

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

**DRAFT
DEVELOPMENT AGREEMENT
ENCINAL TERMINALS PROJECT**

This Development Agreement is entered into on _____, 2017 (“Effective Date”), between the City of Alameda, a municipal corporation, (“City”) and North Waterfront Cove LLC, a Delaware limited liability company (“Developer”) regarding the Encinal Terminals Project. The City and the Developer are sometimes referred to collectively as the “Parties” and either individually as a “Party.”

RECITALS

This Development Agreement is based on the following facts, understandings and intentions of City and Developer:

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (the “Development Agreement Legislation”) which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. Pursuant to Government Code Section 65864, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Alameda Municipal Code Chapter XXX, Article VII, Code Sections 30-91 thru 30-95 (the “City Development Agreement Regulations”). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

C. The Developer is the owner of approximately 25.91 acres of real property, consisting of approximately 16.66 acres of land and 9.25 acres of submerged lands, located along the Oakland Estuary, north of Entrance Road, commonly known as Encinal Terminals, with an address of 1521 Buena Vista Avenue, City of Alameda, County of Alameda (APNs 72-0382-001, 72-0382-002 and 72-0383-003), as more specifically described in Exhibit A, attached hereto (“Encinal Terminals Parcel”).

D. City holds in trust approximately 6.4 acres of property located adjacent to the Encinal Terminals Parcel, identified as assessor’s parcel number 072-0382-009, as more

specifically described in Exhibit B, attached hereto (“State Tidelands Parcel”). The State Tidelands Parcel and the Encinal Terminals Parcel are referred to collectively herein as the “Property”.

E. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits described in Section 5, some of which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

F. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of underdeveloped property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Alameda General Plan (“General Plan”) and will implement City's stated General Plan policies; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from increased public open space and commercial recreational opportunities, and employment opportunities for residents of City created by the businesses in the commercial space within the Project; and (5) City will receive the Public Benefits provided by the Project for the residents of City.

G. The terms and conditions of this Development Agreement have undergone review by the City, the Developer and their respective legal counsel. The Planning Board and the City Council at publicly noticed meetings find the Development Agreement to be in conformance with the City General Plan, as amended by City Council action, the Development Agreement Legislation, and the City Development Agreement Regulations. The City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

H. The Developer has applied to the City for Master Plan approval for the Property, Affordable Housing Density Bonuses and waivers (City file #PLN16-0117) and this Development Agreement.

I. Developer proposes to develop the Property into a transit-oriented residential mixed use development with up to 589 housing units (which includes seventy-nine (79) affordable units), up to 50,000 square feet of retail/commercial space, a public marina with up to 160 slips, and seven acres of public open space (“Project”), consistent with the Master Plan approved on _____ via Ordinance No. _____ (“Master Plan”).

J. This Development Agreement was adopted by ordinance of the City Council, after notice and public hearings before the Planning Board and City Council and after City Council adoption of a Focused Supplemental Environmental Impact Report in accordance with the California Environmental Quality Act, Public Resources Code section 21000 and following.

K. For the reasons recited herein, City and Developer have further determined that the Project is a transit-oriented development for which this Development Agreement is

appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (as defined below), thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property in accordance with this Development Agreement is anticipated to, in turn, provide substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, the Parties agree as follows:

1. **The Property.** The Property which is the subject of this Development Agreement is described in Recitals C and D, above.
2. **The Project.** The Developer is authorized to develop and use the Property for a mixed-use housing development, in conformance with the terms and conditions of the Master Plan. The Master Plan Ordinance and this Agreement contains the required terms regarding the permitted uses of the Property, the intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes. (Government Code Section 65865.2.)
3. **Effective Date and Term.**
 - a. **Effective Date.** The Effective Date of this Development Agreement is stated in the first paragraph of this Development Agreement and represents the latest of: (a) thirty (30) days after the date the Ordinance approving this Development Agreement is adopted by the City Council; (b) five (5) business days after full execution of the agreement for the State Tidelands Exchange by all parties thereto; and (c) if a referendum petition is timely and duly circulated and filed, the date the election results on the ballot measure by City voters approving this Development Agreement are certified by the City Council in the manner provided by the Elections Code. This Development Agreement shall be executed by the City within ten (10) days after the Effective Date and recorded as provided in Government Code Section 65868.5.
 - b. **Term.** The term of this Development Agreement is fifteen (15) years, beginning on the Effective Date. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits. In establishing and agreeing to such Term, City has determined that the Project Approvals and this Development Agreement incorporate sufficient provisions to permit City to adequately monitor and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the development of the Project.
 - c. **Termination Following Expiration.** Following the expiration of the Term, or the earlier completion of development of the Project and all of Developer's obligations in connection therewith, this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 21 hereof.
4. **Project Approvals.** Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described

