Prepare and implement an Integrated Pest Management Plan (IPM) for all common landscaped areas. The IPM shall be prepared by a qualified professional and shall recommend methods of pest prevention and turf grass management that use pesticides as a last resort in pest control. Types and rates of fertilizer and pesticide application shall be specified. - The IPM shall specify methods of avoiding runoff of pesticides and herbicides into receiving storm drains and surface waters or leaching into the shallow groundwater table. Pesticides shall be used only in response to a persistent pest problem that cannot be resolved by non-pesticide measures. Preventive chemical use shall not be employed. - The IPM must fully integrate considerations for cultural and biological resources into the IPM with a) emphasis toward reducing pesticide application.	The Project applicant will incorporate Integrated Pest Management measures into construction specifications. The Project applicant will implement Integrated Pest Management measures including an integrated pest management plan.	City of Alameda Community Development Department	City will ensure that the Integrated Pest Management measures are included in the construction specifications. City will monitor and ensure that Project applicant implements pest management measures.	Prior to construction and after construction	
Mitigation Measure 4.1-3: (Sea-Level Protection) The applicant shall implement the following steps prior to project implementation: - Apply for membership in the National Flood Insurance Program (NFIP) Community Rating System (CRS) and to appropriate through revisions to the City Code, obtain reductions in flood insurance rates offered by the NFIP to community residents. - Cooperate with FEMA in its efforts to comply with recent congressional mandates to incorporate predictions of sea level rise into its Flood Insurance Studies and FIRM. - Implement climate adaptation strategies, such as wetland morphological renewal, wetland levees, wetland levees for accommodate habitat transition zones, buffer zones and beaches, expanded tidal prism for enhanced natural scouring of channel sediments, tidal and flood-passing structures, or provisions for additional floodwater pumping stations, and inland location basins to reduce peak discharges.	City will incorporate climate adaptation measures into construction plans and specifications.	City of Alameda Community Development Department	City shall ensure that structural design and climate adaptation measures are incorporated in construction plans and specifications. City will monitor to ensure implementation of measures.	Prior to construction	*Although implementation of this mitigation measure is the responsibility of the City of Alameda, it should be implemented prior to construction of the first new development project at Alameda Point.
J. Hazardous and Hazardous Materials Mitigation Measure 4.2-1a: (Hazardous Building Material Assessment) Prior to issuance of any demolition permit, the project applicant shall submit to the City a hazardous building material assessment prepared by a certified licensed contractor for each structure marked for demolition indicating whether LBP or lead based coatings, ACMs, and/or PCB-containing equipment are present. Mitigation Measure 4.2-1b: (Health and Safety Plan) If the assessment required by Mitigation Measure 4.2-1a indicates the presence of LBP, ACMs, and/or PCBs, the project applicant shall create and implement a health and safety plan to protect demolition and construction workers and the public from risk associated with such hazardous materials during demolition or renovation of affected structures.	Project applicant will obtain a qualified licensed contractor to prepare and submit a hazardous building material assessment. Qualified contractor will prepare and submit hazardous building material assessment for the Project applicant and City's review.	City of Alameda Community Development Department City of Alameda Community Development Department	City will review the hazardous building material assessment. City will review health and safety plan. City will monitor to ensure that the health and safety plan is implemented.	Prior to issuance of demolition permits. Prior to undertaking construction.	*This mitigation measure applies only to projects involving demolition of existing buildings or other structures. *This mitigation measure applies only to projects involving demolition of existing buildings or other structures.

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
Mitigation Measure 4.1-1a: (LEP Removal Plan) If the assessment required by Mitigation Measure 4.1-1a finds presence of LEP, the project applicant shall develop and implement a LEP removal plan. The plan shall specify, but not be limited to, the following elements for implementation: • Develop removal specifications approved by a Certified Lead Project Designer. • Ensure that all removal workers are properly trained. • Contain all work areas to prohibit off-site migration of paint chip debris. • Remove all peeling and cracked LEP on building and non-building surfaces to the degree necessary to safely and properly complete demolition activities according to recommendations of the survey. The demolition contractor shall be responsible for the proper containment and disposal of intact LEP on all equipment to be cut and/or removed during the demolition. • Provide dusts generated and any air monitoring during all removal activities to ensure that workers and the environment are adequately protected by the control measures used. • Clean up and/or vacuum paint chips with a high efficiency-particulate air (HEPA) filter. • Collect, segregate, and profile waste for disposal determination. • Properly dispose of all waste.	Project applicant will prepare and implement a LEP removal plan (LEP is found present).	City of Alameda Community Development Department	City will review LEP removal plan. City will monitor to ensure that LEP removal plan is implemented.	Prior to construction and during construction.	"This mitigation measure applies only to projects entailing demolition of existing buildings or other structures."
Mitigation Measure 4.1-1b: (Asbestos Abatement Plan) If the assessment required by Mitigation Measure 4.1-1a finds asbestos, the project applicant shall prepare an asbestos abatement plan and shall ensure that asbestos abatement is conducted by a licensed contractor prior to building demolition. A list of known or suspected ACNs shall occur prior to demolition or construction activities that would disturb these materials. Pursuant to an asbestos abatement plan developed by a state-certified asbestos consultant and approved by the City, all ACM shall be removed and appropriately disposed of by a state-certified asbestos contractor.	If asbestos is found upon implementation of Mitigation Measure 4.1-1a, Project applicant will prepare an asbestos abatement plan. Project applicant will obtain a state-certified asbestos consultant to prepare the asbestos plan. State-certified asbestos consulting will ensure that all ACNs are removed and appropriately disposed of."	City of Alameda Community Development Department	City will review and shall approve the asbestos abatement plan. Ensure that abatement of known or suspected ACNs are removed by a state-certified asbestos contractor.	Prior to building demolition activities and during demolition work.	"This mitigation measure applies only to projects entailing demolition of existing buildings or other structures."
Mitigation Measure 4.1-1c: (PCB Abatement) If the assessment required by Mitigation Measure 4.1-1a finds PCBs, the project applicant shall ensure that PCB abatement is conducted prior to building demolition or renovation. PCBs shall be removed by a qualified contractor and transported in accordance with California requirements.	If PCBs are found upon implementation of Mitigation Measure 4.1-1a, Project applicant will obtain a qualified contractor to implement PCB abatement. Qualified contractor will remove PCBs and will transport in accordance with California requirements.	City of Alameda Community Development Department	City will ensure that PCB abatement measure is incorporated to construction plans and specifications. City will monitor and ensure that PCB abatement measures are implemented.	Prior to and during building demolition or renovation work.	"This mitigation measure applies only to projects entailing demolition of existing buildings or other structures."
Mitigation Measure 4.1-2: (Site Management Plan) Prior to issuance of a building or grading permit for any ground disturbing activities within the project site, the City shall prepare a Site Management Plan (SMP) that is approved by US EPA, DTSC, and the Water Board for incorporation into construction specifications. Any additional information or modification on identified pollutants from the City's tracking system shall be completed as directed by the responsible agency, U.S. EPA, DTSC, or Water Board, in accordance with the local restrictions and requirements as well as any Government(s) or Restrict Use of Property (CRUP), prior to commencement of construction activities. Where necessary, additional remediation shall be accomplished by the project applicant prior to issuance of any building or grading permits in accordance with all requirements set by the overseeing agency (i.e., U.S. EPA, DTSC, or Water Board). The SMP shall be present on site at all times and readily available to site workers. The SMP shall specify protocols and requirements for: excavation, dredging, and transport of soil and for disturbance of materials or surface contingency plan to respond to the discovery of previously unknown uses of contaminants (e.g., discarded solvents, storage petroleum solvents, an underground storage tank installed during normal construction activities, etc.). At a minimum the SMP shall include the following components:	City shall prepare a Site Management Plan (SMP) for U.S. EPA, DTSC, or State Water Resources Control Board's (Water Board) approval. City and Project applicant shall implement additional or remaining remediation activities from the City's tracking system and as directed by the U.S. EPA, DTSC, or Water Board. City will implement measures contained in the approved SMP.	City of Alameda Community Development Department and U.S. EPA, DTSC, or Water Board.	The City, U.S. EPA, DTSC, or Water Board will review SMP and ensure SMP is incorporated into construction specifications. City and the reviewing agency will ensure that Project applicant implement additional remediation requirements based on those established by overseeing agency as well as any Government(s) Restrict Use of Property (CRUP). The City and the overseeing agency will ensure that the SMP is present on site at all times.	Prior to issuance of a building or grading permit.	

Mitigation Measures	Implementation Procedures	Monitoring Responsibilities	Monitoring and Reporting Action	Mitigation Schedule	Notes
4. <i>Soil management requirements.</i> Protocols for stockpiling, handling, and transporting soil generated from on-site activities. The soil management requirements listed include: • Soil stockpiling requirements such as placement of cover, implementation of moisture, erosion, or containment structures, and implementation of security measures. Additional measures related to HXNONTD uses control requirements as they apply to contamination shall also be included, as needed (see also Air Quality section). • Protocols for assuring suitability of soil for on-site reuse through representative laboratory analysis of soils as approved by U.S. EPA, DTSC, or Water Board, taking into account the site-specific health-based remediation goals, other applicable health-based standards and the proposed location, circumstances and conditions for the intended soil reuse. • Requirements for off-site transportation and disposal of soil not determined to be suitable for on-site reuse. Any soil identified for off-site disposal must be packaged, handled, and transported in compliance with all applicable state, federal, and the disposal facility's requirements for waste handling, transportation and disposal. • Protocols for adherence to the City of Alameda's Municipal Solid Debris Ordinance. • Measures to be taken for areas of RR Site 13 where refinery wastes and asphaltic residues known as muck refinery waste might be encountered. Measures shall include requirements for the storage, handling and disposal/recycling of any suspected muck refinery waste that may be encountered. • Radiological screening protocols for the radiological sites identified by the City as approved by the U.S. EPA, where necessary. 2. <i>Groundwater management requirements.</i> Protocols for conducting dewatering activities and sampling and analysis requirements for groundwater extracted during dewatering activities. The sampling and analysis requirements shall specify which groundwater contaminants must be analyzed or how they will be determined. The results of the groundwater sampling and analysis shall be used to determine which of the following relief or disposal options is appropriate for such groundwater: • Onsite reuse (e.g., as dust control); • Discharge under the general permit for stormwater discharge for construction sites; • Treatment (as necessary) before discharge to the sanitary sewer system under applicable Div. 14.1.13 waste discharge criteria; • Treatment (as necessary) before discharge under a site specific NPDES permit; • Offsite transport as approved of that facility. In and of the options listed, the MMRP shall specify the particular criterion or protocol that would be considered appropriate for reuse or disposal options. The threshold used must, at a minimum, be consistent with the applicable requirements of the Water Board and Div. 14.1.13 MWD. 3. <i>Subsurface contamination/leakage contingency plan.</i> Protocols for implementing a contingency plan, including appropriate notification, site safety protection, and site control procedures, if the previously-identified potential subsurface hazards or hazardous material releases are discovered during construction. Control procedures shall include: • Protocols for identifying potential contamination through visual or olfactory observation; • Protocols on what to do in the event an underground storage tank is encountered; • Emergency contact procedures; • Procedures for notifying regulatory agencies and other appropriate parties; • Site control and security procedures; • Sampling and analysis protocols; and • Incident response work plan preparation and implementation procedures.					
Mitigation Measure 4.4-7: (Land Use Restriction Tracking Program) The City shall include closed and open RR CERCLA sites that have land use controls within its Land Use Restriction Tracking Program for identification and disclosure of any past cleanup efforts and current status of any remaining contamination, if any. Additional control measures such as vapor barriers and venting rule to be required as a condition of approval in areas where soil gas emissions have been identified. Prior to transfer of title for any parcel, the City shall require that the SMI as approved by U.S. EPA, DTSC, and the Water Board be incorporated into any transfer site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.	City will include closed and open controlled Remediation (RC CERCLA) sites that have land use controls within its Land Use Restriction Tracking Program. City will ensure that the SMI (as approved by U.S. EPA, DTSC, and Water Board) be incorporated into any transfer site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.	City of Alameda Community Development Department	City shall ensure that (1) and (2) Remediation Tracking Program includes open and closed RR CERCLA sites.	Prior to transfer of title for any parcel	*This mitigation measure will only apply to sites that have land use controls due to contamination or past site contamination. The City will identify restricted sites to project applicants.

