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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:



PHASE 3 TRUST TERMINATION
LANDS PARCEL THREE
DN 2020-252282

PHASE 3 TRUST
TERMINATION LANDS
PARCEL FOUR
DN 2020-252282

PHASE 3 TRUST
TERMINATION LANDS
PARCEL FIVE
DN 2020-252282

PAN AM WAY
PARCEL 2
341 M 82

POINT OF
COMMENCEMENT
PARCEL 4
341 M 82

WEST TOWER AVENUE

PHASE 2.5 TRUST
TERMINATION LANDS
DN 2017-113844

LINE TABLE		
NO	BEARING	LENGTH
L1	S04°47'18"W	23.76'
L2	S85°12'42"E	76.00'

PARCEL ONE
AGREED NON-TRUST LANDS
DN. 2014-154597

S85°12'42"E 1184.92'

R=20.00' Δ=85°46'27" L=29.94'

DEVELOPER'S PARCEL
26.27 AC±

R=481.00' Δ=10°26'28" L=87.65'

N15°13'46"E 27.27'

R=20.00' Δ=94°13'33" L=32.89'

N4°47'18"E 395.50'

S85°12'42"E 639.56'

N04°47'18"E 253.82'

R=20.00' Δ=90°00'00" L=31.42'

N85°12'42"W 1872.31'

SCALE: 1"=300'



MAIN STREET

S00°33'45"W 745.32'

SHEET 1 OF 1

PLAT TO ACCOMPANY LEGAL DESCRIPTION

DEVELOPER'S PARCEL
ALAMEDA POINT
ALAMEDA, CALIFORNIA
MAY 9, 2023



SAN RAMON (925) 866-0322
ROSEVILLE (916) 788-4456
WWW.CBANDG.COM

CIVIL ENGINEERS • SURVEYORS • PLANNERS

MAY 9, 2023
JOB NO.: 1087-010

**LEGAL DESCRIPTION
DEVELOPER'S 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, ALSO BEING A PORTION OF PHASE 3 TRUST TERMINATION LANDS PARCEL THREE, PARCEL FOUR, AND PARCEL FIVE 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, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PHASE 2.5 TRUST TERMINATION LANDS IN THAT CERTAIN PATENT DEED RECORDED MAY 24, 2017, IN DOCUMENT NO. 2017-113844 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, SOUTH 85°12'42" EAST 639.56 FEET;

THENCE, NORTH 15°13'46" EAST 27.27 FEET;

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

THENCE, NORTH 04°47'18" EAST 395.50 FEET;

THENCE, SOUTH 85°12'42" EAST 1,184.92 FEET;

LEGAL DESCRIPTION

PAGE 2 OF 2

MAY 9, 2023
JOB NO.: 1087-010

THENCE, ALONG THE ARC OF A TANGENT 20.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 85°46'27", AN ARC DISTANCE OF 29.94 FEET;

THENCE, SOUTH 00°33'45" WEST, A DISTANCE OF 745.32 FEET;

THENCE, ALONG THE ARC OF A TANGENT 20.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 94°13'33", AN ARC DISTANCE OF 32.89 FEET;

THENCE, NORTH 85°12'42" WEST 1,872.31 FEET;

THENCE, ALONG THE ARC OF A TANGENT 20.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 31.42 FEET;

THENCE, NORTH 04°47'18" EAST 253.82 FEET TO SAID POINT OF BEGINNING.

CONTAINING 26.27 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 9 May 2023

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

EXHIBIT B

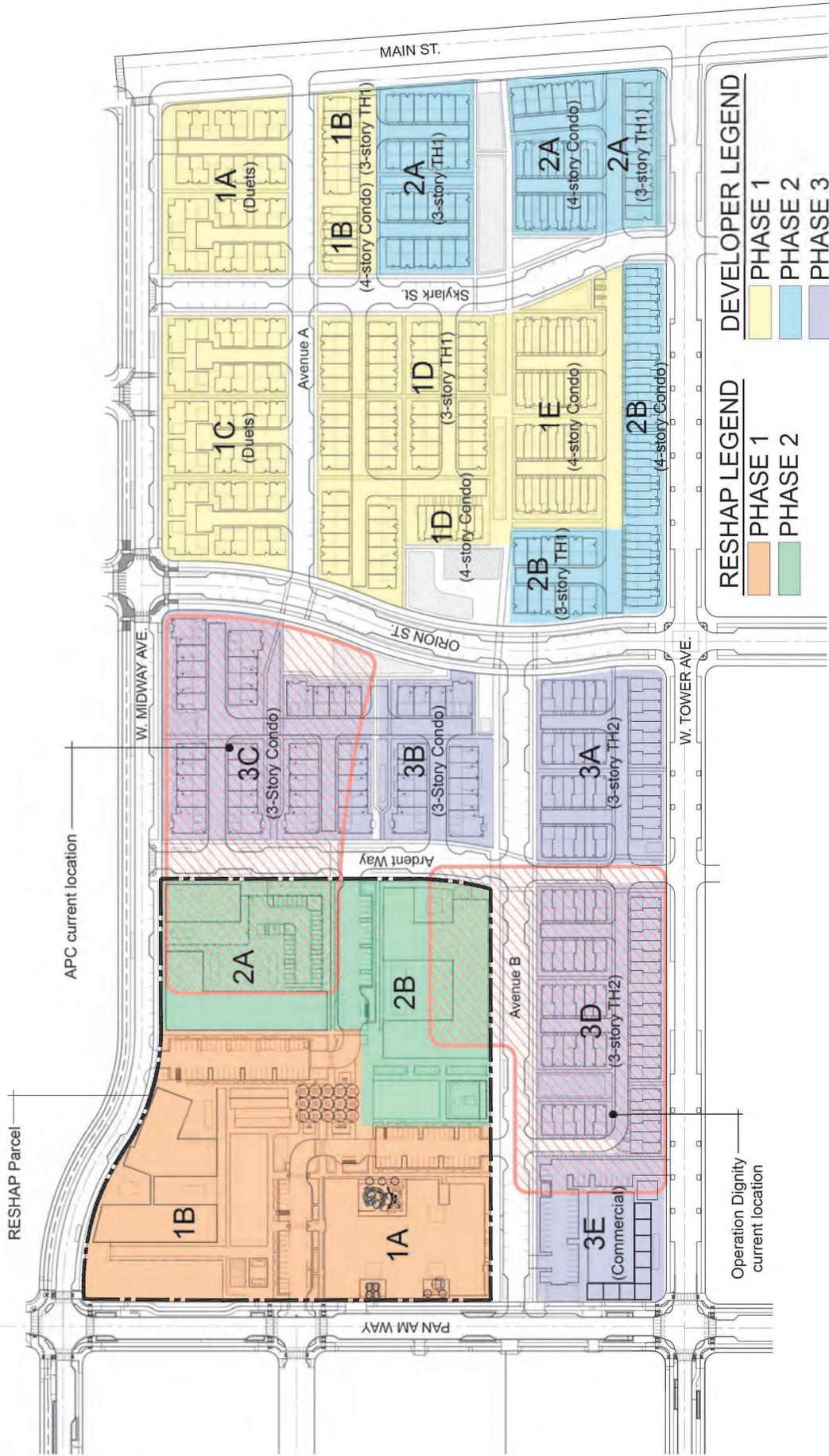
MAP OF THE PROPERTY

Exhibit 2: Project Area



- 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

EXHIBIT C
PHASING PLAN



- RESHAP LEGEND**
- PHASE 1
 - PHASE 2
- DEVELOPER LEGEND**
- PHASE 1
 - PHASE 2
 - PHASE 3

WEST MIDWAY
ALAMEDA, CA

EXHIBIT "C"

CONSTRUCTION PHASING PLAN



EXHIBIT D

MITIGATION MONITORING AND REPORTING PROGRAM

Exhibit D: West Midway Project Mitigation Monitoring and Reporting Program (MMRP)

WEST MIDWAY MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>C. Transportation and Circulation</p> <p>Mitigation Measure 4C-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:</p> <ol style="list-style-type: none"> 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. 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. 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. 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. 	<p>Project applicant and its contractor(s) obtain approval of Construction Management Plan and implement the plan during construction.</p>	<p>City of Alameda Public Works Department</p>	<p>Public Works Department must review and approve Construction Management Plan</p>	<p>Prior to issuance of building or grading permit(s); inspect during construction</p>	
<p>Mitigation Measures</p> <p>Mitigation Measure 4D-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 archaeologist and a Native American representative. Prehistoric archaeological materials might include obsidian and chert (flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris, culturally (tanned) soil ("midden") containing hear-affected rocks, artifacts, or steel/iron remains, and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs), and battered or broken tools, such as arrowheads. Historic-era materials might include stone or ceramic (e.g., pipe, pottery, or one tool, such as a pipe, filled with or pyrite, and other tools of metal, glass, and ceramic). If no archaeological resources are identified, the project applicant shall notify the City of Alameda and shall develop an appropriate response plan for the resources. The archaeologist shall consult with Native American representatives in the field to determine appropriate measures to be taken to avoid, minimize, and/or mitigate impacts to the resources. The archaeologist shall conduct treatment for unearthened cultural resources if the resources are prehistoric or Native American in nature. In considering any suggested measures proposed by the archaeologist and Native American representative in order to 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.</p> <p>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 resources of an archaeological nature. The following factors shall be considered for a project involving an archaeological site:</p> <p>A. Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.</p>	<p>Project applicant and its contractor(s) shall halt work, and notify archaeologist and Native American representative if materials are discovered.</p> <p>Archaeologist and Native American representative shall conduct independent review and prepare treatment plan, if necessary.</p> <p>Project applicant or its contractor(s) shall implement treatment plan and mitigate impacts pursuant to CEQA Guidelines.</p>	<p>City of Alameda Community Development Department</p>	<p>If resources are encountered, verify work is suspended and review and approve the treatment and monitoring plan if archaeological materials are discovered</p>	<p>If resources encountered, review of treatment and monitoring plan prior to continuation of construction</p>	

West Midway MMRP

Attachment
A Mitigation Monitoring and Reporting

<p>B. Preservation in place may be accomplished by, but is not limited to, the following:</p> <ol style="list-style-type: none"> 1. Planning construction to avoid archaeological sites; 2. Incorporation of sites within parks, greenspaces, or other open spaces; 3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site. 4. Dedicating the site into a permanent conservation easement. <p>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 resources, 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 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.</p> <p>D. Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies 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 EIR and that the studies are deposited with the California Historical Resources Regional Information Center.</p>					
<p>Mitigation Measure 4D-3 (Paleontological Resources): If paleontological resources, such as fossilized bone, teeth, shell, 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, 1996).</p> <p>Mitigation Measure 4D-4 (Human Remains): In the event of discovery or recognition of any human remains during construction activities, such activities 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 contact the person 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.</p>	<p>Project applicant and its contractor(s) shall halt construction within 100 feet of paleontological resources.</p> <p>Project applicant shall retain a paleontologist to assess significance of resources and develop appropriate salvage measures. If necessary, Project applicant shall incorporate measures upon continuation of construction.</p> <p>Project applicant and its contractor(s) shall halt work and notify coroner and City of Alameda Community Development Department if remains are discovered.</p> <p>NAHC shall assign most likely descendant.</p> <p>Project applicant and its contractor(s) shall hire archaeologist and cease work if site contains Native American remains.</p>	<p>City of Alameda Community Development Department</p> <p>City of Alameda Community Development Department; NAHC; County Coroner</p>	<p>Consult paleontologist in development of appropriate salvage measures for any paleontological resources found</p> <p>Contact City, NAHC, or County Coroner if human remains are encountered</p> <p>Ongoing</p>	<p>If resources encountered, review of treatment and monitoring plan prior to continuation of construction</p>	
<p>E. Biological Resources</p> <p>Mitigation Measures</p> <p>Mitigation Measure 4E-1F: (Bat Pre-Construction Survey) Potential direct and indirect disturbances to bats shall be identified by locating roosts, and instituting protective measures prior to construction. No more than two weeks in advance of tree removal, demolition of buildings onsite, 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 active roosts shall proceed prior to the completed surveys.</p>	<p>Project applicant will obtain a qualified biologist to conduct pre-construction surveys for bat roosts.</p> <p>Qualified biologist will conduct pre-construction bat surveys two weeks prior to tree removal and building demolition work and shall develop protective measures.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure inclusion of protective measures for active bat roosts.</p> <p>Monitor to ensure completion of pre-construction survey.</p>	<p>Prior to issuance of demolition or tree removal permit</p>	<p>This mitigation measure applies to any project requiring removal of trees and/or demolition of buildings.</p>

<p>Mitigation Measure 4E-1g: (Bat Maternity Colony Measures) If a maternity colony is located within the project site during pre-construction surveys, the project shall be re-designed to avoid impacts if feasible, and a no-disturbance buffer acceptable in size to the CDFW shall be created around the roost. Bat roosts (maternity or otherwise) initiated during construction are generally presumed to be unaffected by increased noise, vibration, or human activity, and no buffer is necessary as long as roost sites are not directly altered or destroyed. However, the "take" of individuals is still prohibited at any time.</p> <ul style="list-style-type: none"> If there is a maternity colony present and the project cannot be redesigned to avoid removal of the tree or structure inhabited by the bats, demolition of that tree or structure shall not commence until after young are flying (i.e., after July 31, confirmed by a qualified bat biologist) or before maternity colonies form the following year (i.e., prior to March 1). If a non-maternity roost must be removed as part of the project, the non-maternity roost shall be evicted prior to building/tree removal by a qualified biologist, using methods such as making holes in the roost to alter the air-flow or creating one-way funnel exits for the bats. If significant (e.g., maternity roosts or large non-maternity roost sites) bat roosting habitat is destroyed during building/tree removal, artificial bat roosts shall be constructed in an undisturbed area in the project site vicinity away from human activity and at least 200 feet from project demolition/construction activities. The design and location of the artificial bat roost(s) shall be determined by a qualified bat biologist. 	<p>Project applicant and its contractor(s) shall incorporate measures in the construction specifications to reduce impacts to maternity colonies.</p> <p>During pre-construction surveys, Project applicant and/or its contractor(s) will redesign the project if maternity colony is located within the project site.</p>	<p>City of Alameda Community Development Department; CDFW</p>	<p>Monitor to ensure adequate measures are taken to avoid impacts to maternity colonies.</p>	<p>Prior to issuance of demolition or tree removal permit</p>	<p>This mitigation measure applies to any project requiring removal of trees and/or demolition of buildings.</p>
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Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>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 30 percent or more or that would replace 30 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.</p> <p>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 some of the following measures or features 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:</p> <ul style="list-style-type: none"> • Employ design techniques that create "visual noise" via cladding 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 of reflective surfaces using "visual marker" design techniques, which techniques may include: <ul style="list-style-type: none"> - Patterned or fritted glass, with patterns at most 28 centimeters apart, - One-way films installed on glass, with any picture or pattern or arrangement that can be seen from the outside by birds but appear transparent from the inside, - Geometric fenestration patterns that effectively divide a window into smaller panes of at most 28 centimeters, and/or - Decals with patterned or abstract designs, with the maximum clear spaces at most 28 centimeters square. • Up to 60 feet high on building facades facing the shoreline, decrease reflectivity of glass, using design techniques such as plastic or metal screens, light-colored blinds or curtains, frosting of glass, angling glass towards the ground, UV-A glass, or awnings and overhangs; • Eliminate the use of clear glass on opposing or immediately adjacent faces of the building without intervening interior obstacles such that a bird could perceive its flight path through the glass to be unobstructed; • Mute 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. <p>Alternatively, if planting of landscapes near a glazed building facade is desirable, situate 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.</p> <p>Lighting. In addition to implementation of the City/VIA 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 contain light. These include, but are not limited to, the following general considerations that should be applied wherever feasible throughout Alameda Point to reduce night lighting impacts on species other than least terns:</p> <ul style="list-style-type: none"> • Avoid installation of lighting in areas where not required for public safety • Examine and adopt alternatives to bright, all-night, floor-wide lighting when interior lights would be visible from the exterior or exterior lights must be left on at night, including: <ul style="list-style-type: none"> - Installing motion-sensitive lighting - Installing task lighting - Installing programmable timers - Installing fixtures that use lower-wattage, sodium, and yellow-red spectrum lighting. • Install strobe or flashing lights in place of continuously burning lights for any obstruction lighting. • Where exterior lights are to be left on at night, install fully shielded lights to contain and direct light away from the sky. 	<p>Project applicant shall retain a qualified biologist to review and approve design of buildings for potential impacts on birds related to bird strike, lighting, and placement of rooftop antennae 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.</p>	<p>City of Alameda Community Development Department, CDPW; USFWS</p>	<p>Review submittal 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.</p>	<p>Prior to issuance of building permit(s)</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>Antennae, Monopole Structures, and Rooftop Elements. The City shall ensure, as a condition of approval for every building permit, that buildings minimize the number of and co-locate rooftop- antennas and other rooftop equipment, and that monopole structures or antennas on buildings, in open areas, and at sports and playing fields and facilities do not include guy wires.</p> <p>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 spring and fall migratory periods, by turning off unnecessary lighting and/or closing window coverings at night. The City shall review and approve the educational materials prior to building occupancy.</p> <p>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 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 who reviews and approves the design of any proposed projects to ensure that they sufficiently minimize the potential for bird strikes.</p>	<p>Project applicant shall conduct pre- construction breeding bird surveys.</p> <p>Project applicant shall implement identified avoidance and minimization measures for nesting bird impacts.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure incorporation of nesting bird avoidance and minimization measures. Monitor to ensure implementation of avoidance and minimization measures during construction.</p>	<p>Prior to issuance of building permit(s) and during construction</p>	<p>Although this mitigation measure is particularly critical for projects located in the Northwest Territories 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.</p>
<p>Mitigation Measure 4E-4c: (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.</p> <ul style="list-style-type: none"> To avoid and minimize potential impacts on nesting raptors and other birds, preconstruction surveys shall be performed not more than one week 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 nestlings 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. 	<p>The City will prohibit placement of open refuse containers that contain food waste.</p>	<p>City of Alameda Community Development Department</p>	<p>City to ensure that measure is implemented.</p>	<p>After construction is complete.</p>	
<p>Mitigation Measure 4E-4f: (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 at Alameda Point.</p>					

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>F. Air Quality and Greenhouse Gases</p> <p>Mitigation Measure 4-F-1a: (Fugitive Dust) The following BAAQMD Best Management Practices for fugitive dust control will 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:</p> <p><i>Basic Controls that Apply to All Construction Sites</i></p> <ol style="list-style-type: none"> 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 visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 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. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. 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 Airborne Toxics 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 Lead 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. 	<p>Project applicant shall incorporate the BAAQMD BMPs for fugitive dust control in construction specifications. Project applicant shall implement BMPs during construction.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications for inclusion of BAAQMD BMPs. Monitor to ensure that BMPs are implemented during construction.</p>	<p>Prior to issuance of building permit(s) and on-going during construction.</p>	
<p>Mitigation Measure 4-F-1b: (Construction Exhaust) The following control measures for construction emissions will be required for all construction activities within the project area:</p> <ul style="list-style-type: none"> • 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 two 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., owned, leased, and sub-contractor vehicles) would 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, and on-board 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-1d 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 of NO and PM. • Require all contractors to use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines. 	<p>Project applicant shall incorporate control measures for construction emissions in construction specifications. Project applicant shall implement control measures during construction.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure incorporation of control measures for construction emissions. Monitor to ensure that construction exhaust measures are implemented during construction.</p>	<p>Prior to issuance of building permit(s) and during construction.</p>	
<p>Mitigation Measure 4-F-1c: (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.</p>	<p>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.</p>	<p>City of Alameda Community Development Department</p>	<p>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.</p>	<p>Prior to and during construction.</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>Mitigation Measure 4F-1d: (Toxic Air Contaminants and PM2.5) The project sponsors shall ensure that construction contract specifications include a requirement that all off-road construction equipment used for project improvements be equipped with a Level 3 Verified Diesel Emissions Control (VDDEC), which would reduce diesel particulate emissions by at least 85 percent.</p>	<p>Project applicant shall incorporate toxic air contaminants and PM2.5 measure in construction contract specifications. Project applicant will use off-road construction equipment with a Level 3 Verified Diesel Emissions Control.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure that toxic air contaminants and PM2.5 measure is incorporated. Ensure that Project applicant uses off-road construction equipment with a Level 3 Verified Diesel Emissions Control.</p>	<p>Prior to and during construction.</p>	
<p>Mitigation Measure 4F-2: (Greenhouse Gas Reduction Measures) The following measures shall be incorporated into the project design:</p> <ul style="list-style-type: none"> • Implement a Transportation Demand Management (TDM) program by participation in the Alameda TMA. • 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 uses as feasible; • Use recycled water when available; • Install low-flow fixtures (faucets, toilets, showers); • Use water efficient irrigation systems; and • Institute recycling and composting services. 	<p>Project applicant shall incorporate measures into project design documents.</p>	<p>City of Alameda Community Development Department</p>	<p>Ensure that project design documents incorporate measures identified in Mitigation Measure 4F-2.</p>	<p>During design phase.</p>	
G: Noise					
<p>Mitigation Measure 4G-1a: (Construction Hours) Applicant shall require construction contractors to limit standard construction activities hours to be in compliance with the Noise Ordinance. Pile driving activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday. No pile driving shall be allowed on weekends and National holidays.</p>	<p>Project applicant and its contractor(s) to include noise limitations in construction specifications. Project applicant and its contractor(s) to comply with the Noise Ordinance and ensure that pile driving activities greater than 90 dBA are limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure measure is incorporated; inspection to ensure conformance.</p>	<p>Prior to issuance of grading or building permit(s); inspection during construction</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>Mitigation Measure 4G-1b: (Construction Noise Measures) To reduce daytime noise impacts due to construction, the applicants will require construction contractors to implement the following measures:</p> <ul style="list-style-type: none"> Equipment and trucks used for project construction will utilize the best available noise control techniques, such as improved mufflers, equipment redesign, use of intake silencers, ducts, 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 by up to about 10 dBA. External 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 within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. Haul routes that affect the fewest number of people will be selected. 	<p>Project applicant and its contractor(s) shall use best available noise-control techniques described and locate stationary noise sources as far from adjacent receptors as possible.</p>	<p>City of Alameda Community Development Department</p>	<p>Require use of noise-control techniques in building permit; inspect construction site to confirm adherence to those requirements.</p>	<p>Prior to issuance of grading building permit(s); inspect during construction</p>	
<p>Mitigation Measure 4G-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:</p> <ul style="list-style-type: none"> 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. 	<p>Project applicant and its contractor(s) shall prepare plan and submit to City; implement during construction.</p>	<p>City of Alameda Community Development Department</p>	<p>Review noise-attenuation plan and incorporate plan into building permit; inspect site during construction to confirm adherence to plan.</p>	<p>Prior to issuance of grading or building permit(s); inspect site during construction</p>	
<p>Mitigation Measure 4G-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:</p> <ul style="list-style-type: none"> Signs will be posted at the construction site that include permitted construction days and hours, a city 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 onsite 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. 	<p>Project applicant and its contractor(s) shall post construction information and track complaints pertaining to construction noise</p>	<p>City of Alameda Community Development Department</p>	<p>Review construction specifications to ensure conformance; inspection to ensure conformance</p>	<p>Prior to issuance of building permit(s)</p>	
<p>Mitigation Measure 4G-4: (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:</p> <ul style="list-style-type: none"> The proposed land uses will be designed so that onsite 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. Onsite 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 10:00 p.m. unless site-specific analysis confirms that noise impacts to sensitive receptors would be less-than-significant: <ul style="list-style-type: none"> Truck deliveries; Operations of motor powered landscape maintenance equipment; and Outdoor use of amplified sound systems. 	<p>Project applicant and its contractor(s) shall incorporate operational noise control measures in project design phase documents.</p>	<p>City of Alameda Community Development Department</p>	<p>City shall ensure that design phase documents of individual projects incorporate operational noise control measures.</p>	<p>During design phase and prior to issuance of building permit(s)</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>Mitigation Measure 4-G-5: (Noise Study and Design Measures) Project applicants shall submit a detailed noise study, prepared by a qualified noise consultant, to determine design measures necessary to achieve acceptable interior noise levels at the proposed new residences. The study will be submitted to the City for review and approval. Design measures such as the following could be required, depending on the specific findings of a noise study: double-paneled glass windows facing noise sources; solid-core doors; increased sound insulation of exterior walls (such as through staggered-or double-studs, multiple layers of gypsum board, and incorporation of resilient channels); weather-tight seals for doors and windows; or mechanical ventilation such as an air conditioning system.</p>	<p>Project applicant shall obtain a qualified noise consultant to prepare a noise study. Noise consultant will prepare a noise study and determine design measures necessary to achieve acceptable interior noise levels at new residences.</p>	<p>City of Alameda Community Development Department</p>	<p>City shall review and approve noise study and ensure that design measures would meet acceptable interior noise level standards.</p>	<p>Prior to construction.</p>	<p>*This mitigation measure applies only to residential projects.</p>
<p>H. Geology, Soils, and Seismicity</p>					
<p>Mitigation Measure 4-H-1: (Geotechnical Investigation) Prior to approval of a building permit, a site specific, design-level geotechnical investigation shall be prepared for all proposed development on the project site. The investigation shall include detailed characterization of the distribution and compositions of subsurface materials and an assessment of their potential behavior during violent seismic ground-shaking. The analysis shall recommend site preparation and design parameters that would be necessary to avoid or substantially reduce structural damage under anticipated peak ground accelerations in accordance with seismic design requirements within the most current version of the California Building Code and Alameda Municipal Code. The investigation and recommendations shall be in conformance with all applicable city ordinances and policies and consistent with the design requirements of the calculated Seismic Design Category for each site in accordance with the California Building Code. The geotechnical report shall be prepared by a California-registered geotechnical engineer and approved by the City, and all recommendations contained in the report shall be included in the final design of the project.</p> <p>Mitigation Measure 4-H-1 would ensure that the proposed project would be designed to withstand strong seismic ground-shaking, and that the occupants of the proposed development are informed of safety procedures to follow in the event of an earthquake.</p>	<p>Project applicant shall obtain a California-registered geotechnical engineer to conduct design-level geotechnical investigation. Geotechnical engineer shall conduct geotechnical investigation, prepare a report and develop recommendations in accordance to Measure 4-H-1. Engineer shall ensure that recommendations conform to city ordinances and policies.</p>	<p>Project applicant and City of Alameda Community Development Department</p>	<p>City shall review and approve geotechnical report.</p>	<p>Prior to approval of building permit(s)</p>	
<p>Mitigation Measure 4-H-2: (Geotechnical Mitigation) Prior to issuance of a building permit, earthwork, foundation and structural design for proposed development under the project shall be conducted in accordance with all recommendations contained in the required geotechnical investigation (Mitigation Measure 4-H-1a). The investigation must include an assessment of all potentially foreseeable seismically-induced ground failures, including liquefaction, sand boils, lateral spreading and rapid settlement.</p> <p>Mitigation strategies must be designed for the site-specific conditions of the project and must be reviewed for compliance with the guidelines of CGS Special Publication 117A prior to incorporation into the project. Examples of possible strategies include edge containment structures (berms, diked sea walls, retaining structures, compacted soil zones), removal or treatment of liquefiable soils, soil modification, modification of site geometry, lowering the groundwater table, in-situ ground densification, deep foundations, reinforced shallow foundations, and structural design that can accommodate predicted displacements.</p>	<p>Project applicant shall ensure that geotechnical investigation includes assessment of all potentially foreseeable seismically-induced ground failures, including liquefaction, sand boils, lateral spreading and rapid settlement. Project applicant shall ensure that mitigation strategies are developed consistent with the guidelines of CGS Special Publication 117A.</p>	<p>Project applicant and City of Alameda Community Development Department</p>	<p>Ensure that geotechnical report addresses seismically-induced ground failures listed in the measure. Review and ensure that mitigation strategies are developed consistent with the guidelines of CGS Special Publication 117A.</p>	<p>Review mitigation strategies prior to incorporation into the project. Prior to issuance of building permit(s).</p>	
<p>Mitigation Measure 4-H-4: (Settlement Mitigation) The required geotechnical report for each development project (Mitigation Measure 4-H-1a) shall determine the susceptibility of the project site to settlement and prescribe appropriate engineering techniques for reducing its effects. Where settlement and/or differential settlement is predicted, mitigation measures—such as lightweight fill, geofram, surcharging, wick drains, deep foundations, structural slabs, binged slabs, flexible utility connections, and utility hangers—shall be used. These measures shall be evaluated and the most effective, feasible, and economical measures shall be recommended. Engineering recommendations shall be included in the project engineering and design plans, and be reviewed and approved by a registered geotechnical engineer. All construction activities and design criteria shall comply with applicable codes and requirements of the most recent California Building Code, and applicable City construction and grading ordinances.</p>	<p>Project applicant shall ensure that geotechnical investigation assesses the susceptibility of the site to settlement, prescribes engineering techniques for reducing its effects, and includes recommended mitigation measures. Project applicant will include recommendations in project engineering and design plans. Applicant will comply with all applicable codes and requirements during construction.</p>	<p>City of Alameda Community Development Department and registered geotechnical engineer.</p>	<p>Ensure that geotechnical report evaluates susceptibility of the site to settlement and that recommendations and mitigation measures are included. Registered geotechnical engineer will review and approve engineering recommendations. City will ensure that construction activities and design criteria comply with applicable codes and requirements.</p>	<p>During the design and construction phases.</p>	
<p>Mitigation Measure 4-H-5: (Expansive Soils Assessment) Prior to issuance of a building permit, subsurface earthwork (e.g., placement of engineered fill), shall be conducted in accordance with all recommendations contained in the required geotechnical investigation (Mitigation Measure 4-H-1). The geotechnical report must include an assessment of all potentially expansive soils that could adversely affect proposed improvements. Geotechnical strategies must be designed for the site-specific conditions of the project and must be reviewed for compliance with the requirements of the most recent California Building Code as well as any additional City of Alameda requirements.</p>	<p>Project applicant will ensure that geotechnical report includes assessment of expansive soils and strategies consistent with most recent California Building Code as well as any additional City of Alameda requirements.</p>	<p>City of Alameda Community Development Department</p>	<p>City will review and approve strategies/recommendations outlined in geotechnical report.</p>	<p>Prior to issuance of building permit(s)</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>I. Hydrology and Water Quality</p> <p>Mitigation Measure 4-I-1: (Water Quality Measures) Project applicants shall implement the following measures as part associated with the extracted water during project construction:</p> <ul style="list-style-type: none"> 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. 	<p>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.</p>	<p>City of Alameda Community Development Department, RWQCB</p>	<p>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.</p>	<p>Prior to construction</p>	
<p>Mitigation Measure 4-I-2: (Integrated Pest Management) Project applicants shall implement Integrated Pest Management measures to reduce fertilizer and pesticide contamination of receiving waters, as follows:</p> <ul style="list-style-type: none"> 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 nitrates 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. Preventative chemical use shall not be employed. The IPM shall fully integrate considerations for cultural and biological resources into the IPM with an emphasis toward reducing pesticide application. 	<p>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.</p>	<p>City of Alameda Community Development Department</p>	<p>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.</p>	<p>Prior to construction and after construction.</p>	
<p>Mitigation Measure 4-I-3: (Sea-Level Protection) The applicants shall implement the following steps prior to project implementation:</p> <ul style="list-style-type: none"> Apply for membership in the National Flood Insurance Program (NFP) Community Rating System (CRS), and as appropriate through revisions to the City Code, obtain reductions in flood insurance rates offered by the NFP 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 FIRMs. Implement climate adaptation strategies such as avoidance/planned retreat, enhance levees, setback levees to accommodate habitat transition zones, buffer zones and beaches, expanded tidal prisms for enhanced natural scouring of channel sediments, raising and flood-proofing structures, or provisions for additional floodwater pumping stations, and inland detention basins to reduce peak discharges. 	<p>City will incorporate <u>climate adaptation</u> measures into construction plans and specifications.</p>	<p>City of Alameda Community Development Department</p>	<p>City shall ensure that structural design and <u>climate adaptation</u> measures are incorporated in construction plans and specifications. City will monitor to ensure implementation of measures.</p>	<p>Prior to construction.</p>	<p>*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.</p>
<p>J. Hazards and Hazardous Materials</p> <p>Mitigation Measure 4-J-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 qualified licensed contractors for each structure intended for demolition indicating whether LBP or lead-based coatings, ACMs, and/or PCB-containing equipment are present.</p>	<p>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.</p>	<p>City of Alameda Community Development Department</p>	<p>City will review the hazardous building material assessment.</p>	<p>Prior to issuance of demolition permit(s).</p>	<p>*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.</p>
<p>Mitigation Measure 4-J-1b: (Health and Safety Plan) If the assessment required by Mitigation Measure 4-J-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 risks associated with such hazardous materials during demolition or renovation of affected structures.</p>	<p>Project applicant will prepare and implement a health and safety plan if Measure 4-J-1 indicates the presence of LBP, ACMs, and/or PCBs.</p>	<p>City of Alameda Community Development Department</p>	<p>City will review health and safety plan. City will monitor to ensure that the health and safety plan is implemented.</p>	<p>Prior to and during construction.</p>	<p>*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.</p>

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>Mitigation Measure 4-J-1c: (LBP Removal Plan) If the assessment required by Mitigation Measure 4-J-1a finds presence of LBP, the project applicant shall develop and implement a LBP removal plan. The plan shall specify, but not be limited to, the following elements for implementation:</p> <ul style="list-style-type: none"> Develop a removal specification approved by a Certified Lead Project Designer. Ensure that all removal workers are properly trained. Contain all work areas to prohibit offsite migration of paint chip debris. Remove all peeling and stratified LBP 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 LBP on all equipment to be cut and/or removed during the demolition. Provide onsite personnel and area 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. 	<p>Project applicant will prepare and implement a LBP removal plan if LBP is found present.</p>	<p>City of Alameda Community Development Department</p>	<p>City will review LBP removal plan. City will monitor to ensure that LBP removal plan is implemented.</p>	<p>Prior to construction and during construction.</p>	<p>*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.</p>
<p>Mitigation Measure 4-J-1d: (Asbestos Abatement Plan) If the assessment required by Mitigation Measure 4-J-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.</p> <p>Abatement of known or suspected ACMs shall occur prior to demolition or construction activities that would disturb those materials. Pursuant to an asbestos abatement plan developed by a state-certified asbestos consultant and approved by the City, all ACMs shall be removed and appropriately disposed of by a state certified asbestos contractor.</p>	<p>If asbestos is found upon implementation of Mitigation Measure 4-J-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 consultant will ensure that all ACMs are removed and appropriately disposed of.</p>	<p>City of Alameda Community Development Department</p>	<p>City will review and shall approve the asbestos abatement plan. Ensure that abatement of known or suspected ACMs are removed by a state certified asbestos contractor.</p>	<p>Prior to building demolition activities, and during demolition work.</p>	<p>*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.</p>
<p>Mitigation Measure 4-J-1e: (PCB Abatement) If the assessment required by Mitigation Measure 4-J-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 Caltrans requirements.</p>	<p>If PCBs are found upon implementation of Mitigation Measure 4-J-1a, Project applicant will obtain a qualified contractor to implement PCB abatement. Qualified contractor will remove PCBs and will transport in accordance with Caltrans requirements.</p>	<p>City of Alameda Community Development Department</p>	<p>City will ensure that PCB abatement measure is incorporated in construction plans and specifications. City will monitor and ensure that PCB abatement measures are implemented.</p>	<p>Prior to and during building demolition or renovation work.</p>	<p>*This mitigation measure applies only to projects entailing demolition of existing buildings or other structures.</p>
<p>Mitigation Measure 4-J-2: (Site Management Plan) Prior to issuance of a building or grading permit for any ground breaking 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 or remaining remediation on identified parcels 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 deed restrictions and requirements as well as any Covenants(s) to 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, stockpiling, and transport of soil and for disturbance of groundwater as well as a contingency plan to respond to the discovery of previously unknown areas of contamination (e.g., discolored soils, strong petroleum odors, an underground storage tank unearthed during normal construction activities, etc.). At a minimum the SMP shall include the following components:</p>	<p>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 efforts 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.</p>	<p>City of Alameda Community Development Department and U.S. EPA, DTSC, or Water Board.</p>	<p>The City, U.S. EPA, DTSC, or Water Board will review SMP and ensure SMP is incorporated into construction specifications. City and the overseeing agency will ensure that Project applicant implements additional remediation requirements based on those established by overseeing agency as well as any Covenants to Restrict Use of Property (CRUP). The City and the overseeing agency will ensure that the SMP is present on site at all times.</p>	<p>Prior to issuance of a building or grading permit</p>	

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>1. <i>Soil management requirements.</i> Protocols for stockpiling, sampling, and transporting soil generated from onsite activities. The soil management requirements must include:</p> <ul style="list-style-type: none"> • Soil stockpiling requirements such as placement of cover, application of moisture, erection of containment structures, and implementation of security measures. Additional measures related to BAAQMD dust control requirements as they apply to contamination shall also be included, as needed (see also Air Quality section). • Protocols for assessing suitability of soil for onsite 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 offsite transportation and disposal of soil not determined to be suitable for onsite reuse. Any soil identified for offsite 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 Marsh Cust Ordinance. • Measures to be taken for areas of IR Site 13 where refinery wastes and asphaltic residues known as tarry refinery waste might be encountered. Measures shall include requirements for the storage, handling and disposal/recycling of any suspected tarry refinery waste that may be encountered. • Radiological screening protocols for the radiological sites identified by the Navy as approved by the U.S. EPA, where necessary. <p>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 reuse or disposal options is appropriate for such groundwater:</p> <ul style="list-style-type: none"> • 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 East Bay MUD waste discharge criteria; • Treatment (as necessary) before discharge under a site-specific NPDES permit; • Offsite transport to an approved offsite facility. <p>For each of the options listed, the SMP shall specify the particular criteria or protocol that would be considered appropriate for reuse or disposal options. The threshold level must, at a minimum, be consistent with the applicable requirements of the Water Board and East Bay MUD.</p>	<p>City will include closed and open installed Restoration (IR), CERCLA sites that have land-use controls within its Land-use Restrictions Tracking Program.</p> <p>City will ensure that the SMP (as approved by U.S. EPA, DTSC, and Water Board) be incorporated into intrusive site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.</p>	<p>City of Alameda Community Development Department</p>	<p>City shall ensure that its Land-use Restrictions Tracking Program includes open and closed IR CERCLA sites.</p>	<p>Prior to transfer of title for any parcel.</p>	<p>*This mitigation measure will only apply to sites that have land use controls due to existing or past site contamination. The City will identify restricted sites to project applicants.</p>
<p>4. Interim removal work plan preparation and implementation procedures.</p> <p>Mitigation Measure 4J-7: (Land Use Restriction Tracking Program) The City shall include closed and open IR 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 may 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 SMP as approved by U.S. EPA, DTSC, and the Water Board be incorporated into intrusive site operations as required through deed restriction, enforceable Land Use Covenant, or any other applicable legal requirement.</p>					

Mitigation Measures	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Notes
<p>K. Aesthetics</p> <p>M. Utilities and Services Systems</p> <p>Mitigation Measure 4M-5: (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 areas, 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 sponsors 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.</p>	<p>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 would provide funding and technical assistance for managing and financing deconstruction, demolition and recycling and reuse programs.</p>	<p>City of Alameda Community Development Department</p>	<p>City of Alameda Community Development Department shall review plan.</p>	<p>Plan shall be developed prior to issuance of demolition permit.</p>	<p>* 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 first 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.</p>

EXHIBIT E

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 [REDACTED], 2023, by and between the City of Alameda (the “City”), and BC WEST MIDWAY LLC, a Delaware limited liability company (the “Developer”). This Memorandum confirms that the City and the Developer entered into that certain Disposition and Development Agreement, dated as of [REDACTED], 2023 (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 (the “Property”). 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.