below. For purposes of this Development Agreement, "Project Approvals" shall mean the Initial Project Approvals and the Subsequent Approvals (as defined herein). The term "Initial Project Approvals" shall mean all of the approvals, plans and agreements described in this Section 4(a) through (i).

a. **CEQA**. The documentation prepared under CEQA including the Original EIR (State Clearinghouse No. 2016042076), which was recommended for certification by the Planning Board on July 17, 2017, by Resolution No. PB-_____, and certified with findings by the City Council on _____ 2017, by Resolution No. _____ (certifying EIR) and Resolution No. _____ (adopting findings), and the Focused Supplemental Environmental Impact Report (the "FSEIR"), which was recommended for certification by the Planning Board on July 17, 2017, by Resolution No. PB-_____, and certified with findings by the City Council on ____ {date} _____, by Resolution No. _____ (adopting the FSEIR and adopting a mitigation monitoring and reporting program) and Resolution No. _____ (adopting findings).

b. **General Plan Amendment**. On _____, 2017, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, made findings that the Project was consistent with the City's General Plan (the "General Plan") as amended to allow for buildings over 60 feet in height.

c. **Master Plan**. On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved the Encinal Terminals Project Master Plan (the "Master Plan").

d. **Density Bonus Application**. On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, approved the density bonus application for the Project (the "Density Bonus Application") and authorized its execution.

e. **Development Agreement**. On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved this Development Agreement and authorized its execution.

f. **Subsequent Approvals**. The Parties agree that in order to develop the Project (including the Public Benefits), the Developer may require development permits, and/or construction approvals other than those listed in Section 4 above, which may include, without limitation: development plans, conditional use permits, variances, subdivision approvals, design review approvals, demolition permits, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, parcel maps, landscaping plans, master sign programs, affordable housing agreement, and encroachment permits (collectively, "Subsequent Approvals"). At such time as any Subsequent Approval applicable to the Project is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable

to the Initial Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

5. **Public Benefits.** In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits set forth below, some of which are over and above those dedications, conditions and exactions required by laws or regulations, and which include the public benefits resulting from the developer obligations set forth in Sections 6.a. through i. (the “Developer Obligations”). Developer agrees to provide the following Public Benefits:

a. **Public Tidelands Property** Provide 8.5 acres of submerged lands and 9.5 acres of adjacent waterfront uplands to be held by the City of Alameda in trust for the people of California in perpetuity for maritime and public open space uses and purposes in return for approximately five (5) acres of land-locked Tidelands property.

b. **Public Open Space:** Construct and maintain in perpetuity seven (7) acres of waterfront open space, parks, promenades, and plazas for public use as shown in Figure 2.2 of the Master Plan including the extension of the Bay Trail along the water’s edge from the adjacent Wind River property and around the Encinal Terminals Parcel to Fortman Marina, a public water shuttle facility and kayak dock, all as more specifically described in the Master Plan.

c. **Clement Avenue Extensions:** Facilitate the completion of the Clement Avenue extensions by contributing a fair share of funds (i) to complete the extension of Clement Avenue from Atlantic Street to Entrance Road (the “Del Monte Extension”) and (ii) to fund the public acquisition of the land necessary and the construction of the final extension of Clement from Hibbard to Grand (the “Pennzoil Extension”).

d. **Infrastructure and Transportation:** Provide infrastructure improvements and transportation services that will benefit the Property and the surrounding community, including (1) waste water, storm water, and utility improvements, (2) providing a system of bikeways and pedestrian paths to facilitate access to the waterfront; and (3) implementing a Transportation Demand Management Program (“TDM Program”) that will reduce Project-related traffic and associated noise and air quality impacts as more specifically described in the Master Plan.

e. **Affordable and Middle Income Housing:** Provide 79 deed restricted affordable housing units, thirty percent (30%) “affordable by design” middle income units (or up to 153 units), and \$1 million for a down payment assistance program for middle income buyers.

f. **Economic Development:** Strengthen and diversify the economic base of the City and surrounding community by adding a marina containing up to 160 berths together with up to 50,000 gross square feet of new retail/commercial uses as more fully described in the Master Plan.