Mitigation Measures	Implementation Procedures	Monitoring/Responsibility	Monitoring and Reporting Schedule	Mitigation Schedule	Notes
R. Aesthetics M. Utilities and Services Systems Mitigation Measure 4.M.5c (Solid Waste Management Plan) The City shall develop a solid waste management plan for the Alameda Point project consistent with Alameda's demolition and debris ordinance. Plans for managing construction debris from specific reuse and development projects that require separation of waste types and recycling, and provide for reuse of materials onsite for the reuse and development area, shall be developed by the project sponsor. The solid waste management plan shall be prepared in coordination with City staff, the project sponsor(s), and demolition subcontractors, and shall be approved by City staff prior to issuance of a demolition permit. The City and sponsor of projects shall work with organizations able to provide funding and technical assistance for managing and financing deconstruction, demolition, and recycling and reuse programs, should those programs exist at the time of site clearance.	Project applicant(s) shall develop a solid waste management plan through coordination with City staff and demolition subcontractors. City and Project applicant(s) shall work with organizations that could provide funding and technical assistance for managing and financing deconstruction, demolition and recycling and reuse programs.	City of Alameda Community Development Department	City of Alameda Community Development Department shall review plan.	Plan shall be developed prior to issuance of demolition permit.	* Although implementation of this mitigation measure is the responsibility of the City of Alameda, it should be implemented prior to issuance of a demolition permit to the final new development project at Alameda Point that requires demolition of existing buildings or other structures, including pavements. All projects will be required to comply with the solid waste management plan prepared by the City.

EXHIBIT F

FORM OF DDA MEMORANDUM

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

No fee for recording pursuant to
Government Code Section 27383

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of _____, 20____, by and between the City of Alameda (the "City"), and MidPen Housing Corporation, a California nonprofit public benefit corporation, Alameda Point Collaborative, a California nonprofit public benefit corporation, Building Futures With Women and Children, a California nonprofit public benefit corporation, and Operation Dignity, a California nonprofit public benefit corporation (collectively, the "Developer"). This Memorandum confirms that the City and the Developer entered into that certain Disposition and Development Agreement, dated as of _____, 20____ (the "DDA"). The DDA sets forth certain rights and obligations of the City and the Developer with respect to conveyance, development, operation, maintenance and transfer of ownership interests in that certain real property in Alameda, California, described in the attached Attachment No. 1. Such rights and obligations as set forth in the DDA constitute covenants running with the land and are binding upon the City, the Developer, and their respective permitted successors in interest under the DDA.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Disposition and Development Agreement this _____, 20__.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Jennifer Ott, City Manager

Approved as to Form:

Len Aslanian
Assistant City Attorney

DEVELOPER:

MidPen Housing Corporation, a California
nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

Alameda Point Collaborative, a
California nonprofit public benefit
corporation

By: _____

Name: _____

Title: _____

**Building Futures with Women and
Children,** a California nonprofit public
benefit corporation

Exhibit F
Signature Page 1

By: _____

Name: _____

Title: _____

Operation Dignity, a California
nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED

ATTACHMENT NO. 1 TO DDA MEMORANDUM

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT G

MILESTONE SCHEDULE

This Milestone Schedule summarizes the schedule for various activities under the Disposition and Development Agreement (the "Agreement") to which this exhibit is attached. This Milestone Schedule shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Milestone Schedule to other provisions of the Agreement and shall not be deemed to have any substantive effect. Times for performance are subject to extensions as set forth in Section 1.4 of the Agreement.

Whenever this Milestone Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

As provided in Section 1.6 of this Agreement, this Milestone Schedule may be modified by Operating Memoranda executed in accordance with Section 15.16 of this Agreement.

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	ACTION	RESPONSIBLE PARTY	DATE COMPLETED
	RESHAP PHASES 1A and 1B		
1	Notice: City notifies Developer that soil testing and remediation plan (if needed) are complete for RESHAP Site and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.	CITY	Not later than ten (10) months from the Effective Date of this Agreement
2	Application: Developer submits applications for RESHAP Phase 1A and Phase 1B local and state financing (excluding Tax Credits) (First Applications)	DEVELOPER	The next available notice of funding availability round after Developer receives notice from City that RESHAP Site soil testing and remediation plan (if needed) are complete and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.
3	Application: Developer submits applications for RESHAP Phase 1A and Phase 1B local and state financing (excluding Tax Credits) (Subsequent Applications). Developer shall submit a second and subsequent applications to California Department of Housing & Community Development if the first application is unsuccessful.	DEVELOPER	The next available notice of funding availability round immediately following disapproval of previous application.
4	Execute: Collaborating Partners execute Release of Lease Forms, with consent from the City and Alameda County Department of Housing and Community Development, and deliver to escrow.	DEVELOPER	No later than one (1) year after the Effective Date of this Agreement
5	Approval: Collaborating Partners obtain Encumbrance Releases from all holders of encumbrances on the property subject to the Existing Leases (Section 7.14).	DEVELOPER	No later than thirty (30) days before the Release of Lease Forms are released from Escrow and recorded.
6	Submittal: Developer submits RESHAP Phase 1A and Phase 1B for Vertical Design Review	DEVELOPER	Not later than one (1) year after the Effective Date of this agreement.
7	Approval: City approves RESHAP Vertical Design Review for Phase 1A and Phase 1B ministerially.	CITY	Not later than ninety (90) days from Submittal if all Objective Design Review Standards are met or waived.

8	Notice: City notifies Developer that RESHAP Phase 1 Backbone Infrastructure will be complete in no later than 9 months	CITY	Not later than nine (9) months prior to the completion of the RESHAP Phase 1 Backbone Infrastructure
9	Completion: City completes RESHAP Phase 1 Backbone Infrastructure necessary for RESHAP Phase 1A to start construction and delivers complete RESHAP Phase 1A building pad.	CITY	Not later than twelve (12) months from the Effective Date of this Agreement.
10	Completion: City completes RESHAP Phase 1 Backbone Infrastructure necessary for RESHAP Phase 1B to start construction and delivers complete RESHAP Phase 1B building pad.	CITY	Not later than twenty-four (24) months from the Effective Date of this Agreement.
11	Completion: City completes RESHAP Phase 1 Backbone Infrastructure necessary for RESHAP Phase 1A and Phase 1B to obtain Certificate of Occupancy.	CITY	Not later than twenty-four (24) months from the Effective Date of this Agreement.
12	Application: Developer submits RESHAP Phase 1A and Phase 1B Tax Credit Applications (First Application)	DEVELOPER	The next tax credit application round that is no earlier than nine (9) months prior to the completion date of the Phase 1 Backbone Infrastructure and no sooner than after Developer has secured all other required soft financing for a Tax Credit application.
13	Application: Developer submits Phase 1A and Phase 1B Tax Credit Applications (Subsequent Applications). Developer shall submit a second and subsequent applications to TCAC if the first application is unsuccessful.	DEVELOPER	Next available Tax Credit round immediately following disapproval of previous application.
14	Submittal: <u>Relocation Plan.</u> Developer shall prepare and submit a Relocation Plan for existing occupants of Alameda Point Collaborative units located within the boundaries of RESHAP Phase 2A to City for approval.	DEVELOPER	Within ninety (90) days from date that City notifies Developer that soil testing and remediation plan (if needed) are complete for RESHAP Site and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.

15	Approval: Relocation Plan. The City shall approve or disapprove the Relocation Plan for existing occupants of Alameda Point Collaborative units located within the boundaries of RESHAP Phase 2A.	CITY	Within thirty (30) days after receipt of the Relocation Plan. Opportunity is provided in §7.14 for resubmission and further review of a disapproved Relocation Plan.
16	Submittal: Relocation Plan. Developer shall prepare and submit a Relocation Plan for existing occupants of Operation Dignity units located within the boundaries of RESHAP Phase 2B to City for approval.	DEVELOPER	Within ninety (90) days from date that City notifies Developer that soil testing and remediation plan (if needed) are complete for RESHAP Site and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.
17	Approval: Relocation Plan. The City shall approve or disapprove the Relocation Plan for existing occupants of Operation Dignity units located within the boundaries of RESHAP Phase 2B.	CITY	Within thirty (30) days after receipt of the Relocation Plan. Opportunity is provided in §7.14 for resubmission and further review of a disapproved Relocation Plan.
18	Submittal: Relocation Plan. Developer shall prepare and submit a Relocation Plan for existing occupants of Collaborating Partners' units located within the boundaries of West Midway Phase 3 development to City for approval.	DEVELOPER	Within ninety (90) days from date that City notifies Developer that soil testing and remediation plan (if needed) are complete for RESHAP Site and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.
19	Approval: Relocation Plan. The City shall approve or disapprove the Relocation Plan for existing occupants of Collaborating Partners' units located within the boundaries of West Midway Phase 3 development.	CITY	Within thirty (30) days after receipt of the Relocation Plan. Opportunity is provided in §7.14 for resubmission and further review of a disapproved Relocation Plan.
20	Submittal: Relocation Plan. Developer shall prepare and submit a Relocation Plan for existing occupants of Collaborating Partners' units located outside the boundaries of the West Midway development area to City for approval.	DEVELOPER	Within ninety (90) days from date that City notifies Developer that soil testing and remediation plan (if needed) are complete for RESHAP Site and Phase 1 Backbone Infrastructure is fully permitted, funded, and contracted.
21	Approval: Relocation Plan. The City shall approve or disapprove the Relocation Plan for existing occupants of Collaborating Partners' units located outside the boundaries of the West Midway development area.	CITY	Within thirty (30) days after receipt of the Relocation Plan. Opportunity is provided in §7.14 for resubmission and further review of a disapproved Relocation Plan.

22	Annual Progress Update: City and Developer shall meet and confer regarding RESHAP and West Midway Developer schedule to discuss progress and schedule for the RESHAP Phase 1 and Phase 2 backbone infrastructure and West Midway Developer backbone infrastructure and vertical improvements to determine if adjustments are needed to the Relocation Plans.	CITY & DEVELOPER	Annually from approval date of Relocation Plan.
23	Submittal: <u>Phase Financing Plan</u> . Developer shall prepare and submit the Phase Financing Plan for Phase 1A for City approval	DEVELOPER	Within one hundred twenty (120) days after receipt of tax credit allocation for Phase 1A from TCAC.
24	Approval: <u>Phase Financing Plan</u> . The City shall approve or disapprove the proposed Phase Financing Plan for Phase 1A	CITY	Within thirty (30) days after receipt of the Phase Financing Plan. Opportunity is provided in §3.2 for resubmission and further review of a disapproved Phase Financing Plan.
25	Submittal: <u>Phase Financing Plan</u> . Developer shall prepare and submit the Phase Financing Plan for Phase 1B for City approval	DEVELOPER	Within one hundred twenty (120) days after receipt of tax credit allocation for Phase 1B from TCAC.
26	Approval: <u>Phase Financing Plan</u> . The City shall approve or disapprove the proposed Phase Financing Plan for Phase 1B	CITY	Within thirty (30) days after receipt of the Phase Financing Plan. Opportunity is provided in §3.2 for resubmission and further review of a disapproved Phase Financing Plan.
27	Supplemental Approvals: Developer submits applications for Supplemental Approvals for Phase 1A	DEVELOPER	Not later than two (2) months after receipt of the Phase 1A Tax Credit financing award.
28	Receipt of Supplemental Approvals: Developer submits to the City evidence that all Supplemental Approvals necessary for commencement of construction of Phase 1A have been obtained	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 1A.
29	Supplemental Approvals: Developer submits applications for Supplemental Approvals for Phase 1B	DEVELOPER	Not later than two (2) months after receipt of the Phase 1B Tax Credit financing award.