The DDA and this Memorandum shall terminate with respect to each Residential Unit and residential lot and each commercial unit and commercial lot developed on the Property, and such Residential Unit and residential lot and commercial unit and commercial lot shall be released and no longer be subject to the DDA and this Memorandum and all obligations and liabilities hereunder, and the transferees of such units and lots and their successors and assigns shall have no obligations or liabilities under the DDA and this Memorandum (including with respect to any obligations that survive the termination of the DDA), without any further action by City or Developer and without the execution or recordation of any further document, when a Certificate of Occupancy has been issued by the City for such unit or lot, as applicable.

The DDA and this Memorandum shall also terminate with respect to any portion of the Property that is dedicated to the City pursuant to the terms of an applicable public improvement agreement or subdivision improvement agreement, and such portion of the Property shall be released and no longer be subject to the DDA and this Memorandum and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and

recording of any further document, at the time the City accepts the improvements for such portion of the Property.

The DDA and this Memorandum shall also terminate with respect to any portion of the Property that is conveyed or dedicated to any home owners association or property owners association and such portion of the Property shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and recording of any further document, at the time of such dedication or conveyance.

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

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Disposition and Development Agreement this [redacted], 2023.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Jennifer Ott, City Manager

Approved as to Form:

Len Aslanian
Assistant City Attorney

DEVELOPER:

BC West Midway LLC, a Delaware
Limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SIGNATURES MUST BE NOTARIZED

ATTACHMENT NO. 1 TO DDA MEMORANDUM
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT F

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 the Agreement and any references herein or in the Agreement or any document or instrument referenced herein or in the Agreement to this Milestone Schedule and each of the dates set forth herein shall be as extended pursuant to 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.

This Milestone Schedule may be modified by Operating Memoranda executed in accordance with Section 16.16 of this Agreement.

[Remainder of this Page Intentionally Left Blank]

EXHIBIT F: 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 to this Milestone Schedule and shall not be deemed to have any substantive effect. Times for performance are subject to extensions as set forth in 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 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.

This Milestone Schedule may be modified in accordance the Agreement. All milestones that are not specifically identified as "Major Milestones" below shall be considered "Progress Milestones" as defined in the Agreement.

The Infrastructure Packages referenced herein are described in Exhibit G of the Agreement.

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
DESIGN AND ENGINEERING RESHAP PHASE 1 INFRASTRUCTURE PACKAGE		
1 Expiration of Project Approvals appeal periods ("Vesting Date")		Oct 2023
2 Prepare Demolition Plans; submit to City	Nov 2023	Jan 2024
3 City issues Demolition Permit	Jan 2024	Feb 2024
4 Prepare Surcharge Plans; submit to City	Nov 2023	Feb 2024
5 City issues Surcharge Permit	Feb 2024	Mar 2024
6 Prepare Improvement Plans and Public Improvement Agreement; submit to City	Nov 2023	Jun 2024
7 City issues infrastructure and landscape permits	Jun 2024	Aug 2024

EXHIBIT F: MILESTONE SCHEDULE

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
DESIGN AND ENGINEERING WEST MIDWAY PHASE 1, 2, & 3 INFRASTRUCTURE PACKAGES AND RESHAP PHASE 2 INFRASTRUCTURE PACKAGE		
8 Prepare Demolition Plans; submit to City	Nov 2023	Apr 2024
9 City issues Demolition Permit	Apr 2024	May 2024
10 Prepare Surcharge Plans; submit to City	Nov 2023	May 2024
11 City issues Surcharge Permit	May 2024	Jun 2024
12 Prepare Large Lot Subdivision Map; submit to City	Nov 2023	May 2024
13 City Approves Large Lot Subdivision Map	May 2024	Jul 2024
14 Prepare Improvement Plans; submit to City	Nov 2023	Sep 2024
15 City issues infrastructure and landscape permits	Sep 2024	Nov 2024
DESIGN AND ENGINEERING PHASE 1, 2 AND 3 SITE A IMPROVEMENTS PACKAGES		
16 Prepare Site A - Phase 1 & 2 improvement plans: submit to City	Mar 2024	Sep 2024
17 City Issues Permits Site A - Phase 1 & 2	Sep 2024	Nov 2024
18 Prepare Site A - Phase 3 improvement plans: submit to City	Aug 2027	Mar 2028
19 City Issues Permits Site A - Phase 3	Mar 2028	May 2028

EXHIBIT F: MILESTONE SCHEDULE

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
INFRASTRUCTURE CONSTRUCTION RESHAP PHASE 1 INFRASTRUCTURE PACKAGE		
20 Demolition & Site Preparation	Feb 2024	Jul 2024
21 Rapid Impact Compaction ("RIC") of APC Pad	Jul 2024	Aug 2024
22 Rough Grading - APC Pad Completion [COMPLETION IS MAJOR MILESTONE]	Aug 2024	Sep 2024
23 Surcharge Preparation on Operation Dignity ("OD") pad, including wick drain installation	Jul 2024	Sep 2024
24 Soil import, surcharge consolidation and soil export (to West Midway Phase 3A/3B)	Sep 2024	Jun 2025
25 Rough Grading - OD Pad Completion [COMPLETION IS MAJOR MILESTONE]	Jun 2025	Jul 2025
26 Backbone Infrastructure [COMPLETION IS MAJOR MILESTONE]	Jan 2025	Jul 2025
INFRASTRUCTURE CONSTRUCTION WEST MIDWAY PHASE 1 INFRASTRUCTURE PACKAGE		
27 Prepare Financing Plan for West Midway Phase 1; submit to City	Aug 2024	Oct 2024
28 Demolition & Site Preparation	Nov 2024	Jul 2025
29 Rapid Impact Compaction ("RIC") & Wick Install [COMMENCEMENT IS MAJOR MILESTONE and the OUTSIDE COMMENCEMENT DATE FOR THE START OF WEST MIDWAY PHASE 1]	Jul 2025	Apr 2026
30 Soil import, surcharge consolidation, soil export and rough grading	Apr 2026	May 2027
31 Phase 1 Backbone Infrastructure [COMPLETION IS MAJOR MILESTONE]	Apr 2026	May 2027
32 Site A - Phase 1 Backbone Infrastructure	Apr 2026	Oct 2026
33 West Midway Phase 1 Vertical Construction [COMMENCEMENT IS MAJOR MILESTONE and COMPLETION IS THE OUTSIDE CLOSING DATE FOR PHASE 1 CONVEYANCES]	Jan 2028	Mar 2030

EXHIBIT F: MILESTONE SCHEDULE

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
INFRASTRUCTURE CONSTRUCTION WEST MIDWAY PHASE 2 INFRASTRUCTURE PACKAGE		
34 Demolition & Site Preparation	Jul 2025	Oct 2025
35 RIC and Wick Drain Installation	Apr 2026	Mar 2027
36 Soil Import from Phase 1 and Surcharge Consolidation	Apr 2027	Apr 2028
37 Prepare Financing Plan for West Midway Phase 2; submit to City	Nov 2026	Jan 2027
Backbone Infrastructure [COMMENCEMENT AND COMPLETION ARE MAJOR MILESTONES 38 and COMMENCEMENT is the OUTSIDE COMMENCEMENT DATE FOR THE START OF WEST MIDWAY PHASE 2]	Feb 2027	May 2028
39 Site A - Phase 2 Backbone Infrastructure	Feb 2027	Feb 2028
40 Soil export to Phase 3A/3B	Apr 2028	Jun 2028
41 Rough Grading - Building Pad Completion	Apr 2028	May 2028
42 West Midway Phase 2 Vertical Construction [COMMENCEMENT IS MAJOR MILESTONE and COMPLETION IS THE OUTSIDE CLOSING DATE FOR PHASE 2 CONVEYANCES]	Nov 2028	Jun 2031

EXHIBIT F: MILESTONE SCHEDULE

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
INFRASTRUCTURE CONSTRUCTION WEST MIDWAY PHASE 3 INFRASTRUCTURE PACKAGE AND RESHAP PHASE 2 INFRASTRUCTURE PACKAGE		
43 Demolition & Site Preparation Phase 3A/3B	Jul 2024	Dec 2024
44 RIC and wick drain installation in Phase 3A/3B	Dec 2024	May 2025
45 Soil Import to Phase 3A/3B from RESHAP Phase 1	May 2025	Jun 2025
46 Demolition & Site Preparation of RESHAP Phase 2 and West Midway Phase 3C - (former APC Site, after APC tenants move out)	Oct 2027	Mar 2028
47 Demolition & Site Preparation of RESHAP Phase 2 and West Midway Phase 3D - (former OD Site, after OD tenants move out)	Dec 2027	Aug 2028
48 Prepare Financing Plan for West Midway Phase 3; submit to City	Dec 2027	Feb 2028
49 RIC/Wick Drain Install - Phase 3C/RESHAP Phase 2A [COMMENCEMENT IS MAJOR MILESTONE and THE OUTSIDE COMMENCEMENT DATE FOR THE START OF WEST MIDWAY PHASE 3]	Mar 2028	Jun 2028
50 Flop dirt from Phase 3A/3B to Phase 3C/RESHAP Phase 2A; surcharge consolidation of Phase 3C/RESHAP 2A; rough grading of Phase 3A/3B	Jun 2028	Apr 2029
51 Flop dirt from Phase 3C/RESHAP Phase 2A to RESHAP PHASE 2B	Apr 2029	May 2029
52 Rough Grading RESHAP PHASE 2A and PHASE 3C - RESHAP PHASE 2A Building Pad Completion [COMPLETION IS MAJOR MILESTONE]	May 2029	Jun 2029
53 Install Lightweight Fill in Phase 3D, rough grading and building pad completion	Aug 2028	Jan 2029
54 Surcharge consolidation and rough grading of RESHAP PHASE 2B - RESHAP PHASE 2B Building Pad Completion [COMPLETION IS MAJOR MILESTONE]	May 2029	Mar 2030
55 Backbone Infrastructure for RESHAP Phase 2 and West Midway Phase 3 [COMPLETION IS MAJOR MILESTONE]	May 2028	Jun 2029
56 Site A - Phase 3 Backbone Infrastructure	May 2028	Nov 2028
57 West Midway Phase 3 Vertical Construction [COMMENCEMENT IS MAJOR MILESTONE and COMPLETION IS THE OUTSIDE CLOSING DATE FOR PHASE 3 CONVEYANCES]	Jul 2029	Aug 2031

EXHIBIT F: MILESTONE SCHEDULE

ACTION	START DATE (no delays)	COMPLETION DATE (no delays)
INFRASTRUCTURE CONSTRUCTION WEST MIDWAY COMMERCIAL (VERTICAL)		
58 Prepare Phase Zero plans; submit to City	Apr 2026	Oct 2026
59 City issues Phase Zero permits	Oct 2026	Dec 2026
60 Phase Zero Construction and Tenant Improvements [COMPLETION IS MAJOR MILESTONE]	Feb 2027	Oct 2027
61 Prepare Commercial Project (permanent) plans; submit to City	Mar 2028	Dec 2028
62 City approves Development Plan and Design Review for Commercial Project	Dec 2028	Feb 2029
63 City issues building permits	Feb 2029	Apr 2029
64 Outside date for conveyance of the commercial parcel [CONVEYANCE IS MAJOR MILESTONE]		Jun 2029
65 Permanent Building Construction and Tenant Improvements [COMMENCEMENT IS MAJOR MILESTONE]	Jun 2029	Dec 2030

EXHIBIT G
INFRASTRUCTURE PACKAGE

Exhibit G **Infrastructure Packages and Construction Phasing**

Construction Phasing: The phasing of Developer's construction work is shown on Exhibit C, and on Exhibit G-8.1, Exhibit G-8.2, and Exhibit G-8.3, attached hereto. Each phase of the infrastructure construction is described as an "Infrastructure Package" below. All plans 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.

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

Main Street improvements within the Main Street right-of-way, adjacent to the project site, shall be constructed as shown in Exhibit G-3. The scope of work shall only include the Initial Construction work as described in the MIP Updated Figure 23, dated February 2020. The work shall be solely limited to the west side of Main Street, and shall include landscaping, a Class I trail, decomposed granite path, curb and gutter storm drainage improvements, and street lighting. Developer shall have no responsibility for the balance of the Main Street improvements which will be constructed by the City in the future.

West Midway Avenue improvements within the West Midway right-of-way adjacent to the project site shall be constructed consistent with the MIP, as shown in Exhibit G-4.

Orion Street improvements within the Orion Street right-of-way, located within the project site between West Midway and West Tower Avenue shall be constructed consistent with the MIP and as shown in Exhibit G-5.

Pan Am Way improvements within the Pan Am Street right-of-way, located adjacent to the project, shall be constructed by the City of Alameda, as shown in Exhibit G-7. Developer shall have no responsibility for any improvements to Pan Am Way.

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. 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, 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

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.

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.

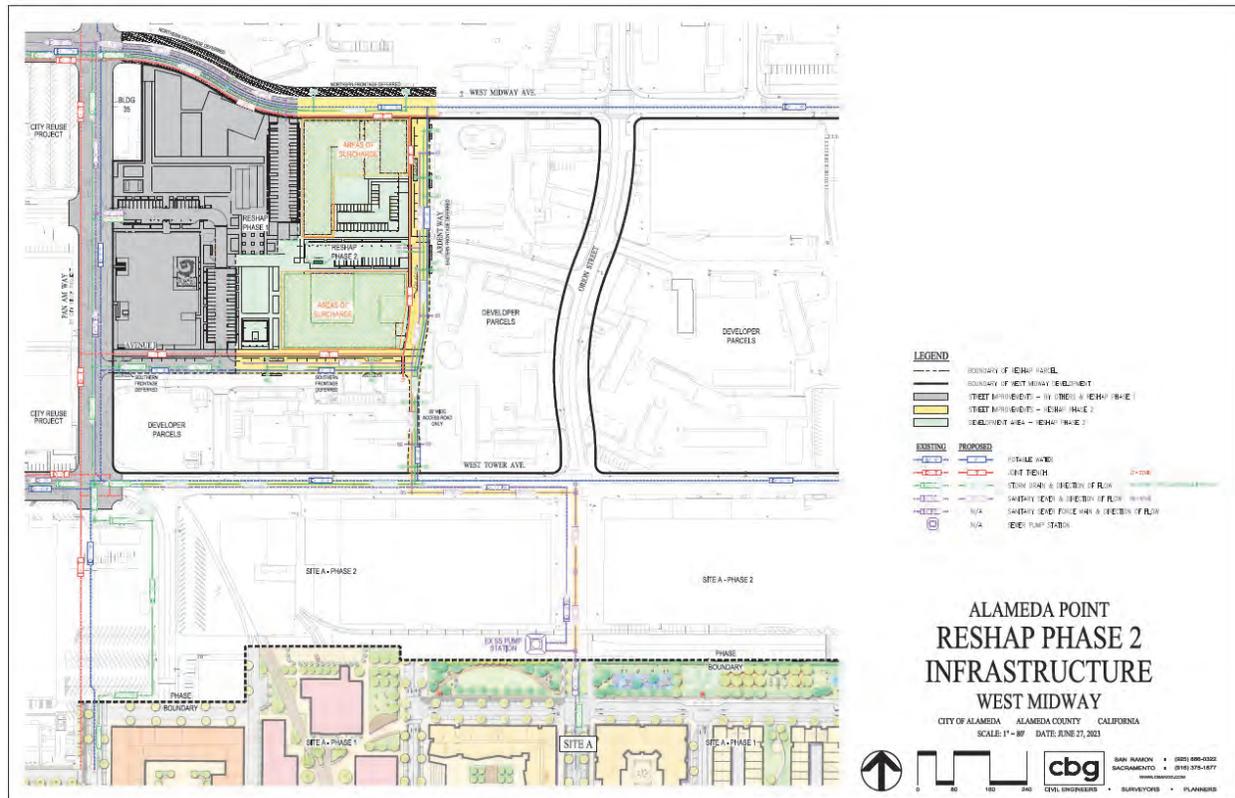
Joint Trench conduit (only) for electrical and communications (AT&T and Comcast) will be installed to RESHAP Phase 1 as shown in the yellow area on Exhibit G-8.1 5' from RESHAP property line and vaults will be installed on sidewalks, as will be further coordinated as RESHAP Phase 1 designs advance.

West Midway Avenue. 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 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. 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. 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, 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. 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.

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 RESHAP's Site Plan. The 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. 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. 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. 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. 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.

WEST MIDWAY PHASE 1 INFRASTRUCTURE PACKAGE. The West Midway Phase 1 Infrastructure package will be designed to support the West Midway Development Plan approved by the Planning Board on May 23, 2023. The West Midway Phase 1 infrastructure packages shall include:

- a. Demolition and abatement of all existing improvements within Market Rate Phase 1 as shown on Exhibit G-1.
- b. Developer shall surcharge and conduct sub-surface ground improvements within the phase pursuant to the ENGEO geotechnical report and recommendations, to be provided at a later date.
- c. Post-surcharge site grading within Market Rate Phase 1 will be sheet graded to the site leveling grades based on pad elevations.
- d. Developer shall install the portions of West Midway Avenue (from Orion to Main), Orion Street, Skylark Street, and Main Street shown in yellow on Exhibit G-8.1. Phase 1 Infrastructure Improvements shall be constructed in accordance with Exhibit G-3, Exhibit G-4, Exhibit G-5, Exhibit G-8.1, and elsewhere in this Exhibit G.

WEST MIDWAY PHASE 2 INFRASTRUCTURE PACKAGE. The West Midway Phase 2 Infrastructure package will be designed to support the West Midway Development Plan approved by the Planning Board on May 23, 2023. The West Midway Phase 2 infrastructure packages shall include:

- a. Demolition and abatement of all existing improvements within West Midway Phase 2 as shown on Exhibit G-8.2.
- b. Developer shall surcharge and conduct sub-surface ground improvements within the phase pursuant to the ENGEO geotechnical report and recommendations, to be provided at a later date.
- c. Post-surcharge site grading within Phase 2 will be sheet graded to the site leveling grades based on pad elevations.
- d. Developer shall install the portion of Main Street shown in yellow on Exhibit G-8.2. Phase 2 Infrastructure Improvements shall be constructed in accordance with Exhibit G-3, Exhibit G-8.2, and elsewhere in this Exhibit G.

WEST MIDWAY PHASE 3 INFRASTRUCTURE PACKAGE. The West Midway Phase 3 Infrastructure package shall be designed to support the West Midway Development Plan approved by the Planning Board on May 23, 2023. The West Midway Phase 3 infrastructure packages shall include:

- a. Demolition and abatement of all existing improvements within the areas shown as Developer Phase 3 on Exhibit G-8.3.
- b. Developer shall surcharge and conduct sub-surface ground improvements within the phase pursuant to the ENGEO geotechnical report and recommendations, to be provided at a later date.
- c. Post-surcharge site grading within Phase 3 will be sheet graded to the site leveling grades based on pad elevations.

- d. Developer shall install the portions of West Midway Avenue fronting on Phase 3 and Avenue B fronting on Phase 3 shown in yellow on Exhibit G-8.3. Phase 3 Infrastructure Improvements shall be constructed in accordance with Exhibit G-4, Exhibit G-5, Exhibit G-8.3, and elsewhere in this Exhibit G.

SITE A INFRASTRUCTURE PACKAGE. The West Midway and RESHAP infrastructure packages are reliant on infrastructure to be completed by the adjacent Site A Development. As described in the DDA, Developer may take responsibility for the design and construction of some or all of the Site A Improvements needed to serve the West Midway and/or RESHAP development phases. The Site A infrastructure improvements needed to serve both the RESHAP or West Midway developments are described below.

Site A improvements to serve RESHAP Phase 1: None

Site A improvements to serve RESHAP Phase 2:

- a. Sewer improvements in West Tower Avenue from Ardent Street to Orion Street, as shown in orange on Exhibit G-8.3.
- b. Storm drain improvements in West Tower Avenue from Ardent Street to Pan Am Way, as shown in orange on Exhibit G-8.3.

Site A Improvements Required for West Midway Phase 1:

- a. Storm drain improvements in West Tower Avenue from Skylark Street to point just west of Orion Street, as shown in orange on Exhibit G-8.1.
- b. Sewer improvements in West Tower Avenue from Skylark Street to Orion Street, extending south in Orion Street and connecting to the existing sewer pump station located within a block of Site A, Phase 2, as shown in orange on Exhibit G-8.1.

Site A Improvements Required for West Midway Phase 2:

- a. Street improvements to West Tower Avenue from Main Street to Orion Street, as shown in orange on Exhibit G-8.2 and more particularly described in Exhibit G-6. Developer's scope is limited to improvements from the northern right-of-way line to the southern edge of the southern (east bound) travel lane, and will include landscaping, bio-retention areas, bike lanes, roadways, joint trench and street lighting (if required), as shown in Exhibit G-6. The southern balance of this section of West Tower Avenue will be constructed by the Site A Developer.
- b. Sewer improvements in West Tower Avenue from Main Street to Skylark Street, as shown in orange on Exhibit G-8.2.
- c. Storm drain improvements in West Tower Avenue from Main Street to Skylark Street, as shown in orange on Exhibit G-8.2.

Site A Improvements Required for West Midway Phase 3:

- a. Street improvements to West Tower Avenue from Orion Street to Pan Am Way, as shown in orange on Exhibit G-8.3 and more particularly described in Exhibit G-6. Developer's scope is limited to improvements from the northern right-of-way line to the southern edge of the southern (east bound) travel lane, and will include landscaping, bio-retention areas, bike lanes, roadways, joint trench and street lighting (if required), as shown in Exhibit G-6. The southern balance of this section of West Tower Avenue will be constructed by the Site A Developer.
- b. Sewer improvements in West Tower Avenue from Pan Am Way to Orion Street, as shown in orange on Exhibit G-8.3.
- c. Storm drain improvements in West Tower Avenue from Ardent Street to Pan Am Way, as shown in orange on Exhibit G-8.3.



WEST MIDWAY
ALAMEDA, CA

EXHIBIT "G-1" SITE PLAN - ALL PHASES



SITE DEVELOPMENT PLAN
November 10, 2022

SP1.3

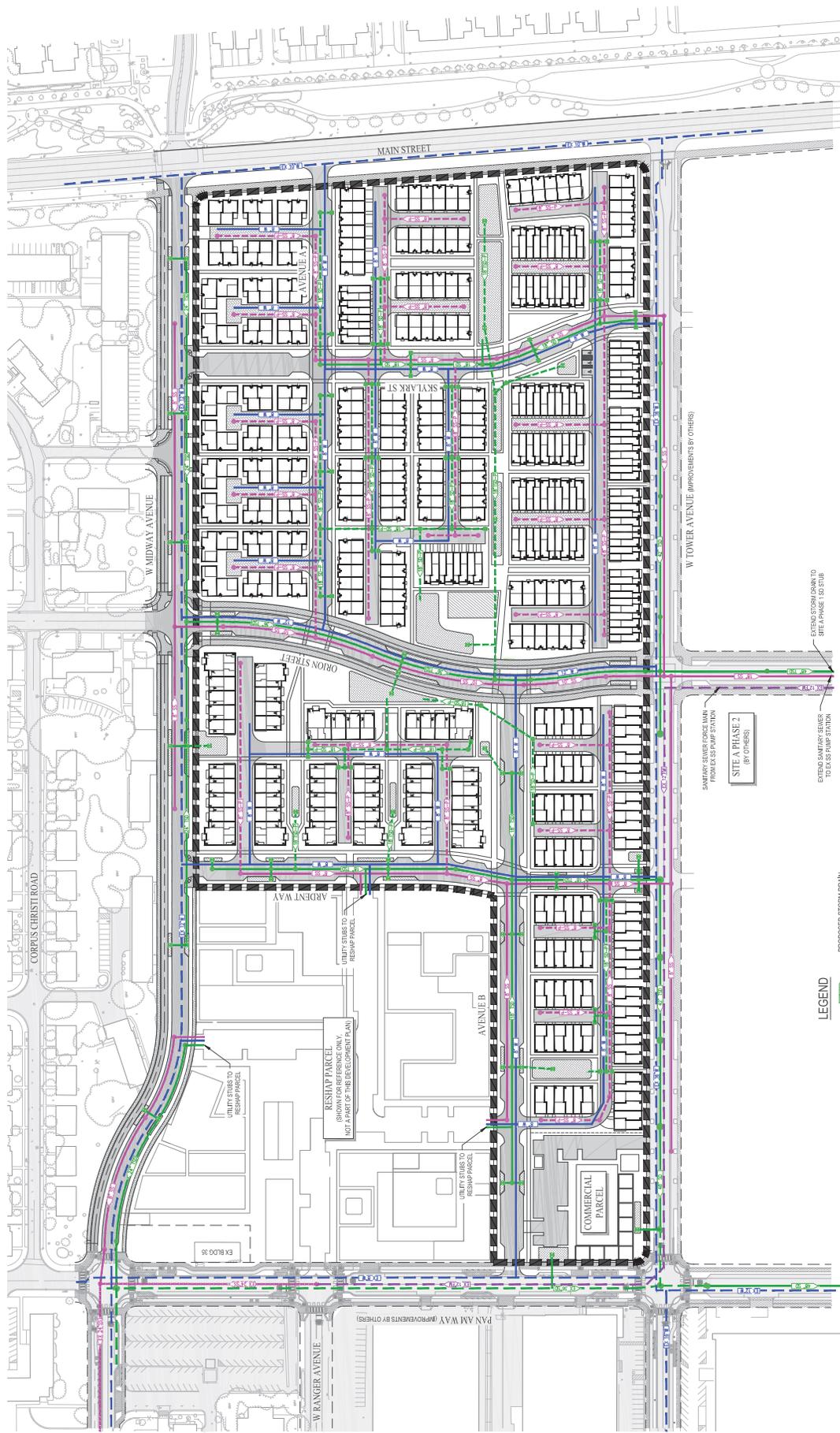


EXHIBIT "G-2" UTILITY PLAN

WEST MIDWAY
ALAMEDA, CA

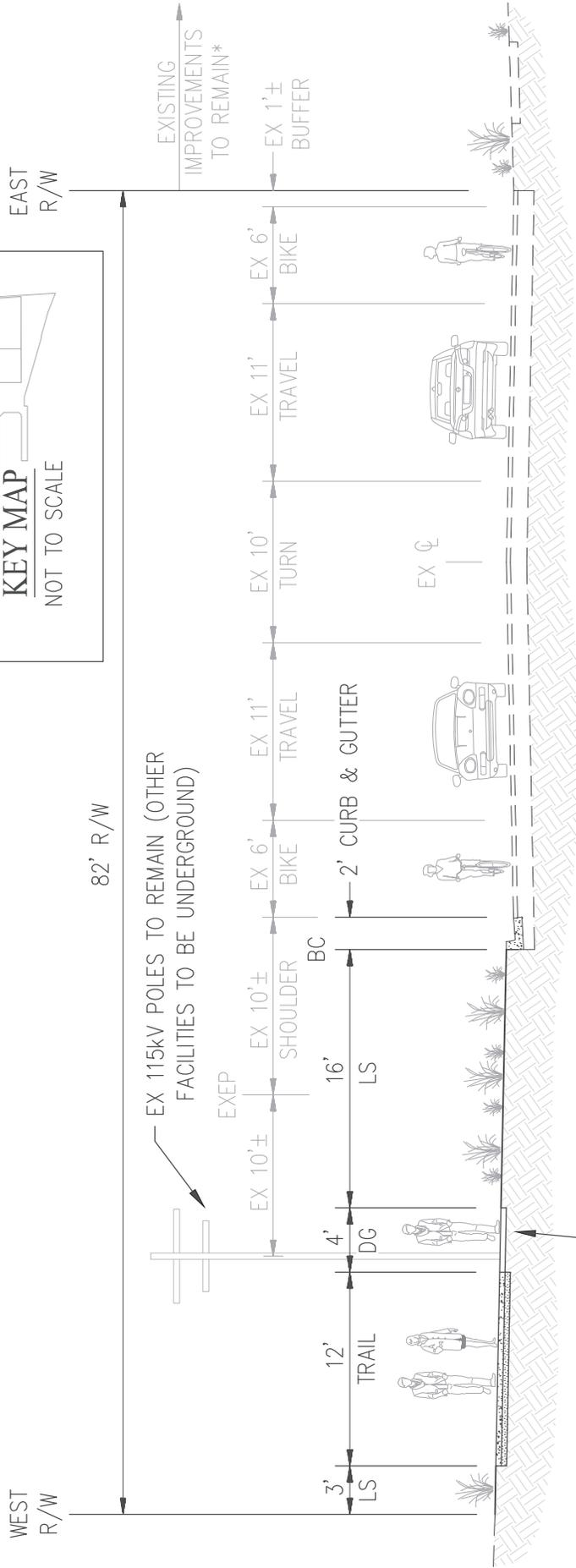


Brookfield
Properties

CATELLUS

STREET CLASSIFICATIONS

- REGIONAL ARTERIAL
- PRIMARY TRANSIT
- TRUCK ROUTE
- CLASS 2C BIKE FACILITY



DG PATH TO BE ALIGNED TO PROVIDE MIN 4' UNOBSTRUCTED TRAVEL AT EXISTING POLES

MAIN STREET
ATLANTIC TO MAIN GATE
(INITIAL CONSTRUCTION)

***EXISTING IMPROVEMENTS NOTE:**
THERE IS AN EXISTING LINEAR PARK INCLUDING CLASS I TRAILS ON THE EAST SIDE OF MAIN STREET FROM ATLANTIC TO SINGLETON AVENUE.

ALAMEDA POINT
MASTER INFRASTRUCTURE PLAN
CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
DATE: FEBRUARY, 2020 NOT TO SCALE
Carlson, Barbee, & Gibson, Inc.

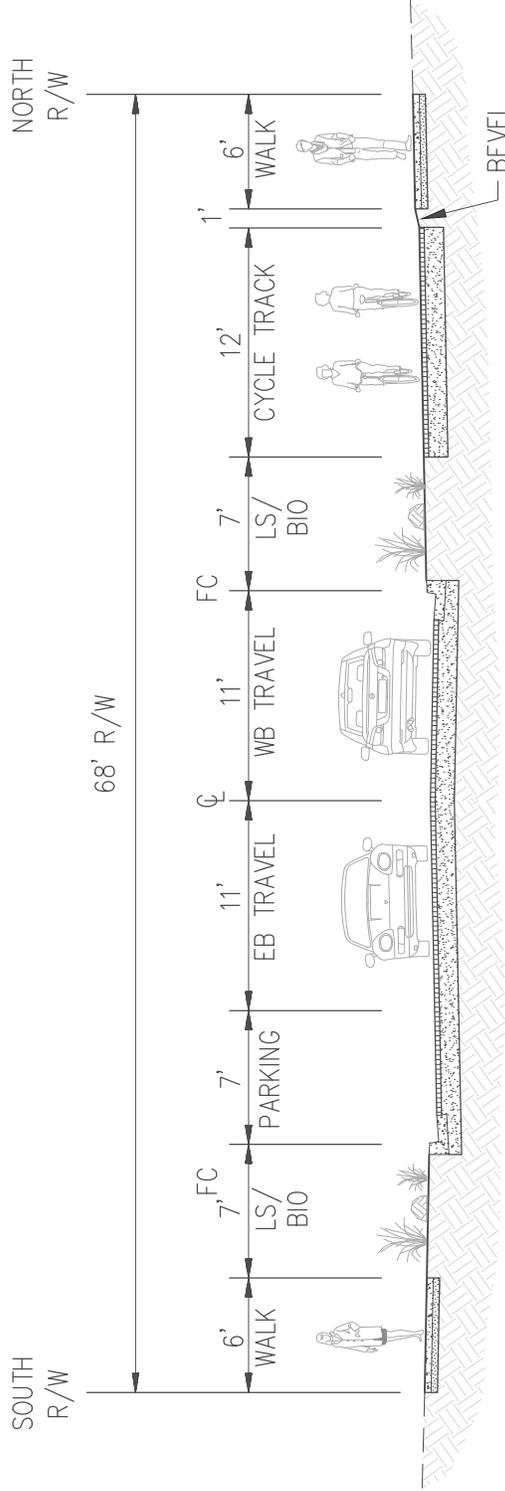
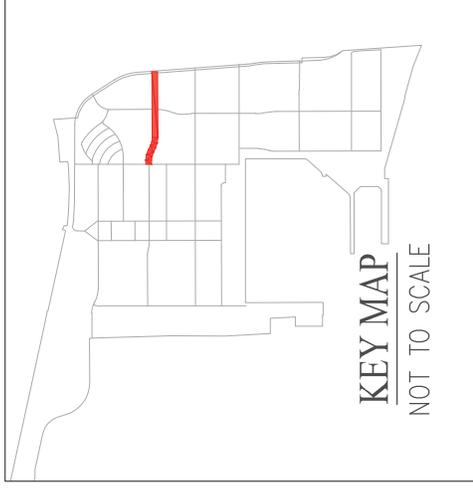
UPDATED FIGURE 23 MAIN STREET - INITIAL DEVELOPMENT AREAS



STREET

CLASSIFICATIONS

- ISLAND ARTERIAL
- SECONDARY TRANSIT
- CLASS 2A BIKE FACILITY

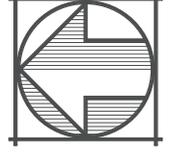


TRAVEL LANE NOTE:

TRAVEL LANES SHALL BE INCREASED TO 13' FOR STREETS ADJACENT TO BUILDINGS GREATER THAN 30' HIGH (OR AS APPROVED BY FIRE DEPT) AND SHALL BE STRIPED AS 10' LANES.

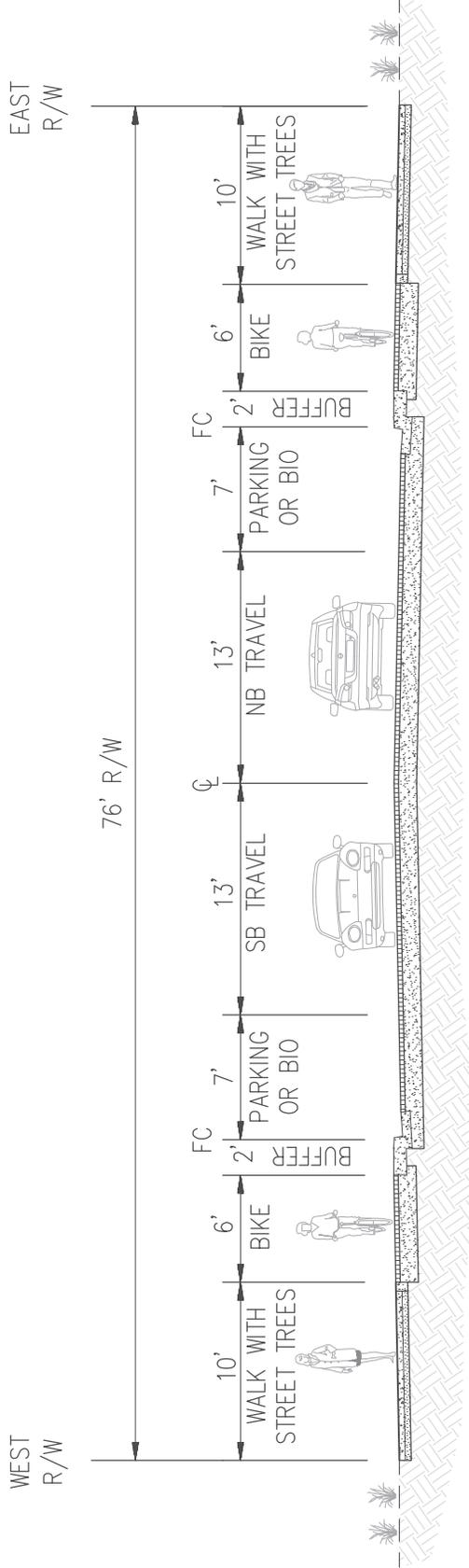
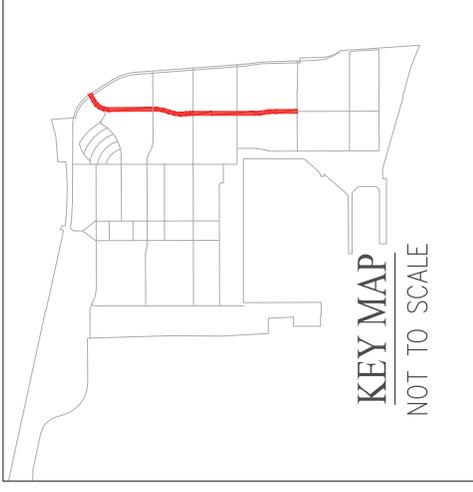
ALAMEDA POINT
MASTER INFRASTRUCTURE PLAN
 CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
 DATE: FEBRUARY, 2020 NOT TO SCALE
Carlson, Barbee, & Gibson, Inc.