6. **Developer’s Obligations.** Developer shall perform the following obligations, including complying with any requirements in the exhibits referenced herein:

a. **Public Tidelands Exchange.** Developer wishes to facilitate an agreement to exchange land between Developer on the one hand, and City and State of California State Lands Commission on the other hand, which agreement would exchange the State Tidelands Parcel for those portions of the Encinal Terminals Parcel identified in Exhibit E attached hereto (the “State Tidelands Exchange”) subject to the following provisions:

i. Developer shall reimburse City’s costs incurred in negotiating the State Tidelands Exchange, providing documents and other information to the State Lands Commission upon request and attending meetings with the City and State Lands Commission staff regarding the State Tidelands Exchange.

ii. The State Tidelands Exchange will ensure at minimum 8.5 acres of submerged lands and 9.5 acres of adjacent uplands to be permanently held by the City of Alameda in trust for the State of California (the “Project Tidelands”).

iii. A community facilities district and/or one or more homeowners’ association(s) formed in connection with the development on the Property shall be responsible for all maintenance of the Project Tidelands and all improvements thereon in perpetuity.

b. **Public Open Space and Public Art.** Developer shall dedicate, improve and maintain seven (7) acres of public open space (the “Open Space”) at no cost to the City, subject to the following conditions and requirements:

i. The Open Space shall be distributed approximately as follows: a two (2) - acre Public Park, a two (2) acre public plaza at the northwest corner of the site, and three (3) acres of public promenade along the waterfront portions, a public kayak launch and the public water shuttle landing (the “Open Space”) as shown on Figure 2.2 of the Master Plan. Construction of the promenade shall include all costs to improve the existing wharf, including improvements related to the change in use, improvements to the bulkhead at the base of Alaska Basin, as well as costs for paving, public boat launches and landings, street furniture and railings required for improvements to the promenade. The construction of the Open Space shall be consistent in scope and extent with the conceptual design set forth in the Master Plan.

ii. The Open Space shall satisfy all on-site open space requirements for the development of the Encinal Terminals property.

iii. A community facilities district and/or one or more homeowners’ association(s) formed in connection with the development on the Property shall be responsible for all maintenance of the Open Space in perpetuity

iv. Developer shall provide Two Hundred Fifty Thousand Dollars (\$250,000.00) in public art within the public open spaces. The review and timing

of the construction of the public art shall be in conformance with the requirements of the Public Art Ordinance, section 30-65.

c. **Clement Avenue Extensions: Del Monte Extension.** Developer shall contribute its fair share of the costs for the construction of the Del Monte Extension, including a new intersection at Sherman, Clement, and Atlantic, and installation of new signals at the intersection of Sherman/Atlantic/Clement and at Clement/Entrance Road.

i. Developer's contribution shall be made directly to the Del Monte Developer in accordance with the terms of a separate cost-sharing agreement between Developer and the Del Monte Developer.

ii. In the event the Del Monte Developer has not commenced construction of the Del Monte Extension by the date Developer commences construction of the site improvements on the Property or if the Del Monte Developer otherwise defaults on its obligation to construct the Del Monte Extension, Developer shall complete the Del Monte Extension prior to issuance of the first occupancy permit for the first housing unit at the Property. For purposes hereof, Developer's obligation shall include the curb-to-curb improvements from Entrance Road to the intersection of Sherman and Atlantic, reconfiguration of the intersection at Sherman and Atlantic and installation of all back of curb improvements on the north side of the Del Monte Extension from Entrance Road to the intersection of Sherman and Atlantic, including sidewalks, cycle track and landscaping. Developer shall not be responsible for constructing a permanent sidewalk on the south side of the Del Monte Extension fronting onto the Del Monte project. Developer shall construct at minimum a temporary asphalt sidewalk on the south side fronting the Del Monte project.

iii. Upon completion of the improvements, the Del Monte Extension right of way, including the travel lanes, bike lanes, landscaping strips, sidewalks, and cycle track shall be dedicated back to the City of Alameda at no cost.