30	Receipt of Supplemental Approvals: Developer submits to the City evidence that all Supplemental Approvals necessary for commencement of construction of Phase 1B have been obtained	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 1B.
31	Submittal: Developer submits to the City Vertical Improvement Construction Contract for Phase 1A (Section 5.4)	DEVELOPER	Not later than thirty (30) days before the Outside Phase Closing Date for Phase 1A
32	Approval: City approves Vertical Improvement Construction Contract for Phase 1A (Section 5.4)	CITY	Not later than fifteen (15) days after the Developer submits to the City Vertical Improvement Construction Contract for Phase 1A.
33	Submittal: Developer submits to the City Vertical Improvement Construction Contract for Phase 1B (Section 5.4)	DEVELOPER	Not later than thirty (30) days before the Outside Phase Closing Date for Phase 1B
34	Approval: City approves Vertical Improvement Construction Contract for Phase 1B (Section 5.4)	CITY	Not later than fifteen (15) days after the Developer submits to the City Vertical Improvement Construction Contract for Phase 1B.
35	Submittal: Developer submits to the City evidence that any conditions to the release or expenditure of funds in the Phase Financing Plan have been met or will be met at the Closing on Phase 1A	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 1A
36	Submittal: Developer Affiliate submits Vertical Improvement Completion Assurances for Phase 1A (Section 5.5)	DEVELOPER	Not later than ten (10) days before the Outside Phase Closing Date for Phase 1A
37	Approval: City Manager approves Vertical Improvement Completion Assurances for Phase 1A (Section 5.5)	CITY	Not later than five (5) days before the Outside Phase Closing Date for Phase 1A
38	Submittal: Developer obtains PLL insurance as required by Section 13.7	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 1A

39	Submittal: Developer submits to the City evidence that any conditions to the release or expenditure of funds in the Phase Financing Plan have been met or will be met at the Closing on Phase 1B.	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 1B
40	Submittal: Developer Affiliate submits Vertical Improvement Completion Assurances for Phase 1B (Section 5.5)	DEVELOPER	Not later than ten (10) days before the Outside Phase Closing Date for Phase 1B
41	Approval: City Manager approves Vertical Improvement Completion Assurances for Phase 1B (Section 5.5)	CITY	Not later than five (5) days before the Outside Phase Closing Date for Phase 1B
42	Outside Phase Closing Date – Phase 1A: RESHAP Phase 1A: Tax Credit Partnership Forms/City Conveys Land /Loans Close/Pull Supplemental Approvals	DEVELOPER	Not later than one hundred ninety-four (194) days after RESHAP Phase 1A Tax Credit financing award
43	Completion: Vertical Improvement Completion Date – Phase 1A. RESHAP Phase 1A construction completion	DEVELOPER	Not later than twenty-four (24) months after RESHAP Phase 1A begins construction
44	Outside Phase Closing Date – Phase 1B: RESHAP Phase 1B: Tax Credit Partnership Forms/City Conveys Land /Loans Close/Pull Building Permits	DEVELOPER	Not later than one hundred ninety-four (194) days after RESHAP Phase 1B Tax Credit financing award
45	Commencement: RESHAP Phase 1B begins construction	DEVELOPER	Not later than one (1) month after the RESHAP Phase 1B Tax Credit Partnership Forms/City Conveys Land /Loans close/Pull Building Permits
46	Completion: Vertical Improvement Completion Date – Phase 1B. RESHAP Phase 1B construction completion	DEVELOPER	Not later than twenty-two (22) months after RESHAP Phase 1B begins construction
47	Notice: Developer notifies City that Alameda Point Collaborative will be relocated from existing buildings on RESHAP Phase 2A site and Market Rate Phase 3 property (west of Orion and south of West Midway) in ninety (90) days and those buildings will be available for demolition.	DEVELOPER	Not later than thirty (30) days after the completion of RESHAP Phase 1A construction.

48	Completion: Relocation of Alameda Point Collaborative residents from RESHAP Phase 2 and Market Rate Phase 3 property (west of Orion and south of West Midway) into new RESHAP Phase 1A building complete. Developer notifies City confirming relocation is complete.	DEVELOPER	Not later than ninety (90) days after receipt of a Temporary Certificate of Occupancy and construction completion of RESHAP Phase 1A.
49	Notice: Developer notifies City that Operation Dignity will be relocated from existing buildings on RESHAP Phase 2B site in ninety (90) days and those buildings will be available for demolition.	DEVELOPER	Not later than Thirty (30) days after the completion of RESHAP Phase 1B construction.
50	Completion: Relocation of Operation Dignity residents from RESHAP Phase 2 and Market Rate Phase 3 property (west of Orion and south of West Midway) into new RESHAP Phase 1B building complete. Developer notifies City confirming relocation is complete.	DEVELOPER	Not later than ninety (90) days after receipt of a Temporary Certificate of Occupancy and construction completion of RESHAP Phase 1B.
RESHAP PHASES 2A and 2B			
51	Submittal: Developer submits RESHAP Phase 2A for Vertical Design Review	DEVELOPER	Not later than three (3) years after the Effective Date of this agreement
52	Approval: City approves RESHAP Vertical Design Review for Phase 2A ministerially.	CITY	Not later than ninety (90) days from Submittal if all Objective Design Review Standards are met or waived.
53	Notice: City notifies Developer that Phase 2 Backbone Infrastructure is fully permitted, funded, and contracted.	CITY	Not later than six (6) months from the date the City received notice from Developer confirming relocation of Alameda Point Collaborative and Operation Dignity are complete
54	Application: Developer submits applications for RESHAP Phase 2A local and state financing (excluding Tax Credits) (First Application)	DEVELOPER	The next available notice of funding availability round after RESHAP Phase 2 Backbone Infrastructure is fully permitted, funded, and contracted.

55	Application: Developer submits applications for RESHAP Phase 2A local and state financing (excluding Tax Credits) (Subsequent Applications). Developer shall submit a second and subsequent applications to California Department of Housing & Community Development if the first application is unsuccessful.	DEVELOPER	The next available notice of funding availability round immediately following disapproval of previous application.
56	Commencement: City commences construction of RESHAP Phase 2 Backbone Infrastructure and Surcharge Preparation necessary for RESHAP Phase 2A to start construction.	CITY	Not later than four (4) years from the Effective Date of this Agreement, if Completion of Relocation of Alameda Point Collaborative from Phase 2 Market Rate property (west of Orion and south of West Midway) into new RESHAP Phase 1A building occurs two (2) months prior to this milestone. For every one (1) month Completion of Relocation of Alameda Point Collaborative is delayed, this milestone will be delayed one (1) month.
57	Notice: City notifies Developer that RESHAP Phase 2 Backbone Infrastructure will be complete in no later than 9 months	CITY	Not later than nine (9) months prior to the completion of the RESHAP Phase 2 Backbone Infrastructure
58	Completion: City completes RESHAP Phase 2 Backbone Infrastructure necessary for RESHAP Phase 2A to start construction and delivers complete RESHAP Phase 2A building pad.	CITY	Not later than twenty-three (23) months from commencement of construction of RESHAP Phase 2 Backbone Infrastructure and Surcharge Preparation necessary for RESHAP Phase 2A to start construction.
59	Commencement: City commences construction of RESHAP Phase 2 Backbone Infrastructure and Surcharge Preparation necessary for RESHAP Phase 2B to start construction.	CITY	Not later than five (5) years and five (5) months from the Effective Date of this Agreement, if Completion of Relocation of Operation Dignity from Phase 2 Market Rate property (west of Orion and south of West Midway) into new RESHAP Phase 1B building occurs two (2) months prior to this milestone. For every one (1) month Completion of Relocation of Operation Dignity is delayed, this milestone will be delayed one (1) month.

60	Completion: City completes RESHAP Phase 2 Backbone Infrastructure necessary for RESHAP Phase 2B to start construction and delivers complete RESHAP Phase 2B building pad.	CITY	Not later than twenty-three (23) months from commencement of construction of RESHAP Phase 2 Backbone Infrastructure necessary for RESHAP Phase 2B to start construction.
61	Completion: City completes RESHAP Phase 2 Backbone Infrastructure necessary for RESHAP Phase 2A and Phase 2B to obtain Certificate of Occupancy.		Not later than fifteen (15) months from delivery of RESHAP Phase 2A and RESHAP Phase 2B Building Pads
62	Application: Developer submits RESHAP Phase 2A Tax Credit Application (First Application)	DEVELOPER	The next tax credit application round that is no earlier than nine (9) months prior to the completion date of the Phase 2 Backbone Infrastructure necessary for RESHAP Phase 2A to start construction, and no sooner than after Developer has secured all other required soft financing for a Tax Credit application.
63	Application: Developer submits Phase 2A Tax Credit Application (Subsequent Applications). Developer shall submit a second and subsequent applications to TCAC if the first application is unsuccessful.	DEVELOPER	Next available Tax Credit round immediately following disapproval of previous application.
64	Submittal: Phase Financing Plan. Developer shall prepare and submit the Phase Financing Plan for Phase 2A for City approval	DEVELOPER	Within one hundred twenty (120) days after receipt of tax credit allocation for Phase 2A from TCAC.
65	Approval: Phase Financing Plan. The City shall approve or disapprove the proposed Phase Financing Plan for Phase 2A	CITY	Within thirty (30) days after receipt of the Phase Financing Plan. Opportunity is provided in §3.2 for resubmission and further review of a disapproved Phase Financing Plan.
66	Supplemental Approvals – Developer submits applications for Supplemental Approvals for Phase 2A	DEVELOPER	Not later than two (2) months after receipt of the Phase 2A Tax Credit financing award.

67	Receipt of Supplemental Approvals – Developer submits to the City evidence that all Supplemental Approvals necessary for commencement of construction of Phase 2A have been obtained.	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 2A.
68	Submittal: Developer submits to the City Vertical Improvement Construction Contract for Phase 2A (Section 5.4)	DEVELOPER	Not later than thirty (30) days before the Outside Phase Closing Date for Phase 2A
69	Approval: City approves Vertical Improvement Construction Contract for Phase 2A (Section 5.4)	CITY	Not later than fifteen (15) after the Developer submits to the City Vertical Improvement Construction Contract for Phase 2A.
70	Submittal: Developer submits to the City evidence that any conditions to the release or expenditure of funds in the Phase Financing Plan have been met or will be met at the Closing on Phase 2A	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 2A
71	Submittal: Developer Affiliate submits Vertical Improvement Completion Assurances for Phase 2A (Section 5.5)	DEVELOPER	Not later than ten (10) days before the Outside Phase Closing Date for Phase 2A
72	Approval: City Manager approves Vertical Improvement Completion Assurances for Phase 2A (Section 5.5)	CITY	Not later than five (5) days before the Outside Phase Closing Date for Phase 2A
73	Outside Phase Closing Date – Phase 2A: RESHAP Phase 2A: Tax Credit Partnership Forms/City Conveys Land /Loans close/Pull Building Permits	DEVELOPER	Not later than one hundred ninety-four (194) days after RESHAP Phase 2A Tax Credit financing award
74	Commencement: RESHAP Phase 2A begins construction	DEVELOPER	Not later than one (1) month after the RESHAP Phase 2A Tax Credit Partnership Forms/City Conveys Land /Loans close/Pull Building Permits
75	Completion: <u>Vertical Improvement Completion Date – Phase 2A.</u> RESHAP Phase 2A construction completion	DEVELOPER	Not later than twenty-two (22) months after RESHAP Phase 2A begins construction
76	Submittal: Developer submits RESHAP Phase 2B for Vertical Design Review	DEVELOPER	Not later than four (4) years after the Effective Date of this agreement

77	Approval: City approves RESHAP Vertical Design Review for Phase 2B ministerially.	DEVELOPER	Not later than ninety (90) days from Submittal if all Objective Design Review Standards are met or waived.
78	Application: Developer submits applications for RESHAP Phase 2B local and state financing (excluding Tax Credits) (First Application)	DEVELOPER	The next available notice of funding availability round after RESHAP Phase 2 Backbone Infrastructure is fully permitted, funded and contracted.
79	Application: Developer submits applications for RESHAP Phase 2B local and state financing (excluding Tax Credits) (Subsequent Applications). Developer shall submit a second and subsequent applications to California Department of Housing & Community Development if the first application is unsuccessful.	DEVELOPER	The next available notice of funding availability round immediately following disapproval of previous application.
80	Application: Developer submits RESHAP Phase 2B Tax Credit Application (First Application)	DEVELOPER	Not later than the next tax credit round after RESHAP Phase 2A submits a First Application for tax credits and no sooner than after Developer has secured all other required soft financing for a Tax Credit application.
81	Application: Developer submits Phase 2B Tax Credit Application (Subsequent Applications). Developer shall submit a second and subsequent applications to TCAC if the first application is unsuccessful.	DEVELOPER	Next available Tax Credit round immediately following disapproval of previous application.
82	Submittal: <u>Phase Financing Plan</u> . Developer shall prepare and submit the Phase Financing Plan for Phase 2B for City approval	DEVELOPER	Within one hundred twenty (120) days after receipt of tax credit allocation for Phase 2B from TCAC.
83	Approval: Phase Financing Plan. The City shall approve or disapprove the proposed Phase Financing Plan for Phase 2B	CITY	Within thirty (30) days after receipt of the Phase Financing Plan. Opportunity is provided in §3.2 for resubmission and further review of a disapproved Phase Financing Plan.
84	Supplemental Approvals – Developer submits applications for Supplemental Approvals for Phase 2B	DEVELOPER	Not later than two (2) months after receipt of the Phase 2B Tax Credit financing award.