UPDATED FIGURE 23
WEST MIDWAY AVENUE
DEVELOPMENT AREAS



STREET CLASSIFICATIONS

- LOCAL STREET
- SECONDARY TRANSIT STREET
- CLASS 2A BIKE FACILITY



LOCAL STREET PROTECTED BIKE LANES

ALAMEDA POINT
MASTER INFRASTRUCTURE PLAN
CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
DATE: FEBRUARY, 2020 NOT TO SCALE
Carlson, Barbee, & Gibson, Inc.

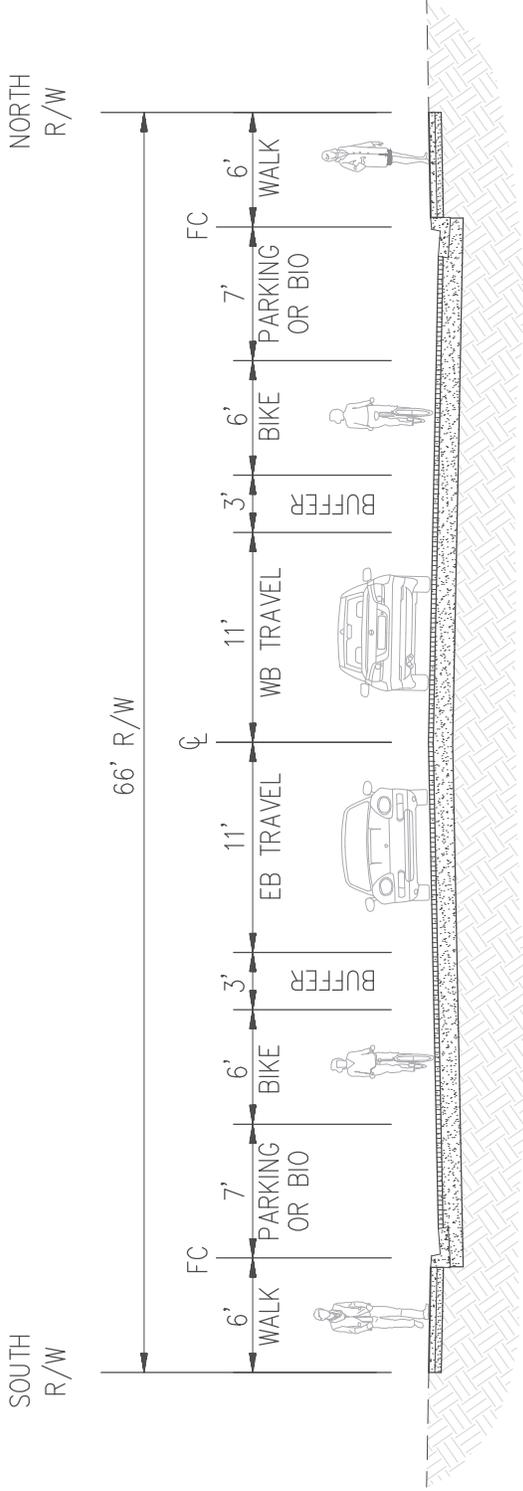
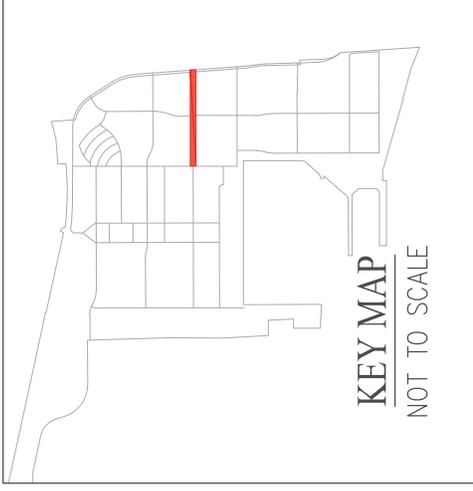
UPDATED FIGURE 23
LOCAL STREETS - PROTECTED BIKE LANES
DEVELOPMENT AREAS



EXHIBIT "G-5"

STREET CLASSIFICATIONS

- LOCAL STREET
- CLASS 2B BIKE FACILITY



WEST TOWER AVENUE

ALAMEDA POINT
MASTER INFRASTRUCTURE PLAN
 CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
 DATE: FEBRUARY, 2020 NOT TO SCALE
Carlson, Barbee, & Gibson, Inc.

UPDATED FIGURE 23
WEST TOWER AVENUE
DEVELOPMENT AREAS





- LEGEND**
- BOUNDARY OF WEST MIDWAY PARCELS
 - FUTURE STREET IMPROVEMENTS (BY CITY REUSE)
 - FUTURE POTABLE WATER (BY CITY REUSE)
 - FUTURE JOINT TRENCH (BY CITY REUSE)
 - FUTURE STORM DRAIN & DIRECTION OF FLOW (BY CITY REUSE)
 - FUTURE SANITARY SEWER & DIRECTION OF FLOW (BY CITY REUSE)
 - EXISTING SANITARY SEWER FORCE MAIN & DIRECTION OF FLOW (BY SITE A - PHASE 1)
 - EXISTING SEWER PUMP STATION (BY SITE A - PHASE 1)

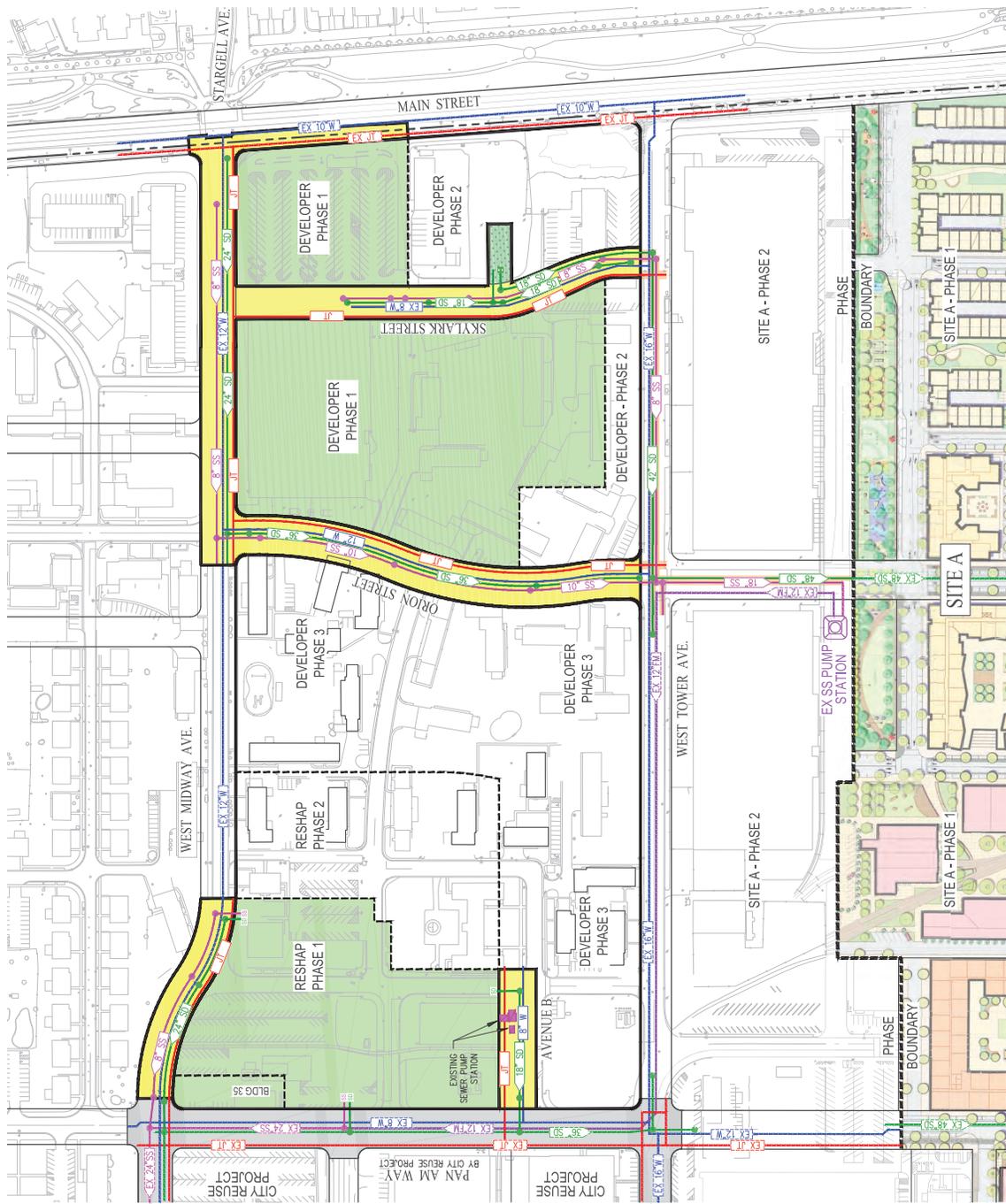
ALAMEDA POINT
**FUTURE INFRASTRUCTURE
 IMPROVEMENTS BY CITY REUSE**
 WEST MIDWAY PARCELS
 CITY OF ALAMEDA - ALAMEDA COUNTY CALIFORNIA

SCALE: 1" = 100' DATE: JUNE 10, 2020

SAN RAMON (925) 866-0322
 SACRAMENTO (916) 374-1977
 WWW.CBG.COM
cbg
 CIVIL ENGINEERS SURVEYORS PLANNERS

EXHIBIT "G-7.1"

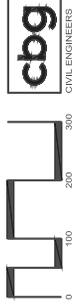
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- LEGEND**
- BOUNDARY OF WEST MIDWAY PARCELS
 - STREET IMPROVEMENTS - BY OTHERS
 - OFF-SITE IMPROVEMENTS - PHASE 1
 - STREET IMPROVEMENTS - PHASE 1
 - DEVELOPMENT AREA - PHASE 1
 - PROPOSED
 - EXISTING
 - POTABLE WATER
 - JOINT TRENCH
 - STORM DRAIN & DIRECTION OF FLOW
 - SANITARY SEWER & DIRECTION OF FLOW
 - SANITARY SEWER FORCE MAIN & DIRECTION OF FLOW
 - SEWER PUMP STATION
 - BIOREGION PLANTER

ALAMEDA POINT
PHASE 1
INFRASTRUCTURE
 WEST MIDWAY PARCELS
 CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

SCALE: 1" = 100' DATE: JUNE 16, 2023



SAN RAMON (925) 866-0322
 SACRAMENTO (916) 374-1977
 WWW.CBG.COM
 CIVIL ENGINEERS SURVEYORS PLANNERS

EXHIBIT "G-8.1"

EXHIBIT H
DEVELOPMENT PLAN

**THE DISPOSITION AND DEVELOPMENT AGREEMENT EXHIBIT H - ALAMEDA POINT -
WEST MIDWAY DEVELOPMENT PLAN IS ATTACHED TO THIS ITEM AS EXHIBIT 1**

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 dated as of _____, 2023 (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 until Grantee is entitled to a Vertical Phase Certificate of Completion with respect to the Vertical Improvements constructed on the Property pursuant to Section 9.4 of the DDA, the Grantee shall devote the Property only to the uses specified in the DDA, or as otherwise approved in writing by the Grantor. Except as otherwise provided in Section 9.4 of the DDA, Grantee’s entitlement to a Vertical Phase Certificate of Completion shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in the DDA with respect to the construction and development obligations of the Grantee and its successors and assigns with respect to the Property.

3. 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 Vertical Improvements thereon.

4. 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 development 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 until a Vertical Phase Certificate of Completion has been issued with respect to the Property, 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.

5. The covenants contained in this Quitclaim Deed shall remain in effect until Grantee is entitled to a Vertical Phase Certificate of Completion with respect to the Property, except for the nondiscrimination covenants contained in Section 4 above which shall run with the land in perpetuity.

6. 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.

7. 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 subject however to the limitations provided in the DDA. 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.

8. **[NOTE: SECTION 8 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER]** Subject to any rights or interests provided in the DDA

for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right, at its option, to reenter and take possession of the Property, as set forth in Section 15.5 of the DDA. Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by the DDA; and

(b) Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

9. **[NOTE: SECTION 9 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER]** Subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 9, including also the right to execute and record or file with the Recorder of the County written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, but in all cases on and subject to the terms and conditions of the DDA. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived. The Grantor's interest in the Property, as set forth in Section 9 and subject to the terms of Section 15.5 of the DDA, shall be a "power of termination" as defined in California Civil Code Section 885.010.

10. **[NOTE: SECTION 10 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER]** On and subject to Section 15.6 of the DDA, the Grantor may at its option, in addition to other rights granted in the DDA, but subject to the terms and conditions of the DDA, including, without limitation, any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, repurchase, reenter and take possession of the Property as set forth in the DDA.

11. 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. 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.

12. 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.

13. 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.

14. **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 [redacted] day of [redacted], 20____.

GRANTOR:

CITY OF ALAMEDA,
a California charter City

By: _____
Jennifer Ott, City Manager

Approved as to Form:

Senior Assistant City Attorney

GRANTEE:

SIGNATURES MUST BE NOTARIZED

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
RIGHT OF ENTRY

RIGHT OF ENTRY
(West Midway Backbone Infrastructure Phase __)

This Right of Entry (West Midway Backbone Infrastructure Phase ____) (the “*Permit*”) is entered into as of _____, 202_ (the “*Effective Date*”), by and between the City of Alameda, a municipal corporation (“*City*”), and BC West Midway, LLC, a Delaware limited liability company (“*Permittee*”), with reference to the following facts, understandings and intentions:

RECITALS

- A. City and Permittee have entered into a Disposition and Development Agreement (West Midway), dated for reference purposes as of _____, 2023 (the “*DDA*”), concerning the development of certain property more particularly described in the DDA (the “*West Midway Property*”).
- B. City and Permittee have entered into a Public Improvement Agreement, dated as of _____ (the “*Public Improvement Agreement*”), concerning the scope of the Work (as defined below). [NOTE: THIS RECITAL WILL NOT APPLY TO RESHAP INFRASTRUCTURE PHASE 1 AS THERE WILL NOT BE A PIA FOR THAT PHASE.]
- C. The DDA requires the Permittee to design and construct the Phase __ Infrastructure Package as that term is defined in the DDA and for the City to grant to the Permittee a right of entry (the “*Right of Entry*”) over the portion of the West Midway Property necessary for the construction of the Phase __ Infrastructure Package provided the conditions precedent to the construction of the Phase __ Infrastructure Package set forth in the DDA have been satisfied, which portion of the West Midway Property is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the “*Site*”). [NOTE: THE SITE TO BE DEFINED TO INCLUDE THE STREETS REQUIRED FOR ACCESS TO THE APPLICABLE INFRASTRUCTURE PHASE, OR ALTERNATIVELY THE RIGHT OF ENTRY WILL COVER SUCH STREETS IN ADDITION TO THE PROPERTY.]
- D. The parties have entered into this Permit to provide the required Right of Entry for the construction of the Phase __ Infrastructure Package.

NOW, THEREFORE, in consideration of the forgoing, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, City hereby grants to Permittee a right to enter the Site subject to the requirements set forth in this Permit, all as more fully described below.

1. **DDA Definitions.** The capitalized terms not otherwise defined herein shall have the meanings given in the DDA.
2. **License.** City hereby grants to Permittee for use by Permittee and its employees, officers, agents, consultants, engineers, contractors, and subcontractors (collectively, “*Agents*”) a temporary, personal, nonexclusive and nonpossessory right and license to enter upon and use the Site for the purposes and subject to the terms, conditions and restrictions set forth below. This

676\053559160.2
7/4/2023

Permit grants Permittee a license only and notwithstanding anything to the contrary herein or in the DDA, this Permit does not constitute a deed or grant by City of any ownership, leasehold, easement or other similar real property interest or estate whatsoever in the West Midway Property or the Site or any portion thereof. [“This Permit is nonexclusive, and, subject to the terms of the DDA, the City shall have the right to use the Site for any use that does not materially interfere with Permittee's performance of the Work (as defined below).”][**USE THIS LANGUAGE FOR RIGHTS OF ENTRY FOR “SITE A” AND OTHER OFFSITE WORK**] [OR] [“This Permit is nonexclusive, and, subject to the terms of the DDA, the City shall have the right to use the Site for any use that does not materially interfere with Permittee's performance of the Work (as defined below); provided, however, Permittee shall have the right to approve any such use by City.”][**USE THIS THIS LANGUAGE FOR RIGHTS OF ENTRY FOR ONSITE WORK/CONSTRUCTION OF A PHASE**] Subject to the foregoing, City and Permittee shall cooperate in the use of the Site during the Term of this Permit.

3. **Purposes.** Permittee may enter the Site for the purpose of constructing the Phase __ Infrastructure Package which shall include the construction of the improvements described in **Exhibit B**, attached and incorporated herein pursuant to and consistent with the requirements of the DDA (the “*Work*”). [NOTE: EXHIBIT B TO REFERENCE THE INFRASTRUTURE PACKAGE FOR THE APPLICABLE PHASE SET FORTH IN EXHIBIT G OF THE DDA.] Permittee’s right to perform the Work remains subject to Permittee obtaining all necessary Approvals (as defined below) prior to the date Work on the Site is performed and complying with the other terms and conditions of the Permit applicable to the Work.

4. **Term.** The license conferred to Permittee pursuant to this Permit shall commence on the Effective Date and shall terminate on the earlier to occur of (i) Outside Completion Date (defined below), (ii) the date on which Permittee provides written notice to City that Permittee has completed the Work and no longer has any need to enter on or use the Site for the purposes provided in this Permit, (iii) the date City conveys fee title to the Site to Permittee or a Vertical Permittee (provided that if Permittee conveys only a portion of the Site to Permittee or Vertical Permittee, then this Permit shall continue in effect with respect to the portion of the Site not so conveyed until this Permit otherwise terminates with respect to such portion in accordance with this Section 4), and (iv) the earlier termination of this Permit pursuant to Section 11 below. As used herein, the term “*Outside Completion Date*” shall mean _____ (the date for completion of the Phase __ Infrastructure Package as required by Milestone Schedule to the DDA), as such date may be extended pursuant to terms of the DDA, including Section 1.3 of the DDA.

5. **Performance; Approvals; Due Care.**

a. Permittee shall obtain all approvals and permits required for the Work (collectively, “*Approvals*”), including without limitation approvals and permits from the City, [County of Alameda, California Department of Toxic Substances Control (“DTSC”), San Francisco Bay Conservation and Development Commission (“BCDC”), United States Navy (“Navy”)] [**NOTE: THIS LIST OF AGENCIES TO BE UPDATED BASED ON THOSE THAT HAVE**

JURISDICTION OVER THE APPLICABLE WORK], as applicable, and pay all fees (including, without limitation, inspection fees) required by all City departments, including the Department of Public Works, and any other governmental agencies having or claiming jurisdiction over the Site, that are required to commence and complete the Work, prior to Permittee's commencement of such Work. Prior to commencement of any of the Work, Permittee shall provide proof of all such required Approvals to City, to the extent City was not the entity issuing the applicable Approvals. Permittee shall perform, or cause to be performed, all Work in compliance with such Approvals.

b. Permittee shall use, and shall cause its Agents to use, due care at all times in performing the Work to avoid any damage or harm to City's property and adjoining property and any facilities, in, under, or on the Site or adjacent to the Site, unless such property or facilities are to be demolished, removed or replaced in connection with the Work.

c. Permittee shall be solely responsible for promptly correcting any unplanned interruption to utility services of existing tenants, to the extent caused by Permittee or its contractors, subcontractors or agents. Permittee shall be solely responsible for providing prior written notice of any planned interruption to utility service approved by the City and the application utility provided in conjunction with Permittee's performance of the Work.

d. Permittee shall cause all of its contractors, subcontractors, and all other parties performing the Work to comply with the terms of this Permit. Upon the City's request, evidence of such requirement shall be provided to the City.

e. Permittee shall pay all utility service fees associated with the Work on the Site, including, without limitation, water, sewer, and electricity, to the extent Permittee uses such utilities in connection with the Work.

f. Permittee shall comply with all of the terms and conditions of the DDA and the Public Improvement Agreement covering the Work, including but not limited to any provisions related to insurance and shall provide evidence of the required insurance prior to commencing the Work.

g. Permittee's obligations under this Permit shall be subject to extension due to Force Majeure. Any extension of time for the performance of an act or obligation under this Permit due to Force Majeure shall be subject to the requirements of Section 1.3(e) of the DDA regarding the giving of notice of an event of Force Majeure; provided, further, that Permittee shall not have to provide a separate notice of the occurrence of an event of Force Majeure to the City under this Permit if Permittee provides a notice of such event of Force Majeure under the DDA.

6. **Notice and Schedule.** Prior to performing the Work, Permittee shall provide to City Public Works Director (a) at least forty-eight (48) hour's prior written notice, which notice may be provided via electronic mail, and (b) an anticipated schedule for the Work. Permittee shall promptly provide to City all material updates and modifications to the schedule.

7. **Compliance with Laws and Agreements.**

a. All activities and operations of Permittee and/or its Agents under this Permit shall comply with all applicable federal, state and local laws and regulations, including without limitation, the City's Marsh Crust ordinance (City of Alameda Ordinance No. 2824), and in accordance with all agreements between the Permittee and the City applicable to the Site. All contracts Permittee enters into for performance of the Work shall make appropriate provision for compliance with this Section 7.

b. All activities and operations of Permittee and/or its Agents under this Permit shall be in compliance with the Site Management Plan ("**SMP**") dated September 30, 2022, attached hereto as **Exhibit C**, including any revisions thereto to the extent that they are Permitted Exceptions under Section 4.6 of the DDA. The substantive portions of the SMP shall apply to all applicable Work.

c. Permittee herein covenants for itself and for all persons claiming in or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, sex, marital status, sexual orientation, disability, veterans' status, national origin or ancestry in the use, occupancy or enjoyment of the Site.

8. **Signs.** Permittee shall not place, erect, or maintain any sign, advertisement, banner or similar object on the Site, except for temporary safety and warning signs associated with the Work and/or as approved by City, such approval not to be unreasonably withheld, conditioned or delayed. Informational signage shall be subject to the approval of the City, not to be unreasonably withheld, conditioned or delayed.

9. **Condition/Restoration of Condition of Property.**

a. For purposes of this Permit, Permittee accepts the Site "as is" and entry upon the Site by Permittee is an acknowledgment by Permittee that all dangerous places and defects in the Site, except latent defects and dangerous places, are known to it. Throughout the Term of this Permit, Permittee shall use commercially reasonable efforts to maintain the Site so that it will not be unsafe, unsightly or unsanitary. Upon termination of this Permit, Permittee shall vacate the Site and remove any and all personal property located thereon. If this Permit is terminated prior to conveyance of the Site to Permittee or an assignee of Permittee pursuant to the DDA, then all improvements installed on the Site by the Permittee shall become the property of the City, subject to the provisions of the DDA regarding the City's right of reverter and right of repurchase. The City shall have the right upon not less than thirty (30) days notice to Permittee to dispose of any property left by Permittee on the Site after termination of this Permit or after the Permittee has vacated the Site.

b. If any soil, groundwater, soil gas, or geotechnical investigation permitted hereby involves the drilling of holes or other excavation having a dimension that could create a safety hazard for persons, said holes and excavation shall during any drilling operations be carefully

safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling and shall be approved by Permittee's geotechnical engineer. All soil, groundwater, and soil gas test data and reports prepared based thereon and obtained from these activities shall be provided to City upon request.

c. Permittee shall comply with any and all of the City's on-site safety and security requirements and any other rules and regulations that might be applicable to the Permittee's Work. Permittee shall secure the Site during any Work to prevent unauthorized entry.

d. Intentionally deleted.

e. Prior to the termination of this Permit, Permittee, at its sole cost and expense, shall appropriately contain, label and cause to be removed from the Site any Hazardous Materials (as defined below) extracted from the Site as a result of Permittee's Work or first introduced in, on, under or about the Site by Permittee or its Agents ("**Permittee Hazardous Materials**"), in compliance with all applicable laws. All costs of storage, shipping and disposal of Permittee Hazardous Materials shall be the responsibility of Permittee including, without limitation, the costs of preparation of shipping papers. Permittee shall promptly inform City that such actions have been performed. To the extent required in connection with the transport or disposal of Hazardous Materials from the Site, the City shall be designated and shall sign any necessary manifests as the "generator" of any Hazardous Waste removed from the Site, but Permittee shall be designated the generator for any Hazardous Materials first introduced in, on, under or about the Site solely by Permittee. For purposes herein, the term "**Hazardous Materials**" shall mean any substance, material or waste which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive materials; (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (ix) determined by California or federal governmental authority to be capable of posing an unacceptable risk to human health or the environment due to environmental exposures.

f. [Notwithstanding any provision of this Permit to the contrary, in no event shall Permittee or its Agents be liable for the mere discovery by Permittee of any preexisting condition of Hazardous Materials in, on, under or about the Site (including Incidental Migration as defined in the DDA) that Permittee did not extract from or introduce in, on, under or about the Site, provided Permittee promptly notifies City of such discovery and properly documents and handles any Hazardous Materials actually extracted by Permittee or its Agents in accordance with this

Section.] [NOTE: THIS PROVISION TO BE INCLUDED IN RIGHTS OF ENTRY FOR OFF SITE WORK ONLY, INCLUDING “SITE A” AND RESHAP.]

g. City makes no representations or warranties, express or implied, with respect to the environmental condition of the Site or the surrounding property (including, without limitation, all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any applicable Hazardous Materials Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or release or threatened release of Hazardous Materials in or from the Site, except to the extent specifically provided in the DDA. Permittee recognizes that, in entering upon the Site and performing work under this Permit, its Agents may be working with, or be exposed to, substances or conditions which are toxic or otherwise hazardous. Permittee shall provide prior written notice to its Agents of the potential presence and exposure to such toxic or hazardous substances or conditions. Permittee agrees that, for purposes of this Permit and performance of the Work, it is assuming full responsibility for such risks, except and to the extent the same arise from the gross negligence or willful misconduct of the City.

h. To the extent any of the terms of this Section 9 conflict with the terms of the DDA, the terms of the DDA shall control.

i. All excavation, backfilling or other earthwork shall be performed in accordance with the recommendations of Permittee's geotechnical engineer and the terms of any permits or approvals.

10. **Defaults by Permittee.** A default of Permittee under this Permit shall include, but not be limited to, Permittee's failure to timely perform an obligation under this Permit or to comply with any material term of this Permit; Permittee's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Permittee fails to discharge within sixty (60) days; the commencement of a foreclosure action against the Permittee or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure. Permittee shall notify the City of Permittee's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

11. **Remedies.** Upon the happening of any event described above in Section 10, the City shall first notify Permittee in writing of Permittee's purported breach or failure. Permittee 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 Permittee has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, Permittee shall not be in default so long as Permittee is diligently prosecuting such cure to completion. Permittee's failure to timely cure a default under this Permit shall be deemed an "Event of Default."

Upon the occurrence of an Event of Default, City shall have the right to issue a stop work order, seek specific performance or other injunctive relief, and/or recover damages against the Permittee

with respect to the applicable Event of Default under this Permit, subject to the limitation on such damages set forth in the DDA.

Furthermore, if there is a Developer Event of Default under the DDA with respect to the Infrastructure Phase that is the subject of this Permit, and if following such Developer Event of Default the City exercises its rights and remedies described in Sections 15.5 and 15.6 of the DDA prior to the issuance of a Infrastructure Phase Certificate of Completion for such Infrastructure Phase or Permittee becoming entitled to the issuance of an Infrastructure Phase Certificate of Completion for such Phase, then City shall have the right to revoke and terminate this Permit and remove the Permittee from the Site. If this Permit is revoked or terminated pursuant to the immediately preceding sentence prior to the completion of the Work, Permittee shall secure all portions of the Site to prevent injury or damage to person or property at Permittee's sole cost and expense. Notwithstanding the foregoing, if Permittee fails to secure the Site in a reasonable time thereafter then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense.

Subject to the limitation on revoking and terminating this Permit set forth in this Section 11, City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Permittee agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

12. **Costs.** Subject to the terms of this Permit, Permittee shall bear all costs and expenses of any kind or nature in connection with its use of the Site, including, without limitation, any fines or penalties related to, or arising from performance of the Work and any costs incurred by the City caused by Permittee's or its Agents' failure to comply with this Permit.

13. **Notices.** Any notice or communication required hereunder to be given by the City or the Permittee 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:

a. If delivered by email or by registered or certified mail, the notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (ii) 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.

b. 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.

City: City of Alameda
2263 Santa Clara Avenue, Room
Alameda, CA 94501
Attention: Public Works Director
Email:
Phone:

With copy to: City Attorney's Office
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501 Attention: City Attorney
Email:cityattorney@alamedacityattorney.org
Phone: 510-747-4752

Permittee:

With copy to:

14. **No Assignment.** This Permit is personal to Permittee and shall not be transferred by Permittee without City's prior written consent, which may be granted or denied in City's sole discretion. Any attempt by Permittee to transfer this Permit in violation of the immediately preceding sentence shall be null and void. Notwithstanding the foregoing, (a) City acknowledges that some or all of the Work may be performed by Permittee's Agents, and such performance shall not be construed as an assignment or transfer by Permittee of this Permit; and (b) Permittee may assign this Permit in connection with a Transfer of the DDA permitted under Section 10.4 or Section 10.5 of the DDA.

15. **Strictly Construed.** This Permit is to be strictly construed and no use other than that specifically stated herein is authorized hereby.

16. **Non-Liability of Officials, Employees and Agents.** Notwithstanding anything to the contrary in this Permit, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Permittee, its successors and assigns, in the event of any default or breach by City or for any obligation of City under this Permit or a judgment obtained against City, nor shall any officer, director, shareholder, partner, member, trustee, employee, or beneficiary of Permittee be personally liable to City, or its successors or assigns, in the event of any default or breach by Permittee or for any obligation of Permittee under this Permit or a judgment obtained against Permittee.

17. **No Joint Venture or Partnership; No Authorization.** This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Site. Except as provided in this Permit, the giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, or relating to the Site.

18. **Taxes.** Permittee agrees to pay any applicable taxes, including possessory interest taxes, in the event that this Permit creates a possessory interest subject to property taxation, that may be lawfully assessed on Permittee's interest under this Permit or use of the Site pursuant hereto. Permittee shall pay all such charges when they become due and payable and before delinquency. Nothing in this section shall be construed as indicating an intent to create a possessory interest subject to taxation, and City agrees that it will cooperate with Permittee in efforts to lawfully minimize or avoid any such assessments.

19. **Indemnification.**

a. The Parties agree that the indemnification provisions set forth in Article 13 of the DDA shall apply to the Work performed by Permittee pursuant to this Permit.

b. Permittee shall not permit any mechanics' or material supplier's liens to be levied against the Site for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to its Agents and Permittee shall indemnify, defend and hold the Indemnities free and harmless from any and all cost or expense connected with or arising from any Work undertaken on the Property by Permittee.

c. For the purposes of this Section 19, Permittee's operations and activities include, but are not limited to, those of its Agents.

d. Permittee's obligations under this Section 19 shall survive the expiration or other termination of this Permit.

e. The agreement that the indemnification provisions set forth in Article 13 of the DDA shall apply to the Work performed by Permittee pursuant to this Permit shall not be construed to limit or replace, any other obligations or liabilities which Permittee may have to City in the DDA, this Permit, the Public Improvement Agreement at common law or otherwise, except as same may be limited by the provisions of the DDA or this Permit.

20. **General Provisions.**

a. This Permit may not be amended or modified except by a written instrument signed by an officer or other authorized representative of all parties hereto.

b. No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in

such written waiver.

c. All approvals and determinations of City required or permitted hereunder shall be made in the reasonable discretion of City.

d. The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit

e. Time is of the essence with respect to this Permit and all actions authorized hereunder.

f. This Permit shall be construed and governed in accordance with the laws of the State of California.

g. Any legal action under this Permit 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 Permit, 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 Permit, 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.

h. All parties have been represented by counsel in the preparation and negotiation of this Permit, and this Permit shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Permit. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

i. Section headings in this Permit are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Permit.

j. Except as otherwise provided herein, if any provision(s) of this Permit is (are) held invalid, the remainder of this Permit shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

k. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Permit had executed the same counterpart.

- l. Permittee may not record this Permit or any memorandum hereof.
- m. Subject to the limitations on assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.
- n. Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.
- o. This Permit may be executed in counterparts.
- p. For purposes herein, the designated representative for City shall be the Community Development Director or her designee.

Signature begin on next page

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

PERMITTEE:

[Signature of City on next page]

Signature Page

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676\05\3559160.2
7/4/2023

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CITY:

CITY OF ALAMEDA, a California charter city

By: _____
Jennifer Ott, City Manager

[Notary Acknowledgment Required]

Recommended for Approval:

Lisa Maxwell
Community Development Department Director

Approved as to Form:

Len Aslanian
Assistant City Attorney

Authorized by City Council Resolution No. _____

Signature Page

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7/4/2023

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Exhibit A

The Site

Exhibit B

The Work

Exhibit C

The SMA

[Please See Attached]

EXHIBIT K

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT

(Alameda Point West Midway, [Phase/Subphase])

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 _____, 2023, as amended, regarding the portion of Alameda Point commonly known as West Midway (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: (1) any and all permits, entitlements, rights, intangible property and/or privileges appurtenant or otherwise related to [Phase/Subphase] more particularly described on Schedule 1 attached hereto, including, without limitation, the EDC Agreement, (collectively, the “[**Phase/Subphase**] ___ **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/Subphase] ___ 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/Subphase] ___ Intangible Property shall be delivered to:

Developer:

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.

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 electronic 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. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Assignment.

7. 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:

Schedule 1 to General Assignment

Legal Description of the Phase/Subphase

EXHIBIT L

FORM OF BILL OF SALE

BILL OF SALE

This **BILL OF SALE** is entered into as of _____, 202____, 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 _____, 2023, as amended, regarding the portion of Alameda Point commonly known as West Midway (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 to, inter alia, transfer the [Phase/Subphase] _____ Personal Property (defined below) to the Developer.

AGREEMENT

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

1. Transfer. In consideration of the portion of the Land Payment allocated to the [Phase/Subphase] 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/Subphase] _____ Personal Property”). The Developer hereby accepts the [Phase/Subphase] _____ Personal Property pursuant to the terms of this Bill of Sale.

2. City’s Representations; As-Is Purchase; Waiver of Implied Warranties; Limitation of Liability.

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

The Developer acknowledges that the Developer has had the opportunity to inspect the [Phase/Subphase] _____ Personal Property and, except as expressly set forth in Section 2.1, hereby agrees that the Developer is accepting the [Phase/Subphase] _____ Personal Property in their “As-Is” condition.

Except as expressly set forth in Section 2.1, 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.

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.

4. 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.

5. Counterparts. This Bill of Sale may be executed in one or more counterparts by actual or electronic 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. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Assignment.

7. 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. 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 "1" TO BILL OF SALE

[Phase/Subphase] ___ Personal Property

EXHIBIT M

PUBLIC IMPROVEMENT AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Alameda
Public Works Department
2263 Santa Clara Avenue
Alameda, CA 94501

No fee for recording pursuant to
Government Code Section 27383

APNs: _____.

PUBLIC IMPROVEMENT AGREEMENT

(West Midway, Phase __; Map No. _____)

This Public Improvement Agreement (“Agreement”) is made by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California, hereinafter called "City," and , a Delaware limited liability company, hereinafter called "Developer" and dated this ____ day of _____, 202_ (the “Effective Date”).

WITNESSETH:

A. WHEREAS, City and the Developer have entered into that certain Disposition and Development Agreement dated as of _____, 2023 (“DDA”) whereby the City has agreed to convey to the Developer certain property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, (hereinafter called the “Subdivision”) under the terms and conditions of the DDA; and

B. WHEREAS, City and the Developer have entered into that certain Development Agreement dated as of _____, 2023 and recorded against the Subdivision on _____ as Instrument No. _____ in the Official Records of Alameda County (“Development Agreement”);

C. WHEREAS, under the terms of the DDA, the Developer is required to construct certain Backbone Infrastructure within the Subdivision; and

D. WHEREAS, Final Map No. _____ (the “Final Map”) of the Subdivision was approved with conditions by the City on _____, 20__, which conditions are on file in the Public Works Department and incorporated herein by this reference (the “Conditions of Approval”); and

F. WHEREAS, the Final Map has been reviewed by the City’s Public Works and Planning Directors and found to be in substantial compliance with the approved Tentative Map; and

G. WHEREAS, the Backbone Infrastructure required to be constructed pursuant to DDA with respect to the Subdivision is more particularly described in the Public Infrastructure Improvement plans and specifications listed in Exhibit B, attached hereto (the “Plans and Specifications”), which have not been completed as of the Effective Date; and

H. WHEREAS, as a condition precedent to the Developer’s commencement of construction of the Backbone Infrastructure for an Infrastructure Phase, the City is requiring the execution of this Agreement relating to installation of the Public Infrastructure Improvements (including outside the boundaries of the Subdivision) pursuant to the terms of the DDA; and

I. WHEREAS, in accordance with Section 66499 of the Government Code, the City is requiring that this Agreement be secured by a surety bond or an instrument of credit issued by a financial institution subject to approval by the City and subject to regulation by the State or federal governments, or by a cash deposit; and

J. WHEREAS, Sections 66499.2 and 66499.3 of the Government Code establish the types and amount of security to guarantee the performance of improvement agreements; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto mutually agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

2. Construction Obligation; Offers of Dedication. Developer agrees, at Developer's sole cost and expense, to commence construction of the Public Infrastructure Improvements (defined as _____ **[NOTE: DEFINITION OF “COMMENCE” WITH RESPECT TO A PARTICULAR INFRASTRUCTURE PHASE FROM THE DDA TO BE INSERTED HERE]** on or before _____ (the “Commencement Date”) and cause all Public Infrastructure Improvements to be made and completed pursuant to this Agreement prior to _____ (the “Completion Date”), which dates shall at all times remain consistent with and subject to the DDA Milestone Schedule (including the Outside Phase Commencement Date and the Outside Phase Completion Date for the Infrastructure Phase subject to this Agreement), as the Milestone Schedule may be extended pursuant to the terms of the DDA and as the same may be amended pursuant to the terms of the DDA. The Commencement Date and the Completion Date are subject to extension pursuant to the terms of the DDA, including Section 1.3 of the DDA; provided, however, that any extension due to Force Majeure shall be subject to the requirements of Section 1.3(e) of the DDA regarding the giving of notice of an event of Force Majeure; provided, further, that Developer shall not have to provide a separate notice of the occurrence of an event of Force Majeure to the City under this Agreement if Developer provides a notice of such event of Force Majeure under the DDA.