d. **Clement Avenue Extensions: Pennzoil Extension.** Developer shall pay all costs incurred by the City to acquire and construct the Pennzoil Extension. Developer shall be entitled to a fair share contribution for all such costs, as provided below in Section 7.b. In addition, if City acquires any property in excess of the land needed for the Pennzoil Extension and sells such excess property at a price equal to greater than the purchase price paid by City, Developer shall be entitled to reimbursement of any amounts paid by Developer for City's acquisition of such excess property.

e. **Ferry Shuttle Funding.** In the event that total net costs of the Pennzoil Extension are less than One Million Dollars (\$1,000,000), and/or to the extent Developer receives fair share contributions or reimbursement for any portion of such amounts previously paid, such excess amounts shall be paid to ATMA to subsidize a private shuttle or AC Transit bus from the Northern Waterfront area to the Main Street ferry terminal (the "Ferry Shuttle"). In the Northern Waterfront area, the Ferry Shuttle shall

run on Clement Avenue (or Buena Vista Avenue until such time as the extension of Clement Avenue from Grand to Atlantic is complete). Developer shall make any such payment to ATMA within five (5) business days of the latest to occur of: (i) completion of construction of the Clement Grand Extension; (ii) issuance of the first market rate residential certificate of occupancy at the Project or (iii) execution of a formal agreement between the City and WETA (or AC Transit, as the case may be) regarding the provision of the Ferry Shuttle service.

f. **Affordable Housing.** Developer shall be responsible for:

i. Funding and constructing a total of seventy-nine (79) affordable housing units as further described in the Master Plan. Prior to approval of the first final Map for the Project, Developer shall submit for City Manager review and approval in its reasonable discretion, an Affordable Housing Agreement for the provision of seventy-nine (79) affordable housing units, consistent with the requirements of the Master Plan and in a form acceptable to the City Attorney.

ii. **Down Payment Assistance Program** Contributing One Million Dollars (\$1,000,000.00) to the Alameda Housing Authority Down Payment Assistance Program for first time home buyers at the Project. Developer shall fund the Encinal Down Payment Assistance Program on the date that the first market rate units are made available for sale. As funds shall be repaid by Project residents who benefit from the Encinal Down Payment Assistance Program, reuse of the Encinal Down Payment Assistance Program shall give priority to prospective residents of the Project first and then to income eligible first time home buyers / prospective tenants in other eligible residential or mixed use projects in Alameda as determined by the Alameda Housing Authority.

g. **Subdivision Improvement Agreement.** Prior to filing its first final map, Developer and City shall execute a subdivision improvement agreement that is not inconsistent with this Development Agreement and that satisfies the requirements of California Government Code Sections 66462 and 66462.5(c).

Failure of the Developer to timely comply with or implement the obligations in this Section 6 shall be deemed a Breach of this Development Agreement under Section 17.a.

7. **City of Alameda Obligations.** City shall perform the following obligations:

a. **State Tidelands Exchange.** Diligently pursue the State Tidelands Exchange, on terms and conditions to be mutually agreed upon by the City and State Lands Commission on the one hand and the Developer on the other hand, including those conditions set forth in Section 5.a, and the following terms and conditions:

i. The City Manager shall execute the agreement effectuating the State Tidelands Exchange provided such agreement is in conformance with the terms

and conditions for the exchange set forth herein and in the Master Plan, including the land subject to the exchange and the phasing for the closing on the exchange.

ii. The City Manager shall grant Developer a right of entry to all Project Tidelands, including the locations of the kayak launch and water transit docking facility, to allow completion of construction and shall further process all necessary construction licenses to complete the public and private improvements to be completed in the Project Tidelands, in accordance with the Master Plan and Alameda Municipal Code.

b. **Clement Avenue Extensions: Fair Share Contributions.** The City shall collect a fair share contribution for the cost of the Clement Avenue Extensions and associated traffic signals from all future discretionary development projects located within one-half (½) mile of the intersections of Clement and Atlantic and/or Clement and Grand and which contribute automobile trips to the location as determined by a traffic study. Any such fair share contribution shall be based upon the adjusted average daily car trips from each project as determined by a project specific traffic study. Allowable costs for any fair share contribution shall include the following (i) the purchase price paid for any land needed to allow construction of the Clement Extensions; (ii) legal, staff and closing costs associated with the acquisition such land; and (iii) the costs for construction of the improvements thereof.