85	Receipt of Supplemental Approvals – Developer submits to the City evidence that all Supplemental Approvals necessary for commencement of construction of Phase 2B have been obtained.	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 2B.
86	Submittal: Developer submits to the City Vertical Improvement Construction Contract for Phase 2B (Section 5.4)	DEVELOPER	Not later than thirty (30) days before the Outside Phase Closing Date for Phase 2B
87	Approval: City approves Vertical Improvement Construction Contract for Phase 2B (Section 5.4)	CITY	Not later than fifteen (15) after the Developer submits to the City Vertical Improvement Construction Contract for Phase 2B.
88	Submittal: Developer submits to the City evidence that any conditions to the release or expenditure of funds in the Phase Financing Plan have been met or will be met at the Closing on Phase 2B	DEVELOPER	Not later than five (5) days before the Outside Phase Closing Date for Phase 2B
89	Submittal: Developer Affiliate submits Vertical Improvement Completion Assurances for Phase 2B (Section 5.5)	DEVELOPER	Not later than ten (10) days before the Outside Phase Closing Date for Phase 2B
90	Approval: City Manager approves Vertical Improvement Completion Assurances for Phase 2B (Section 5.5)	CITY	Not later than five (5) days before the Outside Phase Closing Date for Phase 2B
91	Outside Phase Closing Date – Phase 2B: RESHAP Phase 2B: Tax Credit Partnership Forms/City Conveys Land /Loans close/Pull Building Permits	DEVELOPER	Not later than one hundred ninety-four (194) days after RESHAP Phase 2B Tax Credit Financing award
92	Commencement: RESHAP Phase 2B begins construction	DEVELOPER	Not later than one (1) month after the RESHAP Phase 2B Tax Credit Partnership Forms/City Conveys Land /Loans close/Pull Building Permits
93	Completion: <u>Vertical Improvement Completion Date – Phase 2B</u> , RESHAP Phase 2B construction completion	DEVELOPER	Not later than twenty-two (22) months after RESHAP Phase 2B begins construction

EXHIBIT H
DEVELOPMENT PLAN



**REBUILDING THE EXISTING SUPPORTIVE HOUSING AT ALAMEDA POINT
(RESHAP) - DEVELOPMENT PLAN**

**Project Sponsors: Alameda Point Collaborative, Building Futures, Operation Dignity, and MidPen Housing Corporation
(Collaborating Partners)**

Prepared by: David Baker Architects, Plural Studio, CBG, Inc.

May 08, 2023





Providing Housing for Veterans, Formerly Homeless Families, and Survivors of Domestic Violence

Alameda Point Collaborative (APC), Building Futures (BFWC), and Operation Dignity (OD) currently lease 34 acres of land at the former Naval Air Station from the City, pursuant to terms of long term legally binding agreements by rights conveyed through the Base Realignment and Closure Act. The three organizations utilize the aging Navy structures to collectively provide affordable housing and supportive services to over 500 formerly homeless residents. Together, they provide job skills training, mental health counseling, access to nutritious meals, opportunities for social enterprise, and opportunities to break the cycle of homelessness.

A Shared Vision to End Homelessness

Alameda Point Collaborative (APC), Building Futures (BFWC), and Operation Dignity (OD) are partnering with MidPen to design, construct, own and operate new high quality housing at Alameda Point. RESHAP will create a cohesive community providing high quality and stable housing with enhanced services for the residents while also re-energizing the Main Street Neighborhood. Each partner brings specialized and complementary skills and experience to RESHAP.

APC was formed in 1999 to help families and individuals break the cycle of homelessness and poverty. APC now provides over 350 formerly homeless residents, including 200 children and youth, with the safety and stability of a place to call home. All residents will continue to have access to life and job skills training and substance abuse and mental health counseling provided by a team of highly skilled professionals.

BFWC was founded in 1988 and provides a continuum of care, resources, programs, and services to help Alameda County residents build futures free from homelessness and family violence. BFWC currently provides 52 units of permanent housing at Bessie Coleman Court located at Alameda Point. Services provided to the community include a 24-hour crisis line, a domestic violence outreach program providing support groups, and individual support and resources.

OD was founded in 1993 and assists homeless veterans and their families by providing emergency, transitional, and permanent housing and mobile outreach for homeless veterans in Alameda County. At Alameda Point, OD currently provides a mix of permanent supportive housing and transitional housing in 28 units at Dignity Commons. OD offers housing and employment search support, nutritious meals, veteran peer support, assistance accessing VA and other benefits, and connections to physical and mental health care.

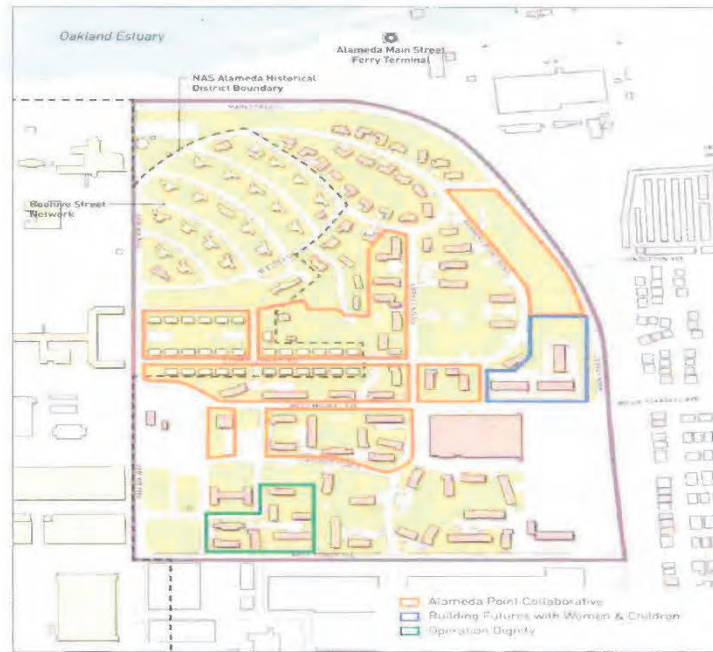
MidPen was founded in 1970 to address concerns over the lack of affordable housing in the San Francisco Bay Area. As one of the largest developers and owners of high-quality affordable rental housing in Northern California, MidPen has developed and rehabbed over 8,500 affordable homes and has provided housing solutions for low-income working families, seniors, and individuals with special needs. MidPen builds and manages properties to be long-term community assets.



HISTORY OF PROVIDING SUPPORTIVE HOUSING

scale: 21510
date: 05.08.2023

2



EXISTING SUPPORTIVE HOUSING



scale:
date:

21510
05.08.2023

3



Throughout the summer and fall of 2015, the Collaborating Partners and David Baker Architects created and implemented a highly collaborative resident engagement process before developing the site plan. With nearly 500 residents living at the existing housing, the Collaborating Partners recognized the community's value in being an integral part of the planning process. Engagement opportunities included community-wide design input meetings, monthly meetings with each provider's residents, focus groups with Collaborating Partners' staff, 1-on-1 interviews and other meetings as needed.



Over 100 residents participated in each of the community-wide design meetings. The Collaborating Partners received over 600 comments regarding the housing types, indoor amenities, outdoor amenities, and site circulation. Common feedback we received included:

- Desire for variety of housing types to meet needs for family size, security, and accessibility
- Multi-purpose community spaces
- Street lighting
- Priority for people and bikes
- Outdoor seating, play areas, street trees

This invaluable feedback is reflected in the proposed RESHAP Development Plan's site, buildings, and open spaces.



COMMUNITY OUTREACH & FEEDBACK

scale: 21510
date: 05.08.2023



3. OPERATION DIGNITY



4. BUILDING 8



1. BUILDING 35



2. PG&E GAS FACILITY



5. BUILDING 152 - COMMISSARY



SITE PHOTOS - EXISTING
CONDITIONS

scale: 21510
date: 05.08.2023

5



1. BIG WHITES
2. BUNGALOWS - FORMER NCO HEADQUARTERS
3. ALAMEDA FOOD BANK & RED CROSS
4. MAIN STREET LINEAR PARK
5. ALMANAC BEER CO.
6. BUILDING 41
7. ALAMEDA POINT SITE A
8. NAVAL AIR MUSEUM
9. ALAMEDA WATERFRONT PARK



SITE PHOTOS - NEIGHBORHOOD
CONTEXT



scale: 21510
date: 05.08.2023

6



1. BIG WHITES



4. MAIN STREET LINEAR PARK



7. ALAMEDA POINT MULTIFAMILY DEVELOPMENT



2. CORPUS CHRISTI RD SINGLE FAMILY HOMES



5. ALMANAC BEER & CO.



8. ALAMEDA NAVAL AIR MUSUEM



3. ALAMEDA FOOD BANK AND RED CROSS



6. BUILDING 41



9. ALAMEDA WATERFRONT PARK



SITE PHOTOS - NEIGHBORHOOD
CONTEXT

scale: 2"=10'
date: 05.08.2023

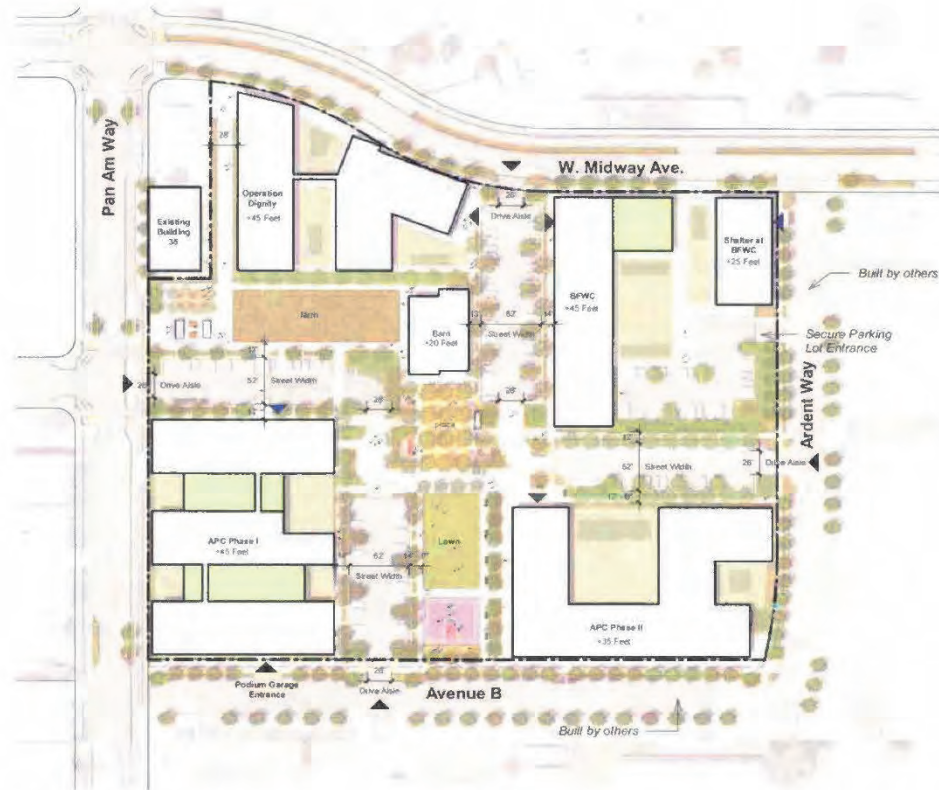
7

MINIMUM PROPOSED SETBACKS:

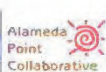
0 FEET - W. MIDWAY AVE
0 FEET - PAN AM WAY
0 FEET - ARDENT WAY
0 FEET - AVENUE B

ALL BUILDINGS HEIGHTS LIMITED TO
±/ 50 FEET

- Building locations are approximate and not final
- Planting shown is preliminary and represents intent. Locations and quantity subject to change.



Illustrative Site Plan - Phasing
1" = 100'-0"



ILLUSTRATIVE PLAN - ALL
PHASES



0' 25' 50' 100'

21510
scale: As indicated
date: 05.08.2023



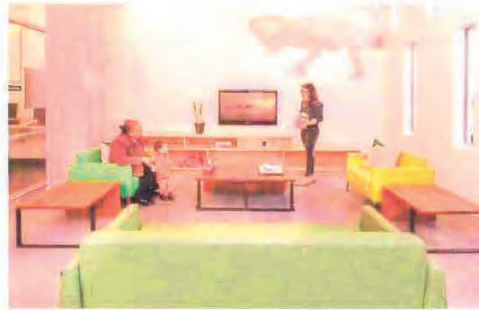
LIVING IN DIGNITY AND HIGH QUALITY HOUSING



CHARACTER IMAGES

scale: 21510
date: 05.08.2023

9



CULTIVATING
COMMUNITY WITH
ACTIVITIES &
OPPORTUNITIES
TO SOCIALIZE



CHARACTER IMAGES

scale: 21510
date: 05.08.2023

10

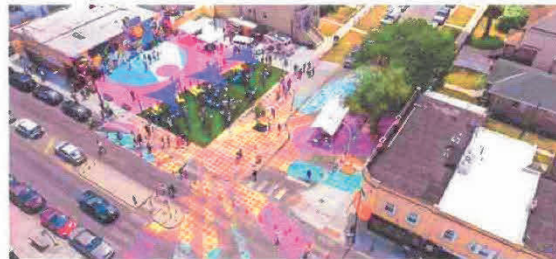


DYNAMIC OPEN SPACES TO BUILD COMMUNITY



scale: 21510
date: 05.08.2023

11



PROVIDING JOB OPPORTUNITIES
WHILE ENHANCING THE URBAN
AGRICULTURE CHARACTER OF
THE MAIN STREET
NEIGHBORHOOD



CHARACTER IMAGES

scale: 21510
date: 05.08.2023

12

INCLUDES A TOTAL OF 309 RESIDENTIAL UNITS. A MINIMUM OF 301 OF WHICH WILL BE LOW AND VERY LOW INCOME UNITS, IN ADDITION TO UP TO 8 MANAGER'S UNITS

ALL BUILDING HEIGHTS LIMITED TO +/- 50' HEIGHT

UP TO 40,000 SF NON-RESIDENTIAL COMMERCIAL USES INCLUDING ADMIN OFFICES.