Subject to the foregoing, any modification to the Commencement Date or the Completion Date, other than an extension of the Commencement Date and/or Completion Date permitted by the DDA (e.g., as a result of Force Majeure), shall be initiated by a written application made by Developer to the City Manager and Public Works Director stating fully the grounds of the application and facts relied upon for such an extension. Neither the modification nor extension of the Commencement Date and/or Completion Date, nor any other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety. If the extension or modification results in an increase in costs, any extension may be conditioned upon an increase in security and inspections fees to reflect current costs. Any extension may be granted without notice to the Developer's surety, shall not affect the validity of the bonds, and shall not relieve the surety's liability on any of the bonds required by this Agreement.

3. Easements and Permits. Pursuant to Section 9.6 of the DDA, the City has provided Developer with a Right of Entry and any and all other rights of way, encroachment permits and temporary construction easements which may be necessary or convenient for the construction and operation of the Public Infrastructure Improvements. Developer shall, at its sole cost and expense, (a) obtain all other necessary permits and licenses for the construction of the Public Infrastructure Improvements; (b) give all necessary notices for the construction of the Public Infrastructure Improvements; and (c) pay all fees and taxes required by law for the construction of the Public Infrastructure Improvements.

4. Performance of the Work. Construction of the Public Infrastructure Improvements shall be performed in a workmanlike and professional manner, in accordance with the "Applicable Requirements" which shall include: (a) all requirements of the Applicable Law as that term is defined in and as in accordance with the Development Agreement; (b) the Public Works Standard Specifications; (c) the Master Infrastructure Plan ("MIP") approved by the City Council on February 4, 2014; (d) the applicable provisions of Article 5 and Section 8.3 of the DDA; (e) the applicable measures imposed to mitigate adverse environmental effects of the project under the MMR Program (as defined in the DDA); and (f) the Plans and Specifications (including all details and notes shown on the Plans and Specifications).

Developer shall provide supervision of the work on the Public Infrastructure Improvements or have a competent contractor, foreman or superintendent on the work during progress with authority to act for Developer.

5. Modifications. Developer reserves the right to modify the Plans and Specifications as the development progresses should unforeseen conditions occur, provided written approval is first obtained from the Public Works Director, and so long as such modifications are materially consistent with the Applicable Requirements. City also reserves the right to make or require reasonable modifications to the Plans and Specifications whenever field conditions and/or public safety require such modifications, subject to the terms and conditions of the Development Agreement. Developer shall pay the City for all actual costs including, without limitation, plan check and inspection costs resulting from any such modifications.

Any alteration or alterations made to the Plans and Specifications or to any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or

bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to such bonds waive the provisions of Section 2819 of the California Civil Code.

6. Compliance and Inspection. All development activity pursuant to this Agreement shall be in compliance with Applicable Requirements, and all Public Infrastructure Improvements shall be inspected by the City for compliance with Applicable Requirements. Subject to the terms and conditions of the Development Agreement, concurrent with the commencement of construction of the Public Infrastructure Improvements Developer shall deposit with the City the sum of _____ Dollars (\$ _____), which is to cover the costs of all inspections and Public Works charges with respect to the Public Infrastructure Improvements, consistent with the then applicable Master Fee Schedule.

7. Access to Work. Developer shall allow City's duly authorized representatives access to the work under this Agreement at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the Applicable Requirements. Developer is required to give at least forty-eight (48) hours' advance notice of the date upon which Developer seeks to have the City inspect the applicable work. City may reject defective work and require its repair, replacement, or removal by Developer, all at no expense to City.

8. Acceptance of Offers of Dedication and Public Infrastructure Improvements. Subject to compliance with the requirements of Section 16 below, the City hereby agrees to (a) accept the offers of dedication to the City shown on the Final Map and (b) accept the Public Infrastructure Improvements for permanent maintenance upon Developer's completion of the Public Infrastructure Improvements in accordance with the Applicable Requirements and upon inspection and approval by the City pursuant to Section 6 of this Agreement. Developer may offer dedication of the Public Infrastructure Improvements in phases or subphases and the City shall not refuse to accept such phased or sub-phased dedications or refuse phased or sub-phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied.

9. City Services. Developer agrees to be financially responsible for all utility services provided to subdivision residents prior to acceptance of improvements by City.

10. Developer Not Agent of City. Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. Developer has full rights, however, to manage its employees in their performance of services under this Agreement. Developer is not authorized to bind City to any contracts or other obligations.

11. Developer Responsibility for Work. Until such time as all Public Infrastructure Improvements required by this Agreement are fully completed, passed final inspection and, if to be dedicated to the City, are accepted by City, Developer will be responsible for the care, maintenance of, and any repairs or reconstruction to remedy any damage to such Public Infrastructure Improvements, and City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements, except to the extent that (1) the City or any officer or employee thereof

caused such damage, and/or (2) such damage is caused by the general public, but only if the City requires that such work or improvement be opened to public access prior to acceptance of such work or improvement by the City. Except as otherwise set forth in the immediately preceding sentence, prior to the City's acceptance of the Public Infrastructure Improvements, Developer shall be responsible for, and bear the risk of loss to, any of the Public Infrastructure Improvements constructed or installed by Developer, and such risks are hereby assumed by Developer.

12. Obligation to Warn Public. Until final acceptance of the Public Infrastructure Improvements, Developer shall give good and adequate warning to the public of potentially dangerous conditions which exist in said Public Infrastructure Improvements, and will take all reasonable actions to protect the public from such condition(s). Developer shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the site as may be necessary to prevent accidents to the public and damage to the property.

13. Sale or Disposition of Subdivision. The sale or other disposition of any portion of the Subdivision will not relieve Developer from the obligations set forth herein; provided, however, If the Subdivision or any portion of the Subdivision is sold to any other person in accordance with the DDA, and the Developer's obligation to perform the Public Infrastructure Improvements work is assigned to the purchasing party (the "Assigned Obligations"), Developer may request a novation of this Agreement and a substitution of security together with a release of Developer's obligation to perform the Assigned Obligations. Upon approval of the novation and substitution of securities, Developer may obtain a release or reduction of the security required by this Agreement together with a release of Developer's obligation to perform the Assigned Obligations. Nothing in the novation shall relieve Developer of the obligations under Paragraphs 22 and 23 for the work or improvements done by or on behalf of Developer unless City expressly consents in writing to such release. Nothing in this Agreement is intended to amend, modify or otherwise change Developer's ability to transfer the Subdivision under the DDA, and Developer may assign this Agreement in connection with a Transfer of the DDA permitted under Section 10.4 or Section 10.5 of the DDA.

Notwithstanding the forgoing provisions of this Section 13 to the contrary, in the event a portion of the Subdivision is transferred to a third party pursuant to Section 10.4 or 10.5 of the DDA, such transferee's obligation to assume any obligations under this Agreement shall be in accordance with the DDA.

14. Improvement Security. In order to ensure full and faithful performance of this Agreement and in accordance with the requirements of the Subdivision Map Act and the Applicable Law, Developer shall file with the City the following security in the type and amounts specified:

(a) Performance Bond. On the earlier of the close of escrow for the applicable Phase under the DDA or the commencement of construction of the Public Infrastructure Improvements, a faithful performance security in an amount of _____ Dollars (\$) _____ (one hundred percent (100%) of the total approved estimate for the cost of improvement, which estimate shall include a ten percent (10%) contingency), to assure City that the Public Infrastructure Improvements will be satisfactorily completed. Developer shall

furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.1 or in a form reasonably satisfactory to the City Attorney.

(b) Labor and Material Bond. On the earlier of the close of escrow for the applicable Phase under the DDA or the commencement of construction of the Public Infrastructure Improvements, a labor and materials security in an amount of _____ Dollars (\$ _____) (one hundred percent (100%) of the total approved estimate for the cost of improvement, which estimate shall include a ten percent (10%) contingency), to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on the Public Infrastructure Improvements. Developer shall furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.2 or in a form reasonably satisfactory to the City Attorney.

(c) Monumentation Bond. On the earlier of the close of escrow for the applicable Phase under the DDA or the commencement of construction of the Public Infrastructure Improvements, either: (i) a bond; or (ii) cash deposit, in the amount of _____ Dollars (\$ _____) to guarantee payment of the installation of the required permanent monumentation;

(d) Warranty Bond. Upon the full release of the bonds set forth in Section 14(a) and (b) above either: (i) a cash deposit; (ii) a corporate surety bond issued by a company duly licensed to conduct a general surety business in the State of California; or (iii) an instrument of credit, in the amount of _____ Dollars (\$ _____) (ten percent (10%) of the estimated cost of the Public Infrastructure Improvements) in accordance with Government Code Sections 66499, 66499.4 and 66499.9 and City Code Section 30-85.2.c to serve as a guarantee and warranty of the Work against any defective work or labor done or defective materials furnished (from the date when the City Council accepts the final Infrastructure Phase or portion thereof as complete until one year thereafter).

15. Form of Security.

(a) All security shall be of a type specified in Government Code §66499(a)(1), (2), (3) or (5), as applicable, and must be satisfactory to and be approved by the City Attorney as to form. In conjunction with the submittal of bonds, Developer shall furnish the following information:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bonds to do so;

(2) Evidence that the issuing corporate surety or sureties are duly and legally licensed to conduct a general surety business in the State of California; and

(3) A certificate from the Clerk of Alameda County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.

(b) As an alternative to bonds, Developer may:

(1) Submit an instrument of credit or certificate of deposit from one or more financial institutions subject to regulation by the State or Federal Governments with an office located in the nine Bay Area counties and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment; or

(2) Make a deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public money.

(c) Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that the City is the owner of record of such funds.

16. Acceptance of Public Infrastructure Improvements. No portion of the Public Infrastructure Improvements shall be accepted by the City unless and until Developer submits a warranty bond in the amount required by Section 14(d) and such portion of the Public Infrastructure Improvements are free of all liens and encumbrances (other than Permitted Exceptions as defined in Section 4.7 of the DDA and encumbrances created by or on behalf of the City), free of all material defects and conditions which may create a hazard to the public health, safety, or welfare [and until Developer has set and established survey monuments in accordance with the Final Map and all Applicable Requirements]. Upon completion of final inspection of the portion of the Public Infrastructure Improvements described herein, Developer shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements, and other interests to be dedicated to the City shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances of any kind or character whatsoever (other than Permitted Exceptions and encumbrances created by or on behalf of the City) and free of any and all material defects and conditions creating a hazard to public health or public safety.

Acceptance of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act on the City Engineer's recommendation within sixty (60) days from the date the City Engineer certifies that the work has been finally completed, as provided in this Agreement. Such acceptance shall not constitute a waiver of defects by the City.

City shall release any and all security provided by Developer for the portion of the Public Infrastructure Improvements accepted by the City in the manner described in Government Code Section 66499.7.

17. Guarantee and Security. Developer guarantees that all Public Infrastructure Improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of at least one (1) year from and after acceptance of such improvements by City as complete, and Developer shall repair any defects in any such Public Infrastructure Improvements and replace any defective improvements which cannot be repaired and which occur

or arise within said one (1) year period at Developer's own expense. Should Developer fail to act promptly or in accordance with this requirement and not have cured such failure within the cure period provided for in Section 20 below, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or contract for the necessary work and Developer shall pay to City the actual cost of such repairs as well as all administrative expenses incurred by City.

18. Exoneration of Surety. Subject to the requirements of Government Code Section 66499.7, City shall not be required to exonerate any surety, release any security relating to satisfactory completion of the Public Infrastructure Improvements or issue occupancy permits until acceptance of proposed Public Infrastructure Improvements by the City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final inspection by City; provided, however, that, where the necessary Public Infrastructure Improvements for permanent access and utility services to serve any particular Subphase of the Subdivision have been completed, City shall not delay final inspection of such Public Infrastructure Improvements or withhold occupancy permits applicable to such Subphase.

19. Intentionally Deleted.

20. Default of Developer. Default of Developer shall include, but not be limited to, (a) Developer's failure to timely commence construction of the Public Infrastructure Improvements under this Agreement; (b) Developer's failure to timely complete construction of the Public Infrastructure Improvements in accordance with this Agreement; (c) Developer's failure to timely cure any defect in the Public Infrastructure Improvements; (d) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within sixty (60) days; (e) the commencement of a foreclosure action against Developer or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (f) Developer's failure to timely perform any other obligation under this Agreement. Developer shall notify the Public Works Director of Developer's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

Upon the happening of any event described above in this Section 20, the City shall first notify Developer in writing of Developer's purported breach or failure. Developer shall have sixty (60) 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 sixty (60) day period and Developer has commenced the cure within such sixty (60) day period and thereafter is diligently and continuously working in good faith to complete such cure, Developer shall not be in default so long as Developer is diligently prosecuting such cure to completion. Developer's failure to timely cure a default under this Agreement shall be deemed an "Event of Default."

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to Force Majeure (as described in Section 1.3(b) of the DDA).

21. Remedies in Event of a Default. In the event of an Event of Default hereunder:

(a) City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Developer agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

(b) Developer, the surety, and any person, firm, partnership, entity, corporation, or association that has assumed the obligation that is the subject of the Event of Default pursuant to Section 13 above and the applicable provisions of the DDA (each, an “Obligated Owner”) and each of them shall reimburse City for all of its reasonable costs and expenses (including reasonable attorney’s fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on any portion of the Subdivision owned by an Obligated Owner, provided, however, that such lien shall be subordinate to the lien of any Permitted Mortgagee now or hereafter existing.

(c) City may enter onto the subject property, take over the work and prosecute the same to completion by contract or any other method City deems advisable, and, in such event, City, without liability for so doing, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer which may be on the site of the work and necessary performance of the work.

(d) City may record a Notice of Violation against the lots in the Phase or Subphase affected by the violation, and/or withhold occupancy permits against the lots in the Phase or Subphase affected by such violation.

(f) Notwithstanding the forgoing to the contrary, in the event that the City elects to exercise its rights under Section 15.5 or 15.6 of the DDA in conjunction with an Event of Default under the DDA, from and after the date the City obtains title to the Subdivision (or applicable portion thereof) pursuant to such provisions the City shall release/reduce any such bonds with respect to the balance of the Public Infrastructure Improvements.

City’s rights hereunder with respect to any Permitted Mortgagee that has expressly assumed in writing any Developer obligation hereunder are subject to the applicable provisions of the DDA.

22. Hold Harmless. Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer’s general contractor, subcontractor, consultants, employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

23. Duty to Defend and Indemnify.

(a) Claims Related to City's Approval and Implementation of Public Improvement Agreement: Developer shall, with counsel reasonably approved by the City, hold

harmless, defend, and indemnify the City and its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents (collectively, “**City Indemnified Parties**”) from and against any claim, action, or proceeding against the City or its agents, officers, and employees to attack, set aside, void, or annul an approval of the City concerning the Public Improvement Agreement, which action is brought within the time period provided for in Government Code Section 66499.37. Notwithstanding the foregoing, the defense and indemnity obligation contained in this Section 23(a) shall not extend to any claim arising solely from any City Indemnified Party’s gross negligence or willful misconduct or from breach of this Agreement by the City. The City shall promptly notify Developer of any claim, action, or proceeding and the City shall cooperate fully in the defense. If City fails to promptly notify Developer of any claim, action or proceeding, or if City fails to cooperate in the defense, then thereafter Developer shall not be responsible to defend, indemnify or hold harmless the City.

(b) Claims Related to Injury to Persons or Property: Developer further agrees that it will hold harmless, defend with counsel reasonably approved by the City, and indemnify the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, lawsuit, costs (including costs of defense) and damages of every kind caused to any person or to the property of any person which may occur on any portion of the property then owned by Developer and caused by any acts or omissions of Developer or its agents, servants, employees or contractors in any way arising from or related to the performance of its duties under this Agreement. Notwithstanding the foregoing, the defense and indemnity obligation contained in this Section 23(b) shall not extend to any claim arising solely from any City Indemnified Party’s gross negligence or willful misconduct, or from breach of this Agreement by the City, or the mere discovery by Developer or its consultants, engineers, contractors, subcontractors, or agents of any preexisting condition of Hazardous Materials in, on, under or about the Property.

24. Insurance. Without limiting Developer's indemnification provided herein, Developer shall take out and maintain or cause to be maintained at all times during the term of this Agreement the following policies of insurance with insurers (if other than the State Compensation Fund) with a current A.M. Best's rating of no less than A:VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Developer, its agents, employees, contractors or subcontractors:

(a) Workers' Compensation with statutory limits as required by the California Labor Code.

(b) Comprehensive general liability insurance in an amount not less than Four Million Dollars (\$4,000,000) with limits not less than Four Million Dollars (\$4,000,000) 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.

(c) Automobile Liability, with coverage at least as broad as Insurance Services Office form number CA 0001 06 92, Code 1 (any auto), in an amount of \$2,000,000.00 per accident.

The foregoing worker's compensation, commercial general liability, and automobile liability insurance shall satisfy the applicable requirements for such insurance set forth in Article 14 of the DDA. In the event of any conflict between the insurance requirements set forth in this Agreement, and the applicable insurance requirements set forth in the DDA, the insurance requirements in the DDA shall control.

25. Attorney's Fees; Etc. In the event any party to this Agreement brings an action to enforce or interpret the provisions of this Agreement, the parties and litigants shall bear their own attorneys' 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.

26. Time of Essence. Time is of the essence.

27. Severability. The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

28. Entire Agreement. This Agreement, together with the DDA, the Development Agreement and the Applicable Requirements, constitute the entire agreement with respect to the subject matter and all modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the City Manager and the Public Works Director. Modifications, amendments or waivers under the DDA and the Development Agreement are subject to the terms and conditions of the DDA and the Development Agreement, respectively.

29. Reference. Any reference to a department manager shall include his or her duly authorized deputy or representative.

30. No Pledging of City's Credit. Under no circumstances shall Developer have the authority or power to pledge the credit of City or incur any obligation in the name of City. Developer shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Developer under this Agreement.

31. Recordation. By recordation of this Agreement or a memorandum hereof, it is parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. At its option City may record this Agreement or may require Developer, at Developer's cost, to record this Agreement and may withhold City permits until proof of recordation is provided to City. Upon the completion of the Public Infrastructure Improvements and the satisfaction of Developer's other obligations under this Agreement, City and Developer shall enter into and record a document sufficient to remove this Agreement from title to the Subdivision.

32. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Alameda, or if appropriate, in the United States District Court, Northern District of California, Oakland, California.

33. Captions. The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

34. Obligations Run With the Land. All obligations and provisions of this Agreement shall run with the real property described in attached Exhibit A and, subject to the provisions of Section 13 above, shall bind the Parties and each of their respective successors and assigns.

35. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signatures on next page]

IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

DEVELOPER:

CITY OF ALAMEDA

By: _____
Jennifer Ott,
City Manager

Date: _____

Attest:

Lara Weisiger, City Clerk
Approved as to Form:

Len Aslanian
Assistant City Attorney
Authorized by City Council Ordinance No. _____

EXHIBIT A

SUBDIVISION LEGAL DESCRIPTION

[SEE ATTACHED]

EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENT
PLANS AND SPECIFICATIONS

[Note: Exhibit B to include the improvements set forth in the applicable Infrastructure Phase of the Infrastructure Package described in the Tentative Map or Final Map.]

EXHIBIT N
CITY DISCLOSURE DOCUMENTS

[To Be Attached]

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 Evaluation Data Summary, Phase 2A Sampling, Zone 21: The Naval Exchange Commercial Zone, Alameda Point, Alameda, California, January 2001
3	Zone Analysis Data Summary, Phase 2A Sampling, Zone 20: The Service Station Zone, Alameda Point, Alameda, California
4	Parcel Evaluation Data Summary, Phase 2A Sampling, Zone 20: The Service Station Zone, Parcel 112, Alameda Point, Alameda, California. January 2001
5	Parcel Evaluation Data Summary, Phase 2B Sampling, Zone 20: The Service Station Zone, Parcel 112, Alameda Point, Alameda, California. January 2001
6	Parcel Evaluation Data Summary, Phase 2C Sampling, Zone 20: The Service Station Zone, Parcel 112, Alameda Point, Alameda, California. January 2001
7	Parcel Evaluation Data Summary, Phase 2A Sampling, Zone 20: The Service Station Zone, Parcel 113, Alameda Point, Alameda, California. January 2001
8	Parcel Evaluation Data Summary, Phase 2B Sampling, Zone 20: The Service Station Zone, Parcel 113, Alameda Point, Alameda, California. January 2001
9	Parcel Evaluation Data Summary, Phase 2A Sampling, Zone 20: The Service Station Zone, Parcel 114, Alameda Point, Alameda, California. January 2001
10	Zone Analysis Data Summary, Zone 16: The Housing Zone, Alameda Point, Alameda, California. January 2001
11	Zone Analysis Data Summary, Phase 2A Sampling, Zone 13: The Central Light Industrial Zone, NAS Alameda, Alameda, California. January 2001
12	Final Finding of Suitability to Transfer for Former Naval Air Station Alameda, Alameda Point, Alameda, California, April 19, 2013
13	Final Finding of Suitability to Transfer Phase 3B, Former Naval Air Station Alameda, Alameda, California, August 7, 2017
14	Final RACR, IR Site 35, Alameda Point, Alameda, California, August 27, 2012
15	Final Record of Decision, IR Site 35, Alameda Point. February 2010
16	Case Closure, UST Nos. 13-1 through 5; 392-1; and 411-1; Alameda Point, Alameda, California. September 20, 2001
17	No Further Action for AST 392, Former Alameda Naval Air Station, Alameda County, January 17, 2013
18	No Further Action for Former Aboveground Storage Tank No. 152 Former Alameda Naval Air Station, Alameda County. August 18, 2014
19	No Further Action for Former Underground Storage Tanks No 459-7 and 459-8, Former Alameda Naval Air Station, Alameda County. January 27, 2014
	Case Closure, USTs Nos. 1-1; 39-1; 40-1; 117-1; 173-1,2&3; 271-AV1&2;340-1; 374P-1;420-1;473-1;506-1; Alameda Point, Alameda, California; June 16, 2000

No Further Action for Former Underground Storage Tank Nos. 173-1, 173-2, 173-3, 420-1, 473-1, and 506-1, Former Alameda Naval Air Station, Alameda County.
21 RWQCB. April 30, 2014
Review of Comments for Final Technical Memorandum Bioremediation Treatability Study at Petroleum Corrective Action Area (CAA) 4C and 7, Alameda Point, Alameda
22 County. RWQCB. February 13, 2020
Final Technical Memorandum Bioremediation Treatability Study At Petroleum
23 Corrective Action Area 4C and 7, NAVFAC. September 2019
Final Remedial Action Completion Report, Operable Unit 1, Installation Restoration
24 Site 7, Alameda Point, Alameda, California. April 2013
Record of Decision for Operable Unit 1 Installation Restoration Sites 6,7,8, and 16,
25 Alameda Point, Alameda, California, September 2007.
No Further Action for Fuel Lines FL-106 and FL-107 in CAA B North, Former Alameda
26 Naval Air Station, Alameda County. RWQCB. July 30, 2019

No Further Action for Correction Action Area B North, Former Alameda Naval Air
27 Station, Alameda County. RWQCB. October 28, 2020
Final Preliminary Assessment Report, Basewide Investigation of Per- and
Polyfluoroalkyl Substances (PFAS), Former Naval Air Station Alameda, Alameda,
28 California, May 2021

Draft Site Inspection Report, Per- and Polyfluoroalkyl Substances at Areas of Interest,
29 Former Naval Air Station Alameda, Alameda, California, March 2023
30 Final Revised Site Management Plan, Alameda Point, Alameda, California

2021 Annual Groundwater Monitoring Report, Basewide Groundwater Monitoring
31 Program at Various Sites, Alameda Point, Alameda, September 2022

Link

One Drive Link

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/7287246525/AST%20392%20package%20Signed.pdf

https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000001390&enforcement_id=6217958

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/9317677140/20140127_USTs%20459-7%20and%20459-8_NFA.pdf

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https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8327573478/Navy_AlamedaPt_CAA%20and7%20TM_comment_letter%20021320.pdf

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8300656974/DFT%20FINAL%20TM_MMEC-2012-0069-0013.PDF

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https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/3353788077/Navy%20Alameda%20Point%20CAA%20BN%20NFA%20Letter%2010282020.pdf

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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 [Phase/Subphase] _____ of West Midway 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 _____, 2023, 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 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 Closing Date from the Property to any portion of the NAS Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City and/or

later acquired by the City), whether such Incidental Migration occurs prior to or after the applicable 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 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) a of Developer’s obligations under 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 (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later 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 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.

4. 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: _____

By: _____
Name: _____
Title: _____

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

(SEE ATTACHED)

[Note: Insert references to applicable Phase/Subphase 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, which 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 [Phase/Subphase] _____ of West Midway 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 _____, 2023, 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 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 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 Closing Date (the “**Release of Claims**”).

The foregoing Release of Claims does 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 (or anyone claiming by, through or under Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable 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 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 Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the Property, or any other portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later 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 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.

4. 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: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
(SEE ATTACHED)

[Note: Insert references to applicable [Phase/Subphase] 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, which was decommissioned by the United States Department of the Navy (the “**Navy**”) in 1993 and closed in 1997.

EXHIBIT P-1

[To Be Attached]

EXHIBIT P-1

FAIR MARKET VALUATION DETERMINATION PROCESS - RESIDENTIAL

The Gross Proceeds deemed received by the Developer pursuant to Section 2.2(a)(3) for any portion of the Property transferred to an Affiliated Purchaser acting as a Vertical Developer or retained by the Developer for the purpose of acting as a Vertical Developer (collectively, the "**Valuation Property**") shall be determined as follows:

For a Valuation Property proposed to be purchased by Developer or an Affiliated Purchaser, Developer will propose a purchase price for each residential building site which shall equal the residual value of such Valuation Property based upon a homebuilder gross margin of eighteen percent (18%) of housing revenue and otherwise calculated in accordance with Schedule 1. The residual valuation will be based upon then current estimated home prices and base home construction costs. Other cost and revenue line items will be determined in accordance with the basis specified in the right-hand column of Schedule 1.

The City may either agree or disagree with the purchase price. If the City agrees with the purchase price, then the price proposed by the Developer shall be the purchase price and the amount included in Gross Proceeds with respect to the Valuation Property. If the City disagrees with the purchase price, then the Parties shall meet and confer and make good faith efforts to resolve the dispute. If the dispute is not resolved following good faith efforts within thirty (30) days, then the Parties shall each appoint in writing an appraiser, which appraiser shall be associated with a regionally recognized appraisal firm and have at least ten (10) years of appraisal experience with similar large-scale, master-planned projects in Northern California. If one party has appointed an appraiser hereunder, and the other party fails to appoint an appraiser hereunder within the time period specified above, the purchase price of the Valuation Property will be established by the determination of the appraiser appointed by such first party acting alone, and such other party hereby consents to the same. The two appraisers shall be instructed to complete their appraisals within thirty (30) days of the appointment of the last appraiser to be appointed and to appraise only the purchase price of the Valuation Property (the "Original Appraisals") in strict accordance with the methodology in Schedule 1 with Base Home Price, Lot Premium, Incentives, Bond Permit & Fees, Impact Fees, Property Taxes, Housing Permits and Fees, that Base House Costs are based on actual construction bids, and that Land Development – Intracts reflect actual construction bids or an engineer's estimate of these costs, being the only variables the appraiser will be verifying in the Schedule 1 calculation. If the Original Appraisals are within ten percent (10%) of each other (i.e., if the lower Original Appraisal is equal to or greater than ninety percent (90%) of the higher Original Appraisal), the mean of the Original Appraisals shall be deemed to be the purchase price of the Valuation Property. If the Original Appraisals deviate by more than ten percent (10%) the parties shall cause the two appraisers previously selected to appoint a third appraiser meeting the criteria set forth above within fifteen (15) days of completion of the Original Appraisals. If the parties fail to appoint a third appraiser within said fifteen (15) day period, either party may request such appointment by the president or executive secretary of the chapter of the American Institute of Real Estate Appraisers located nearest to the Valuation Property. If the president or executive secretary fails to appoint a third appraiser within ten (10) days after request, then either party may petition the presiding judge of

the state or federal court sitting in Alameda County where the Valuation Property is located to appoint an appraiser. Once the third appraiser has been selected, such appraiser shall conduct its own independent appraisal in accordance with the procedures set forth herein. Upon completion of the third appraiser's appraisal, the parties shall select the two appraisals closest in value and the average of those two appraisals shall be utilized for purposes of establishing the purchase price of the Valuation Property. The parties shall bear the fees and costs of any appraiser appointed by such party and bear equal portions of the fees and costs of any third appraiser (including the appointment thereof).

Schedule 1

**West Midway
Sample Purchase Price Residual**

4 Story Condos

	<u>Per Unit</u>	<u>Total Project</u>	<u>% Revenue</u>	<u>Basis for Purchase Price Calculation</u>
Number of Lots	1	51		
Average House SF	1,800	91,800		
Total Base Price / SF	\$539	\$563		
Base House Cost / SF	\$190	\$190		
Housing Revenue				
Base Home Price	\$970,000	\$49,470,000	98.1%	3rd party market study and calculated prices for moderate units
Option Income	\$29,100	\$1,484,100	2.9%	3% of Base Home Price
Lot Premium	\$5,000	\$255,000	0.5%	3rd party market study
Incentives	(\$15,000)	(\$765,000)	-1.5%	3rd party market study
Total Revenue	<u>\$989,100</u>	<u>\$50,444,100</u>	<u>100.0%</u>	A
Land Improvements				
Land Acquisition Transaction Cost	\$3,462	\$176,554	0.35%	0.35% of revenue - incl. escrow, title insur, transfer tax, recording, legal
Bond, Permits & Fees	\$2,500	\$127,500	0.3%	Estimate - info received from City & districts
Impact Fees	\$28,000	\$1,428,000	2.8%	Estimate including 5% contingency - info received from City & districts
Land Consultant	\$9,214	\$469,901	0.9%	13.5% of Land Development - Intracts
Land Development - Intracts	\$65,000	\$3,315,000	6.6%	Engineers estimate or actual bids including 10% contingency
Contingency	\$3,250	\$165,750	0.3%	5% of Land Development - Intracts
Property Taxes	\$8,000	\$408,000	0.8%	Estimate based on tax rate and assessed value
Total Land Improvement Cost	<u>\$119,426</u>	<u>\$6,090,706</u>	<u>12.1%</u>	B
Housing Costs				
Base House Cost	\$342,000	\$17,442,000	34.6%	Estimate & actual bids from trades >5% of base cost (including 10% contingency)
Housing Options	\$21,825	\$1,113,075	2.2%	75% of option revenue
Housing Permits and Fees	\$10,000	\$510,000	1.0%	Estimate including 5% contingency - info received from City & districts
Site Indirects, Consultants, Holding	\$26,706	\$1,361,991	2.7%	2.7% of Revenue
Contingency	\$6,840	\$348,840	0.7%	2% of Base House Construction Cost
Warranty/Insurance	\$19,782	\$1,008,882	2.0%	2.0% of revenue (1% for insurance, 1% for Warranty)
Total Housing Cost	<u>\$427,153</u>	<u>\$21,784,788</u>	<u>43.2%</u>	C
Financing Cost	<u>\$34,619</u>	<u>\$1,765,544</u>	<u>3.5%</u>	D 3.5% of revenue
Homebuilder Gross Margin*	<u>\$178,038</u>	<u>\$9,079,938</u>	<u>18.0%</u>	E 18% of revenue
Total Costs and Gross Margin	<u>\$759,235</u>	<u>\$38,720,975</u>	<u>76.8%</u>	F =B + C + D + E
Purchase Price for Building Site	<u>\$229,865</u>	<u>\$11,723,125</u>	<u>23.2%</u>	A - F = Purchase Price included as Project Revenue

* Homebuilder gross margin includes costs associated with sales, marketing, commissions, general & administrative expenses, and homebuilder profit.

EXHIBIT P-2

FAIR MARKET VALUATION DETERMINATION PROCESS - COMMERCIAL

<u>Description</u>	<u>Amount</u>	<u>Basis</u>
Annual Rent Estimate at Completion (NNN)	\$50.00	A. /SF of Commercial Building. Determined as provided in narrative.
Less Vacancy	(\$2.50)	Fixed at 5.0% of Annual Rent
Less Management Fee	(\$1.00)	Fixed at 2.0% of Annual Rent
Less Structural Reserves	(\$0.10)	Fixed at \$0.10 per building square foot
Net Operating Income (NOI)	<u>\$46.40</u>	B. /SF of Commercial Building
Published Retail Cap Rate	7.17%	PwC National Strip Shopping Center market, cap rate average
Spread over Published Cap Rate	2.00%	Fixed at 2%
"Build-to Yield"	9.17%	C.
Total Cost	\$506.00	D. /SF of Commercial Building, calculated as B. / C.
Land Price Per Commercial Bldg SF @15%	\$75.90	E. /SF of Commercial Building, fixed at 15% x D.
Commercial Building Square Feet	10,000	F. Building area per project approvals at time of conveyance, not less than 7,500 square feet.
Land Square Feet	47,916	G.
FAR	0.21	H. = F. / G.
Land Value per land square foot	\$15.84	I. = E. x H.
Land Value - Commercial	<u>\$758,997</u>	J. = I. x G.
Land Value - Residential	\$0	K. Amount determined pursuant to the residential purchase price formula for any residential to be constructed on the site.
Purchase Price	<u>\$758,997</u>	L. = J. + K., Gross Proceeds for commercial conveyance

Determination of Annual Rent for Commercial Purchase Price Formula

(A) For purposes of calculating the purchase price for the commercial parcel, annual rent shall equal the fair market rental value of the improvements to be constructed on the commercial parcel (taking into account the applicable Community Facilities District special taxes. If the proposed building(s) is subject to one or more executed leases for all of the building(s) to be located upon the applicable Commercial Parcel, then the Annual Rent to be used in calculating the purchase price shall be the contracted lease rate, and the Annual Rent shall not be subject to the appraisal process set forth herein. If the proposed building(s) is not fully leased or if the parties cannot agree on the fair market triple net rental rate, then an appraisal process will be used to determine the Annual Rent as provided in clause (B) below.

(B) Appraisal. Each of Developer and the City, at its cost and by giving notice to the other party within fifteen (15) days after determination that such an appraisal process will be used, shall appoint a competent, MAI designated and disinterested real estate appraiser with at least five (5) years' full-time commercial appraisal experience, including appraisal experience in Alameda County, to

determine the Annual Rent. The City and Developer shall require each of their appraisers to assume that the development will be new Class A retail space, and each appraisal will take into account as market evidence letters of intent or executed leases for the subject property (the parties hereby acknowledging that portions of the buildings(s) upon the Retail Parcel may be subject to an executed lease while other portions of such building(s) may not yet be leased). The Annual rent shall be the average concluded rent of the two appraisals.

EXHIBIT Q
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 6/6/2013 for Parcel ALA-60-EDC, Series No. 2013 199826
3. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-82-EDC, Series No 2017 217077
4. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-83-EDC, Series No 2017217078
5. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-84-EDC, Series No 2017 217079
6. Quitclaim Deed recorded [REDACTED] for Parcel ALA-78-EDC, Series No. 2017-078010)

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

Note:

- There are two additional CRUPS that include a partial area of Parcel ALA-37. A review of the CRUPS documents indicate that the area does not include the project site.
 - CRUP ALA-37-EDC (partial), ALA-57-EDC, and ALA-72-EDC (partial)
 - CRU” ALA-37-EDC, ALA-42-EDC, ALA-56-EDC, and ALA-62-EDC

EXHIBIT R

AFFORDABLE HOUSING COVENANT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
Community Development Department
950 W. Mall Square, Suite 205
Alameda, California 94501
Attention: Community Development Director

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

AFFORDABLE HOUSING AGREEMENT
[ADDRESS]
WEST MIDAY PROJECT

(For Sale Units Required Pursuant to the Main Street Neighborhood Specific Plan and the
Renewed Hope Settlement Agreement)

THIS AFFORDABLE HOUSING AGREEMENT (“Agreement”) is entered into as of the _____ day of _____, 20__ (“Effective Date”), by and among the CITY OF ALAMEDA, a municipal corporation (“City”) and _____, a _____ (“Developer”).

RECITALS

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto (“Property”), and Developer wishes to construct residential units on the Property. The Property is a [Phase/Subphase] of the West Midway Project (as defined below).