c. **Clement Avenue Pennzoil Extension – Acquisition and Construction.** The City shall be solely responsible for the acquisition (by voluntary sale, eminent domain or other lawful means) and construction of the Clement Avenue Extension from Hibbard to Grand.

i. City shall submit a written offer to purchase the necessary right of way no later than one year from the Effective Date (the “Initial Offer Date”).

ii. If property owner and City fail to execute a purchase and sale agreement within three (3) years of Initial Offer Date, City shall commence Eminent Domain proceedings to acquire the necessary right of way at fair market value.

iii. If City fails to submit an offer, execute a purchase and sale agreement and/or fails to initiate eminent domain proceedings within the timeframes set forth above, the Developer’s obligations with respect to the Clement Grand Extension shall terminate and be of no further force or effect.

d. **Infrastructure.** Subject to Developer’s compliance with all applicable laws, including, but not limited to, any required vote of affected property owners, and further subject to reimbursement of its costs by Developer, the City shall cooperate with the Developer:

- i. In the establishment of a Community Facilities District, Municipal Services District or a similar financing mechanism should Developer, in its sole discretion, choose to establish such a district.
 - ii. To support grants for the funding of public facilities that may be required by the Project, including, without limitation, a potential emergency ferry dock and/or affordable housing infrastructure. The City shall cooperate with Developer and expedite the permit process for the construction of the public facilities.
- e. **Fee Credits:** In consideration of Developer's agreement to maintain the entirety of the Project open spaces, streets, and other public facilities in perpetuity, City may grant a ____% credit of the Improvement Tax at the time of Building Permit submittal in accordance with Alameda Code of Ordinances Section 3-62.5.
- f. **Marina Lease.** City may grant Developer or its successor a right of first refusal or below market rate lease option for operation of the Marina (the "Marina Lease") on the future public trust Public Tidelands submerged property within the Alaska Basin.

Failure of the City to timely comply with or implement the obligations in this Section 8 shall be deemed a Breach of this Development Agreement under Section 17.a.

8. **Development of the Property.**

- a. **Vested Development Rights.** The Property is hereby made subject to the provisions of this Development Agreement. All development of or on the Property, or any portion thereof, shall be undertaken only in compliance with the Project Approvals, Applicable Law and the provisions of this Development Agreement. Developer shall have a vested right to develop the Property in accordance with the Project Approvals, Applicable Law and this Development Agreement. The Project shall be subject to all Subsequent Approvals (which, upon final approval, shall be deemed part of the Project Approvals hereunder).
- b. **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals and this Development Agreement, and with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) as set forth below, to the extent not inconsistent with the Project Approvals, governing permitted uses, building locations, timing of construction, densities, design, heights, development impact fees and exactions in force and effect on the Effective Date ("Applicable Law"). Such laws include:
 - i. The City's General Plan and Planning and Zoning Code in effect on the Effective Date;
 - ii. The City's Public Art Ordinance which was adopted by the Alameda City Council in March 2003 pursuant to Ordinance No. 2892, as amended by the City Council in July 2005 pursuant to Ordinance No. 2942.

iii. The Master Plan for the site approved by the City Council on _____;

iv. All other City policies, ordinances, resolutions, rules, regulations and standards applicable to development or use of the Property on the Effective Date, except that Developer shall:

(1) Comply with Building Code requirements in effect on a city-wide basis during the construction;

(2) Comply with changes in City laws, regulations, plans or policies applicable city-wide which are necessary to protect members of the public from a condition dangerous to their health or safety;\

(3) Following any subsequent environmental review, comply with required mitigation measures and all Subsequent Project Approvals which are consistent with this Development Agreement.

(4) Comply with a change in City law, regulations, plans or policies which is/are:

A. Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or

B. A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or

C. Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the Property issued or granted to the City, County and/or Developer by any federal, state or regional agency.

c. **Processing Fees.** "Processing Fees" mean fees charged to the Project to cover the cost of City review of applications for any permit or other review by City departments. Applications for Project Approvals for the Project shall be charged the then-applicable Processing Fees to allow the City to recover its actual and reasonable costs. Notwithstanding anything to the contrary contained in this Development Agreement, Developer shall not receive any protection from rate escalators or rate increases on Processing Fees.

d. **Impact Fees.** “Impact Fees” means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval (including Subsequent Project Approvals) for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. For purposes of this Agreement, the term “Impact Fees” shall not include impact fees imposed on the Project by the Alameda Unified School District, the State of California or any political subdivision of the State except the City.