LEGEND

- RESIDENTIAL FLATS
- SHELTER
- RESIDENT SERVICES
- COMMUNITY SPACE
- OPEN SPACE - NEIGHBORHOOD
- OPEN SPACE - RESIDENTS
- FARM
- PARKING
- STREET



*NOTE: RESIDENTIAL UNIT DESIGNATIONS ARE APPROXIMATE PER BLOCK BUT TOTAL SHALL NOT EXCEED 309 RESIDENTIAL UNITS ACROSS COLLABORATING PARTNERS RESHAP SITE

Landuse Diagram
1" = 100'-0"



LANDUSE DIAGRAM



21510
scale: As indicated
date: 05.08.2023

13

TOTAL ESTIMATED OPEN SPACE = 117,300 SF

SQUARE FOOTAGES OF OPEN SPACE ARE APPROXIMATE AND SUBJECT TO CHANGE

PROJECT TO COMPLY WITH BAY-FRIENDLY LANDSCAPING SCORECARD AND WATER EFFICIENT LANDSCAPE ORDINANCE (WELO) REQUIREMENTS.

LEGEND

- PRIVATE PARK / PASSAGE
- PRIVATE PLAZA
- PRIVATE COURTYARD
- FARM



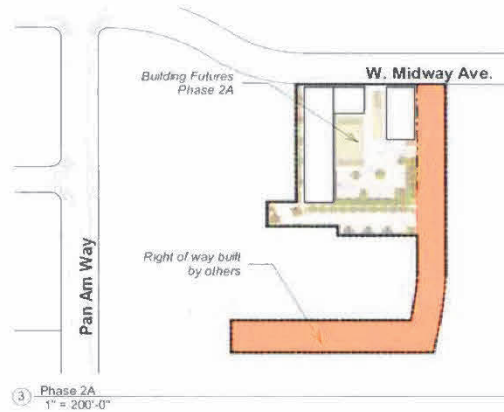
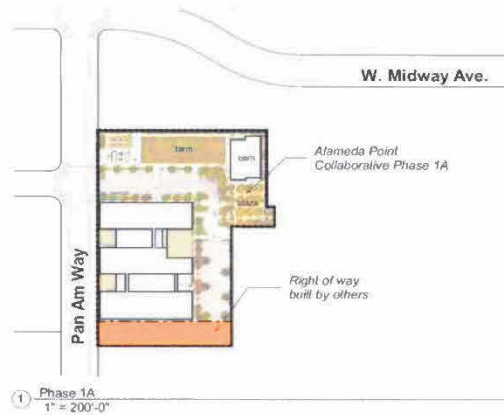
Site Plan - Open Space
1" = 100'-0"



OPEN SPACE DIAGRAM



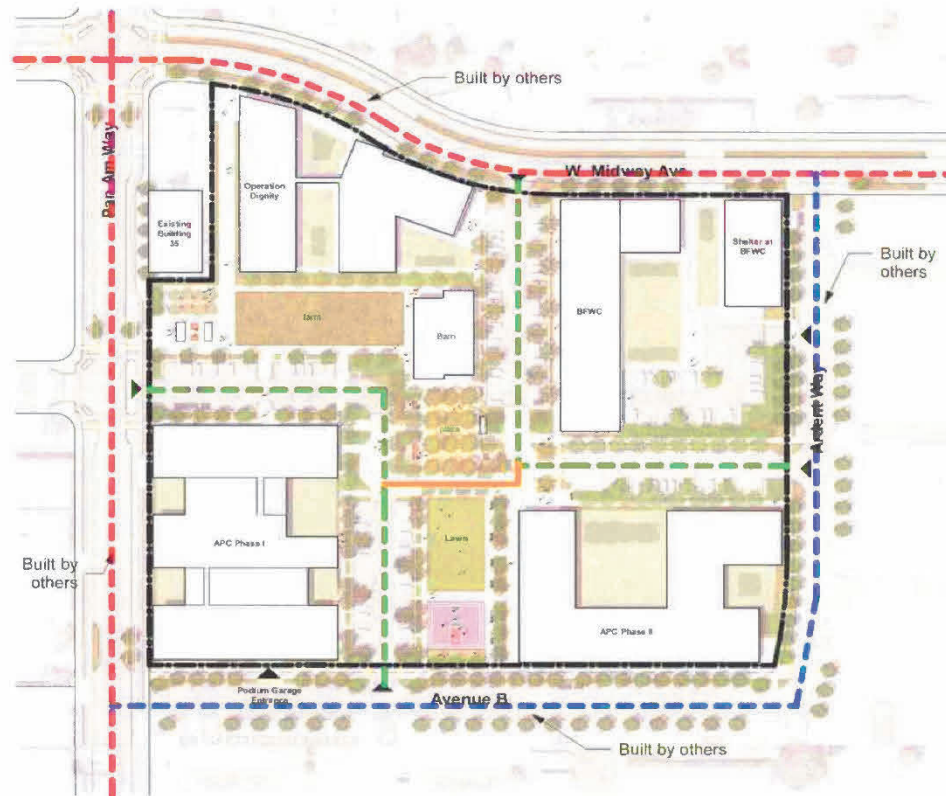
0' 25' 50' 100'
21510
scale: As indicated
date: 05.08.2023



*This reflects estimated phasing. Final phasing to be dependent on financing.

LEGEND

- RESHAP SITE
- EXISTING ARTERIAL ROAD TO BE IMPROVED, Per Main Street Specific Plan
- NEW LOCAL STREETS, Per Main Street Specific Plan
- NEW INTERNAL STREETS
- EMERGENCY VEHICLE ACCESS



Vehicular Access
1" = 100'-0"



PROPOSED VEHICULAR ACCESS



21510
scale: As indicated
date: 05.08.2023

16

PARKING:

(APC) GARAGE: 55 SPACES

(APC) NON GARAGE : 42 SPACES

BFWC: 66 SPACES
(includes 33 secured parking,
2 passenger loading, 31 on-street)

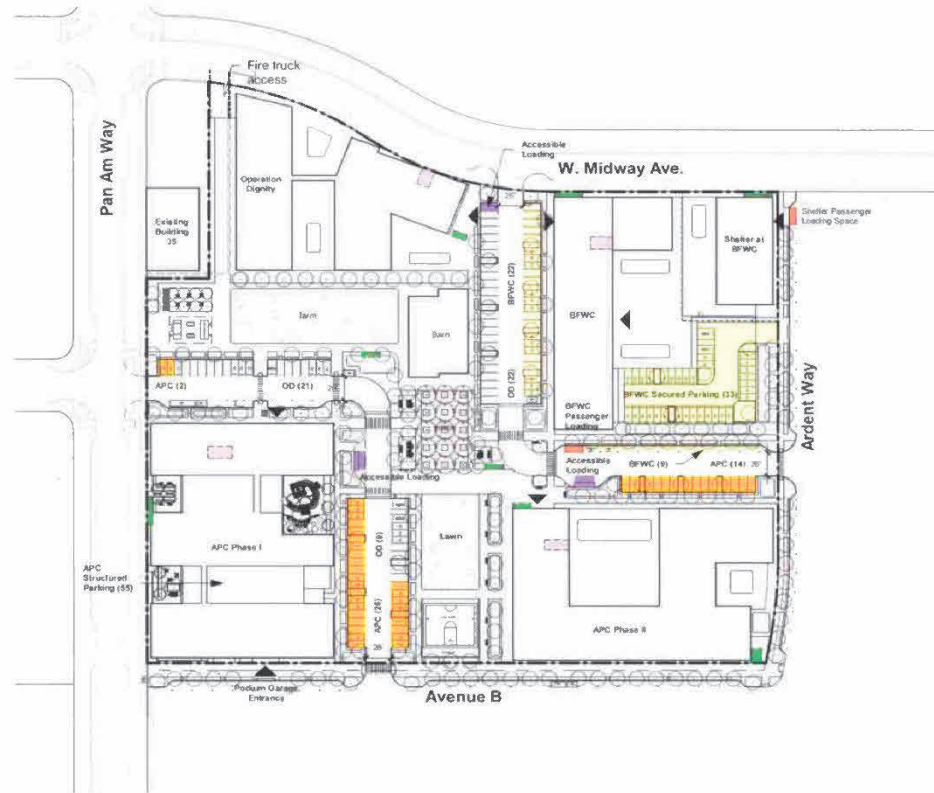
OD: 52 SPACES

TOTAL: 215 SPACES

FINAL LOCATIONS OF PARKING SUBJECT TO
CHANGE BASED ON FUTURE COORDINATION.

LEGEND

- ALAMEDA POINT COLLABORATIVE
NON-GARAGE PARKING (APC)
- BUILDING FUTURES PARKING (BFWC)
- OPERATION DIGNITY PARKING (OD)
- SHORT-TERM BICYCLE PARKING
- INTERIOR SECURE BICYCLE PARKING
- ACCESSIBLE LOADING SPACE
- PASSENGER LOADING SPACE



Site Plan - Parking
1" = 100'-0"

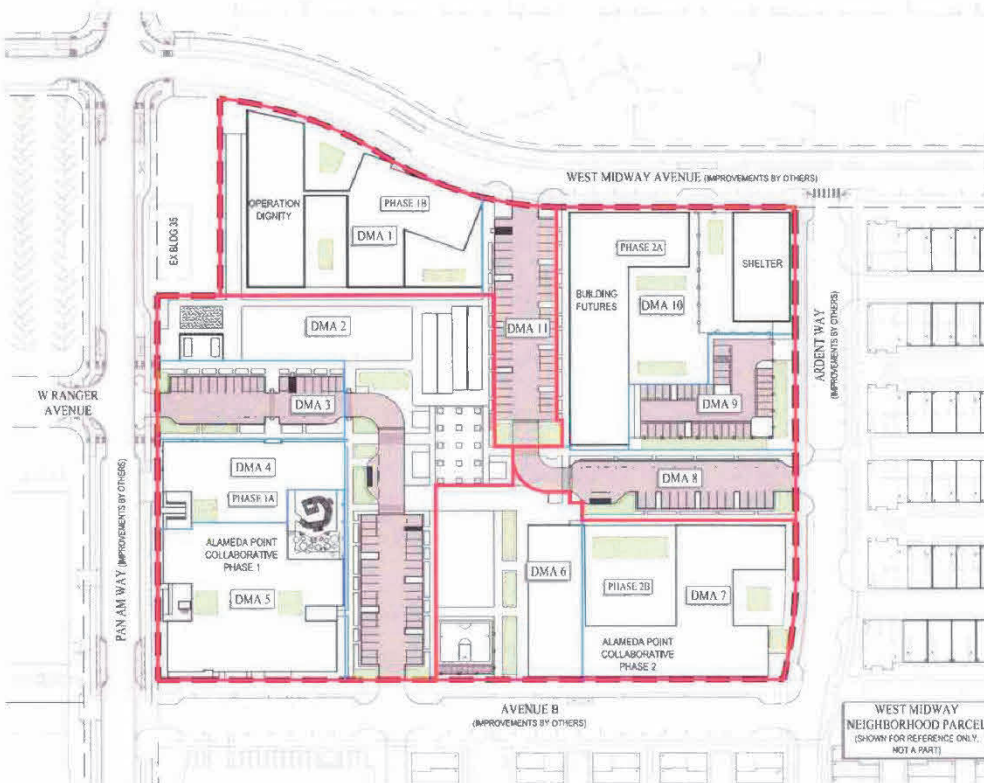


PARKING & BICYCLE PLAN



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scale: As indicated
date: 05.08.2023

17



DMA #	TOTAL AREA (SF)	TOTAL IMPERVIOUS AREA (SF)	TOTAL PERVIOUS AREA (SF)	REQUIRED BIORETENTION AREA (SF)	PROVIDED BIORETENTION AREA (SF)
1	44,264	35,411	8,853	1,452	1,539
2	66,037	52,830	13,207	2,161	2,169
3	16,445	13,156	3,289	539	670
4	15,813	12,490	3,323	512	574
5	35,819	28,455	7,364	1,155	1,158
6	32,104	25,682	6,422	1,053	1,385
7	38,593	30,878	7,715	1,265	2,834
8	18,331	15,945	2,386	654	822
9	17,270	13,818	3,452	566	2,401
10	46,599	37,279	9,320	1,538	1,909
11	17,688	14,374	3,314	589	784
TOTAL	350,177	280,257	70,080	11,433	16,042

- NOTES**
- FINAL DRAINAGE MANAGEMENT AREAS TO BE DETERMINED IN LATER STAGES OF DESIGN.
 - BIORETENTION PLANTERS TO BE SIZED IN ACCORDANCE WITH THE CURRENT VERSION OF THE ALAMEDA COUNTY CLEAN WATER PROGRAM C-3 STORMWATER TECHNICAL GUIDANCE MANUAL.