B. The Main Street Neighborhood Specific Plan (“MSNSP”) sets forth certain inclusionary housing requirements for residential development within the Alameda Point Area of the City. The West Midway Project, including the Property, is located in the Alameda Point Area of the City and is, therefore, subject to the inclusionary housing requirements of the MSNSP.

C. The West Midway Project, including the Property, is also subject to the requirements of the Renewed Hope Settlement Agreement dated as of March 20, 2001, related to *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*

D. The West Midway project includes the development of 478 residential units (the “West Midway Project” or “Project”) to be developed in accordance with (a) the Disposition and Development Agreement (West Midway) dated _____, 2023 (“DDA”) which requires that the Project reserve at least forty-four (44) units in the Project for sale to moderate income households (“Moderate Income Units”), subject to a potential reduction to as few as thirty-nine (39) Moderate Income Units in accordance with the terms of the DDA and forty-three (43) of the units as affordable by design units (“Affordable by Design Units”), (b) the Development Plan approved by the City of Alameda Planning Board Resolution _____ .

E. The Project’s obligation to construct units available to very low and low income households is being met by the development of the RESHAP project adjacent to the Project.

F. In accordance with the terms of the DDA, Developer and City desire to set forth Developer’s obligations to provide Moderate Income Units and Affordable By Design Units with respect to the Property in a recorded document. The number of Moderate Income Units that the Project is required to provide on the Property is _____. The number of Affordable By Design Units that the Project is required to provide on the Property is _____. **[NOTE: Number of Moderate Income Units and Affordable By Design Units in the applicable Phase/Subphase to be added here. If there are no Moderate Income Units or Affordable By Design Units in the applicable Phase/Subphase, then the references to and sections addressing such units in this Agreement should be deleted.]**

NOW, THEREFORE, Developer and City agree as follows:

**ARTICLE 1
DEFINITIONS**

The following terms shall have the meanings set forth in this Article 1:

A. “Agreement” means this Affordable Housing Agreement between the Developer and City.

B. “Affordable Sales Price” means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the Owner-Occupied Monthly Housing cost is equal to or less than the thirty percent (30%) of the maximum income for a Moderate Income Household as defined in Health and Safety Code Section 50093 adjusted for household size.

C. “Applicable Law” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Alameda, the City, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Developer or the Property.

D. “Area Median Income” shall mean the median household income (adjusted for household size) of the Metropolitan Statistical Area in which the County of Alameda is located, as established in accordance with California Health and Safety Code section 50093(c).

E. “City” means the City of Alameda, a municipal corporation.

F. “City Inclusionary Policy” means City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004.

G. “Developer” means _____ or its successors and assigns.

H. “Effective Date” means the effective date of this Agreement, as first set forth above.

I. “Eligible Moderate Income Household” means a person or household (i) meeting the definition of “Moderate Income Household” in this Agreement, and (ii) meeting Developer’s standard criteria for determining eligibility for occupancy, which may include an evaluation of the

applicant's ability to pay the mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.

J. "Eligible Workforce Household" means a person or household meeting the definition of "Workforce Household" in this Agreement.

K. "Inclusionary Ownership Guidelines" is defined in Section 2.1.E.2

L. "Market Rate Units" means units in the Project, the sale and occupancy of which are not regulated by this Agreement.

M. "Moderate Income Household" means a household whose annual income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093 of the California Health and Safety Code, or any successor statute thereto.

N. "Owner-Occupied Monthly Housing Payment" means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities not including telephone, homeowner's insurance and homeowner's association dues, and any other applicable elements of "housing cost" as defined in Section 6290 of Title 25 of the California Code of Regulations, paid on an annual basis divided by twelve (12).

O. "Property" is defined in Recital A.

P. "Project Inclusionary Requirement" means the number of Moderate Income Units the Project is required to provide pursuant to the terms of the DDA.

Q. "Project" is defined in Recital C.

R. "Resale Restriction" is defined in Section 2.1.E.4.

S. "Term" is defined in Section 5.3.

T. "Workforce Household" means a household whose annual income is between one hundred twenty percent (120%) and one hundred eighty percent (180%) of Area Median Income. [NTD: This is how the Specific Plan defines "workforce" housing.]

ARTICLE 2 INCLUSIONARY REQUIREMENT

2.1 Affordability Requirements and Restrictions for Moderate Income Units.

A. Developer shall construct, or cause to be constructed, _____ Moderate Income Units on the Property, which shall be sold to and occupied by Moderate Income Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Moderate Income Household. "Annual Household Income" means the combined "gross income" for a person or family living in a dwelling unit as calculated pursuant to Section 6914 of Title 25 of the California Code of Regulations.

C. The Moderate Income Units shall be consistent with the architectural character, size, floor plans and location shown for the housing type identified in the Development Plan.

Moderate Income Units shall be comparable in exterior design and overall quality of construction to Market Rate Units in the Project, provided, however, the Moderate Income Units may be smaller in size than the Market Rate Units and may have different interior finishes and features than the Market Rate Units so long as the interior finishes are durable, of good quality and consistent with contemporary standards for new housing as reasonably determined by the City Manager or his or her designee.

D. The units designated as the Moderate Income Units are depicted in Exhibit B. The total number of Moderate Income Units being offered for sale in accordance with this Article 2 shall be as required by Section 2.1.A. above. During the Term of this Agreement, the Moderate Income Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:

1. The Moderate Income Units shall only be sold to and be occupied by Eligible Moderate Income Households, as specified in subsection 2.1.A. Each Moderate Income Unit shall only be sold to and be occupied by an Eligible Moderate Income Household at a cost that does not exceed the Affordable Sales Price for such a household, subject to prior approval of the City as further described below.

2. For units to be sold, each Moderate Income Unit shall only be sold to an Eligible Moderate Income Household approved by City in accordance with this Agreement, the City Inclusionary Policy, and the City's "Inclusionary Housing Program Buyer Selection Guidelines," attached hereto as Exhibit D ("Inclusionary Ownership Guidelines"), and each such sale shall comply with the following:

(a) At least thirty (30) calendar days prior to entering any agreement with a prospective buyer related to any proposed sale or other transfer of any Moderate Income Unit during the Term, Developer shall submit to the City, to the extent permitted by applicable law (including privacy laws): (a) a copy of the proposed written agreement of purchase and sale; (b) an application for City approval of the prospective purchaser/transferee in a form to be provided by the City, along with such supporting documentation as City may require to document the proposed purchaser's/transferee's status as an Eligible Moderate Income Household, including the prospective purchaser's/transferee's payroll stubs and most recent income tax return, and to otherwise determine compliance with the terms of this Agreement, including the requirement that the sale price for each Moderate Income Unit not exceed the Affordable Sales Price for the Eligible Moderate Income Household; and (c) the income certification to be provided to any lender making a loan on the Moderate Income Unit. Developer shall bear all costs and expenses associated with such certification and eligibility determination process.

(b) Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or non-eligibility. Provided the prospective purchaser/transferee qualifies as an Eligible Moderate Income Household, the purchase price of the Moderate Income Unit meets the definition of Affordable Sales Price, and the sale or transfer complies with the City Inclusionary Policy and the Inclusionary Ownership Guidelines, the City shall within such thirty (30) calendar days issue a letter of approval confirming that the proposed transaction complies with the requirements of this Article 2. If the prospective purchaser/transferee

does not qualify as an Eligible Moderate Income Household, the purchase price of the Moderate Income Unit does not meet the definition of Affordable Sales Price, or the sale or transfer does not comply with the City Inclusionary Policy or the Inclusionary Ownership Guidelines, the City shall so notify the Developer in writing, within such thirty (30) calendar days, stating the basis for its determination in reasonable detail and the Developer shall not sell the Moderate Income Unit to such non-Eligible Moderate Income Household; provided, however, if the Developer disagrees with the City's determination of non-eligibility, the Developer and City shall thereafter meet and confer in good faith to re-evaluate the eligibility of the prospective buyer. If the City fails to render a decision of eligibility or non-eligibility within thirty (30) calendar days from the City's receipt of the documentation described above, then the City shall be deemed to have determined the prospective buyer to be an Eligible Moderate Income Household and the City shall be deemed to have issued a letter of approval that the prospective buyer is an Eligible Moderate Income Household. Developer shall reimburse the City for the City's costs incurred in determining the eligibility of the Eligible Moderate Income Households and administering the terms of this Agreement.

(c) THERE SHALL BE NO SALE OF A MODERATE INCOME UNIT WITHOUT ISSUANCE (OR DEEMED ISSUANCE) OF A LETTER OF APPROVAL BY THE CITY THAT THE PURCHASER/TRANSFEREE IS AN ELIGIBLE MODERATE INCOME HOUSEHOLD, THE PURCHASE PRICE OF THE MODERATE INCOME UNIT MEETS THE DEFINITION OF AFFORDABLE SALES PRICE FOR SUCH PURCHASER/TRANSFEREE, AND THE SALE OR TRANSFER COMPLIES WITH CITY'S INCLUSIONARY POLICY AND THE INCLUSIONARY OWNERSHIP GUIDELINES. ANY SALE OR OTHER TRANSFER OF THE MODERATE INCOME UNIT IN VIOLATION OF THIS AGREEMENT SHALL BE VOID.

(d) EACH PURCHASER OF A MODERATE INCOME UNIT SHALL ENTER INTO AND RECORD AT THE CLOSE OF ESCROW AN AFFORDABILITY COVENANT, RESALE RESTRICTION AND OPTION TO PURCHASE ("RESALE RESTRICTION"), IN A FORM SUBSTANTIALLY SIMILAR TO EXHIBIT E, ATTACHED HERETO, SUPPLIED BY AND APPROVED BY CITY, AND FOR THE BENEFIT OF CITY, AS ELECTED BY THE CITY. UPON RECORDATION OF THE RESALE RESTRICTION: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE MODERATE INCOME UNIT ENCUMBERED BY THE RESALE RESTRICTION; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE MODERATE INCOME UNIT ENCUMBERED BY THE RESALE RESTRICTION, INCLUDING WITHOUT LIMITATION ANY RESPONSIBILITY FOR COMPLIANCE BY THE BUYER OR ITS SUCCESSORS WITH THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION SIGNED BY PURCHASER, PROVIDED THAT DEVELOPER IS NOT THEN IN DEFAULT UNDER THIS AGREEMENT.

(e) Upon the request of the Developer, the City shall provide a letter or written verification certifying that a Market Rate Unit within the Project is not subject to the requirements of this Agreement. Furthermore, upon the recording of a final subdivision map that

subdivides the Property into individual lots or condominiums, this Agreement shall automatically terminate and be released by City with respect all of the lots and/or condominiums upon which Market Rate Units will be developed without any further action by City or Developer and this Agreement shall continue in effect only with respect to those lots and/or condominium units upon which the Moderate Income Units and Affordable By Design Units will be constructed; provided, however, within thirty (30) days of written request by Developer, City shall execute and record such documentation as may be required to memorialize such termination and to clear this Agreement from title to the Market Rate Units.

2.2 Maintenance and Management.

A. During the Term, the exterior areas and common areas of the Property and the Project shall be maintained by a Homeowners' Association and/or a licensed management company to manage, operate and maintain the Project. The maintenance obligations will include maintenance of the improvements and landscaping. Developer agrees to maintain the Moderate Income Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Moderate Income Units free from accumulation of debris and waste materials, until the close of escrow of the Moderate Income Units.

B. Upon the sale and close of escrow of each for-sale Moderate Income Unit, the Eligible Moderate Income Household which purchased the Moderate Income Unit will be a member of the Homeowners' Association and will be responsible for the payment of Homeowners' Association assessments as provided in the Covenants, Conditions and Restrictions ("CC&R's") for the Project. Such Homeowners' Association assessments will be reviewed by the California Department of Real Estate, and subject to increases as provided for in the CC&R's..

2.3 City Option. The City and the Developer hereby agree that the City shall have the right to purchase any one or more of the _____ Moderate Income Units at a purchase price equal to the maximum Affordable Sales Price for the maximum household size for the applicable Moderate Income Unit based on bedroom count, as calculated pursuant to this Agreement, and to rent such Moderate Income Unit to an income-qualified household. The City has the right to assign the City's Purchase Option to a nonprofit organization. Effective upon the date that the City purchases any such Moderate Income Unit, the Developer shall be deemed to have completed its obligations as to such Moderate Income Unit, and such Moderate Income Unit shall be released from this Agreement in accordance with Section 2.1.E. The City is a third-party beneficiary of this Section 2.3. For each Moderate Income Unit that the City is exercising this option, if for any reason, the City does not close escrow on the Moderate Income Unit within 30 days of notice of the issuance of a Certificate of Occupancy, the Developer shall be released from all obligations under Section 2.3 and may sell the Moderate Income Unit to any other Eligible Buyer.

ARTICLE 3
MARKETING OF MODERATE INCOME UNITS

3.1 Marketing and Sales Program and Marketing Reports.

A. Prior to marketing a Moderate Income Unit, Developer shall design and deliver to the City a marketing and/or sales plan for the Moderate Income Units. Such plan shall conform to the terms of the DDA regarding the marketing plan, and shall be subject to the Community Development Director's review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing program for the Moderate Income Units referenced above shall give preference in the sale of the Moderate Income Units according to a point system that allots one preference point to a household where a person in the household lives or works in the City of Alameda and one preference point to a household where a person in the household is a qualified Alameda Unified School District employee. Where a household satisfies both criteria, the preference points shall be aggregated.

3.2 Restrictions on Sales of Moderate Income Units. Developer shall not sell the Moderate Income Units to any of the following: (a) any partner, officer, shareholder or employee of Developer or any Family Member (defined below) of any partner, officer, shareholder or employee of Developer; (b) any member of the City Council, or any member of any City board or commission; and (c) any City employee who exercises any function or responsibility in connection with the Property or who has, or whose Family Member (defined below) has, an economic interest in the Property pursuant to the provisions of the Political Reform Act, Government Code section 87100 *et seq.* "Family Member" shall mean the spouse or child of the individual at issue or the individual's or his or her spouse's parent, grandparent, brother, sister, aunt, uncle, niece or nephew.

3.3 Effect of Article 3. This Article 3 shall terminate and be of no further force and effect as to Developer upon the first to occur of: (a) with respect to each Moderate Income Unit, the closing of the sale by Developer of, and the transfer of title to, the Moderate Income Unit pursuant to Article 2 above, and (b) the date the Resale Restriction has been recorded against each Moderate Income Unit covered by this Agreement.

ARTICLE 4
AFFORDABLE BY DESIGN UNITS

4.1 Requirements for Affordable By Design Units

A. Developer shall construct, or cause to be constructed, _____ Affordable By Design Units on the Property, which shall be sold to and occupied by Workforce Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Workforce Household. "Annual Household Income" means the combined "gross income" for a person or family living in a dwelling unit as calculated pursuant to Section 6914 of Title 25 of the California Code of Regulations.

C. The Affordable by Design Units will generally be smaller than the Market Rate Units and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in relation to the Market Rate Units. The Affordable by Design Units may

have different interior finishes and features than Market Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

D. The Affordable By Design Units shall only be sold to and be occupied by Eligible Workforce Households, as specified in subsection 2.1.A; provided, however, that for the avoidance of doubt, such income restrictions shall only apply to the first homebuyer of such units from Developer and such homebuyer and their successors and assigns and the Affordable by Design Units shall not thereafter be burdened with any requirement concerning the income of any buyer of an Affordable by Design Unit. The first homebuyer's income verification is the only qualifying factor for the sale of an Affordable by Design Unit.

E. The units designated as the Affordable by Design Units are depicted in Exhibit B. The total number of Affordable by Design Units being offered for sale in accordance with this Article 4 shall be as required by Section 4.1.A. above.

F. Developer shall market the Affordable By Design Units in accordance with a marketing plan approved by the City pursuant to the DDA.

G. UPON SALE OF AN AFFORDABLE BY DESIGN UNIT TO AN ELIGIBLE WORKFORCE HOUSEHOLD THIS AGREEMENT SHALL HAVE NO FURTHER FORCE AND EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE BY DESIGN UNIT AND DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE BY DESIGN UNIT.

H. This Article 4 shall terminate in its entirety with respect to Developer and the Affordable By Design Units upon the date that each Affordable By Design Unit covered by this Agreement has been conveyed to an Eligible Workforce Household.

2.2 Maintenance and Management.

A. Developer agrees to maintain the Affordable By Design Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Affordable By Design Units free from accumulation of debris and waste materials, until the close of escrow of the Affordable By Design Units.

B. Upon the sale and close of escrow of each for-sale Affordable By Design Units, the Eligible Workforce Household which purchased the Affordable By Design Units will be a member of the Homeowners' Association and will be responsible for the payment of Homeowners' Association assessments as provided in the Covenants, Conditions and Restrictions ("CC&R's") for the Project. Such Homeowners' Association assessments will be reviewed by the California Department of Real Estate, and subject to increases as provided for in the CC&R's.

**ARTICLE 5
GENERAL PROVISIONS**

5.1 Agreement Shall Prevail. This Agreement is intended to give effect to the MSNSP, City Inclusionary Policy, Project Inclusionary Requirement and the requirements of the DDA. In the event of any conflict between this Agreement and the City Inclusionary Policy, this Agreement shall control and prevail.

5.2 Notices. Notices required to be given to the City or Developer shall be given by hand delivery, recognized overnight courier (such as UPS, DHL or FedEx) or certified mail, return receipt requested, to the following addresses, or to such other address(es) as a party may designate from time to time by written notice to the other:

City: City of Alameda
Community Development Department
950 W. Mall Square, Suite 205
Alameda, CA 94501
Attention: Community Development Director

With a copy to:

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

Developer: _____

With a copy to:

5.3 Duration. The covenants set forth herein on the Moderate Income Units shall be covenants running with the land and shall inure to the benefit of City and its successors and assigns, and shall be enforceable by City and its successors and assigns during the Term. Upon recordation of the Resale Restriction as to each Moderate Income Unit, this Agreement shall have no further force or effect as an encumbrance against each Moderate Income Unit, and Developer shall have no further obligations or liabilities with respect to the Moderate Income Unit, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the Resale Restriction, provided that Developer is not then in default under this Agreement. This Agreement shall terminate on the date that is the later to occur of the following: (a) the date the Resale Restriction has been recorded against each Moderate Income Unit covered by this Agreement, and (b) the date each Affordable By Design Unit covered by this Agreement has been

conveyed to an Eligible Workforce Household (such date of termination, the “Termination Date”). The period of time between the Effective Date and the Termination Date is the “Term” of this Agreement.

5.4 No Discrimination. During the Term of this Agreement, 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 Owner, 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.

5.5 Amendment. This Agreement may be amended only in writing by City and Developer.

5.6 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 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.

5.7 Successors and Assigns:

A. Binding Effect; Covenants Run with Land. The covenants contained in this Agreement shall inure to the benefit of City and its successors and assigns and shall be binding upon Developer and any successor in interest. Upon the transfer by Developer of all or any portion of its interest in the Property, all references in this Agreement to Developer thereafter shall mean and refer to such successor in interest of Developer as may then be the owner of the Property or such portion thereof, or interest therein. In the event that Developer transfers the Property or any portion thereof or interest therein to more than one successor in interest, all successors in interest shall be collectively required to comply with the provisions of this Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants in this Agreement shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City and its successors and assigns, in the event of any breach of any such covenants, 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.

B. Transfer by Developer of Property. In the event that Developer intends to sell, transfer, convey, assign or ground lease the Property or any part thereof or interest therein (“Transfer”) during the period between the Effective Date and the closing date for the sale of the last Moderate Income Unit pursuant to Article 2 above or the last Affordable By Design Unit pursuant to Article 4 above, as applicable, Developer shall comply with the requirements of the DDA with respect to such Transfer and any such transferee shall be responsible for all of the

obligations of the Developer under the Agreement occurring after the date of the Transfer and provide a copy of the executed agreement to the City.

5.8 Priority of this Agreement. Upon recording, this Agreement shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Property, or any portion thereof, and Developer shall be required to furnish to City subordination agreements in form and substance approved by the City subordinating the liens of any deeds of trust or mortgages existing as of such recording to this Agreement; provided, however, this Agreement shall be released from, and shall not encumber, any individual Moderate Income Unit upon sale of such Moderate Income Unit to an Eligible Moderate Income Household and/or any individual Affordable By Design Unit upon sale of such Affordable By Design Unit to an Eligible Workforce Household.

5.9 No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, there are no third party beneficiaries of this Agreement.

5.10 Effect of Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall have any force or effect on any buyer or buyer's right, title or interest in or to any Market Rate Unit or any unit other than the Moderate Income Units and the Affordable By Design Units, as applicable, except that the buyer of an Moderate Income Unit shall execute and be subject to the Resale Restriction. The foregoing exemption and release shall be self-executing and require no further instruments or assurances to be effective.

5.11 Default and Remedies.

A. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of 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 cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

B. Any notice of default given hereunder shall specify in detail the nature of the failure in performance alleged by City and the manner in which such failure of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, Developer shall not be considered to be in default of this Agreement for any purposes.

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of 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.

D. In the event of an Event of Default under this Agreement, City shall have the right to exercise all of the rights and remedies, and to maintain any actions under this Agreement, the City Inclusionary Policy, at law, in equity, or other remedy proceedings.

5.12 California Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

4.13 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

5.14 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court or other body of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force and effect pursuant to the limitations and duration agreed to herein.

5.15 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto. The exhibits attached to this Agreement are incorporated by reference.

5.16 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words “include” and “including” shall be construed as if followed by the words “without limitation.” The parties acknowledge that each party and its respective counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection herewith. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

5.17 Attorney Fees. 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 attorneys’ 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 of litigant might prevail.

5.18 Authorized Signatories. Each of the undersigned hereby warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for whom he/she signs.

[Signature page follows]

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

RECOMMENDED FOR APPROVAL:

CITY:

CITY OF ALAMEDA, a municipal corporation

Andrew Thomas, Interim Base Reuse and
Economic Development Directo

[Signature must be notarized]
Jennifer Ott
City Manager

APPROVED AS TO FORM:

Len Aslanian,
Assistant City Attorney

DEVELOPER:

DEVELOPER:

_____,
a _____

By: _____

By: _____
[Signature must be notarized]

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

STATE OF CALIFORNIA)

) ss:

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.

Signature _____

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)

) ss:

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.

Signature _____

676\05\3534241.2
676\05\3534241.4
7/2/2023
086762\16860443v4
676\05\3559691.1

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plans for Project

EXHIBIT C

Reserved

EXHIBIT D

Inclusionary Housing Program Buyer/Renter Selection Guidelines

On the following page are the Buyer Selection Guidelines that are currently in effect. City staff anticipates that updated guidelines will be presented to the Council in _____ . The Developer shall comply with the Council-approved guidelines that are in effect at the time that the City approves the marketing and/or sales plan for the Moderate Income Units described in Section 3 of the Agreement.

EXHIBIT E

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
Community Development Department
701 Atlantic Avenue
Alameda, California 94501
Attention: Executive Director

RECORDED FOR THE BENEFIT OF THE CITY OF ALAMEDA
PURSUANT TO GOVERNMENT CODE SECTION 6103; NO FEE
PURSUANT TO GOVERNMENT CODE SECTION 27383

**AFFORDABILITY, RESTRICTIONS ON RESALE,
AND
OPTION TO PURCHASE AGREEMENT
(_____)**

Owner: _____

Address of Property: _____

Income Category of Owner: _____

Purchase Price of Property (“Affordable Price”):

Median Income on Effective Date: _____

THIS AFFORDABILITY, RESTRICTIONS ON RESALE, AND OPTION TO PURCHASE AGREEMENT (“Agreement”) is made as of _____, 20__, (“Effective Date”) by and between the City of Alameda (“City”), a California municipal corporation and charter city, and _____ (“Owner”) with reference to the following facts:

RECITALS

A. Owner is acquiring fee title to that certain real property in the City of Alameda, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto, together with all improvements now or hereafter located thereon and all appurtenances thereto (“Property”), subject to the terms and conditions of that certain Affordable Housing Agreement entered into by and between the City of Alameda (“City”), a California municipal

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corporation, and _____ (“Developer”), dated _____, 20__ (“Developer Affordable Housing Agreement”).

B. In furtherance of (a) implementing the goals and objectives of the City’s Housing Element, (b) mitigating the impacts on housing affordability caused by new residential development and (c) meeting the need for housing affordable to persons of very low-, low- and moderate-income, the City has adopted an Inclusionary Housing Policy, embodied in Ordinance No. 2926 N.S, Section 30-16.1, et seq., Alameda Municipal Code (“City Inclusionary Policy”).

C. The Developer Affordable Housing Agreement requires Developer to sell the Property to Owner at an “Affordable Ownership Cost,” as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein.

D. The purpose of this Agreement is to establish the use, occupancy, and resale restrictions in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement, and the Grant Deed (as defined below), and grant to the City certain remedies, including the right to purchase the Property, as covenants running with the land and equitable servitudes that benefit the City and permitted successors and assigns and burden the Property, the Owner and all of its successors and assigns. The Property is being purchased by Owner as a Moderate-Income household at the “Affordable Price,” in accordance with the goals and purposes of the City Inclusionary Policy, and the Developer Affordable Housing Agreement.

E. In order to ensure the Property remains affordable to a Moderate-Income household for at least fifty-nine (59) years following the date of this Agreement, and as a condition of purchasing the Property at the Affordable Price, the Owner is required to execute this Agreement, the City Note and the City Deed of Trust, as such terms are defined below.

NOW, THEREFORE, in consideration for the ability to purchase the Property at a below fair market price, as described herein, which shall be deemed good and valuable consideration, the Owner and all of its heirs, successors, and assigns hereby agrees that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, and option to purchase, all of which shall run with the Property and be binding on all parties having any rights, title, or interest in the Property.

ARTICLE 1 DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meanings (other defined terms in this Agreement not referenced below shall have the meanings where first used herein).

1.1. “Affordable Ownership Cost” shall be as defined as a sales price that results in a monthly housing cost (including mortgage payment, mortgage insurance (if any), homeowner’s insurance, property taxes, home owner’s association costs (if any), assessments (if any), and

utilities) that does not exceed one twelfth of thirty percent (30%) of the maximum annual income for a household of the applicable income.

1.2. “Affordable Price” shall mean the below market rate purchase price paid by the Owner for the Property.

1.3. “Affordable Rent” shall have the meaning provided in Section 2.1(c).

1.4. “Appraisal” shall mean an appraisal setting forth the Market Value of the Property assuming no affordability requirements or other similar restrictions on income, occupancy, or resale of the Property, and prepared by an appraiser approved by the City and who holds an MAI membership designation from the Appraisal Institute or who holds a CREA membership designation from the National Association of Real Estate Appraisers (or, in the case such professional designations are modified or discontinued, the most nearly equivalent successor designations).

1.5. “Appreciation Amount: shall have the meaning provided in Section 6.3(a).

1.6. “Area Median Income” shall mean the median household income (adjusted for household size) of the Metropolitan Statistical Area in which the County of Alameda is located, as established in accordance with California Health and Safety Code section 50093(c).

1.7. “City” shall mean the City of Alameda.

1.8. “City Deed of Trust” shall mean the deed of trust executed by the Owner in favor of the City securing the Owner’s obligations under the City Note and this Agreement, substantially in the form of Exhibit F.

1.9. “City Note” shall mean a promissory note executed by the Owner in favor of the City in the principal amount equal to the difference between the Market Value of the Property calculated at the time Owner acquired the Property and either (a) the Affordable Price, in the case of the first Owner, or (b) the Eligible Buyer Purchase Price, in the case of subsequent Owners, plus a contingent deferred amount equal to the City’s Shared Appreciation, substantially in the form of Exhibit E.

1.10. “City Purchase Option Price” shall mean an amount equal to the Eligible Buyer Purchase Price minus Repair Costs.

1.11. “City Purchase Option” shall have the meaning provided in Section 5.1.

1.12. “City Resale Costs” means any and all costs and fees incurred by the City, whether directly by City or City staff, or indirectly under City or City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5, or an Extraordinary Sale under Article 6, including, without limitation, real estate brokerage fees or commissions, and costs and expenses of application screening and

processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) and shall not be less than one percent (1%) of the Affordable Price.

1.13. “City Response Notice” shall have the meaning provided in Section 4.1.

1.14. “City’s Shared Appreciation” shall have the meaning provided in Section 6.3.

1.15. “Eligible Capital Improvements” shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Eligible Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value. A form for use in requesting City approval of an Eligible Capital Improvement is attached hereto as Exhibit H.

1.16. “This section intentionally left blank.

1.17. “CC&Rs” shall mean that certain Declaration of Covenants, Conditions, and Restrictions recorded on _____, 20__, as Document No. _____ in the Official Records of Alameda County, as amended from time to time.

1.18. Intentionally left blank.

1.19. “Eligible Buyer” shall mean any person or family of moderate income whose combined gross income for all adult persons does not exceed one hundred twenty percent (120%) of Area Median Income, whose family size is appropriate for the Property, and who meet the First-Time Homebuyer requirements provided in Section 1.25. For the purposes herein, “appropriate family size for the Property” shall be: a minimum of one person for a one-bedroom unit; a minimum of two persons for a two-bedroom unit; a minimum of three persons for a three-bedroom unit; and a minimum of four persons for a four-bedroom unit.

1.20. “Eligible Buyer Purchase Price” shall mean the allowable purchase price to be paid by an Eligible Buyer for the Property as provided in Section 4.4.

1.21. “Event of Default” shall have the meaning provided in Section 8.10.

1.22. “Excess Rental Proceeds” shall have the meaning provided in Section 2.1(c).

1.23. “Extraordinary Sale” shall mean a Sale conducted as provided in Article 6.

1.24. “Extraordinary Sale Price” shall have the meaning provided in Section 6.3(c).

1.25. “First Time-Homebuyer” shall mean an individual or individuals, or an individual and his or her spouse, who meets either of the following criteria:

(a) The individual or individuals, or an individual and his or her spouse, has not owned a principle residence during the 3-year period ending on the date of purchase of the Property; or

(b) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody, joint custody, or is pregnant.

1.26. “Grant Deed” shall mean the grant deed executed by the Developer conveying the Property to the Owner for the initial Owner, or the grant deed executed by the initial Owner or subsequent Owners conveying the Property to subsequent Owners.

1.27. “HUD Increase” shall mean the percentage increase in Area Median Income from the date of sale of the Property to an Owner (or Subsequent Owner, as the case may be) to the date of receipt by the City of the Owner’s Notice of Intent to Transfer or Notice of Intent to Sell. In no event shall the HUD Increase be less than zero.

1.28. “Initial Financing” shall have the meaning provided in Section 7.1(a).

1.29. “Market Value” shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time. The cost of the Appraisal shall be paid by the Owner, and the Owner shall promptly provide the Appraisal to the City.

1.30. “Notice of Intent to Transfer” shall have the meaning provided in Section 3.1 and Exhibit B.

1.31. “Notice of Intent to Sell” shall have the meaning provided in Section 4.1 and Exhibit C.

1.32. “Notice of Extraordinary Sale” shall have the meaning provided in Section 6.2 and Exhibit D.

1.33. “Owner” shall mean the purchaser of the Property as identified in the Preamble and Recital A, and includes all of Owner’s heirs, successors, and assigns, as allowed under this Agreement.

1.34. "Owner's Gross Proceeds" is equal to the Eligible Buyer Purchase Price paid for the Property, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement.

1.35. "Permitted Transfer" shall mean a Transfer as provided in Section 2.2.

1.36. "Permitted Sale" shall mean a Sale as provided in Section 2.3.

1.37. "Prohibited Transfer" shall mean any Transfer that is not a Permitted Transfer as provided in Section 2.4.

1.38. "Prohibited Sale" shall mean any Sale that is not a Permitted Sale or Extraordinary Sale as prohibited in Section 2.4.

1.39. "Property" shall have the meaning provided in Recital A.

1.40. "Purchase Subsidy" shall have the meaning provided in Section 6.3(d).

1.41. "Refinancing" shall have the meaning provided in Section 7.1(b).

1.42. "Repair Costs" shall have the meaning provided in Section 4.3.

1.43. "Sale," "Sell" or "Sold" shall mean a Transfer of the Property for monetary consideration.

1.44. "Senior Lien" shall have the meaning provided in Section 7.1.

1.45. "Senior Lender" shall have the meaning provided in Section 7.1(a).

1.46. "Senior Lender Deed of Trust" shall have the meaning provided in Section 7.3(c).

1.47. "Term" shall have the meaning provided in Section 8.15.

1.48. "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate or use, rental, or tenancy therein.

1.49. "Transferee" shall mean the person or persons to whom the Property is Transferred or Sold.

ARTICLE 2 RESTRICTIONS

2.1. Owner Acknowledgments and Agreements. Owner hereby acknowledges and agrees that taking title to the Property shall constitute Owner's acknowledgment and agreement of the following:

(a) THE PROPERTY IS BEING ACQUIRED BY OWNER AT A COST THAT IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND THE CITY'S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE CITY AN IRREVOCABLE POWER OF ATTORNEY COUPLED WITH AN INTEREST TO ACT ON THE OWNER'S BEHALF TO EXECUTE, ACKNOWLEDGE, AND DELIVER ANY AND ALL DOCUMENTS RELATING TO THE CITY'S PURCHASE OPTION. THERE SHALL BE NO SALE OR TRANSFER OF THE PROPERTY EXCEPT IN ACCORDANCE WITH THIS AGREEMENT. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A DEFAULT AND SHALL BE VOIDABLE BY THE CITY.

(b) OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF CLOSE OF ESCROW ON THE PURCHASE OF THE PROPERTY BY OWNER. The Owner shall be considered to occupy the Property if the Owner is living in the Property for at least ten (10) months out of each calendar year. Upon request by the City, each Owner shall submit a declaration to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide the City with a copy of valid driver's license of the Owner showing the Property address, recent copy of a utility bill in the name of the Owner, or other evidence of residency as deemed satisfactory to the City. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal residence, City may declare an Event of Default pursuant to Section 8.10 and exercise any or all of its rights and remedies hereunder, including without limitation the City's Purchase Option pursuant to Article 5.

(c) The Owner shall not rent or lease the Property to another party. Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust. The Owner agrees that, in the event the Owner rents or leases the Property to a third party in violation of this Section, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against Owner, including by foreclosure under the City Deed of Trust. Affordable Rent shall mean the thirty (30%) of one hundred ten percent (110%) of Area Median Income adjusted for household size appropriate to the Property.

(d) The Owner's right to resell the Property at Market Value is limited and, in certain instances, the City will have the option to purchase the Property from the Owner. In order

to ensure the Property shall remain available at an Affordable Ownership Cost over the Term of this Agreement, the Owner's right to resell the Property is limited and is not as favorable as the rights of other property owners whose properties are not affected by this Agreement and are not encumbered by similar agreements.

(e) The Property will not necessarily appreciate in value during the duration of the Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Affordable Price the Owner originally paid for the Property. Thus, when the Owner Sells the Property it may receive less than it originally paid for the Property.

2.2. Permitted Transfers. Subject to compliance with the procedures described in Article 3, including but not limited to providing required notices to the City, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

(a) Transfer to an existing spouse or registered domestic partner who is also an obligor under the City Note;

(b) Transfer to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;

(c) Transfer by the Owner to a spouse or registered domestic partner where the spouse or registered domestic partner becomes the co-owner of the Property;

(d) Transfer between spouses as part of a marriage dissolution proceeding;

(e) Transfer to an existing spouse or registered domestic partner of Owner by devise or inheritance following the death of Owner; and

(f) Transfer by Owner into an inter vivos trust in which Owner is the beneficiary.

For the purposes of this Section 2.2, "Domestic Partners" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of a declaration or other acceptable evidence by Owner to the City.

2.3. Permitted Sales. Subject to compliance with the procedures described in Article 4 and Article 5, including but not limited to providing required notices to the City, an Owner may Sell the Property to an Eligible Buyer ("Permitted Sale"). The City shall have the option to purchase the Property pursuant to the City's Purchase Option described in Article 5. If the City or the Owner are unable to identify an Eligible Buyer or the City has not exercised the City's Purchase

Option, the Owner shall have the right to Sell the Property to a non-Eligible Buyer in accordance with the provisions of Article 6.

2.4. Prohibited Transfers; Prohibited Sales. Any Transfer other than a Permitted Transfer is a Prohibited Transfer. A Prohibited Transfer specifically includes any Transfer of a use, rental, or leasehold interest in the Property. Any Sale of the Property other than a Permitted Sale, the City's Purchase Option, or an Extraordinary Sale, is a Prohibited Sale. If an Owner attempts or makes a Prohibited Transfer or Prohibited Sale, then in addition to all other rights or remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option described in Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer or Prohibited Sale.

ARTICLE 3 TRANSFER PROCEDURES

3.1. Permitted Transfers. If an Owner desires to Transfer by a Permitted Transfer under Sections 2.2(a) through (d), the Owner shall provide the City with a Notice of Intent to Transfer in the form of Exhibit B, together with any other documentation City may reasonably request in order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, City shall have forty-five (45) days after receipt by the City of such Notice of Intent to Transfer and other documentation to deliver written notice to the Owner of its approval or disapproval of the Transfer as a Permitted Transfer. In the event the City approves the Transfer as a Permitted Transfer, the Transferee shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust and new documents shall be executed between the Transferee and the City and recorded against the Property.

3.2. Inheritance. In the event a Permitted Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate or the person inheriting the Property shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(a) If the person inheriting the Property (the "Inheriting Owner") desires to occupy the Property, he or she shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust, and new documents shall be executed between the Inheriting Owner and the City and recorded against the Property.

(b) If the Inheriting Owner does not desire to occupy the Property, he or she shall be required to Transfer the Property to an Eligible Buyer at the Eligible Buyer Purchase Price, pursuant to Article 4, or the City may exercise the City's Purchase Option, pursuant to Article 5; provided, however, that the Inheriting Owner may own and occupy the Property for up to twelve (12) months prior to providing a Notice of Intent to Sell to the City pursuant to Section 4.1 below, and provided further that the Inheriting Owner remains in compliance with the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Property during this twelve (12) month time period.