i. Only the specific Impact Fees, (including the applicable inflator, if any) listed in Exhibit F of this Development Agreement shall apply to the Project and any Subsequent Project Approval. The base year for any Impact Fee inflator shall be 2017.

ii. Except as provided in Section 9.d.i above, no change to an Impact Fee resulting in an increase in dollar amounts charged to the Project by the City that is adopted after the Effective Date shall apply to the Project. No new Impact Fee not listed on Exhibit F shall apply to the Project during the Term of this Development Agreement.

iii. Developer retains all rights set forth in California Government Code § 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer's rights set forth in such section.

e. **Development Timing.** The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that Developer shall have the vested right to develop the Project in such order, and at such rate and at such times, as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. Subject to the deadlines contained in this Development Agreement, Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and the Project Approvals.

f. **Life of Project Approvals.** The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Development Agreement or the term otherwise applicable to such Project Approvals, provided however, that the terms of use permits, design review, building permits and variances shall be the time period permitted by Applicable Law.

g. **Subsequent Project Approvals.** Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, as defined herein. In connection with any Subsequent Project Approval, the City shall conduct its review as set forth in the Master Plan and exercise its discretion in accordance with Applicable Law, the Project Approvals and, as provided by this Development Agreement.

h. **Tentative Maps.** If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting tentative map under the Subdivision Map Act, and if this Development Agreement is determined by a final judgment to be invalid or unenforceable that insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting tentative maps shall survive.

i. **Developer's Right to Rebuild.** City agrees that Developer may, subject to Section 9.c. above, renovate or rebuild portions of the Project at any time within the Term of this Development Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Development Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

j. **No Conflicting City Enactments.** Except as and to the extent required by State or Federal law; or as may be reasonably necessary to comply with requirements of, and/or pass through rate and/or connection fee increases established by, other local governmental agencies ("Other Local Agency Compliance Fees"); or as otherwise provided in this Development Agreement, City shall not impose on the Project any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure (each, individually, a "City Law") that is in conflict with the Applicable Law, this Development Agreement or the Project Approvals or that reduces the development rights or assurances provided by this Development Agreement. Without limiting the generality of the foregoing, any City Law enacted or adopted after the Effective Date of this Development Agreement, shall be deemed to conflict with this Development Agreement or reduce the development rights or assurances provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- i. Reduce the number of residential units permitted to be developed on the Property;
- ii. Reduce the square footage of commercial development permitted to be developed on the Property;
- iii. Change any land use designation or permitted use of the Property unless otherwise authorized by the Project Approvals;
- iv. Limit or control the availability of public utilities or any privileges or rights to public utilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- v. Limit or control the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals, Applicable Law or this Development Agreement;
- vi. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Development Agreement, Applicable Law or the Project Approvals; or
- vii. Impose on the Project or Developer any fees or exactions other than those permitted by this Development Agreement, Applicable Law or the Project Approvals.

9. **Initiatives and Referenda.** Except as required under Section 9.c., if any City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Development Agreement or reduce the development rights or assurances provided by this Development Agreement, such City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Development Agreement is a legislative action subject to referendum. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals.

10. **Annual Review.** Developer shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date requesting an annual review of the Development Agreement. The periodic review of the Development Agreement shall be made at least every twelve (12) months, consistent with Government Code section 65865.1 and Alameda Municipal Code Section 30-95.1. At least thirty (30) days prior to each anniversary of the Effective Date during the term of this Agreement, Developer shall submit a written report to City outlining its efforts toward good faith compliance with the terms of this Agreement. The report shall specifically include but not be limited to the status of the: the Public Open Space (Section 6.a.), the Clement Extension (Section 6.b.), the Affordable Housing requirement (Section 6.c.), the Retail/Commercial Space leasing (Section 6.e.), the Transportation obligation (Section 6.f.), the Down Payment Assistance Program (Section 6.g.), the Public Art requirement (Section 6.h.), the Subdivision Improvement Agreement (Section 6.i.), and the State Tidelands Exchange (Section 7). The annual report from ATMA shall satisfy the annual reporting requirement for the TDM Program.