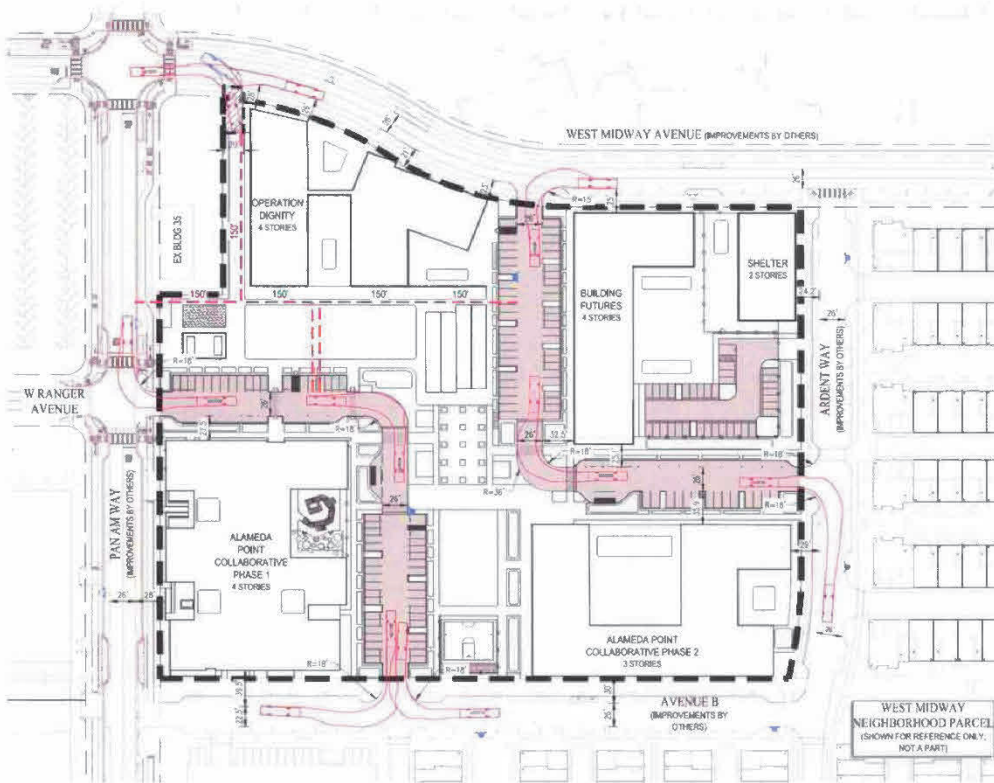


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date: 05.08.2023

18

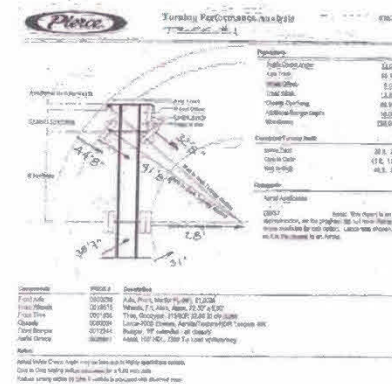


CONCEPTUAL STORMWATER TREATMENT PLAN



LEGEND

	PROPOSED PAVEMENT
	PAVEMENT BY OTHERS
	EMERGENCY VEHICLE ACCESS STAGING AREA
	PROPOSED FIRE HYDRANT
	EXISTING FIRE HYDRANT
	HOSE PULL LENGTH



NOTES

- BUILDING FIRE DEPARTMENT CONNECTIONS (FDC) FOR EACH BUILDING SPRINKLER SYSTEM TO BE WITHIN 100' OF A FIRE HYDRANT.
- THE ROOF EAVE HEIGHT OF EACH BUILDING IS GREATER THAN 30 FEET, UNLESS OTHERWISE NOTED. AN AERIAL FIRE APPARATUS ACCESS ROAD IS LOCATED NOT LESS THAN 15 FEET AND NOT GREATER THAN 30 FEET FROM EACH BUILDING WITH AN EAVE HEIGHT GREATER THAN 30 FEET AND IS POSITIONED PARALLEL TO ONE ENTRY SIDE OF EACH BUILDING PER THE CA FIRE CODE.

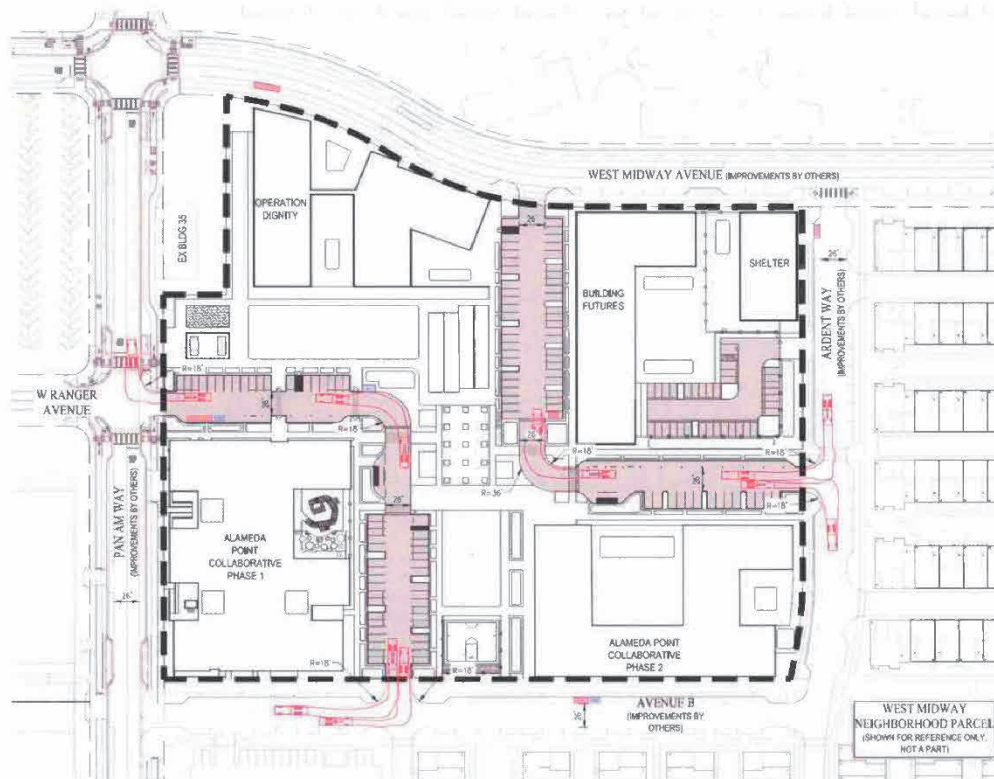


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date: 05.08.2023

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FIRE ACCESS PLAN

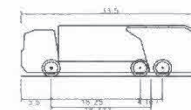


LEGEND



NOTES

1. CURB RAMP(S) TO BE PROVIDED AT STAGING AREAS FOR ROLLOUT OF BINS ON COLLECTION DAYS.
2. BIN STAGING FOR EACH BUILDING TO MEET ALL STORAGE REQUIREMENTS.
3. BINS TO BE STORED WITHIN EACH BUILDING AND ROLLED OUT TO STAGING AREA ON COLLECTION DAY.



ALAMEDA GARBAGE TRUCK
Overall Length
Overall Width
Overall Body Height
Min Body Ground Clearance
Track Width
Lock-to-lock time
Wall to Wall Turning Radius

33.50'
8.50'
12.50'
0.75'
8.00'
6.00'
29.60'



1087-022
scale: 1" = 100'
date: 05.08.2023

20



WASTE COLLECTION PLAN

EXHIBIT I

FORM OF QUITCLAIM DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

No fee for recording pursuant to
Government Code Section 27383

QUITCLAIM DEED

For valuable consideration, the receipt of which is hereby acknowledged, the City of Alameda, a municipal corporation (the "Grantor"), hereby grants to [] (the "Grantee"), the real property (the "Property") more particularly described in Attachment A attached hereto and incorporated into this Quitclaim Deed (this "Quitclaim Deed") by this reference, and all existing improvements existing on the Property.

1. The Property is conveyed subject to the Disposition and Development Agreement entered into by and between Grantor and Grantee's predecessor in interest, dated as of [] (the "DDA"). Capitalized terms used, but not defined, in this Quitclaim Deed, shall have the meaning set forth in the DDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Project on the Property in accordance with the DDA, and that such construction shall be commenced and completed within the times provided in the DDA.

(a) Promptly after completion of the Project on the Property or any Phase in accordance with the provisions of the DDA, the Grantor will furnish the Grantee with the Certificate of Completion as more particularly described in Section 8.4 of the DDA. Except as otherwise provided in DDA Section 8.4, such Certificate of Completion by the Grantor shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in the DDA and in this Quitclaim Deed with respect to the obligations of the Grantee and its successors and assigns to construct the development and the dates for the beginning and completion of such construction for the portion of the Property subject to the Certificate of Completion.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction of the development and thereafter, the Grantee shall devote the Property only to the uses specified in the DDA, or as otherwise approved in writing by the Grantor.

4. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee 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, sublessees or vendees in the Property and the Improvements thereon.

5. The Grantee represents and agrees that the Property will be used for the purposes set forth in the DDA. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

(c) For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that, during the Term of the DDA, there shall be no Transfer in violation of the DDA.

(d) No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Quitclaim Deed or the DDA except as expressly set forth in this Quitclaim Deed or the DDA.

6. The covenants contained in this Quitclaim Deed shall remain in effect for the period set forth in the DDA, except for the nondiscrimination covenants contained in Section 5 above which shall run with the land in perpetuity.

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Quitclaim 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 permitted by the DDA. 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.

8. The covenants contained in this Quitclaim Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Quitclaim Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its 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 Quitclaim Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

9. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Quitclaim Deed or to subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

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

11. This Quitclaim 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.

12. **NAVY QUITCLAIM DEED PROVISIONS** Prior to execution of this Quitclaim Deed, the applicable provisions from the Navy Quitclaim Deed or Deeds conveying the Property subject to this Quitclaim Deed will be incorporated herein.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Quitclaim
Deed this _____ day of _____, 20_____.

GRANTOR:

CITY OF ALAMEDA,
a municipal corporation

By:

Jennifer Ott, City Manager

Approved as to Form:

Len Aslanian
Assistant City Attorney

GRANTEE:

_____ /

SIGNATURES MUST BE NOTARIZED

Exhibit I
Signature Page-1

676\01\2137448.5
676\05\3495333.11
10/8/2023

ATTACHMENT 1

PROPERTY DESCRIPTION

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

EXHIBIT J

SITE MANAGEMENT PLAN

See Final Revised Site Management Plan, Alameda Point, Alameda California prepared by Terraphase Engineering dated December 3, 2020 and revised September 30, 2022 on file with the City of Alameda

J-1

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EXHIBIT K
CITY REGULATORY AGREEMENT

Recording Requested By and
When Recorded, Return to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

No Fee for Recording Pursuant to
Government Code Sections 6103 and 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

DECLARATION OF AFFORDABILITY COVENANTS

This Declaration of Affordability Covenants ("Affordability Covenants") is made as of _____, 2023, (the "Effective Date"), by and between the City of Alameda, a California charter city (the "City"), and _____ (the "Developer"), with reference to the following facts:

RECITALS

These Affordability Covenants are entered into on the basis of the following facts, understandings, and intentions of the City and Developer.