(c) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 3.1 shall constitute an Event of Default under this Agreement and the City may then exercise any of the remedies set forth in Section 8.10 below, including, without limitation, exercise of the City's Purchase Option.

3.3. Transfer of the Property without City's Approval. If the City determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without City's approval shall be voidable and, in such event, in addition to all other rights and remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

ARTICLE 4 PERMITTED SALE PROCEDURES

4.1. Notice of Intent to Sell; City Response Notice. If an Owner desires to Sell the Property, the Owner shall provide the City with a Notice of Intent to Sell in the form of Exhibit C and comply with the requirements set forth in the Notice of Intent to Sell. Within sixty (60) days after receipt of the Notice of Intent to Sell, the City shall notify the Owner whether (a) City elects to exercise the City's Purchase Option pursuant to Section 5.1(a) or (b) that City will not exercise the City's Purchase Option and Owner may proceed to Sell the Property to an Eligible Buyer at the Eligible Buyer Purchase Price pursuant to Section 4.4 (the "City Response Notice"). The City Response Notice shall include: (a) any certifications required of an Eligible Purchaser; (b) the Repair Costs pursuant to Section 4.3; and (c) the Eligible Buyer Purchase Price pursuant to Section 4.4.

4.2. Permitted Sale to Eligible Purchaser. In the event the City permits the Owner to sell the Property to an Eligible Buyer, the City shall use its reasonable efforts to identify an Eligible Buyer, taking into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Subject to the City's prior written approval, the Owner may have the option to identify an Eligible Buyer, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price within sixty (60) days after identification of the Eligible Buyer, unless otherwise agreed to in writing by the City.

4.3. Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the City shall have the right to enter the Property at reasonable times with twenty-four (24) hours advance notice to the Owner to inspect the dwelling unit on the Property to determine whether any damage or violations of applicable laws or ordinances exist. In the event any damage or violations are discovered, the City shall determine the cost necessary to repair or correct any violations of applicable building, plumbing, electric, fire, or housing codes, or any other provisions of the City Building Code, as well as any other repairs the City deems necessary to put the Property into a "sellable condition" ("Repair Costs"). Items necessary to put the Property into sellable condition

may include cleaning, painting, and making structural, mechanical, electrical, plumbing, fixed appliance repairs, pest control repairs, and other deferred maintenance repairs. Within thirty (30) days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (a) repair or replace the items on such report at the Owner's cost prior to closing (without extending the closing date), or (b) at closing cause the escrow holder to pay the Repair Costs to the City or the Eligible Buyer. If an Owner elects to repair or replace the items on such report, the City shall have the right to re-inspect the Property under the terms of this Section 4.3 after the repairs and/or replacements are complete. If the City determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the City the Repair Costs from Owner's Gross Proceeds or the Extraordinary Sales Price.

4.4. Eligible Buyer Purchase Price. The Purchase Price to be paid by an Eligible Buyer for the Property shall be the total sum of (a) the Affordable Price paid by the Owner for the Property, plus (b) the HUD Increase as defined in Section 1.27, plus (c) the depreciated value of any Eligible Capital Improvements approved by the City as described in Section 1.15. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Affordable Ownership Cost allowable for a Moderate-Income household at the time of resale.

Example of how the Eligible Buyer Purchase Price is calculated:

Assume the following facts:

- Affordable Price of the Property when Owner purchased the Property was \$450,000.
- Percentage increase in the Area Median Income ("AMI") from the date of sale of the Property to the Owner to the date of receipt by the City of the Owner's Notice of Intent to transfer or Notice of Intent to Sell ("the HUD Increase") is 7%.
- The Owner made Eligible Capital Improvements on the Property and the depreciated value of the Eligible Capital Improvements is \$10,000.

First, determine the Appreciation Amount by multiplying the Affordable Price times the HUD Increase.

Appreciation Amount = Affordable Price x HUD Increase = [$\$450,000 \times .07 = \$31,500$]

Second, determine the Eligible Buyer Purchase Price by adding the Affordable Price plus the Appreciation Amount and any Eligible Capital Improvements.

Eligible Buyer Purchase Price
= Affordable Price + Appreciation Amount + Eligible Capital Improvements
= $\$450,000 + 31,500 + 10,000 = \$491,500$

4.5. Appraisal; City Resale Costs; City Documents. Upon receipt of a Notice of Intent to Sell, the City shall cause an Appraisal to be completed prior to close of escrow to determine the

Market Value of the Property as of the date of such Notice. The cost of such Appraisal shall be paid by the Owner at close of escrow. In addition, the Owner shall pay the City Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the City Resale Costs from any sources, including, but not limited to, the Owner's Gross Proceeds, to the extent there are any available, as provided in Section 4.6.

At close of escrow, the Eligible Buyer shall deliver or cause to be delivered into escrow:

(a) the City Note, fully executed by the Eligible Buyer in favor of the City in substantially the form of Exhibit E hereto. The City Note shall be in the principal amount equal to the Purchase Subsidy;

(b) the City Deed of Trust securing the City Note fully executed by the Eligible Buyer in recordable form, in substantially the form of Exhibit F hereto;

(c) a new Affordability, Restrictions on Resale, and Option to Purchase Agreement, in a form provided by the City to the Eligible Buyer and fully executed in recordable form by all appropriate parties; and

(d) the required down payment and all documents required by the Eligible Buyer's Senior Lender.

4.6. Proceeds from Permitted Sale. Owner's Gross Proceeds from a Permitted Sale shall be distributed in the following priority to the extent funds from Owner's Gross Proceeds are available:

(a) first, to pay any amounts owed under the Owner's Senior Lien; and

(b) second, to pay all customary closing costs that a seller would pay in the County of Alameda, a basic one-year home warranty as provided in Section 4.9, and, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 4.5; and

(c) third, to pay to the City or Eligible Buyer all Repair Costs (if any, and to the extent not already paid) that are owed to the City under Section 4.3; and

(d) fourth, any remaining amounts shall be paid to the Owner.

4.7. Personal Property. Any sums paid to an Owner by an Eligible Buyer for personal property shall not be part of the Eligible Buyer Purchase Price. No other consideration of any nature whatsoever shall be paid by an Eligible Buyer to the Owner unless first fully disclosed to and approved by the City in writing.

4.8. Real Estate Broker Commission. If the City identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by

the City. If the Eligible Buyer is identified by the Owner, as between the Owner and the Eligible Buyer, the Owner shall have the sole and exclusive obligation to pay any real estate broker's commission regardless of whether the broker was engaged by the Owner or Eligible Buyer.

4.9. Closing. At closing, the Owner shall convey fee title to the Eligible Buyer by standard title company form Grant Deed. The Owner shall cause the title company to issue to the Eligible Buyer a CLTA standard coverage owner's form of title insurance policy in the amount of the Eligible Buyer Purchase Price ensuring title to the Property is vested in the Eligible Buyer, subject to exclusions from coverage, exceptions for current taxes and assessments not yet due, this Agreement, and all documents recorded pursuant to this Agreement and such other matters (other than encumbrances created or suffered by the Owner) that were exceptions to title on the date of this Agreement. The Owner shall pay for a basic one-year home warranty contract issued by a reputable and established company to the Eligible Buyer. The Eligible Buyer shall pay the costs of any longer or more extensive warranty. All other closing costs shall be paid by the Owner or the Eligible Buyer pursuant to the custom in the County of Alameda.

ARTICLE 5 CITY'S PURCHASE OPTION

5.1. Purchase Option. By taking title to the Property, the Owner irrevocably grants, to the City, an option to purchase the Property (the "City Purchase Option") at the City Purchase Option Price upon the occurrence of any of the following:

- (a) in the event the Owner provides a Notice of Intent to Sell to the City pursuant to Section 4.1;
- (b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;
- (c) in the event the Owner is in default of the occupancy requirement set forth in Section 2.1;
- (d) as reserved to the City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.1 hereof to the date of written acceptance by the Owner of an offer to purchase the Property from an Eligible Buyer;
- (e) in the event that escrow fails to close within the times set forth in Section 6.6; or
- (f) upon occurrence of an Event of Default (as defined in Section 8.10);

provided that, in the case of (b), (c), (d) (e) or (f), above, the City Purchase Option shall be in addition to any other remedy provided in this Agreement for an Event of Default. By taking title to the Property, the Owner agrees that the City's facilitation of the Transfers contemplated

hereby, and its acts, commitments, and expenditures in furtherance thereof constitute adequate consideration for the grant of the City Purchase Option.

5.2. Exercise of Option.

(a) Procedure Upon Exercise of Option. The City may exercise the City Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option pursuant to Section 5.1, including, but not limited to the delivery of the City Response Notice to the Owner pursuant to Section 4.1.

(b) Assignment of City Purchase Option. After the City has exercised the City Purchase Option, the City may, without the Owner's or Transferee's consent, assign the City Purchase Option to an Eligible Buyer or to a governmental agency or non-profit organization that agrees to be subject to this Agreement; provided, however, that any such assignment shall not extend any time limits contained in this Agreement.

5.3. Close of Escrow.

(a) If the City Purchase Option is available to the City pursuant to Section 5.1(a), the City or its assignee shall purchase the Property within ninety (90) days of the date of the City Response Notice and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

(b) If the City Purchase Option is available to the City Pursuant to Sections 5.1 (b), (c), (d), (e), or (f), the City or its assignee shall purchase the Property within thirty (30) days after delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

5.4. Power of Attorney. By taking title to the Property, the Owner grants to the City an irrevocable power of attorney coupled with an interest to act on the Owner's behalf to execute, acknowledge, and deliver any and all documents relating to the City Purchase Option.

**ARTICLE 6
EXTRAORDINARY SALE; SHARED APPRECIATION**

6.1. When Extraordinary Sale Permitted. The Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6 if:

(a) The City or the Owner fail to identify an Eligible Buyer within one hundred and eighty (180) days of the date of the City Response Notice notifying the Owner that the City will not exercise the City Purchase Option pursuant to Section 4.1; or

(b) The City fails to close escrow pursuant to Section 5.3(a) after exercising the City Purchase Option.

Notwithstanding anything to the contrary herein, the City shall retain the City Purchase Option for the period of time from the Owner's Notice of Extraordinary Sale pursuant to Section 6.1 to the date of written acceptance by the Owner of an offer to purchase the Property from a buyer. In no event shall the Owner have the right to make an Extraordinary Sale if there has been any attempted or actual Prohibited Transfer or Prohibited Sale by the Owner or if there is any other Event of Default by the Owner under this Agreement.

6.2. Notice of Extraordinary Sale; Appraisal; City Resale Costs. The Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale in the form of Exhibit D. The Notice of Extraordinary Sale shall contain a request that the City calculate the current Market Value of the Property based upon an Appraisal, the cost of which shall be paid by the Owner through escrow. The City shall use reasonable efforts to obtain the Appraisal within thirty (30) days after receipt of the Notice of Extraordinary Sale. The City shall provide the Owner with a copy of the Appraisal within ten (10) days after receipt by the City. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval, consistent with the terms of this Agreement. In addition, the Owner shall pay the City Resale Costs at close of escrow.

6.3. City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner shall pay to the City the principal amount outstanding on the City Note and the City's Shared Appreciation, as defined herein. .

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Article 6, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Owner at acquisition of the Property, minus Eligible Capital Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "City Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Market Value of the Property at the time the Owner purchase the Property multiplied by the Appreciation Amount.

(c) "Extraordinary Sale Price" means the amount received by the Owner as the sales price of the Property under an Extraordinary Sale pursuant to Article 6, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved by the City in writing.

(d) “Purchase Subsidy” shall mean the City’s initial equity contribution, equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Affordable Price. The Purchase Subsidy shall be provided to the Owner as a deferred contingent interest loan, as evidenced by the City Note.

Example of calculating the amount of the City’s Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Owner purchased the Property was \$1,000,000.
- Affordable Price of the Property at the time the Owner purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [\$1,000,000 - \$450,000 = \$550,000]
- Owner paid closing costs of \$5,000 at time of purchase.
- Owner made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lender sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

Extraordinary Sale Price	\$ 625,000
– Affordable Price at purchase	– 450,000
– Closing Costs	– 5,000
– Capital Improvements	– 10,000
– City Resale Costs	– 20,000
= Appreciation Amount	\$ 140,000

In this example, the Appreciation Amount is \$140,000.

Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

$$\text{City’s Shared Appreciation Amount} = .55 \times \$140,000 = \$77,000$$

The Owner's share of the Appreciation Amount is \$63,000. [\$140,000 - \$77,000 = \$63,000]

(e) The City's Shared Appreciation collected by the City shall be used by the City to assist in the provision of housing that is affordable to persons and families of low or moderate income in accordance with Civil Code section 1917.006(a)(1).

6.4. Distribution of Proceeds. At escrow, the Extraordinary Sale Price shall be distributed in the following priority, to the extent funds are available:

- (a) first, to pay any amounts owed under the selling Owner's Senior Lien;
- (b) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, except the City Shared Appreciation;
- (c) third, subject to the provisions of Section 6.7 below, to pay all customary closing costs and escrow fees that are the responsibility of the selling Owner;
- (d) fourth, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 6.2;
- (e) fifth, to pay to City or the Eligible Buyer all Repair Costs (if any, and to the extent not already paid) which are owed to the City or the Eligible Buyer under Section 4.3;
- (f) sixth, to pay the City Shared Appreciation;
- (g) seventh, any remaining amounts to the Owner.

6.5. Time Requirements for Extraordinary Sale. The Owner shall complete an Extraordinary Sale within sixty (60) days after receipt of the Appraisal under Section 6.2. If the Extraordinary Sale is not completed within such time, and the Owner is not bound by written contract with a buyer to Sell the Property, the City may either (i) designate an Eligible Buyer for the Property pursuant to Section 4.1, in which case the provisions of Article 4 shall apply in lieu of the provisions of this Article 6, or (ii) exercise the City Purchase Option under Section 5.1, in which case the provisions of Article 5 shall apply in lieu of the provisions of this Article 6.

6.6. Effect of Extraordinary Sale. Upon the close of escrow for an Extraordinary Sale in compliance with the provisions of this Article 6, the purchaser at the Extraordinary Sale shall acquire title to the Property free and clear of the provisions of this Agreement, including the City Purchase Option. The City agrees to execute, acknowledge, and record a release or other documentation sufficient to release the Property sold at an Extraordinary Sale from the provisions of this Agreement, including the City Purchase Option.

6.7. Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Within thirty (30) days of the first scheduled date for the close of escrow of an Extraordinary Sale, the Owner shall submit evidence to the reasonable satisfaction of the City of the closing costs to be

paid at resale of the Property as set forth in Section 6.4(c). To the extent such evidence is not submitted by the Owner to the reasonable satisfaction of City at least thirty (30) days prior to the first scheduled date for the close of escrow, such costs shall be deemed waived by the Owner and the Owner shall not be entitled to have such costs, as applicable, be used in the determination of the Appreciation Amount in accordance with Section 6.3(a) or receive payment of such costs as set forth in Section 6.4(c). The City acknowledges that such evidence may include, by way of example and not limitation, the Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors. In the event of a foreclosure sale, this Section 6.7 shall operate to require the same obligations of the Owner as in an Extraordinary Sale and all references to the "close of escrow" shall be replaced by "foreclosure sale."

ARTICLE 7 LENDER PROVISIONS

7.1. Senior Liens. Mortgages, deeds of trust, sales and leases-back, or any other form of conveyance required for any reasonable method of financing (subject to Section 7.2, the "Senior Lien") are permitted, but only as follows:

(a) for the sole purpose of securing a purchase money loan of funds to be used by an Owner for financing the acquisition of the Property by the Owner ("Initial Financing"), provided such Initial Financing shall be obtained through a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making residential real estate loans ("Senior Lender"); or

(b) for the sole purpose of refinancing an Owner's Initial Financing ("Refinancing"), provided such Refinancing shall be limited solely to the outstanding principal balance owed under the Owner's Initial Financing, and shall not include any additional amounts, such as fees or costs associated with such Refinancing or additional funds disbursed to the Owner, and Refinancing shall not include secondary financing such as subordinate deeds of trust or home equity loans; and provided the Owner has paid the City all administrative and document preparation costs and fees incurred by the City in connection with the processing of any documents required to effectuate such Refinancing.

7.2. Subordination. The City may, at its sole discretion, enter into a subordination agreement with a Senior Lender to subordinate provisions of this Agreement and its lien under the City Note and the City Deed of Trust to the Senior Lien. Any such subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, or other alternative provisions acceptable to the City in its sole discretion.

7.3. Default and Foreclosure.

(a) The City shall record a request for notice of default and any notice of sale under any deed of trust or mortgage with a power of sale encumbering the Property pursuant to

California Civil Code section 2924. Whether or not a request for a notice of default is recorded, the Owner shall provide a true and correct copy of any notice of default to the City within three (3) business days of the Owner's receipt thereof.

(b) In the event of default and foreclosure, the City shall have the same right as the Owner to cure any defaults, reinstate the loan (not less than a specified number of times to be set forth in the subordination agreement between the City and the Senior Lender), or redeem the Property prior to foreclosure sale or the acceptance of a deed in lieu of foreclosure by the Senior Lender. Such redemption shall be subject to the same fees, charges, and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(c) If the trustee set forth in Senior Lender's deed of trust (the "Senior Lender Deed of Trust") Sells the Property at a foreclosure sale, the proceeds shall be delivered in the following priority to the extent funds are available:

(i) first, to pay all sums due and owing under the Senior Lien, including without limitation the principal amount, interest, fees and costs of sale;

(ii) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, including, but not limited to the City's Shared Appreciation;

(iii) third, to pay any amounts due to person or persons legally entitled thereto, as required by law; and

(iv) fourth, to pay any remaining amounts, if any, to the Owner.

(d) Upon written request by the City, the Senior Lender is hereby authorized by the Owner to furnish a report of the payment status of the Owner and all other financial information concerning the Owner to the City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, the Senior Lender grants to the City the option to purchase the Senior Lien from the Senior Lender at any time after the filing of a notice of default under the Senior Lien but prior to consummation of the foreclosure or the giving of a deed-in-lieu of foreclosure. Pursuant to this subsection, the City may purchase the Senior Lien from the Senior Lender for an amount equal to the entire indebtedness secured by the Senior Lender's deed of trust. The City may exercise this option by giving the Senior Lender written notice of its intent to do so (i) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (ii) with respect to a deed-in-lieu of foreclosure, within fifteen (15) days after receiving written notice from the Senior Lender of its intent to accept a deed-in-lieu of foreclosure with respect to the Property. Upon receipt of such written notice from the City, the Senior Lender shall

promptly give the City a written statement setting forth the amount of the total indebtedness secured by the Senior Lender Deed of Trust, which shall be the purchase price for the Senior Lien, and a copy of the policy of title insurance insuring the priority and validity of the Senior Lender Deed of Trust. Within ten (10) days after the City gives such written notice, the City shall establish an escrow at such title company and concurrently therewith give the Senior Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after the Senior Lender's receipt of notice of the opening of the escrow, the Senior Lender shall deposit in the escrow the promissory note evidencing the Senior Lien endorsed in favor of the City, the original Senior Lender Deed of Trust, an assignment of the Senior Lender Deed of Trust duly executed by the Senior Lender and in recordable form, and all other documents, instruments, agreements, certificates, and other items that evidence, secure, or otherwise relate to the Senior Lien. The escrow holder shall be instructed to close the escrow within two (2) business days after receipt of all such items and upon such close of escrow to issue to the City a CLTA Form No. 104.1 endorsement to the title policy, showing the City as the Senior Lender's assignee with respect to the Senior Lender Deed of Trust. The Senior Lender and the City shall execute and deliver escrow instructions and such other documents as may be necessary or appropriate in connection with such escrow and to implement the intent hereof. The City shall pay the escrow fees, recording fees, and the premium for the CLTA Form No. 104.1 endorsement.

ARTICLE 8 MISCELLANEOUS

8.1. No Option Assignment Liability. In no event shall the City in any way become liable to the Owner or become obligated in any manner to any other party by reason of the assignment of the City Purchase Option, nor shall City in any way be obligated or liable to any Owner for any failure of City to purchase the Property or to comply with the terms of the City Purchase Option.

8.2. Distribution of Insurance and Condemnation Proceeds. If the Property is condemned or the improvements damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with the CC&Rs or, if not covered by the CC&R's, to Owner or its successors or assigns, for purposes of restoring or replacing the Property, unless the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust provides otherwise, in which case the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust shall control.

8.3. Maintenance and Use. Each Owner shall maintain the Property, including all structures and landscaping, in accordance with the CC&Rs. Each Owner shall maintain the interior of the dwelling unit on the Property in a clean condition and all appliances and fixtures in good working order. The Property shall be used and occupied by the Owner solely for residential purposes, and in addition to the residential purpose may also be used for any accessory uses that comply with the provisions of the City's Zoning Ordinance, as it may be amended from time to time, the provisions of the Grant Deed, the Developer Affordable Housing Agreement, and the CC&R's. No Owner shall grant use of, rent, or lease all or any part of the Property.

deed, or other instrument covering, conveying, or otherwise transferring the Property or any interest therein shall conclusively be held to have been executed, delivered, and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

8.10. Defaults.

(a) Event of Default. Any one of the following events shall constitute a “Event of Default” by the Owner under this Agreement:

(i) The City determines that the Owner has made a material misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement.

(ii) The Owner actually Transfers, or attempts to Transfer, the Property in violation of this Agreement.

(iii) The Owner fails to owner-occupy the Property in violation of Section 2.1 of this Agreement.

(iv) The Owner rents or leases the Property in violation of Section 2.1 of this Agreement.

(v) The Owner fails to provide information to the City necessary to determine Owner’s compliance with the requirements of this Agreement.

(vi) A notice of default is issued under any other financing secured by the Property, or the City receives any notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any financing secured by the Property.

(vii) A lien is recorded against the Property other than the lien of the Senior Lender or a loan approved by the City.

(viii) Judicial foreclosure proceedings are commenced regarding the Property.

(ix) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.

(x) The Owner fails to comply with any other requirements of this Agreement.

(b) Remedies. Upon a declaration of Event of Default by the City under this Agreement, the City may:

- (i) Declare Excess Rental Proceeds immediately due and payable without further demand, if applicable;
- (ii) Accelerate payments due under the City Note;
- (iii) Invoke the power of sale under the City Deed of Trust;
- (iv) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;
- (v) Take such enforcement actions as are authorized under the City Municipal Code;
- (vi) Declare an Event of Default under the City Note and the City Deed of Trust and pursue all City remedies under the City Note and the City Deed of Trust; or
- (vii) Exercise the City Purchase Option pursuant to Article 5 of this Agreement.

(c) Notice and Cure. Upon an Event of Default, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, which period of time shall not be longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation or as set forth in this Agreement, the City may declare an Event of Default under this Agreement. However, if the Owner is in default under any financing secured by the Property, the City may declare an Event of Default upon receipt of any notice given to the City pursuant to Civil Code section 2924 or through any other means and may exercise its rights as provided in Section 7.3 and this Section.

8.11. Nonliability and Indemnification of the City.

(a) The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the City Purchase Option under Article 5 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

(b) The Owner acknowledges, understands, and agrees that the relationship between the Owner and the City is solely that of an owner and an administrator of an inclusionary housing program, and that the City does not undertake or assume any responsibility for or duty to the Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The City owes no duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Owner agrees that neither the Owner, nor the Owner's heirs,

successors, or assigns shall ever claim, have, or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold the City harmless from any liability, loss, or damage for these things.

(c) The Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective commissioners, officers, directors, employees, and agents from and against all liabilities, losses, claims, actions, damages, judgments, costs, and expenses (including, without limitation, reasonable attorney's fees) the City may incur as a direct or indirect consequence of any action by the Owner, including, but not limited to: (i) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; (ii) the failure at any time of any of the Owner's representations to the City to be true and correct; or (iii) the Owner's purchase or ownership of the Property. The Owner agrees that if any claims, demands, suits, or other legal proceedings are made or instituted by any person against the City that arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with City in the defense or other disposition.

8.12. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction to create a valid and enforceable City Purchase Option and to prevent any Prohibited Transfer or Prohibited Sale or any use of the Property in violation of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neutral, and vice versa.

8.13. Termination of Agreement. This Agreement shall terminate as to the Property as a result of an Extraordinary Sale pursuant to Section 6.6. In addition, if the City has subordinated this Agreement pursuant to Section 7.2, this Agreement shall terminate as a result of foreclosure through a trustee's sale, a judicial foreclosure sale, or deed in lieu of foreclosure. Upon such termination of this Agreement, on request of the then record Owner of the Property, the City shall execute, acknowledge, and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement but this Agreement shall no longer affect title to the Property.

8.14. Entire Agreement and Modifications. This Agreement, together with the exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter set forth herein and replaces and supersedes any and all prior or contemporaneous oral or written agreements, subject to Section 8.16. This Agreement may be modified only in a writing duly signed by the affected Owner or Owners and an authorized agent of the City. The modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.15. Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall remain in full force and effect for fifty-nine (59) years from the date of recordation of this Agreement.

8.16. Compliance Monitoring.

(a) The City (or its designee) may enter the Property for inspection following two (2) business days advance written notice to the Owner.

(b) The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the City or its designee for inspection and copying upon five (5) business days advance written notice.

(c) The City shall monitor the Owner's compliance with the requirements of this Agreement and the City Inclusionary Policy on an annual basis. The Owner shall cooperate with City monitoring and provide required certifications and other information required by the City to determine compliance within ten (10) days of receipt of a written request by the City.

8.17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, veteran status, source of income, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

8.18. Payment of City Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay City a portion of its administrative costs for preparing and processing this Agreement in the amount of Three Hundred Dollars (\$300), which amount may be part of the closing costs and shall be paid to City at Owner's close of escrow for purchase of the Property.

8.19. Recordation of Agreement. Immediately following the Effective Date, this Agreement, shall be recorded against the Property in the Official Records of Alameda County.

8.20. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- Exhibit A: Property Description
- Exhibit B: Notice of Intent to Transfer
- Exhibit C: Notice of Intent to Sell
- Exhibit D: Notice of Extraordinary Sale
- Exhibit E: City Note
- Exhibit F: City Deed of Trust
- Exhibit G: Intentionally Left Blank
- Exhibit H: Eligible Capital Improvements

IN WITNESS THEREOF, the parties have executed this Agreement as of the year and date first written above.

CITY:
CITY OF ALAMEDA, a California municipal corporation and charter city

OWNER(S):

By: _____
Jennifer Ott
City Manager
[Signature must be notarized]

Owner
[Signature must be notarized]

APPROVED AS TO FORM:

Owner
[Signature must be notarized]

Michael Roush
Chief Assistant City Attorney

RECOMMENDED FOR APPROVAL:

Lisa Fitts
Management Analyst, Housing
Authority of the City of Alameda

EXHIBIT A
PROPERTY DESCRIPTION

[Attached]

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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676\05\3534241.4
7/2/2023

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EXHIBIT B

NOTICE OF INTENT TO TRANSFER

Date _____

To: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Executive Director

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the “Property”) hereby notifies you of its intent to Transfer in compliance with Section 3.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the “Agreement”). The reason or circumstances relating to such transfer are as follows: _____

_____. Any additional information regarding the proposed transferee will be provided to you immediately upon request.

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda’s receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

Owner

Owner

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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7/2/2023

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EXHIBIT C

NOTICE OF INTENT TO SELL

To: City of Alameda Date _____
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Community Development Director

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the “Property”) hereby notifies you of its intent to Sell the Property in compliance with Section 4.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the “Agreement”).

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda’s receipt of this Notice and that terms not defined in this Notice shall have the meaning given in the Agreement.

A. The following information is provided to the City pursuant to Section 4.1 of the Agreement:

1. Address of Property: _____
2. Date Owner purchased Property: _____
3. Purchase Price paid by Owner when Property was purchased: _____
4. Date Owner intends to vacate Property: _____
5. Date Property will be placed on market: _____
6. Name and phone number of person for City to contact to schedule inspection:
_____ and _____
(name) (phone number)

B. The following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner’s purchase of the Property

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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7/2/2023

2. If the Owner believes the Property is in good condition with no deferred maintenance and no deduction for repairs will be necessary, check box below:

Yes, I believe the Property is in good condition and that no deduction for repairs will be necessary pursuant to Section 4.3 of the Agreement. I hereby authorize the City or its designee to enter and inspect the Property to verify its condition.

EXHIBIT C – AFFORDABILITY AGREEMENT

3. If the Owner has made Eligible Capital Improvements and wants such improvements included in the calculation of the Eligible Buyer Purchase Price for the Property pursuant to Section 4.4, check the box below.

Yes, include my Eligible Capital Improvements in the price calculation. I am attaching a copy of the City letter approving these improvements and documentation of costs incurred.

C. I have not yet listed the Property for sale with a multiple listing service or contacted a real estate broker or financial institution. I agree to prepare the Property for sale by:

1. obtaining a pest control report within thirty (30) days of the date of this Notice,
2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this Notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property,
3. allowing the City or its designee to inspect the Property within thirty (30) days of this Notice,
4. if requested by the City following the City’s inspection, I will obtain a home inspection report from a licensed home inspector,
5. maintaining utility connections until the Property is transferred, and
6. permitting a walk through by the City prior to close of escrow or the transfer.

This Owner’s Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ [insert date] under penalty of perjury.

By: _____
Owner

By: _____
Owner

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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EXHIBIT D

NOTICE OF EXTRAORDINARY SALE

Date: _____

To: City of Alameda
c/o Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

The undersigned _____, (“Owner”) is the owner of that certain real property located in Alameda, California, commonly known as _____ [insert address], (the “Property”). On _____, 20____, the Owner provided the City with written notice of its intent to sell the Property. The City and the Owner have failed to identify an Eligible Buyer in accordance with Section 6.1(a) of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Agreement”) or the City has failed to exercise the City Purchase Option in accordance with Section 6.1(b) of the Agreement. Accordingly, the Owner hereby notifies the City of its intent to make an Extraordinary Sale of the Property in accordance with Article 6 of the Agreement.

The Owner hereby requests that the City calculate the Market Value of the Property based on an Appraisal in accordance with Article 6 of the Agreement. The Owner hereby acknowledges that the City shall retain the City Purchase Option until the time that the Owner has accepted in writing an offer to purchase the Property from a buyer, and that all applicable time periods for an Extraordinary Sale under the Agreement commence only upon the City’s receipt of this Notice.

Terms not defined in this Notice shall have the meaning given in the Agreement.

Owner

Owner

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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EXHIBIT E

CITY NOTE

(Shared Appreciation Loan)

\$ _____ Alameda, California _____

FOR VALUE RECEIVED, _____, (“Borrower”) promise to pay the CITY OF ALAMEDA (“City”), or such other place as the City may designate in writing, the principal sum of _____ (\$ _____), plus Shared Appreciation and Excess Rental Proceeds, as applicable (collectively, the “Loan”).

1. PROPERTY. The “Property” is that certain real property commonly known as _____, Alameda, California, and more particularly described on Exhibit A, attached hereto and incorporated herein, which together with all improvements located thereon is referred to in this promissory note (“Note”) as the “Property.” The Property is part of a residential development known as “_____” (“Project”).

2. AFFORDABILITY COVENANTS, RESALE RESTRICTIONS. The Property, along with certain other residential lots in the Project, is part of an affordable housing program designed to create, preserve, maintain, and protect housing for persons of low- and moderate-income as described in and pursuant to an Affordable Housing Agreement between the City of Alameda (“City”), and _____ (“Developer”) dated _____ (“Developer Affordable Housing Agreement”). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to the Borrower at an Affordable Housing Price, as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein. Borrower assumes title to the Property subject to that certain Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Resale Restrictions”), between the Borrower and City, recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California. Capitalized terms used herein and not defined in this Note shall have the meanings set forth in the Resale Restrictions.

3. BASIS OF PRINCIPAL AMOUNT OF NOTE. In the event that this Note is due and payable pursuant to Section 5 below, the Borrower shall pay the City the principal sum of _____ (\$ _____) (the “Principal” or the “Purchase Subsidy”). The Purchase Subsidy is an amount equal to the difference between the Affordable Price and the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property is acquired

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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by the Borrower. The Borrower acknowledges and agrees that the Purchase Subsidy represents the amount by which the purchase price of the Property has been reduced as a result of the City's covenants, conditions, and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement.

4. DEED OF TRUST. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement, and fixture filing (the "Deed of Trust") from the Borrower in favor of the City, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE.

(a) Term. The term of this Note shall be the same as the Term of the Resale Restrictions, as set forth in Section 8.16 of the Resale Restrictions.

(b) Deferral. Repayment of the Loan shall be deferred for the Term, except as provided in subsection (c) below.

(c) Repayment in Full. The total amount of the Principal and any City Shared Appreciation owed under this Note (together with any Excess Rent Proceeds due the City pursuant to the Resale Restriction Agreement) shall immediately become due and payable (i) in the Event of a Default by the Borrower under this Note, the Resale Restrictions, the Deed of Trust, or the Senior Loan; (ii) in the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions; (iii) on the date of a Prohibited Sale or Prohibited Transfer, or (iv) at the end of the Term of this Note. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Transfer.

(d) Prepayment. Borrower may prepay all or part of the balance due under this Note. If the Borrower prepays all of the balance due under this Note, such prepayment shall include the City's Shared Appreciation as calculated at the time the prepayment is made. The City's Shared Appreciation shall be based on the Market Value of the Property at the time of the prepayment. If the Borrower makes a partial prepayment, such partial prepayment shall be applied only to the principal. If the principal and Shared Appreciation of this Note is entirely prepaid, the Deed of Trust shall remain on the Property to secure payment of the Excess Rental Proceeds, if any, and the Resale Restrictions. In addition, prepayment of this Note shall not affect the Resale Restrictions, which shall remain in full force and effect for the Term, regardless of any prepayment.

6. CITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions or an event of default by Borrower under this Note, the Deed of Trust, the Resale Restrictions, or Senior Lien, the Borrower shall pay to the City the outstanding Principal owed under this Note and the City's Shared Appreciation, as defined herein. The City's Shared Appreciation shall not be credited to the subsequent purchase of the Property.

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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(a) “Appreciation Amount” shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Section 6.2 of the Resale Restrictions, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Borrower at acquisition of the Property, minus Eligible Capital Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee’s deed upon sale, or otherwise, the amount paid for the Property at a creditor’s sale of the Property, minus Eligible Capital Improvements.

(b) “Affordable Price” shall mean the below market rate purchase price in the amount of _____ Dollars (\$) paid by the Borrower for the acquisition of the Property.

(c) “City Resale Costs” means any and all costs and fees incurred by the City, whether directly by the City or indirectly under City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5 or an Extraordinary Sale under Article 6 of the Resale Restrictions, including, without limitation, real estate brokerage fees or commissions, recording fees, escrow charges, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) and shall not be less than one percent (1%) of the Affordable Price..

(d) “City’s Shared Appreciation” shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Market Value of the Property at the time the Borrower purchased the Property multiplied by the Appreciation Amount.

(e) “Eligible Capital Improvements” shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value.

(f) “Extraordinary Sale Price” means the amount received by Borrower as the sales price of the Property under an Extraordinary Sale pursuant to Article 6 of the Resale

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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Restrictions, as evidenced by an executed purchase and sale agreement and estimated settlement statement and as certified by the Borrower under the penalty of perjury. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved in advance by the City in writing.

(g) “Market Value” shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time.

Example of calculating the amount of the City’s Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Borrower purchased the Property was \$1,000,000.
- Affordable Price of the Property at the time the Borrower purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [\$1,000,000 - \$450,000 = \$550,000]
- Borrower paid closing costs of \$5,000 at time of purchase.
- Borrower made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lenders sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

Extraordinary Sale Price	\$ 625,000
– Affordable Price at purchase	– 450,000
– Closing Costs	– 5,000
– Capital Improvements	– 10,000
– City Resale Costs	– 20,000
= Appreciation Amount	\$ 140,000

In this example, the Appreciation Amount is \$140,000.

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

City's Shared Appreciation Amount = .55 x \$140,000 = \$77,000.

The Borrower's share of the Appreciation Amount is \$63,000. [\$140,000 - \$77,000 = \$63,000]

7. DEFAULT. The Borrower shall be in default under this Note if the Borrower (i) is in default under the this Note, the Resale Restrictions, the Deed of Trust, or a Senior Lien, (ii) fails to pay any money when due under this Note; or (iii) breaches any representation or covenant made in this Note or the Resale Restrictions.

8. NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE. Borrower acknowledges, understands, and agrees that the relationship between Borrower and City is solely that of borrower and lender, and that the City and its designated agents neither undertake nor assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform the Borrower of the quality, adequacy, or suitability of the Property or any other matter. The City and its designated agents owe no duty of care to protect the Borrower against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Borrower agrees that neither the Borrower, nor the Borrower's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City or its agents for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold City and its agents harmless from any liability, loss, or damage for these things.

9. INDEMNITY. Borrower agrees to defend, indemnify, and hold the City and its respective officials, officers, directors, employees, and agents, harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney's fees that the City and its designated agents may incur as a direct or indirect consequence of:

- (a) the making of the loan to the Borrower;
- (b) the Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Resale Restrictions; or
- (c) the failure at any time of any of the Borrower's representations or warranties to be true and correct.

10. ACCELERATION. Upon the occurrence of a default as defined in Section 7 of this Note, the City shall have the right to declare the full amount of the principal along with any Shared Appreciation, Excess Rental Proceeds, or other amounts due under this Note immediately due and payable. Any failure by the City to pursue its legal and equitable remedies upon default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this Note, the Resale Restrictions, and the Deed of Trust. Nor shall acceptance by the City

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed.

11. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against the City, its successors, and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

12. WAIVER. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors, and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor, and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration, or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. SEVERABILITY. If any provision of this Note 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.