A. All terms not defined in these Recitals have the meaning set forth in Article 1 below.

B. The Developer owns certain real property located in the City of Alameda, County of Alameda, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

C. The City and Developer entered into that certain Disposition and Development Agreement, dated as of _____, as amended from time to time (the "DDA") pursuant to which the City conveyed the Property to Developer. The recordation of these Affordability Covenants is a condition to the conveyance of the Property pursuant to the Agreement.

D. City Municipal Code Section 30-16, added by Ordinance No. 2966-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.

E. The Property is part of a larger site where approximately _____ units of residential housing located in the City of Alameda ("Housing Project") are to be developed and is,

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therefore, subject to the City Inclusionary Policy. The Housing Project is subject to a discretionary approval from the City which requires that at least 25% of the units developed within the Housing Project be reserved for very low, low and moderate income households (each a "Restricted Unit" and collectively, the "Restricted Units") in accordance with the City Inclusionary Policy.

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Housing 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 Restricted Units in greater specificity and to ensure that the Restricted Units are built as part of the Housing 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 Restricted Units remain affordable permanently upon the recordation of this Agreement.

AGREEMENT

NOW, THEREFORE, the City and Developer hereby declare that the following express covenants are to be taken and construed as running with the Property and, except as set forth below, shall pass to and be binding upon Developer and its successors, assigns, heirs, grantees or lessees to the Property or any part thereof from the date of recordation of these Affordability Covenants, and shall continue in effect until such times as modified or released in writing by the City. Each and every deed, lease or other instrument conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to these Affordability Covenants, regardless of whether the covenants and restrictions are set forth in such deed, lease or other instruments.

ARTICLE 1. Definitions. The following definitions apply in this Declaration:

(a) "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, 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..

(b) "Area Median Income" shall mean the median family income in the Alameda County, as annually estimated by HUD pursuant to Section 8 of the United States Housing Act of 1937 (California Health and Safety Code Section 50093). In the event such income determinations are no longer published by HUD, or are not updated for a period of at least twenty four (24) months, the City shall provide Developer with other income determinations which are reasonably similar with respect to the method of calculation previously published by HUD.

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(c) "Assumed Household Size" means a household of two persons in the case of a one-bedroom unit, three (3) persons in the case of a two-bedroom Unit, four (4) persons in the case of a three-bedroom Unit, and five (5) persons in the case of a four-bedroom Home. This definition is utilized solely to calculate Affordable Housing Cost and is not intended to limit the number of people occupying a Home.

(d) "City" means the City of Alameda, a California charter city.

(e) "Developer" means _____, and its successors and assigns.

(f) "Eligible Households" shall mean either a Low Income Household or a Very Low Income Household.

(g) "HUD" shall mean the United States Department of Housing and Urban Development.

(h) "Income" has the meaning set forth in 24 Code of Federal Regulations §570.3.

(i) "Low Income Household" means a household whose Income does not exceed eighty percent (80%) of AMI or such other low income limit as published by HUD.

(j) "Project" has the meaning set forth in Recital D above.

(k) "Property" has the meaning set forth in Recital B above.

(l) "Rent" means the total of monthly payments by the Tenant of a Restricted Unit for the following: use and occupancy of the Restricted Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Tenant.

(m) "Restricted Unit" means _____ of rental housing units constructed on the Property.

(n) "Tenant" means a household legally occupying a Unit pursuant to a valid lease with Developer.

(o) "Very Low Income Household" means a household whose Income does not exceed fifty percent (50%) of AMI or such other very low income limits pursuant to the

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standard published by HUD.

(p) "Unit" means one of the approximately _____ () rental housing units constructed on the Property.

ARTICLE 2. RENT INCOME AND OCCUPANCY RESTRICTIONS

2.01 Affordability Requirements and Restrictions.

All of the Restricted 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 Restricted Units constructed on the Property shall be available to Very Low Income Households at an Affordable Rent.
- (b) Low Income. Not less than ____ of the Restricted Units constructed on the Property shall be available to Low Income Households at an Affordable Rent.

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 no more than two (2) of the Restricted Units may be designated as a resident manager's unit, and such Restricted Unit shall not be subject to the above affordability restrictions so long as such Restricted Unit is occupied by a full-time on-site manager for the Housing Project.

Not more than once per year, Developer may adjust rents in occupied Restricted Units to the level allowed for the family size appropriate to the unit. Developer may adjust the rent upon vacancy of a Restricted 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 a Restricted 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 Restricted Unit; (2) the new rental amount for each Restricted Unit; and (3) the effective date of the adjustment for each Restricted 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 Restricted Unit by such household and shall be subject to review and approval by City. The income of all persons residing in the Restricted 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 a Restricted Unit changes. The notice shall indicate the name and household size of the tenant vacating the Restricted Unit. Once the Restricted Unit is reoccupied, Developer shall notify City in writing of the new tenant's name, household size and income.

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Immediately prior to the first anniversary date of the occupancy of a Restricted Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the occupants of such Restricted Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Restricted Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B. If an occupant of a Restricted Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph (a) and (b), of this Section 2, the occupant may continue to occupy the former Restricted Unit; provided, however, Developer may increase the rental rate for such former Restricted 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 a Restricted Unit. Developer shall send written notice to City with the address and bedroom/bathroom mix of the Restricted Unit designated by Developer as the replacement Restricted Unit.

2.02 Marketing and Leasing Program.

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

Developer is responsible for implementing the Restricted 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 Restricted Units Marketing Program as approved by City.

2.03 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 Restricted 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 Restricted Unit;
- (b) Name of each Restricted Unit Tenant;
- (c) Initial occupancy date;
- (d) Rent paid per month; and
- (e) Gross income per year.

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Such information shall be reported to the City substantially in the form of the Certification of Continuing Compliance attached hereto as Exhibit C 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 Restricted 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 Restricted Units, including disclosures of the affordability restrictions on the Restricted Units, prior to Developer's use of such form.

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.

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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 Restricted 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

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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

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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. Notwithstanding the above, the City agrees to cooperate with the Developer with regards to subordination of the provisions of this Agreement with respect to the Restricted Units that are not necessary to satisfy the City's Inclusionary Policy if subordination is necessary to facilitate financing for the Project.

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

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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:

To Developer

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

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Immediately following the Effective Date, this Agreement 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 Restricted 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

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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.

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::

y

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

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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

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EXHIBIT A
Description of Property

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Exhibit A

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EXHIBIT B

Tenant Income Certification

Project Name and Address: _____ Date: _____

Restricted Units: ☐ 50% of Median Income
☐ 80% of Median Income
☐ 120% of Median Income

Address/Unit Number: _____ Rent: _____

Tenant/Household Name: _____ Date of Lease: _____

Size of Household: _____ Expiration: _____

Total Household Income: _____ per year

The following list includes each member of the household and their income. Attached are federal or state income tax returns for the most recent tax year, current stubs from paychecks or other evidence of the income of each income-producing member of the household.

Name of Household Member	Relationship	Age	Social Security Number	Annual Income	Source of Income/ Name of Employer
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

I/We the undersigned have read and answered fully, frankly and personally each of the above questions under penalty of perjury and do hereby swear they are true.

Head of Household _____ Date _____ Developer/ Agent _____ Date _____

Exhibit B

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EXHIBIT C
CERTIFICATION OF CONTINUING COMPLIANCE

Project Name and Address: _____ Date: _____

Total Affordable Housing Units in Project:

Very Low Income Units (not to
exceed 50% of Median Income): _____

Low Income Units (not to
exceed 80% of Median Income): _____

Moderate Income Units (not to
exceed 120% of Median Income): _____

The Developer, in accordance with the Affordable Housing Agreement dated _____,
does hereby certify to the City of Alameda that during the preceding year, the units identified on
the following pages were occupied in accordance with the Affordable Housing Agreement and
does hereby further certify that the representations set forth herein are true and correct to the best
of the undersigned's knowledge.

Signed: _____ Date: _____
Developer/ Agent

[See Attached]

Exhibit E

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ANNUAL COMPLIANCE REPORT

Project Name and Address: _____ Date: _____

Very Low Income Units (Not to Exceed 50% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____ Date: _____
Developer / Agent

Exhibit E

676\05\2276840.3
6/27/2023

K-18

676\05\3495333.11
10/8/2023

ANNUAL COMPLIANCE REPORT

Project Name and Address: _____ Date: _____

Low Income Units (Not to Exceed 80% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____ Date: _____
Developer / Agent

Exhibit E

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6/27/2023

K-19

676\05\3495333.11
10/8/2023

ANNUAL COMPLIANCE REPORT

Project Name and Address: _____ Date: _____

Moderate Income Units (Not to Exceed 120% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____ Date: _____
Developer / Agent

Exhibit E

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6/27/2023

K-20

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10/8/2023

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6/27/2023

A-1

K-21

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10/8/2023

EXHIBIT L

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT ("**Assignment**") is entered into the day of ____, 20__ (the "**Effective Date**"), by and between the CITY OF ALAMEDA, a California charter city (the "**City**"), and [_____] ("**Developer**").

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement, dated ____, as amended, regarding the Property (the "**DDA**"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

B. Pursuant to the DDA, the City is obligated, inter alia, to assign the following to the Developer and the Developer is obligated to accept the following from Assignor any and all permits, entitlements rights, intangibles or privileges appurtenant or otherwise related to Phase, including, without limitation, the EDC Agreement (collectively, the "**Phase Intangible Property**").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Acceptance. Effective as of the Effective Date, (a) the City hereby assigns the Phase Intangible Property to the Developer and (b) the Developer hereby accepts the foregoing assignment.

2. Notice. From and after the Effective Date, the notices to be delivered with respect to the Phase Intangible Property shall be delivered to:

Developer: [_____]

With copies to: [_____]

With copies to: [_____]

With copies to: [_____]

3. Attorneys' Fees. If legal action is brought by either Party against the other for default under this Assignment or to enforce any provision herein, each Party shall bear their own attorney's fees, expert witness fees, and court costs and neither Party shall be entitled to recover attorneys' fees or costs from the other Party regardless of whether a Party is a prevailing party.

L-1

4. Entire Agreement. All attachments are incorporated herein by this reference, are an integral part of this Assignment, and will be read and interpreted together as a single document. This Assignment and the applicable provisions of the DDA set forth the complete, exclusive and final statement of the agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

5. Counterparts. This Assignment may be executed in one or more counterparts by actual or email signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

6. Miscellaneous. This Assignment shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

CITY:

CITY OF ALAMEDA, a California charter city.

By: Name: Title:

DEVELOPER:

[]

EXHIBIT M

BILL OF SALE

This **BILL OF SALE** is entered into as of _____ by and between the CITY OF ALAMEDA, a California charter city (the “**City**”), and [_____] (“**Developer**”).

A. **DDA.** The City and Developer have entered into that certain Disposition and Development Agreement, dated _____ as amended, regarding the property commonly referred to as RESHAP (the “**DDA**”). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA. Pursuant to the DDA, the City is obligated to, inter alia, transfer the Phase _ Personal Property (defined below) to the Developer.

B. **Transfer.** In consideration of the portion of the Land Payment allocated to Phase _____ and other provisions of this Bill of Sale, the City does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to the Developer the personal property listed in Exhibit 1 attached hereto (the “**Phase Personal Property**”). The Developer hereby accepts the Phase _____ Personal Property pursuant to the terms of this Bill of Sale.

C. **City’s Representation: As-Is Purchase; Waiver of Implied Warranties; Limitation of Liability.**

1. The City hereby represents that the Phase Personal Property is free and clear of all encumbrances.

2. The Developer acknowledges that the Developer has had the opportunity to inspect the Phase Personal Property and, except as expressly set forth in Section 3.1, hereby agrees that the Developer is accepting the Phase Personal Property in their “As-Is” condition.

3. Except as expressly set forth herein, the Developer agrees that no other representations or warranties (express or implied) are made by the City, and any implied warranties of merchantability or fitness for a particular purpose are hereby disclaimed.

D. **Attorneys’ Fees.** In the event of any litigation, including administrative proceedings, related to this Agreement, including but not limited to any action or suit by any party, assignee, or beneficiary against any other party, beneficiary, or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney’s fees and costs. No party or litigant shall be entitled to recover any attorneys’ fees or cost from any other party or litigant, regardless of which party or litigant might prevail.

E. **Entire Agreement.** All attachments are incorporated herein by this reference, are an integral part of this Bill of Sale, and will be read and interpreted together as a single document. This Bill of Sale (including all attachments thereto) and the applicable provisions of the DDA set forth the complete, exclusive and final statement of the agreement between the

parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

F. Counterparts. This Bill of Sale may be executed in one or more counterparts by actual or email signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

G. Miscellaneous. This Bill of Sale shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. If legal action is brought by either Party against the other for default under this Assignment or to enforce any provision herein, each Party shall bear their own attorney's fees, expert witness fees, and court costs and neither Party shall be entitled to recover attorneys' fees or costs from the other Party regardless of whether a Party is a prevailing party. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed and delivered this Bill of Sale as of the day and year first above written.