14. NOTICES. All notices required in this Note shall be in writing and shall be deemed received if sent to the addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

If to City: City of Alameda
Community Development Department
950 West Mall Square, 2nd Floor
Alameda, CA 94501
Attention: Community Development Director

If to Owner: _____
_____, Alameda, CA 94501

15. CONTROLLING LAW. This Note shall be construed in accordance with and be governed by the laws of the State of California.

16. ASSIGNMENT BY CITY. The City may assign its right to receive the proceeds under this Note to any person and, upon notice to the Borrower by the City, all payments shall be made to the assignee. The City may not transfer or assign the Note to a profit-making entity

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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without first obtaining approval of the Senior Lender. The City may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the Senior Lender.

17. ENTIRE AGREEMENT. This Note (along with the Resale Restrictions and Deed of Trust) sets forth the entire understanding and agreement of the City and the Borrower and any amendment, alteration, or interpretation of this Note must be in writing signed by both the City and the Borrower.

18. ATTORNEYS FEES AND COSTS. 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 attorneys' 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 of litigant might prevail..

19. JOINT AND SEVERAL OBLIGATIONS. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

20. NO WAIVER BY CITY. No waiver of any breach, default, or failure of condition under the terms of this Note shall be implied from any failure of the City to take, or any delay by the City in taking, action with respect to such breach, default, or failure or from any previous waiver of any similar or unrelated breach, default, or failure. A waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

BORROWER:

Owner

Owner

Address: _____, Alameda, CA 94501

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

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EXHIBIT F

CITY DEED OF TRUST

After Recording Return To:
City of Alameda
c/o Housing Authority of
the City of Alameda
701 Atlantic Avenue
Alameda, California 94501
Attention: Executive Director

THIS DOCUMENT IS RECORDED ON BEHALF
OF THE HOUSING AUTHORITY OF THE CITY
OF ALAMEDA AND IS EXEMPT FROM RECORDING
FEES PURSUANT TO GOVERNMENT SECTION CODE
6103, NO FEE 27383

_____ [Space Above This Line For Recording Data] _____

CITY DEED OF TRUST

This DEED OF TRUST made this ____ day of _____, 20__, among the trustor _____, (“Trustor”), whose address is _____, Alameda, California 94501 and _____ Title Company (“Trustee”) and the City of Alameda as Beneficiary.

(A) **“Security Instrument”** means this document, which is dated _____, 20__ together with all Riders to this document.

(B) **“Note”** means the promissory note signed by Trustor and dated _____, 20__. The Note states that the Trustor owes the Beneficiary Purchase Subsidy. The Trustor has promised to pay this debt in the event of Extraordinary Sale. There shall be no payments due under this Note unless payments are otherwise due pursuant to provision of Sections at 5(c) and (d) of Exhibit E FORM OF CITY NOTE.

(C) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(D) **“Riders”** mean all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider Condominium Rider Second Property Rider
- Balloon Rider Planned Unit Development Rider
- 1-4 Family Rider Biweekly Payment Rider Rider to City Deed of Trust

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Beneficiary: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Trustor’s covenants and agreements under this Security Instrument and the Note. For this purpose, Trustor irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ALAMEDA:

which currently has the address of _____, Alameda, CA 94501 (“Property Address”).

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the “Property.”

TRUSTOR COVENANTS that Trustor is lawfully seized of the estate hereby conveyed and that the Property is unencumbered, except for encumbrances of record. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Trustor and recorded with it

Witnesses:

Owner _____ (Seal)

Owner _____ (Seal)

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_____ **[Space Below This Line For Acknowledgment]** _____

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

State of California)
County of _____)

On _____, before me, _____, a 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.

Signature _____

RIDER TO CITY DEED OF TRUST

This Rider to Deed of Trust is executed by _____, ("Trustor") for the benefit of the CITY OF ALAMEDA ("Beneficiary").

1. This Deed of Trust also secures the obligations of the Trustor under that certain Affordability, Restrictions on Resale and Option to Purchase Agreement dated _____, 20__ and recorded on _____ as Document No. _____ in the Official Records of Alameda County, California ("Agreement"), against the property encumbered by this Deed of Trust. A default under the Agreement shall be considered a default under this Deed of Trust.

2. This Deed of Trust secures a Shared Appreciation Loan and Note.

Owner

Owner

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CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this ____ day of _____, 20__, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the “Security Instrument”) of the same date given by the undersigned (the “Borrower”) to secure Borrower’s Note to **CITY OF ALAMEDA** (the “Lender”) of the same date and covering the Property described in the Security Instrument and located at:

_____, **Alameda, CA 94501**

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

(the “Condominium Project”). If the owners association or other entity which acts for the Condominium Project (the “Owners Association”) holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower’s interest in the Owners Association and the uses, proceeds and benefits of Borrower’s interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower’s obligations under the Condominium Project’s Constituent Documents. The “Constituent Documents” are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a “master” or “blanket” policy on the Condominium

Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term “extended coverage,” and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower’s obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender’s Prior Consent. Borrower shall not, except after notice to Lender and with Lender’s prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest

from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

Owner

Owner

EXHIBIT G

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EXHIBIT H
ELIGIBLE CAPITAL IMPROVEMENTS

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EXHIBIT S
SITE A IMPROVEMENTS

EXHIBIT T
PAYMENT GUARANTY

This Payment Guaranty (this “Guaranty”), dated for reference purposes as of _____, 202__, is made by _____, a _____ (“Brookfield Guarantor”) and _____, a _____ (“CDC Guarantor”) (Brookfield Guarantor and CDC Guarantor shall each hereinafter be referred to individually as a “Guarantor” and collectively as the “Guarantors”), to and for the benefit of the CITY OF ALAMEDA, a California charter city (“City” or “Beneficiary”). Capitalized terms not otherwise defined herein have the meanings specified in the DDA (as defined below).

Recitals

- A. BC WEST MIDWAY LLC, a Delaware limited liability company (“Developer”), an affiliate of Guarantors, and City are parties to that certain Disposition and Development Agreement for West Midway dated for reference purposes as of _____, 2023 (the “DDA”), which relates to certain real property located in the City of Alameda, County of Alameda, State of California, as more particularly depicted and described on Exhibit A attached hereto (the “Property”).
- B. Subject to the terms and conditions of the DDA, in connection with the commencement of RESHAP Infrastructure Phase 1, Developer is required to deliver this Guaranty to the City concerning the obligation to make the RESHAP Phase 1 Payment (as defined in the DDA). However, although this Guaranty is being delivered to the City, it shall not be considered effective against Guarantor, the City shall have no right to enforce this Guaranty and this Guaranty shall be of no force or effect unless and until Developer Commences construction of Market Rate Infrastructure Phase 1 (as such terms are defined in the DDA). Upon any termination of the DDA prior to Developer so Commencing construction of the Market Rate Infrastructure Phase 1, this Guaranty shall be null and void and the City shall promptly return all originals and copies of this Guaranty to Guarantor.
- C. Accordingly, Guarantors are delivering this Guaranty pursuant to Section 2.1(b) and Section 5.3(b)(8) of the DDA to guaranty payment of the RESHAP Phase 1 Payment, subject to the terms and conditions contained herein.

Guaranty

In consideration of the foregoing, Guarantors agree as follows.

- 1. If and only if Developer Commences construction of Market Rate Infrastructure Phase 1, then upon such Commencement Guarantors, jointly and severally, unconditionally, and absolutely guarantee to Beneficiary Developer’s payment of the RESHAP Phase 1 Payment in accordance with the terms and conditions of the DDA (the “Guaranteed Obligations”).
- 2. Each Guarantor represents and warrants that the execution of the DDA and the consummation of the transactions contemplated thereby are of direct and material benefit to such Guarantor. Each Guarantor further covenants and agrees that this Guaranty shall be and remain in

full force and effect as to any renewal, modification, amendment, or extension of the DDA, and as to any assignee of Beneficiary's interest or interests under the DDA.

3. Each Guarantor hereby waives, to the fullest extent permitted by applicable law, diligence and all demands, protests, presentments and notices of every kind or nature, including notices of protest, dishonor, nonpayment, acceptance of this Guaranty and the creation, renewal, extension, modification or accrual of any of the obligations such Guarantor has hereby guaranteed. Each Guarantor further waives, to the fullest extent permitted by applicable law, the right to plead any and all statutes of limitations as a defense to such Guarantor's liability hereunder or the enforcement of this Guaranty. No failure or delay on Beneficiary's part in exercising any power, right or privilege hereunder shall impair any such power, right or privilege or be construed as a waiver of or an acquiescence therein.

4. This Guaranty is an absolute and unconditional guaranty of payment of the Guaranteed Obligations and not of collection. Each Guarantor agrees that it is not necessary for Beneficiary, in order to enforce this Guaranty, to institute suit or exhaust its legal remedies against Developer; but the sole condition precedent to enforcement of the obligations of such Guarantor hereunder is that Developer does not pay its payment obligations guaranteed hereby in accordance with the terms of the DDA following the applicable notice and cure period under the DDA.

5. This Guaranty is governed as to its validity, construction and performance by the laws of the State of California, without regard to its conflict of law provisions.

6. Each Guarantor agrees that this Guaranty is a continuing guaranty and will remain in full force and effect until the Guaranteed Obligations have been paid in full. To the fullest extent permitted by applicable law, each Guarantor waives notices of acceptance of this Guaranty.

7. This Guaranty is binding upon and inures to the benefit of Guarantors and Beneficiary and their respective successors and assigns; provided, however, that neither Guarantor shall assign its rights or delegate its obligations under this Guaranty. No modification or amendment of this Guaranty is effective unless executed by Guarantors and consented to by Beneficiary in writing, and no cancellation of this Guaranty is valid unless executed by Beneficiary in writing. No delay or failure of Beneficiary in exercising any right hereunder shall affect such right, nor shall any single or partial exercise of any right preclude any further exercise thereof.

8. The liability of Guarantors is not affected by (a) any defense based upon an election of remedies by Beneficiary that destroys or otherwise impairs the subrogation rights of any Guarantor or the right of any Guarantor to proceed against Developer for reimbursement; (b) any duty on the part of Beneficiary to disclose to any Guarantor any facts Beneficiary may know about Developer, it being agreed that each Guarantor is fully responsible for being and keeping informed of the financial condition of Developer and of all circumstances bearing on the risk of non-payment or non-performance of the obligations guaranteed hereby; (c) any defense arising from the bankruptcy or insolvency of Developer; (d) any assignment or other transfer by Developer of any interest in the DDA or the Property; (e) any defense given to guarantors at law or in equity other than actual payment of the Guaranteed Obligations. Each Guarantor further waives and agrees not to assert or claim at any time any deductions in the amount guaranteed under this Guaranty for

any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by Developer, any Guarantor, or both.

9. (a) Any notice or communication required hereunder to be given by the any party shall be in writing and shall be delivered by each of the following methods: (i) electronically (e.g., by e-mail delivery); and (ii) 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 email or 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) Any 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 Beneficiary 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:

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:

With a copy to: City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Base Reuse Manager

Facsimile:
Email:

If to CDC Guarantor to: Catellus Development Corporation
2000 Powell Street, Suite 500
Emeryville, CA 94608
Attn:
Email:
Telephone:

With a copy to: Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Mathew A. Wyman
Email: mwyman@coxcastle.com
Telephone: (415) 262-5166

If to Brookfield Guarantor to: Brookfield Bay Area Holdings LLC
12657 Alcosta BLVD, Suite 250
San Ramon, CA 94583
Attn: President – Josh Roden
Email:
Josh.roden@brookfieldpropertiesdevelopment.com
Telephone: (925) 743-8000

(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 Guaranty, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Guaranty, that failure to respond in a timely manner could have a specified adverse result.

10. Notwithstanding anything to the contrary herein, (i) although this Guaranty is being delivered to the City, it shall not be considered effective against the Guarantors, the City shall have no right to enforce this Guaranty and this Guaranty shall be of no force or effect unless and until Developer Commences construction of the Market Rate Infrastructure Phase 1 and (ii) this Guaranty and each Guarantor's obligations hereunder shall be null and void (a "Guaranty Cancellation") on the earlier to occur of (a) the date the RESHAP Phase 1 Payment is paid in full, (b) the date Developer delivers written notice to the City of Developer's election not to proceed with the Commencement of Construction of Market Rate Infrastructure Phase 1, and (c) the termination of the DDA if Developer has not Commenced construction of the first Market Rate Infrastructure Phase as of the date of such termination (each a "Guaranty Cancellation Event"). Although a Guaranty Cancellation shall occur automatically upon the occurrence of any Guaranty Cancellation Event without requiring any further action or the delivery of any documentation, upon a Guaranty Cancellation, the City shall (i) return all copies and originals of the Guaranty to the Guarantors and (ii) at the request of either Guarantor, deliver written acknowledgment of such Guaranty Cancellation.

11. Each Guarantor hereby agrees that such Guarantor shall have no right of subrogation or reimbursement against Developer and, no right of contribution against any other guarantor with respect to payment of the RESHAP Phase 1 Payment, unless and until the RESHAP Phase 1 Payment is paid in full. To the extent such Guarantor's waiver of these rights of subrogation, reimbursement or contribution as set forth herein are found by a court of competent jurisdiction to be void or voidable for any reason, such Guarantor agrees that such Guarantor's rights of subrogation and reimbursement against Developer shall be junior and subordinate to Beneficiary's rights against Developer, and such Guarantor's right of contribution against any other guarantor shall be junior and subordinate to Beneficiary's rights against any such guarantor.

12. Each Guarantor represents and warrants to Beneficiary that (a) such Guarantor has adequate means to obtain from Developer, on a continuing basis, information concerning the financial condition of Developer and that such Guarantor is not relying on Beneficiary to provide such information, either now or in the future, and that Beneficiary has made no representation to such Guarantor as to the creditworthiness of Developer; (b) no litigation, claim, investigation, arbitration, administrative proceeding or similar action (including those for unpaid taxes) against such Guarantor is pending or to such Guarantor's knowledge, threatened, which would be reasonably likely to materially adversely affect such Guarantor's ability to perform the Guaranteed Obligations, other than litigation, claims, or other events, if any, that have been disclosed to Beneficiary in writing as of the date hereof; and (c) the individual or entity signing this Guaranty on behalf of such Guarantor, has the full right and authority to execute this Guaranty, and that this Guaranty has been duly executed and delivered by such Guarantor, constitutes such Guarantor's valid and legally binding obligation and is enforceable in accordance with its terms against such Guarantor.

13. No delay on the part of Beneficiary in exercising any rights under this Guaranty, or failure to exercise the same, shall operate as a waiver of such rights; no notice to, or demand on, any Guarantor shall be deemed to be a waiver of the obligation of such Guarantor, or of the right of Beneficiary, to take further action without notice or demand as provided in this Guaranty; nor in any event shall any waiver of the provisions of this Guaranty be effective unless in writing and signed by Beneficiary; nor shall any such waiver be applicable except in the specific instance for which given. The rights and remedies of Beneficiary provided in this Guaranty shall be cumulative and concurrent, may be pursued separately, successively or together, in any order, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Guaranteed Obligations due, grant any extension of time for payment of the Guaranteed Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the applicable loan documents, or waive or fail to exercise any right or remedy under any applicable loan document shall not, in any way, affect this Guaranty or the rights of Beneficiary.

14. Each party acknowledges that the arbitration procedures contained in Exhibit U of the DDA shall apply to any controversy, claim or dispute that may arise under this as if the provisions thereof were fully set forth herein.

15. In the event Beneficiary shall commence any litigation or formal alternative dispute action or proceeding against Guarantors by reason of any breach or claimed breach of any

provision of this Guaranty, in the event Beneficiary is the party prevailing in such action or proceeding, Beneficiary shall be entitled to recover from or to be reimbursed by Guarantors for Beneficiary's reasonable and actual attorneys' fees and costs through all levels of proceedings.

16. This Guaranty may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this Guaranty to physically form one document.

THIS WRITTEN GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT WRITTEN AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BROOKFIELD GUARANTOR:

By: _____

Name: _____

Title: _____

Date Signed: _____

CDC GUARANTOR:

By: _____

Name: _____

Title: _____

Date Signed: _____

City of Alameda:

City hereby accepts this Guaranty and, in connection herewith, acknowledges and agrees to its terms and conditions, including, without limitation, Section 10 hereof.

CITY OF ALAMEDA

By: _____

Jennifer Ott, City Manager

Date: _____

Attest: Recommended for Approval:

Lara Weisiger, City Clerk

Approved as to Form:

Assistant City Attorney

Exhibit A
Legal Description of Property

EXHIBIT U

Arbitration Procedures for Resolution of Certain Disputes

If following the thirty (30) day meet and confer period referenced in Section 3.2(b) (Required Section 3.1 Submissions), Section 5.6(c) (Required Construction Contract Elements), Section 7.2(f) (Moderate Income Unit Marketing Plan), or Section 7.3(e) (Affordable By Design Unit Marketing Plan) of the Disposition and Development Agreement (the “Agreement”) to which this Exhibit is attached the City and Developer have not resolved the applicable dispute that is subject to resolution pursuant to the arbitration procedures set forth in this Exhibit, and either Party requests that the applicable dispute be resolved pursuant to arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(a) Waiver of Jury Trial. The City and Developer each acknowledge that they are voluntarily agreeing to arbitrate disputes which relate to (1) whether a Phase Update submitted by Developer includes the Required Section 3.1 Submissions, (2) whether a Phase Construction Contract submitted by Developer includes the Required Construction Contract Elements, (3) whether the marketing plan for the Moderate Income Units submitted by Developer includes reasonable terms for the marketing of the Moderate Income Units, or (4) whether the marketing plan and related information for the Affordable By Design Units submitted by Developer satisfies the requirements of Section 7.3(e) and that each party hereby waives, to the fullest extent permitted by law, any right to a trial by jury with respect to, or in connection with any of the matters which have been designated as arbitrable.

(b) Initiation of Claim and Appointment of Arbitrator. Either party may initiate arbitration pursuant to Section 3.2(b), Section 5.6(c), Section 7.2(f), Section 7.3(e) and this Exhibit by serving written notice on the other party of its intention to arbitrate the dispute, which notice shall contain a statement setting forth the nature of the dispute and the remedy sought. The parties shall agree upon a single arbitrator within three (3) days from service of the notice of arbitration. The arbitrator must be a retired judge or member of the State Bar of California actively engaged in the practice of real estate law with not less than 15 years expertise in the field of real estate. Once the arbitrator has been identified, the party initiating the dispute resolution procedure shall provide both the written demand and any response to the arbitrator.

(c) Hearing. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the commercial arbitration rules (formal or informal) of the American Arbitration Association. The arbitrator shall determine the manner in which the arbitration is conducted including the time and place (within the County of Alameda, California, or such other location as may be mutually agreeable to the parties) of all hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of arbitration. The arbitrator shall determine all issues in accordance with applicable decisional law. The presentation and admission of evidence shall be governed by the rules governing the presentation and admission of evidence in Alameda County Superior Court, including but not limited to the provisions of the California Evidence Code.

(d) Discovery. The parties shall be entitled to conduct limited discovery in the form of depositions, interrogatories, requests for admissions and requests for production. All discovery notices, requests or responses shall be served by personal service or email. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge. Discovery disputes that cannot be resolved by the parties shall be submitted to the arbitrator whose decision on such matters shall be final and binding.

(e) Scope of Authority. The arbitrator shall be empowered to enter equitable as well as legal relief, to provide temporary and/or provisional relief and to enter equitable orders that will be binding upon the parties; provided that, the arbitrator shall not have the authority to grant any remedy or relief that is expressly prohibited by, or that exceeds any limitations on remedies set forth in, the Agreement.

(f) Fees and Expenses. Except as otherwise agreed by the parties or as required by applicable law, each party to the arbitration shall split the costs of the arbitration proceeding equally between them. Regardless of the outcome, each party shall bear their own attorneys' fees and costs.

(g) Decision Binding. The arbitrator shall issue a single reasoned award at the close of the arbitration consistent with California Code of Civil Procedure § 1283.4. The arbitrator shall issue the final award within twenty (20) days after the conclusion of the arbitration proceeding. In any proceeding conducted pursuant to this Section, the decision and award of the arbitrator shall be final, binding and enforceable in any court of competent jurisdiction.

EXHIBIT V

FORM OF DDA PARTIAL ASSIGNMENT

RECORDING REQUESTED
BY AND WHEN RECORDED
RETURN TO:

APN(s):

(Space above this line for Recorder's use)

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (“*Agreement*”) is entered into as of the _____ day of _____, 20____, by and among _____ (“*Assignor*”), _____ (“*Assignee*”), and the **CITY OF ALAMEDA**, a California charter city (“*City*”).

RECITALS

WHEREAS, Assignor entered into that certain Disposition and Development Agreement dated as of _____, 2023 with the City (collectively, the “*DDA*”) to facilitate the redevelopment of that certain real property known as Alameda Point West Midway consisting of approximately ___ acres within the City of Alameda, County of Alameda, State of California, which is described in **Exhibit A** to the DDA (collectively, “*Site*”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the DDA.

WHEREAS, in furtherance of the objectives of the DDA, Assignor wishes to cause the City to convey a portion of the Site to Assignee, which portion is more particularly described in **Exhibit 1**, attached hereto and incorporated herein (“[Property/Assigned [Vertical] Phase]”), concurrently with execution of this Agreement, and Assignee desires to acquire the [Property/Assigned [Vertical] Phase] and assume Assignor’s obligations under the DDA related to the [Property/Assigned [Vertical] Phase].

[WHEREAS, Article 10 of the DDA permits Assignor, as Developer, to Transfer to Assignee the Assigned Rights and Obligations (as defined in Section 1 below) for the Property, all as subject to the terms and conditions herein and in the DDA. Pursuant to the DDA, Assignor, as Developer, desires to assign its Assigned Rights and Obligations (as defined in Section 1 below) as such pertain to the Property and Assignee desires to assume the Assigned Rights and Obligations, subject to the terms and conditions contained herein and in the DDA.]

[WHEREAS, Pursuant to Section 10.4[(h)/(i)], of the DDA, Assignor, as Developer, may Transfer a Phase or Vertical Phase of the Site to a [Developer Affiliate/Qualified Developer/Affiliated Purchaser], subject to the terms and conditions of Section 10.4[(h)/(i)]. Pursuant to Section 10.4[(h)/(i)] of the DDA, Assignor, as Developer, desires to assign its Assigned Rights and

Obligations (as defined in Section 1 below) as such pertain to the respective Phase or Vertical Phase, as more particularly described in Exhibit 1, attached hereto and incorporated herein (“Property/Assigned [Vertical] Phase”) and Assignee desires to assume such rights obligations under the DDA related to the [Property /Assigned [Vertical] Phase], subject to the terms and conditions contained herein and in the DDA.]

[NOTE: MODIFY THE RECITALS AS NECESSARY TO ADDRESS A PARTICULAR PARTIAL ASSIGNMENT.]

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee, and City hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers, delegates and grants to Assignee, and its successors and assigns, Assignor’s rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the DDA only (a) with respect to the [Property/Assigned [Vertical] Phase] and (b) only to the extent first arising after the Effective Date (collectively, the “**Assigned Rights and Obligations**”); provided however, Assignor shall retain those rights and obligations with respect to the [Property/Assigned [Vertical] Phase]] set forth on Exhibit 2 (collectively, the “**Retained Rights and Obligations**”). Except as expressly provided herein, the “**Assigned Rights and Obligations**” shall mean and include all of the rights of Assignor under the DDA that (i) apply exclusively to the [Property/Assigned [Vertical] Phase], or (ii) apply nonexclusively to the [Property/Assigned [Vertical] Phase] solely to the extent necessary to develop the [Property/Assigned [Vertical] Phase] accordance with the DDA and (iii) are not Retained Rights and Obligations.

2. Acceptance and Assumption by Assignee. Assignee acknowledges it has inspected the [Property/Assigned [Vertical] Phase], reviewed the DDA, and hereby accepts this Assignment and assumes and agrees to be bound by and perform all of the Assigned Rights and Obligations related to the [Property/Assigned [Vertical] Phase] under the DDA arising from and after the Effective Date.

3. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor as the “Developer” under the DDA, but only with respect to the Assigned Rights and Obligations. Whenever the term “Developer” appears in the DDA, it shall hereafter mean Assignee with respect to the Assigned Rights and Obligations.

4. Events of Default.

(a) No Assignor Liability for Assignee Default. From and after the Effective Date, any Event of Default under the DDA by Assignee with respect to the [Property/Assigned [Vertical] Phase] or Assigned Rights and Obligations shall not be considered an Event of Default by Assignor under the DDA with respect to the Retained Rights and Obligations or Retained Property (or any other assignee (each an “Other Assignee”) under the DDA with respect to such portion of the Site that such Other Assignee owns and the assigned interests related thereto (collectively, the “Other Assigned Interests”). In the event of an Event of Default by Assignee with respect to the [Property/Assigned [Vertical] Phase] or Assigned Rights and Obligations, the City will not impose

any remedies under the DDA against Assignor, the Retained Rights and Obligations or Retained Property (or any Other Assignee or its Other Assigned Interests) arising from such Event of Default by Assignee.

(b) No Assignee Liability for Assignor Default. From and after the Effective Date, any Event of Default by Assignor occurring or arising prior to, on or after under the DDA with respect to the Retained Rights and Obligations or Retained Property shall not be considered an Event of Default by Assignee under the DDA with respect to the [Property/Assigned [Vertical] Phase] or Assigned Rights and Obligations. In the event of an Event of Default by Assignor with respect to the Retained Rights and Obligations or the Retained Property, the City will not impose any remedies under the DDA against Assignee, the [Property/Assigned [Vertical] Phase] or the Assigned Rights and Obligations arising from such Event of Default by Assignor.

5. Amendment of DDA and Operating Memoranda.

(a) Assignor may, in Assignor's sole discretion, process any interpretation of, amendment to, or operating memorandum under the DDA that does not materially adversely affect Assignee's ownership, development and sale of the [Property/Assigned [Vertical] Phase] in accordance with the Assigned Rights and Obligations, and, if necessary, Assignee shall execute all documents necessary to accomplish said amendment.

(b) During the term of the DDA, Assignee shall not request, process or consent to any interpretation of, amendment to, or operating memorandum under the DDA that would affect (i) Assignor's Retained Rights and Obligations or that portion of the Site retained or acquired by Assignor after the conveyance of the [Property/Assigned [Vertical] Phase], including without limitation any portion of the Site Assignor has not acquired but has the right to acquire pursuant to the DDA (collectively, the "***Retained Property***"), without Assignor's prior written consent, in Assignor's sole discretion, or (ii) any portion of the Site owned by any Other Assignee or its Other Assigned Interests without Assignor's prior written consent, in Assignor's sole discretion. Further, notwithstanding anything in the Assigned Rights and Obligations or this Agreement to the contrary, Assignee agrees not to exchange, swap or otherwise change the Assigned Rights and Obligations without Assignor's prior written consent, in Assignor's sole discretion, including without limitation, any change in use or allocation of units between parcels or any other modifications as may otherwise be permitted with respect to [Property/Assigned [Vertical] Phase].

6. City Acknowledgements and Release. City is executing this Agreement for the limited purpose of acknowledging the foregoing assignment and assumption of the Assigned Rights and Obligations, confirming its agreement to the matters set forth below, and clarifying that there is privity of contract between City and Assignee with respect to the DDA as such pertains to the [Property/Assigned [Vertical] Phase] and the Assigned Rights and Obligations.

(a) City hereby confirms and agrees with the following:

(i) the terms and conditions of Sections 4(a) and 4(b) above;

(ii) the timely receipt of the written notice and other information required by the first paragraph of Section 10.6 of the DDA;

(iii) that this Agreement satisfies the requirements of Section 10.6(b) of the DDA;

(iv) that, upon the execution and delivery of this Agreement and the transfer of the [Property/Assigned [Vertical] Phase] to Assignee, (i) Assignee qualifies as a “Qualified Developer” under the DDA, (ii) Assignor is hereby released and forever discharged from any obligations and liabilities that arise or accrue on or after the Effective Date with regards to the [Property/Assigned [Vertical] Phase] and/or the Assigned Rights and Obligations other than any indemnification obligations in the DDA concerning matters that occurred prior to the Effective Date; and (iii) from and after the Effective Date of this Agreement, the City shall look solely to the Assignee for satisfaction of the obligations and liabilities of the “Developer” under the DDA with respect to the [Property/Assigned [Vertical] Phase] and the Assigned Rights and Obligations that arise after the Effective Date;

(v) the protections afforded Assignor and Assignee pursuant to Section 10.6(c) of the DDA; and

(vi) that the City’s receipt of a conformed copy of the recorded Agreement pursuant to the terms and conditions herein below will satisfy the requirements of Section 10.6(a) of the DDA

(vii) (a) the DDA is unmodified and in full force and effect [(except for [_____] dated [_____] regarding [_____]); and (b) that there are no current defaults under the DDA by the City or, to the knowledge of City, Assignor, and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default by the City or, to the knowledge of City, Assignor.

7. Representations and Warranties.

(a) Assignee represents and warrants to City as follows:

(i) Assignee is a _____ duly formed within and in good standing under the laws of the State of _____. The copies of the documents evidencing the formation of Assignee, which have been delivered to City, are true and complete copies of the originals, as amended to the date of this Agreement. Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(ii) Assignee’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(iii) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee’s creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee’s assets, (iv) suffered the attachment or other judicial seizure of all,

or substantially all, of Assignee's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(b) Assignor and Assignee hereby acknowledge and agree that City has not made, and will not make, any representation or warranty that the partial assignment and assumption of the DDA provided for hereunder will have any particular tax implications for Assignor or Assignee.

(c) Assignor acknowledges and agrees that the Assigned Rights and Obligations have been fully assigned to Assignee by this Agreement and that, as between Assignor and Assignee, Assignee shall have the exclusive right to assert any claims against City with respect to such Assigned Rights and Obligations.

8. DDA in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the DDA are hereby ratified and shall remain in full force and effect.

9. Recording. Assignor shall cause this Agreement to be recorded in the Official Records of Alameda County, California, and shall promptly provide conformed copies of the recorded Agreement to Assignee and City.

10. Successors and Assigns. Subject to the restrictions on transfer set forth in the DDA, all of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, pursuant to the DDA.

11. Assignee Address for Notices.

The address of Assignee for the purpose of notices, demands and communications under Section 16.1 of the DDA shall be:

with copies to:

12. Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement between the Assignor and the Assignee, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto. In the event of any legal or equitable proceedings in connections with this Agreement involving the City, the parties and litigants shall bear their own attorneys' fees, costs and disbursements and no party or litigant shall be entitled to recover any attorneys' fees, costs or disbursements from the City, regardless of which party or litigant might prevail.

13. Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought in the Superior Court of the County of Alameda, State of California or the United States District Court for the North District of California.

14. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; and (e) “includes” and “including” are not limiting.

15. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

16. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

16. Effective Date. The Effective Date of this Agreement shall be the date upon which the deed conveying fee title to the [Property/Assigned [Vertical] Phase] to Assignee is recorded in the official public records of Alameda County, California. (“*Effective Date*”).

[Remainder of page intentionally blank]
Signature pages follow]

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Agreement as of the date first above written.

ASSIGNOR:

By: _____

Name: _____

Title: _____

ASSIGNEE:

By: _____

Name: _____

Title: _____

[signature of City on next page]

CITY:

CITY OF ALAMEDA, a California charter city

By:

Name:

Title:

[Notary Acknowledgment Required]

ATTEST:

By: _____

_____, City Clerk

By: _____

_____, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State _____ of _____)
) ss.

County of _____)

On _____, 202_, before me, _____, a 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Commission Expiration Date

[SEAL]

EXHIBIT 1

Legal Description

[PLEASE SEE ATTACHED]

EXHIBIT 2
Retained Rights and Obligations

EXHIBIT W

PERMITTED EXCEPTIONS

All references herein to “Title Commitment” shall mean the Commitment for Title Insurance issued by First American Title Insurance Company, File No. NCS-1178908-CC, dated as of May 10, 2023 and amended as of June 16, 2023, a copy of which is attached hereto as Schedule 1. All capitalized terms used in this Exhibit W and not otherwise defined in this Exhibit W shall have the meanings ascribed to such terms in the Disposition and Development Agreement (“DDA”) to which this Exhibit W is attached. This Exhibit W sets forth the “Permitted Exceptions.” Any title exception in the Title Commitment that is not “Permitted” shall not be a “Permitted Exception”. With respect to title exceptions that are not “Permitted”, the City shall take such actions as are identified in the chart below.

For Exceptions number 6, 7, 8, and 31, Developer shall determine whether the easement conflicts with Project during the preparation of the Tentative Map, Improvement Plans, and In-tract infrastructure plans for the Project. In the event of a conflict, plans submitted by Developer shall include plans for the relocation of any conflicting easements and associated infrastructure or pre-existing rights.

No.	Exception set forth in Title Commitment	Permitted or Not Permitted	City Action
1.	General and special taxes and assessments for the fiscal year 2023-2024, a lien not yet due or payable.	Permitted	None
2.	General and special taxes and assessments for the fiscal year 2022-2023 are exempt. If the exempt status is terminated an additional tax may be levied.	Permitted	None
3.	The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.	Permitted, subject to modifying the exception to read <i>“The lien of supplemental taxes, if any, assessed as a result of the transfer of title to the vestee named in Schedule A; or as a result of changes in ownership, new construction or other events occurring on or after the date of the policy, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the</i>	None

		<i>Revenue and Taxation code of the State of California.</i>	
4.	The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 17-1 (Alameda Point Public Services District), as disclosed by Notice of Special Tax Lien recorded March 22, 2017 as Instrument No. 2017067377 of Official Records, as amended.	Permitted, subject to the satisfaction of the "Annexation Conditions" set forth in Section 3.1(c) of the DDA, including the approval of the New CFD No. 17-1 RMA for the Property.	City to hold public hearings to consider approval of the New No. CFD 17-1 RMA for the Property.
5.	The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for East Bay Regional Park District Community Facilities District No. A/C-3, as disclosed by Notice of Special Tax Lien recorded January 31, 2019 as Instrument No. 2019015593 of Official Records.	Permitted	None
6.	An easement granted to the City of Alameda, acting through the Bureau of Electricity, Department of Public Utilities, recorded March 26, 1984 as Instrument No. 84-057358 of Official Records.	Not Permitted if the easement conflicts with the Project.	To the extent this easement conflicts with the Project, the City shall terminate or otherwise relocate this easement to avoid any conflict with the Project.
7.	An easement granted to the City of Alameda for bicycle path and incidental purposes, recorded December 28, 1992 as Instrument No. 92422073 of Official Records.	Not Permitted if the easement conflicts with the Project.	To the extent this easement conflicts with the Project, the City shall terminate or otherwise relocate this easement to avoid any conflict with the Project.
8.	An easement granted to the City of Alameda, recorded December 10, 1998 as Instrument No. 98435330 of Official Records	Not Permitted if the easement conflicts with the Project.	To the extent this easement conflicts with the Project, the City shall terminate or otherwise relocate this easement to avoid any conflict with the Project.
10.	The terms and provisions contained in the document entitled "Assignment of Leases and Rents" recorded March 01, 2004 as Instrument No. 2004086777 of Official Records. By and between Alameda Reuse and Redevelopment Authority and Union Bank of California, N.A., as amended.	Not Permitted	The City shall obtain and record a release of the Property from the Assignment of Leases and Rents.

14.	Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code Section 1471 for Parcel ALA-37-EDC, Parcel ALA-38-EDC, Parcel ALA-55-EDC, Parcel ALA-57-EDC, Parcel ALA-59-EDC, and Parcel ALA-61-EDC at Former NAS Alameda recorded June 06, 2013 as Instrument No. 2013199810 of Official Records.	Permitted	None
15.	Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code Section 1471 for Parcel ALA-60-EDC at Former NAS Alameda recorded June 06, 2013 as Instrument No. 2013199826 of Official Records.	Permitted	None
16.	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) recorded June 06, 2013 as Instrument No. 2013199837 of Official Records.	Permitted	None
17.	Naval Air Station Alameda Title Settlement and Exchange Agreement, recorded June 30, 2014 as Instrument No. 2014154593 of Official Records, as amended.	Permitted For the avoidance of doubt, no general public trust or tidelands related exception shall be Permitted with respect to any portion of the Property.	None.
18.	State of California Patent and Trust Termination (Phase 1 Trust Termination Lands and Phase 1 Agreed Non-Trust Lands) recorded June 30, 2014 as Instrument No. 2014154597 of Official Records.	Permitted For the avoidance of doubt, no general public trust or tidelands related exception shall be Permitted with respect to any portion of the Property.	None.
19.	Disposition and Development Agreement recorded August 24, 2015 as Instrument No. 2015235388 of Official Records. By and between the City of Alameda	Not Permitted	The City shall obtain a release from the Site A developer and record an amendment to the Site A DDA modifying the legal description to exclude

	and Alameda Point Partners, LLC, as amended (“Site A DDA”).			the Property within six (6) months of the Effective Date of the DDA.
20.	Covenant to Restrict Use of Property Environmental Restriction (Re: Former Naval Air Station [NAS] Alameda for Portion of Operable Unit (OU) 2B [Portions of Parcels ALA-37-EDC, ALA-42-EDC, ALA-56-EDC, and ALA-62-EDC]: Site Code: DTSC201971, recorded April 17, 2017 as Instrument No. 2017085572 of Official Records.	Permitted		None
21.	Declaration of Covenants, Conditions and Restriction Providing for Reciprocal Easements, Joint Use and Maintenance, recorded July 3, 2017 as Instrument No. 2017144870 of Official Records.	Permitted		None
22.	Declaration of Restrictions, recorded November 30, 2017 as Instrument No. 2017263920 of Official Records.	Permitted		None
23.	Disposition and Development Agreement, recorded July 11, 2018 as Instrument No. 2018136853 of Official Records. By and among the City of Alameda, MidPen Housing Corporation, Alameda Point Collaborative, Building Futures with Women and Children, and Operation Dignity (“Prior RESHAP DDA”).	Not Permitted		Upon the amendment of the Prior RESHAP DDA to modify the location of the RESHAP Property and the recording of a new memorandum, the Prior RESHAP DDA shall be deleted from the Title Commitment. City shall take such actions as may be required for the Prior RESHAP DDA and the Collaborating Partners rights therein to be terminated and released from the Property.
29.	The terms, provisions, covenants, conditions, restrictions and easements contained in the document entitled "Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code Section 1471 for Parcel ALA-78-EDC at Former NAS Alameda" recorded April 05, 2017 as Instrument No. 2017078010 of Official Records.	Permitted		None
30.	The terms, provisions, covenants, conditions, restrictions and easements contained in the document entitled "Covenant to Restrict Use of Property	Permitted		None

	Environmental Restriction (Re: Parcel No. ALA-78-EDC - DTSC Site Code 201971)" recorded April 05, 2017 as Instrument No. 2017078011 of Official Records.		
31.	An easement for transmission of utilities and incidental purposes, recorded May 04, 2022 as Instrument No. 2022088528 of Official Records.	Not Permitted if the easement conflicts with the Project.	To the extent this easement conflicts with the Project, the City shall terminate or otherwise relocate this easement to avoid any conflict with the Project.
32.	The terms and provisions contained in the document entitled "Certificate of Compliance" recorded December 23, 2022 as Instrument No. 2022201443 of Official Records.	Permitted	None
	Leases: a. A lease in favor of Alameda Point Collaborative, Inc., recorded September 7, 2005 as Instrument No. 2005384344 of Official Records b. A lease in favor of Alameda Point Collaborative, Inc., recorded January 13, 2012 as Instrument No. 2012014614 of Official Records c. A lease in favor of Operation Dignity, Inc., recorded August 18, 2009 as Instrument No. 2009271052 of Official Records	Not Permitted	See DDA 4.4(b)(6) and 5.3(a)(4). The City shall terminate the three leases with the Collaborating Partners affecting the Property.

Schedule 1 to Exhibit W

Title Commitment

[To Be Attached]

Exhibit “C”: HOA-maintained Improvements

West Midway Term Sheet

ON-SITE MAINTENANCE AREAS

-  HOA MAINTAINED AREAS (STREETS & LANDSCAPING)
-  PUBLICALLY MAINTAINED AREAS (STREETS & LANDSCAPING)
-  PRIVATELY MAINTAINED PARKS

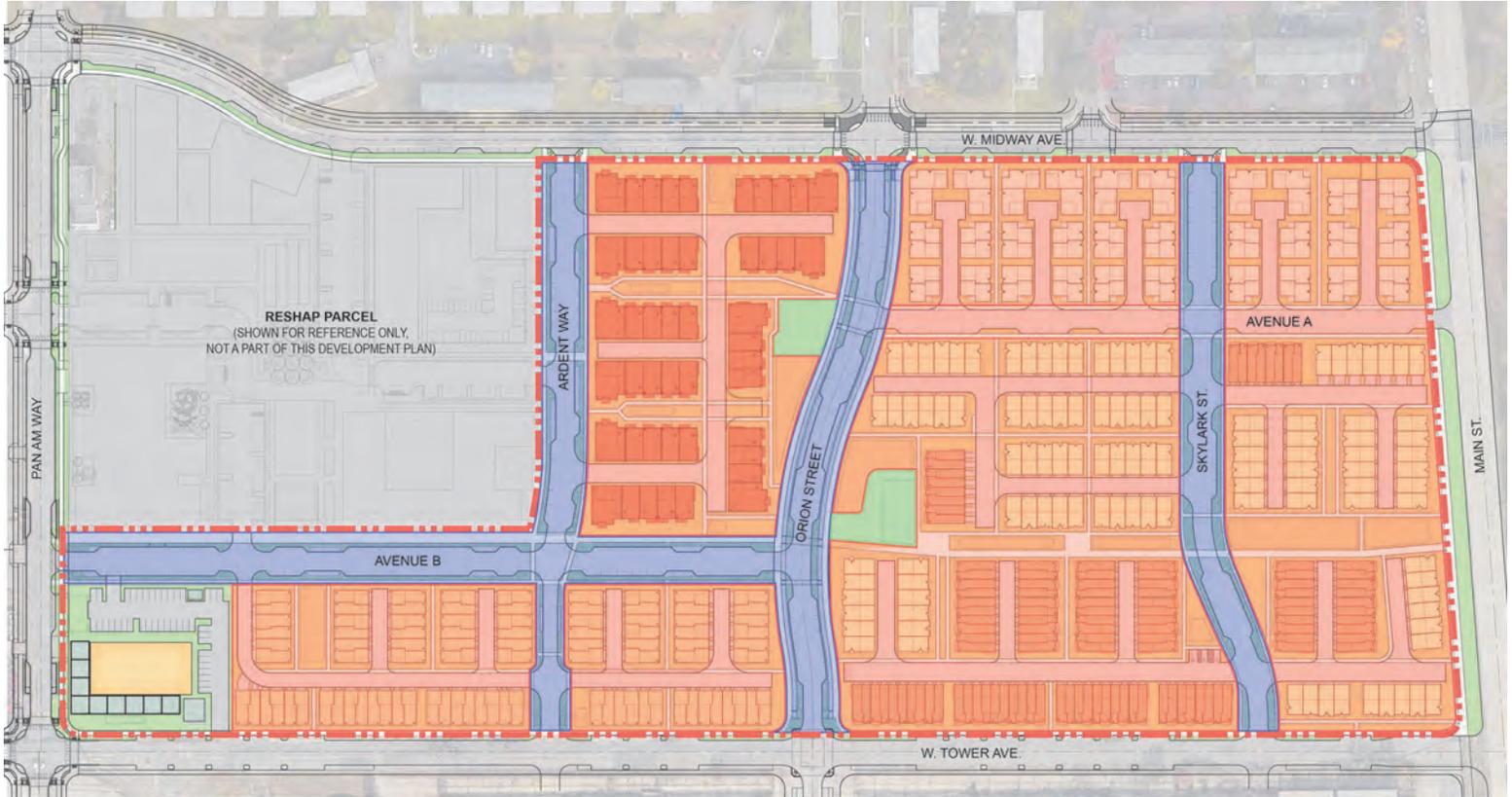


EXHIBIT Y

COMMUNITY FACILITIES DISTRICT FINANCING PROVISIONS

[Capitalized Terms that are not defined in this Exhibit shall have the meanings given such terms in the main body of the DDA.]

1.1 Formation of Facilities District

(a) Background. Developer has the right to acquire the Property in phases pursuant to the DDA. Developer desires, and the City is willing to cooperate, to form a special tax district (the “**Facilities District**”) over the first phase (“**Phase 1**”) and to identify the remaining portion of the Property (other than the RESHAP Project) as Future Annexation Area. The Facilities District may consist of one or more improvement areas (each an “**Improvement Area**”) pursuant to Section 3-70.85 of the Special Tax Act (as defined below). Phase 1 would be identified as Improvement Area No. 1 (“**Improvement Area No. 1**”), and one or more parcels of the Future Annexation Area may be annexed into the Facilities District as part of Improvement Area No. 1 or as part of an Improvement Area formed subsequent to Improvement Area No. 1 (herein, a “**Future Improvement Area**”). The Facilities District, Improvement Area No. 1, and each Future Improvement Area shall be authorized to finance various Facilities and Fees (as defined below).

(b) Formation. Upon the petition of the Developer described below, the City shall diligently and in good faith cooperate with Developer to establish the Facilities District pursuant to the City of Alameda Special Tax Financing Improvement Code, being Section 3.70.1 et seq. of the Alameda Municipal Code, as amended (the “**Special Tax Act**”) and the Mello-Roos Community Facilities Act of 1982, as amended (the “**CFD Act**”) and together with the Special Tax Act, the “**Code**”) in the manner described in this Section 1.1.

(c) Petition. At any time after the Effective Date of the DDA, Developer may petition City under the Code to establish the Facilities District over Phase 1, identifying it as Improvement Area No. 1, and designating the Future Annexation Area. In its petition, Developer may include proposed specifications for the Facilities District, including special tax rates (“**Special Taxes**”), Facilities District and Future Annexation Area boundaries and any proposed tax zones, the total tax burden that will result from the imposition of the Special Taxes (subject to the 1.80% Limitation (as defined below) for residential units), and other provisions. Developer’s proposed specifications will be based on Developer’s development plans, market analysis, and required preferences, but in all cases will be subject to the DDA. The City’s obligation to form the Facilities District shall be subject to the provisions of DDA.

(d) Commencement of Formation of Facilities District. Within six months following City’s receipt of a petition and any reasonable Deposit (as defined below) required by Section 3-70.21 of the Special Tax Act, the City Council shall adopt a resolution of intention to form the Facilities District consistent with the petition. The Facilities District shall have one or more rates and method of apportionment of special tax (each, an “**RMA**”), authorization to issue one or more series of special tax bonds in each Improvement Area (“**CFD Bonds**”), and an appropriations limit. A notice of special tax lien required by Section 3114.5 of the California Streets and Highways Code (the “**Notice of Special Tax Lien**”) shall be recorded against each taxable parcel within the Facilities District upon completion of formation of the Facilities District.

(e) Deposit. The City shall select all consultants necessary to form the Facilities District, including bond counsel, special tax consultant, financial advisor and underwriter. The City and the Developer shall enter into a Deposit and Reimbursement Agreement whereby the Developer shall advance a reasonable amount (the “**Deposit**”) to pay for the non-contingent costs of such consultants and a reasonable amount determined by the City to compensate the City for staff time in connection therewith, and the Deposits that are actually used to pay such costs shall be reimbursed, without interest, to Developer from the proceeds of bonds issued for the Facilities District. Any Deposits that are not used to actually pay such costs shall be refunded to the Developer, without interest, within thirty days of the formation of the Facilities District.

(f) Authorized Financing. The Facilities District shall be authorized to finance all of the following:

(i) Public infrastructure improvements required to be constructed by the DDA and/or as a condition of the Project that are authorized by the Code, including those infrastructure facilities to be owned and operated by the City, East Bay MUD, Alameda Municipal Power, and other local agencies (collectively, the “**Facilities**”); and

(ii) Fees to finance public infrastructure improvements required to be paid for the Project, including fees payable to the City, East Bay MUD, Alameda Municipal Power, and other local agencies that pay for public infrastructure improvements authorized by the Code (collectively, the “**Fees**”).

(iii) Facilities and Fees may be financed by the proceeds of Project Bonds (as defined below) and Remainder Taxes (as defined below) from any and all Improvement Areas, regardless of the geographic location of Facilities or the facilities constructed by the Fees and regardless of the Improvement Area for which such Fees were paid.

(g) Joint Community Facilities Agreements. Under the Code, City may be required to enter into one or more joint community facilities agreements with other governmental entities that will own or operate any of the Facilities or receive any of the Fees to be financed by the Facilities District. The City and Developer agree that they will take all reasonable steps to procure the authorization and execution of any required joint community facilities agreements with other governmental entities before the issuance of any Project Bonds that will finance the Facilities and Fees that will be owned or operated by or paid to such other governmental entities. Developer acknowledges and agrees that the ability of the City to enter into joint community facilities agreements is subject to the discretion of the other governmental entities.

1.3 Parameters of CFD Formation

(a) Cooperation. Developer and City agree to cooperate reasonably in developing the RMA to be used in the Facilities District. The RMA shall be consistent with the Developer’s petition so long as such petition is consistent with the DDA. Developer and City will each use good-faith reasonable efforts at all times to furnish timely to the other, or to obtain and then furnish to the other, any information necessary to develop the RMA, such as Developer’s plans for the types, sizes, numbers, and timing for construction of buildings within the Facilities District.

(b) Maximum Special Tax Rates for Developed Property. The RMA for the Facilities District will specify the maximum Special Tax rates for “Developed Property” (i.e., property for which a building permit has been issued) within the Facilities District (the “**Maximum Special Tax Rates**”). The Maximum Special Tax Rates for Developed Property may vary based on sizes, densities, types of buildings to be constructed, and other relevant factors.

(c) Total Tax Obligation. The Maximum Special Tax Rates on residential property will be set so that the Total Tax Obligation (as defined below) on any residential unit within the Facilities District will not exceed 1.80% of the Anticipated Sales Price (as defined below) of that residential unit (the “**1.80% Limitation**”). The Developer shall determine the anticipated sales price of each residential unit (the “**Anticipated Sales Price**”). The Maximum Special Tax Rates on non-residential property will be determined by the Developer subject to approval by the City, which shall not be unreasonably withheld.

(i) For purposes of this Section 1.3, for Improvement Area No. 1, the term “**Total Tax Obligation**” means, with respect to a projected residential unit in Improvement Area No. 1 on the date of the resolution initiating the formation of the Facilities District (the “**Resolution of Intention**”) to form the Facilities CFD, the sum of: (a) the ad valorem taxes actually levied or projected to be levied if the residential unit were developed at the time of calculation; (b) the maximum special tax rates on developed property in CFD No. 17-1 as if such residential units had received a Certificate of Occupancy; (c) the Maximum Special Tax Rates levied or projected to be levied by the Facilities District as if the residential unit were developed at the time of calculation; and (d) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the residential unit levied or projected to be levied if the residential unit was developed at the time of calculation. Homeowner's association fees shall not be included in the calculation of the Total Tax Obligation. The determination of the Total Tax Obligation for Improvement Area No. 1 shall be undertaken at the time that the Resolution of Intention is approved and the RMA shall include a provision for the Total Tax Obligation to be re-examined prior to the anticipated sale date of the first series of Project Bonds for Improvement Area No. 1.

(ii) For purposes of this Section 1.3, for each Future Improvement Area, the term “**Total Tax Obligation**” means, with respect to a projected residential unit in such Future Improvement Area on the date the unanimous approval for the annexation of property into the Future Improvement Area, the sum of: (a) the ad valorem taxes actually levied or projected to be levied if the residential unit were developed at the time of calculation; (b) the special tax rates on developed property in CFD No. 17-1 as if such residential units had received a Certificate of Occupancy; (c) the Maximum Special Tax Rates levied or projected to be levied by the Facilities District as if the residential unit were developed at the time of calculation; and (d) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the residential unit levied or projected to be levied if the residential unit was developed at the time of calculation. Homeowner's association fees shall not be included in the calculation of the Total Tax Obligation. The determination of the Total Tax Obligation shall be done separately for each Future Improvement Area at the time the property is annexed into the Facilities District, and the RMA for each Future Improvement Area shall include a provision for the Total Tax Obligation to be re-examined prior to the anticipated sale date of the first series of Project Bonds for each applicable Future Improvement Area.

(d) Escalation of Special Tax Rates. The Maximum Special Tax Rates in the RMA for each Improvement Area may increase by two percent (2%) per year.

(e) Use of Special Taxes For Direct Payment of Facilities.

(i) Developer and City agree that the Facilities District formation proceedings shall provide that within each Improvement Area, Facilities and Fees may be financed directly from Remainder Taxes (as defined below) both before and after the issuance of Project Bonds for such Improvement Area until the earlier of (A) the date that special taxes have been levied for 10 years in the applicable Improvement Area and (B) the date that all of the Facilities and Fees for the Project have been financed. Accordingly, the RMA for each Improvement Area will provide that Remainder Taxes may be used to finance Facilities and Fees, consistent with the foregoing. For the Facilities District, annually, on the day following each Principal Payment Date (as defined below), all Remainder Taxes for such Improvement Area will be deposited in the applicable Remainder Taxes Project Account (as defined below).

- (1) The term “**Remainder Taxes**” means, in each year, as of the day following the Principal Payment Date, all Special Taxes collected prior to such date in excess of the total of: (a) debt service on the outstanding Project Bonds in the current calendar year, if any; (b) priority and any other reasonable administrative costs that are payable by the City or expected to be payable by the City prior to the receipt of additional Special Tax proceeds; and (c) amounts levied to replenish any reserve fund as of the Principal Payment Date, including amounts reserved for reasonable anticipated delinquencies, if any.
- (2) The term “**Principal Payment Date**” means, either before or after Project Bonds are issued, September 1 of each year, regardless of whether principal payments are actually due in any particular year.
- (3) The term “**Remainder Taxes Project Account**” means a separate account created by City for each Improvement Area of the Facilities District and maintained by or on behalf of City to hold all Remainder Taxes generated from such Improvement Area of the Facilities District to be used for financing Facilities and Fees.

(ii) No Pledge for Debt Service. Remainder Taxes deposited in any Remainder Taxes Project Account will not be deemed or construed to be pledged for payment of debt service on any Project Bonds, and neither Developer nor any other person will have the right to demand or require that the City or Fiscal Agent, as applicable, use funds in any Remainder Taxes Project Account to pay debt service, so long as no delinquencies in the payment of bonds exist and no draw on the bond debt service reserve fund is expected to be necessary.

(f) Prepayment. The RMA will include provisions allowing a property owner within an Improvement Area to prepay its Special Tax obligation. Prepaid Special Taxes will be placed in a segregated account in accordance with the applicable Indenture (defined below). The RMA and the Indenture will specify the use of prepaid Special Taxes. Before CFD Bonds are issued, all prepayment amounts other than those required for administrative expenses shall be used to finance Facilities and Fees (“**Prepaid Special Taxes**”).

1.4 Issuance of Project Bonds

(a) Issuance. City, on behalf of the Facilities District and each Improvement Area, intends to issue one or more series of bonds secured by the Special Taxes of an Improvement Area (the “**Project Bonds**”) for purposes of financing the Facilities and Fees. The Developer may submit a written request that City issue Project Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer’s request, Developer and City will meet with City’s public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the DDA. Project Bonds shall be issued pursuant to an indenture, trust agreement, or fiscal agent agreement (however denominated, an “**Indenture**”) between the City, on behalf of the Facilities District, and a fiscal agent or trustee (however denominated, the “**Fiscal Agent**”).

(b) Payment Dates. So that Remainder Taxes may be calculated on as described herein, each issue of Project Bonds shall have interest payment dates of March 1 and September 1, with principal due on September 1.

(c) Term. Each issue of Project Bonds will have a term of not less than thirty (30) years and not more than thirty-five (35) years unless Developer and City agree otherwise.

(d) Value-to-Lien Ratio. The appraised or assessed value-to-lien ratio required for each Project Bond issue (including all relevant overlapping liens) will be three to one (3:1) or such higher ratio that is (A) mutually agreed to by the City and the Developer, or (B) required by the Code.

(e) Coverage Ratio. An issue of Project Bonds will not have a debt service coverage-ratio (including all overlapping and outstanding Project Bonds) of less than one hundred ten percent (110%), unless otherwise agreed to by the Developer and the City.

1.5 Miscellaneous Facilities District Provisions

(a) Reserve Fund Earnings. The Indenture for each issue of Project Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred to: (i) the project fund for the Project Bonds for allowed uses until it is closed in accordance with the Indenture; then (ii) the debt service fund held by the Fiscal Agent under the Indenture.

(b) Authorization of Reimbursements. City and Developer will take all actions necessary to satisfy section 3-70.9 of the Special Tax Act or any similar statute subsequently enacted to use Project Bond proceeds and Remainder Taxes to reimburse Developer for: (i) Facilities District formation and Project Bond issuance deposits; and (ii) advance funding or reimbursement of the costs of Facilities and Fees.

(c) Acquisition Agreement. Contemporaneously with the formation of the Facilities District, Developer and City will execute an acquisition and funding agreement (the “**Acquisition Agreement**”) that will apply to the financing of the Facilities and Fees for the Facilities District. The City shall consider including in the Acquisition Agreement provisions to allow for bond proceeds available to fund costs of the Infrastructure Package to offset, on a dollar for dollar basis, the dollar amount of performance and payment bonds otherwise required by the City for such Infrastructure Package subject to, in any event, the agreement by the Developer in the related Acquisition Agreement, to a satisfactory maintenance period during which the Developer will maintain the improvements to be so financed and provisions that allow

the City to use Project Bond issuance deposits and Remainder Taxes to complete the applicable infrastructure improvements upon a default by the Developer under the Acquisition Agreement. The Acquisition Agreements shall contain an acknowledgment by the City and Developer as to the following:

(i) Developer may be constructing Facilities or paying Fees before Project Bond proceeds, Remainder Taxes, and Prepaid Special Taxes (herein, "**Funding Sources**") that will be used to acquire them are available;

(ii) The City will inspect Facilities (constructed by the Developer and paid for through the application of Fees) and process payment requests even if Funding Sources for the amount of pending payment requests are not then sufficient to satisfy them in full;

(iii) Facilities (constructed by the Developer) may be conveyed to and accepted by the City or other governmental entity before the applicable payment requests are paid in full, subject to compliance with federal tax law as advised to the City by its bond counsel;

(iv) If the City or other governmental entity accepts Facilities (constructed by the Developer) before the applicable payment requests are paid in full, the unpaid balance will be paid if and only to the extent that sufficient Funding Sources become available, and the Acquisition Agreement will provide that the applicable payment requests for Facilities (constructed by the Developer) accepted by the City or other governmental entity or for Fees previously paid may be paid: (A) in any number of installments as Funding Sources become available; and (B) irrespective of the length of time payment is deferred;

(v) Developer's conveyance or dedication of Facilities to the City or other governmental entity before the availability of Funding Sources to acquire the Facilities, and the Developer's payment of the Fees prior to the availability of Funding Sources to finance such Fees, is not a dedication or gift, or a waiver of Developer's right to payment of Facilities and Fees under the DDA or the Acquisition Agreement; and

(vi) City will have no obligation to finance the Facilities or Fees or reimburse Developer with any moneys other than the Funding Sources.

EXHIBIT Z
COMPLETION GUARANTY

This Completion Guaranty (this “Guaranty”), dated for reference purposes as of _____, 202__, is made by _____, a _____ (“Brookfield Guarantor”) and _____, a _____ (“CDC Guarantor”) (Brookfield Guarantor and CDC Guarantor shall each hereinafter be referred to individually as a “Guarantor” and collectively as the “Guarantors”), to and for the benefit of the CITY OF ALAMEDA, a California charter city (“City” or “Beneficiary”). Capitalized terms not otherwise defined herein have the meanings specified in the DDA (as defined below).

Recitals

- A. BC WEST MIDWAY LLC, a Delaware limited liability company (“Developer”), an affiliate of Guarantors, and City are parties to that certain Disposition and Development Agreement for West Midway dated for reference purposes as of _____, 2023 (the “DDA”), which relates to certain real property located in the City of Alameda, County of Alameda, State of California, as more particularly depicted and described on Exhibit A attached hereto (the “Property”).
- B. Subject to the terms and conditions of the DDA, in connection with the commencement of Market Rate Infrastructure Phase 2, Developer is required to deliver this Guaranty to the City concerning the obligation to construct RESHAP Infrastructure Phase 2 (as defined in the DDA). However, although this Guaranty is being delivered to the City, it shall not be considered effective against Guarantor, the City shall have no right to enforce this Guaranty and this Guaranty shall be of no force or effect unless and until Developer Commences construction of Market Rate Infrastructure Phase 3 (as such terms are defined in the DDA) or the City validly exercises its RESHAP Phase 2 Commencement Right (as defined in the DDA) in accordance with the terms and conditions of the DDA.
- C. Accordingly, Guarantors are delivering this Guaranty pursuant to Section 5.15(c) of the DDA to guaranty completion of RESHAP Infrastructure Phase 2, subject to the terms and conditions contained herein.

Guaranty

In consideration of the foregoing, Guarantors agree as follows.

- 1. If and only if Developer Commences construction of Market Rate Infrastructure Phase 3 or the City validly exercises its RESHAP Phase 2 Commencement Right in accordance with the terms and conditions of the DDA, then upon such Commencement or valid exercise of the City’s RESHAP Phase 2 Commencement Right, Guarantors, jointly and severally, unconditionally, and absolutely guarantee to Beneficiary Developer’s completion of RESHAP Infrastructure Phase 2 in accordance with the terms and conditions of the DDA (the “Guaranteed Obligations”).

2. Each Guarantor represents and warrants that the execution of the DDA and the consummation of the transactions contemplated thereby are of direct and material benefit to such Guarantor. Each Guarantor further covenants and agrees that this Guaranty shall be and remain in full force and effect as to any renewal, modification, amendment, or extension of the DDA, and as to any assignee of Beneficiary's interest or interests under the DDA.

3. Each Guarantor hereby waives, to the fullest extent permitted by applicable law, diligence and all demands, protests, presentments and notices of every kind or nature, including notices of protest, dishonor, nonpayment, acceptance of this Guaranty and the creation, renewal, extension, modification or accrual of any of the obligations such Guarantor has hereby guaranteed. Each Guarantor further waives, to the fullest extent permitted by applicable law, the right to plead any and all statutes of limitations as a defense to such Guarantor's liability hereunder or the enforcement of this Guaranty. No failure or delay on Beneficiary's part in exercising any power, right or privilege hereunder shall impair any such power, right or privilege or be construed as a waiver of or an acquiescence therein.

4. This Guaranty is an absolute and unconditional guaranty of performance of the Guaranteed Obligations and not of collection. Each Guarantor agrees that it is not necessary for Beneficiary, in order to enforce this Guaranty, to institute suit or exhaust its legal remedies against Developer; but the sole condition precedent to enforcement of the obligations of such Guarantor hereunder is that Developer does not perform its obligations guaranteed hereby in accordance with the terms of the DDA following the applicable notice and cure period under the DDA.

5. This Guaranty is governed as to its validity, construction and performance by the laws of the State of California, without regard to its conflict of law provisions.

6. Each Guarantor agrees that this Guaranty is a continuing guaranty and will remain in full force and effect until the Guaranteed Obligations have been performed in full. To the fullest extent permitted by applicable law, each Guarantor waives notices of acceptance of this Guaranty.

7. This Guaranty is binding upon and inures to the benefit of Guarantors and Beneficiary and their respective successors and assigns; provided, however, that neither Guarantor shall assign its rights or delegate its obligations under this Guaranty. No modification or amendment of this Guaranty is effective unless executed by Guarantors and consented to by Beneficiary in writing, and no cancellation of this Guaranty is valid unless executed by Beneficiary in writing. No delay or failure of Beneficiary in exercising any right hereunder shall affect such right, nor shall any single or partial exercise of any right preclude any further exercise thereof.

8. The liability of Guarantors is not affected by (a) any defense based upon an election of remedies by Beneficiary that destroys or otherwise impairs the subrogation rights of any Guarantor or the right of any Guarantor to proceed against Developer for reimbursement; (b) any duty on the part of Beneficiary to disclose to any Guarantor any facts Beneficiary may know about Developer, it being agreed that each Guarantor is fully responsible for being and keeping informed of the financial condition of Developer and of all circumstances bearing on the risk of non-performance of the obligations guaranteed hereby; (c) any defense arising from the bankruptcy or insolvency of Developer; (d) any assignment or other transfer by Developer of any interest in the DDA or the

Property; (e) any defense given to guarantors at law or in equity other than actual performance of the Guaranteed Obligations. Each Guarantor further waives and agrees not to assert or claim at any time any deductions in the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by Developer, any Guarantor, or both.

9. (a) Any notice or communication required hereunder to be given by the any party shall be in writing and shall be delivered by each of the following methods: (i) electronically (e.g., by e-mail delivery); and (ii) 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 email or 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) Any 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 Beneficiary 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:

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:

With a copy to: City of Alameda
Alameda City Hall

2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Base Reuse Manager
Facsimile:
Email:

If to CDC Guarantor to: Catellus Development Corporation
2000 Powell Street, Suite 500
Emeryville, CA 94608
Attn:
Email:
Telephone:

With a copy to: Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Mathew A. Wyman
Email: mwyman@coxcastle.com
Telephone: (415) 262-5166

If to Brookfield Guarantor to: Brookfield Bay Area Holdings LLC
12657 Alcosta BLVD, Suite 250
San Ramon, CA 94583
Attn: President – Josh Roden
Email:
Josh.roden@brookfieldpropertiesdevelopment.com
Telephone: (925) 743-8000

(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 Guaranty, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Guaranty, that failure to respond in a timely manner could have a specified adverse result.

10. Notwithstanding anything to the contrary herein, (i) although this Guaranty is being delivered to the City, it shall not be considered effective against the Guarantors, the City shall have no right to enforce this Guaranty and this Guaranty shall be of no force or effect unless and until Developer Commences construction of the Market Rate Infrastructure Phase 3 or the City validly exercises its RESHAP Phase 2 Commencement Right in accordance with the terms and conditions of the DDA, and (ii) this Guaranty and each Guarantor’s obligations hereunder shall be null and void (a “RESHAP Phase 2 Completion Guaranty Cancellation”) on the earlier to occur of (a) the completion of construction of RESHAP Infrastructure Phase 2, and (b) termination of the DDA if prior to both the Commencement of construction of Market Rate Infrastructure Phase 3 and the valid exercise of the RESHAP Phase 2 Commencement Right in accordance with the terms and conditions of the DDA (each a “Guaranty Cancellation Event”). Although a RESHAP Phase 2 Completion Guaranty Cancellation shall occur automatically upon the occurrence of any Guaranty

Cancellation Event without requiring any further action or the delivery of any documentation, upon a RESHAP Phase 2 Completion Guaranty Cancellation, the City shall (i) return all copies and originals of the Guaranty to the Guarantors and (ii) at the request of either Guarantor, deliver written acknowledgment of such RESHAP Phase 2 Completion Guaranty Cancellation.

11. Each Guarantor hereby agrees that such Guarantor shall have no right of subrogation or reimbursement against Developer and, no right of contribution against any other guarantor with respect to the construction of RESHAP Infrastructure Phase 2, unless and until RESHAP Infrastructure Phase 2 is completed. To the extent such Guarantor's waiver of these rights of subrogation, reimbursement or contribution as set forth herein are found by a court of competent jurisdiction to be void or voidable for any reason, such Guarantor agrees that such Guarantor's rights of subrogation and reimbursement against Developer shall be junior and subordinate to Beneficiary's rights against Developer, and such Guarantor's right of contribution against any other guarantor shall be junior and subordinate to Beneficiary's rights against any such guarantor.

12. Each Guarantor represents and warrants to Beneficiary that (a) such Guarantor has adequate means to obtain from Developer, on a continuing basis, information concerning the financial condition of Developer and that such Guarantor is not relying on Beneficiary to provide such information, either now or in the future, and that Beneficiary has made no representation to such Guarantor as to the creditworthiness of Developer; (b) no litigation, claim, investigation, arbitration, administrative proceeding or similar action (including those for unpaid taxes) against such Guarantor is pending or to such Guarantor's knowledge, threatened, which would be reasonably likely to materially adversely affect such Guarantor's ability to perform the Guaranteed Obligations, other than litigation, claims, or other events, if any, that have been disclosed to Beneficiary in writing as of the date hereof; and (c) the individual or entity signing this Guaranty on behalf of such Guarantor, has the full right and authority to execute this Guaranty, and that this Guaranty has been duly executed and delivered by such Guarantor, constitutes such Guarantor's valid and legally binding obligation and is enforceable in accordance with its terms against such Guarantor.

13. No delay on the part of Beneficiary in exercising any rights under this Guaranty, or failure to exercise the same, shall operate as a waiver of such rights; no notice to, or demand on, any Guarantor shall be deemed to be a waiver of the obligation of such Guarantor, or of the right of Beneficiary, to take further action without notice or demand as provided in this Guaranty; nor in any event shall any waiver of the provisions of this Guaranty be effective unless in writing and signed by Beneficiary; nor shall any such waiver be applicable except in the specific instance for which given. The rights and remedies of Beneficiary provided in this Guaranty shall be cumulative and concurrent, may be pursued separately, successively or together, in any order, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Guaranteed Obligations due, grant any extension of time for performance of the Guaranteed Obligations, take other or additional security for the performance thereof, release any security, change any of the terms of the applicable loan documents, or waive or fail to exercise any right or remedy under any applicable loan document shall not, in any way, affect this Guaranty or the rights of Beneficiary.

14. Each party acknowledges that the arbitration procedures contained in Exhibit U of the DDA shall apply to any controversy, claim or dispute that may arise under this as if the provisions thereof were fully set forth herein.

15. In the event Beneficiary shall commence any litigation or formal alternative dispute action or proceeding against Guarantors by reason of any breach or claimed breach of any provision of this Guaranty, in the event Beneficiary is the party prevailing in such action or proceeding, Beneficiary shall be entitled to recover from or to be reimbursed by Guarantors for Beneficiary's reasonable and actual attorneys' fees and costs through all levels of proceedings.

16. This Guaranty may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this Guaranty to physically form one document.

THIS WRITTEN GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT WRITTEN AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BROOKFIELD GUARANTOR:

By: _____

Name: _____

Title: _____

Date Signed: _____

CDC GUARANTOR:

By: _____

Name: _____

Title: _____

Date Signed: _____

City of Alameda:

City hereby accepts this Guaranty and, in connection herewith, acknowledges and agrees to its terms and conditions, including, without limitation, Section 10 hereof.

CITY OF ALAMEDA

By: _____
Jennifer Ott, City Manager

Date: _____
Attest: Recommended for Approval:

Lara Weisiger, City Clerk

Approved as to Form:

Assistant City Attorney

Exhibit A
Legal Description of Property

EXHIBIT AA

RESHAP PHASE 1 DISBURSEMENT AGREEMENT TERM SHEET (“Agreement”)

Construction and Reimbursement Obligation

BC West Midway, LLC (“Developer”) will cause the design, permitting, and construction of the RESHAP Phase 1 Improvements (the “Improvements”) as described in Exhibit G to the West Midway Disposition and Development Agreement (the “DDA”). The City of Alameda (“City”) will reimburse Developer the total cost of the Improvements (including, permitting, construction, construction administration, and reasonable general conditions costs) pursuant to the terms of the Disbursement Agreement and the DDA. The Improvements will be constructed in accordance with the Milestone Schedule (as the same may be extended) attached to the DDA.

RESHAP Phase 1 Improvements Costs

The costs and expenses to construct the Improvements (the “Improvement Costs”), shall include all hard costs and soft costs during permitting and construction including the Development Sales and Management Fee, which for purposes of RESHAP Phase 1 only, shall be calculated based on Project Cost and not based on Project Revenue (since there is no RESHAP Phase 1 Project Revenue), and Construction Management Fee in accordance with the DDA. The Improvements Costs budget is set forth in Exhibit A. City and Developer understand that the line items in the Improvements Costs budget are preliminary estimates and that the costs for any individual line item may change, but that the total Improvement Costs will not exceed \$9,500,000.

Construction Documents

The Developer and the City agree that in order to construct the Improvements the following Construction Documents are required:

- Geotechnical Report
- Demolition Plans
- Public Improvement Construction Drawings
- Any other documents reasonably required to carry out the Improvements

City Disbursement of Improvement Costs

The City has secured \$9,500,000 and will allocate such funds to pay Developer the total Improvements Costs, not to exceed \$9,500,000. Developer will contract with and, at its option, make all direct payments to contractors, consultants, and governmental agencies as required to design, permit and construct the Improvements. On a monthly basis, the City will disburse funds at the direction of Developer either (i) to reimburse Developer for the Improvement Costs incurred by Developer (or its Affiliate General Contractor) or (ii) to pay such Improvement Cost to the party to which such costs are due and owing. Developer will prepare a submittal on an AIA Pay Application (G-702 and G-703) with the following backup documentation (“Disbursement Request”):

- List of all invoices included in current Disbursement Request.
- Contractor AIA Pay Applications (G702 and G703);
- Contractor unconditional lien waiver for the cumulative amount of all prior payments.
- Contractor conditional lien waiver for current pay application.
- Invoice copies all non-contractor costs included in the current Disbursement Request.

The Disbursement Request amount will be paid by City to Developer or the party entitled thereto via wire within 10 business days from the date the Disbursement Request is transmitted to the City.

Improvement Security

Developer will post faithful performance security to cover all costs of public Improvements to be accepted by City, and labor and materials security to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public Improvements to be accepted by City. No security will be required for the Improvements that will not be accepted by the City. The costs of security are Improvement Costs.

Insurance

Developer will maintain or provide evidence that Developer’s contractors have taken out and will maintain, insurance meeting the requirements set forth in the DDA during the term of construction of the Improvements, the cost of which shall be an Improvement Cost.

Right of Way Dedication, Easements

To the extent necessary for the completion and acceptance of the Improvements, the City will procure easements from third parties and will dedicate any and all necessary Rights of Way.

Compliance and Inspection of Improvements

Developer will cause the construction of the Improvements substantially in accordance with the approved Construction Documents for the Improvements. All Improvements shall be inspected by City for compliance City standards, the plans, and specifications, and applicable regulations.

Completion and Acceptance of Improvements

Upon completion, Developer will provide City with a certificate of completion for the portion of the Improvements that will be accepted and owned by the City. Within 30 days of receipt of Developer’s certificate of completion, the Public Works Director shall inspect the public Improvements described herein and send Developer a written notice stating whether the public Improvements are in accordance with the approved improvement plans for the Improvements (the “Improvement Plans). If the public Improvements are not in accordance with the Improvement Plans, the Public Works Director will list the deficiencies (“Punch List”) that must be corrected to deem the public Improvements complete in accordance with the Improvement Plans. Upon satisfactory completion of the Punch List, the Public Works Director will send

Developer a written notice of completion and such notice shall entitle the Developer to release, as may be applicable, the Improvements security and will recommend acceptance of the Improvements to the City Council.

Upon completion of the portion of the Improvements that are related to site preparation and ground improvements of RESHAP's Phase 1 parcels, Developer will provide City with certificates of completion from the geotechnical consultant and civil engineer of record, certifying that the Improvements have been completed in a manner such that they will perform according to the geotechnical specifications and that the pads have been graded to RESHAP's sheet grade elevations.

Warranty

Developer guarantees that the Improvements constituting public improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of one (1) year from and after issuance of a notice of completion for such public Improvements by City , and the Developer shall repair any defects in any such public Improvements and replace any defective improvements which cannot be repaired and which occur or arise within said one (1) year period. The costs to perform the repairs will be subject to reimbursement by the City as an Improvement Cost.