CITY:

CITY OF ALAMEDA, a California charter city,

By: _____

Name: _____

Title: _____

DEVELOPER:

[_____]

EXHIBIT "I" TO BILL OF SALE

Phase_Personal Property

EXHIBIT N
CITY DISCLOSURE DOCUMENTS

Doc #	Document
1	Final Comprehensive Guide to The Environmental Baseline Survey, Alameda Point, Alameda, California, June 29, 2001
2	Zone Analysis Data Summary, Phase 2A Sampling, Zone 13: The Central Light Industrial Zone, NAS Alameda, Alameda, California. January 2001
3	Final Finding of Suitability to Transfer for Former Naval Air Station Alameda, Alameda Point, Alameda, California, April 19, 2013
4	Final Finding of Suitability to Transfer Phase 3B, Former Naval Air Station Alameda, Alameda, California, August 7, 2017
5	Final RACR, IR Site 35, Alameda Point, Alameda, California, August 27, 2012
6	Final Record of Decision, IR Site 35, Alameda Point. February 2010
7	Case Closure, UST Nos. 13-1 through 5; 392-1; and 411-1; Alameda Point, Alameda, California. September 20, 2001
8	No Further Action for AST 392, Former Alameda Naval Air Station, Alameda County, January 17, 2013
9	No Further Action for Fuel Lines FL-106 and FL-107 in CAA B North, Former Alameda Naval Air Station, Alameda County. RWQCB. July 30, 2019
10	No Further Action for Correction Action Area B North, Former Alameda Naval Air Station, Alameda County. RWQCB. October 28, 2020
11	Final Preliminary Assessment Report, Basewide Investigation of Per- and Polyfluoroalkyl Substances (PFAS), Former Naval Air Station Alameda, Alameda, California, May 2021
12	Draft Site Inspection Report, Per- and Polyfluoroalkyl Substances at Areas of Interest, Former Naval Air Station Alameda, Alameda, California, March 2023
13	Final Revised Site Management Plan, Alameda Point, Alameda, California
14	2021 Annual Groundwater Monitoring Report, Basewide Groundwater Monitoring Program at Various Sites, Alameda Point, Alameda, September 2022

EXHIBIT O-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED
UNDER GOVERNMENT CODE SECTION
37393 AND ENTITLED TO FREE RECORDING
UNDER GOVERNMENT CODE SECTION
27383

RECORDING REQUESTED BY
AND RETURN TO:

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS
(City)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____, 20__ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and [_____] ("**Developer**"), with respect to the real property more commonly known as _____ of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, the City on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of the NAS Alameda Property, whether acquired prior to or after the applicable Phase Closing Date), provided Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") a waiver of its rights to recover from, and fully and irrevocably released the Developer Released Parties from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from the Property to any portion of the NAS Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date (the "**Release of Claims**").

The foregoing Release of Claims did not negate, limit, release, or discharge the Developer Released Parties in any way from, and shall not be deemed a waiver of any Claims by the City with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns, (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing, (iv) any breach by Developer of any of Developer's representations, warranties or covenants expressly set forth in the DDA or any other agreement between the City and the Developer, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the Developer Released Parties at, on, under or otherwise affecting any portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by Developer.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims contained in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of any portion of the NAS Alameda Property acquired by the City to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided hereby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of any portion of the NAS Alameda Property acquired by the City.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum
as of the date indicated above.

CITY OF ALAMEDA.

[]

By: _____

Type or Print Name

Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property]

EXHIBIT B

DEFINITIONS

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

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

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

EXHIBIT O-2

NOTICE OF DEVELOPER RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED
UNDER GOVERNMENT CODE SECTION
37393 AND ENTITLED TO FREE RECORDING
UNDER GOVERNMENT CODE SECTION
27383

RECORDING REQUESTED BY
AND RETURN TO:

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS
(Developer)

This MEMORANDUM OF RELEASE OF CLAIMS ("Memorandum") dated as of _____, 20__ (the "Effective Date"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "City"), and _____ ("Developer"), with respect to the real property more commonly known as _____ of Alameda Point (the "Property"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, as amended, regarding the Property (the "DDA"). As more particularly set forth in the DDA, Developer on behalf of itself and anyone claiming by, through or under Developer (including, without limitation, any successor owner of the Property), provided the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") a waiver of its rights to recover from and fully and irrevocably released the City Released Parties from any and all Claims that Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Property: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (B) any presence of Hazardous

Materials that were existing at, on, or under the Property as of the applicable Phase Closing Date; and (C) any information furnished by the City Released Parties related to the Property under or in connection with the DDA; and

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

The foregoing Release of Claims did not negate, limit, release, or discharge the City Released Parties in any way from, and shall not be deemed a waiver of any Claims by Developer with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives, (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date, (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in the DDA, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by anyone other than a Developer Party at, on, under or otherwise affecting the Property, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of the Property, or any portion thereof, to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided hereby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of the Property or any portion thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum
as of the date indicated above.

CITY OF ALAMEDA,

[]

By: _____

Type or Print Name

Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property.]

EXHIBIT B

DEFINITIONS

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

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

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

EXHIBIT P
LIST OF NAVY QUITCLAIMS DEEDS AND CRUPS

Quitclaim Deeds

1. Quitclaim Deed recorded 6/6/13 for Parcel ALA-37, ALA-38, ALA-55, ALA-57, ALA-59 and ALA-61, Series No.2013 199810
2. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-82-EDC, Series No 2017 217077
3. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-83-EDC, Series No 2017217078
4. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-84-EDC, Series No 2017 217079

CRUPS

1. Covenant to Restrict Use of Property – Environmental Restriction (Re: Parcel No. ALA-82-EDC, ALA-83-EDC and ALA-84 EDC-DTSC Site Code 201971), 10/2/2017, Series No 2017-217085
2. Covenant to Restrict Use of Property – Environmental Restriction (RE: Parcel No. ALA-37-EDC (partial), ALA-38-EDC, ALA-39-EDC, ALA-55-EDC, ALA-56-EDC, ALA-57-EDC, ALA-59-EDC, ALA-60-EDC and ALA-61-EDC- DTSC Site Code 201971), 6/6/2013, Series No. 2013 199837

EXHIBIT Q
RELEASE AND TERMINATION OF LEASE

Exhibit Q

Recording Requested by
And When Recorded Return to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

No Fee for Recording Pursuant to
Government Code Sections 6103 and 27383

TERMINATION AND RELEASE OF LEASEHOLD INTEREST

This Termination and Release of Leasehold Interest ("Agreement") is entered into on _____, _____ by and among the City of Alameda, a municipal corporation ("City"), Alameda County, through its Department of Housing and Community Development, a political subdivision of the State of California ("HCD") and _____ ("Provider")
[Insert name of appropriate collaborating partner].

RECITALS

- a. The Alameda Reuse and Redevelopment Authority, a joint powers authority ("ARRA"), the predecessor in interest to the City, HCD and Provider entered into that certain Legally Binding Agreement and Property Lease dated _____ and recorded on _____ as Instrument No. _____ in the Official Records of Alameda County ("Property Lease"), whereby Provider leased from the City certain property more particularly described in Exhibit A attached hereto and incorporated herein (the "Premises").
- b. The Premises are located within the Naval Air Station Alameda and Fleet and Industrial Supply Center Alameda Annex and Facility ("NAS Alameda"), a former military base that was closed pursuant to the federal base closure law.
- c. The Property Lease was entered into by the Parties in accordance with the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the "Redevelopment Act") that requires that reasonable accommodations be made on closing military bases to meet the needs of the homeless.

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- d. The Property Lease conveyed to the Provider a leasehold interest in the Premises with a term of _____ years and required that the Provider operate on the Premises _____ units of supportive affordable housing in accordance with the requirements of the Property Lease.
- e. The City and HCD are also party to agreements similar to the Property Lease with _____ and _____ that require _____ and _____ to operate on the premises covered by those leases supportive affordable housing ("Collaborative Leases").
- f. The City, Alameda Point Collaborative, Building Futures with Women and Children, Operation Dignity and MidPen Housing Corporation have entered into that certain Disposition and Development Agreement for Alameda Point – Rebuilding the Existing Supportive Housing dated _____ ("DDA") which provides for a development entity in which Provider or an affiliate of Provider is a general partner ("Provider Development Entity") to acquire from the City a portion of the Property described in the DDA for the development of _____ units of supportive affordable housing to be developed in accordance with the terms and provisions of the DDA.
- g. The DDA implements the provisions of the Main Street Neighborhood Specific Plan adopted by the City Council of the City on March 21, 2017 ("Main Street Neighborhood Plan"). The Main Street Neighborhood Plan covers the Premises, the Property that is the subject of the DDA and property subject to the Collaborative Leases and contemplates the redevelopment of the Main Street area with a mixed use development including market rate housing and the consolidation of the existing 201 housing units currently located on the Premises and the Premises covered by the Collaborative Leases with a 7.93 acre campus that will consist of a minimum of 309 affordable housing units (inclusive of managers units) ("Replacement Housing") and up to 40,000 square feet of non-residential community-serving commercial and administrative spaces.
- h. In order to develop the Main Street area in accordance with the Main Street Neighborhood Plan, certain infrastructure improvements are required to be installed to serve the area. The City has entered into a disposition and development agreement with BC West Midway LLC, a market rate developer, that provides conveyance of property within the Main Street area to BC West Midway LLC in exchange for installing the infrastructure necessary to serve the area. A portion of the property to be conveyed to BC West Midway LLC includes the Premises. In order to accomplish that conveyance and accommodate the development of the infrastructure necessary to serve the Replacement Housing, the Provider is required to release its interest in the Premises.
- i. Provider has agreed to enter into this Agreement in consideration for the City's agreements pursuant to the DDA related to the conveyance of a portion of the Property

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6/30/2023

identified in the DDA to the Provider Development Entity and to cause the development of the infrastructure necessary to serve the Replacement Housing.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

Agreement

1. Termination of Property Lease and Release of Premises. The Property Lease is hereby terminated and Provider hereby releases all of its rights, title and interest in the Premises effective as of the date this Agreement is recorded in the Official Records of Alameda County ("Release Date").
2. Delivery of the Premises. Prior to the Release Date, the Provider shall be responsible for completing the following:
 - a. Provider shall have relocated any residents or occupants on the Premises in accordance with any federal, State or local laws that apply and in accordance with the DDA.
 - b. Provider shall have removed any encumbrances placed on the Premises by Provider or resulting from Provider's use and occupancy of the Premises, including any liens, deeds of trust, regulatory agreements, covenants, conditions or restrictions on the Premises that were placed on the Premises by the Provider prior to the Release Date. Provider shall work diligently with its lenders to remove the existing encumbrances to ensure that upon the Release Date the City has clear title to the Premises. Provider shall submit to First American Title Insurance Company ("Escrow Holder") fully executed and acknowledged releases for all encumbrances to be recorded by Escrow Holder on the Release Date.
3. Lease Termination. Provider's failure to comply with the provisions of Section 2 shall be considered an Event of Default under the Property Lease entitling the City to immediately terminate the Property Lease pursuant to Section 34(a)(ii) and regain possession of the Premises. Any such termination in accordance with this Section shall be effective immediately upon receipt by Provider of written notice from the City terminating the Property Lease and neither party shall be entitled to invoke the dispute resolutions provisions of the Property Lease.

In the event City terminates the Property Lease pursuant to this Section 3, Provider shall remain liable for the discharge of any liens on the Premises that encumber the City's fee interest in the Premises and the costs associated with the relocation of any occupants of the Premises.

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6/30/2023

4. HCD Consent. HCD hereby consents to this Agreement and the termination of the Property Lease in accordance with this Agreement and upon the recordation of this Agreement HCD relinquishes any rights it may have to the Premises or pursuant to the Property Lease. HCD agrees to execute any documents necessary to provide clear title to the Premises.
5. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it.
6. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.
7. California Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
8. Counterparts. This Agreement may be signed by the different parties hereto in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

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

CITY OF ALAMEDA

By: _____

Jennifer Ott

City Manager

Date: _____

Attest:

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6/30/2023

Lara Weisiger, City Clerk

Approved as to Form:

Len Aslanian, Assistant City Attorney

Provider:

By: _____

Its: _____

ALAMEDA COUNTY HOUSING AND COMMUNITY
DEVELOPMENT DEPARTMENT, a political subdivision of the state

By: _____

Michelle Starratt

Director

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6/30/2023

EXHIBIT A TO TERMINATION AND RELEASE OF LEASEHOLD INTEREST

Description of Premises

[To be attached.]

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