11. **Amendments.** The Development Agreement may be amended by the Parties, upon mutual agreement, consistent with the procedures set forth in Government Code section 65868 and Alameda Municipal Code Section 30-94.3, including any amendments to it. Except as may otherwise be required by law or court order, all amendments to this Development Agreement, whether approved by the City Council or the City Manager, shall: (i) be in writing; (ii) approved by the City Council in its sole discretion, by ordinance, at a public meeting or alternatively approved by the City Manager pursuant to Section 12.a below; (iii) signed by both Parties; and (iv) entitled "Development Agreement – Encinal Project, Amendment N" where "N" is the next number in order.

a. **Ministerial Amendments.** Without further action by the City Council, the City Manager shall have the authority, but not the obligation, to take the following action in his or her sole discretion:

i. Extend or adjust the deadline for the City or Developer to complete any obligation under this Development Agreement for up to one (1) year upon any terms or conditions he/she deems appropriate using his/her reasonable discretion, except extend the Term of this Development Agreement;

ii. Amend this Development Agreement as necessary to conform to any amendments or modifications to the Master Plan or any other Project Approvals approved by the Planning Commission and/or City Council;

iii. Amend Section 15 only to this Development Agreement as necessary to comply with the requirements of a Mortgagee but only to the extent necessary for Developer to secure needed financing; and so long as such amendments do not materially expose the City to additional risk of liability or subject City to any monetary obligations or damages; and

iv. Consent, on behalf of the City, to a Transfer pursuant to Section 14 herein and to amend this Development Agreement to correctly identify the new developer.

b. Nothing in this Section shall be construed as to require the City Manager to exercise his/her discretion or to prevent the City Manager from seeking City Council review and approval of an amendment that might otherwise fall within the City Manager's authority.

c. **Other Government Permits.** City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, permits and approvals from other governmental or quasi-governmental entities.

12. **Transfer.** No sale, transfer or assignment of all or a portion of the Property, or creation of a joint venture or partnership, shall require the amendment of this Development Agreement, provided that such sale, transfer or assignment is completed in conformance with the following requirements:

a. **Right to Assign.** Because of the necessity to coordinate development of the entirety of the Property pursuant to the Master Plan, particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Developer to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Master Plan and this Development Agreement. Developer agrees to and accepts the restrictions set forth in this Section 14 as reasonable and as a material inducement to City to enter into this Development Agreement. For purposes of this Section 14, a change in the identity of the initial managing member of the Developer, (including the sale or transfer, in the aggregate, of the controlling stock or interest in said managing member) shall be deemed a transfer by Developer subject to the provisions of this Section. Developer shall have the right to sell, transfer, ground lease or assign the Property in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") subject to the prior written consent of City; provided that Developer may assign its rights and obligations under this Development Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with the Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("Affiliated Party"). City's consent shall not be unreasonably withheld, delayed or conditioned, and City shall consent if the Assignee reasonably demonstrates to City that it is able to perform the obligations of Developer under this Development Agreement. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Development Agreement with respect to all portions

of the Property retained by Developer, and with respect to the dedication and installation of all infrastructure improvements to be provided by Developer, and all other Developer obligations not expressly assigned to and accepted by the Assignee, pursuant to the Project Approvals.

i. The sale, transfer, lease or assignment of any right or interest under this Development Agreement shall be made only together with the sale, transfer, ground lease or assignment of all or a part of the Property. Concurrently with any such sale, transfer, ground lease or assignment, Developer shall (i) notify City in writing of such sale, transfer or ground lease; and (ii) Developer and Assignee shall provide a written assignment and assumption agreement in form reasonably acceptable to the City Attorney pursuant to which Assignee shall assume and succeed to the rights, duties and obligations of Developer with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned.

ii. Subject to City's written consent as provided in Section 14, City, upon request of Developer or Assignee, and following compliance with the notification provisions above, shall provide Assignee with a certificate of compliance, stating that this Development Agreement remains valid and in full force and effect and is binding upon City, Developer and the Assignee as of the last Annual Review pursuant to the provisions of Section 11, except that if City knows of any non-compliance, City shall not be required to issue a certificate of compliance.

b. **Release of Transferring Developer.** Except with respect to a permitted transfer and assignment under Section 14.a. to an Affiliated Party, notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Development Agreement as to all or the portion of the Property so transferred unless City is satisfied the Assignee is fully able to comply with Developer's obligations under this Development Agreement (both financially and otherwise) and Developer is given a release in writing.

c. **Partial Transfer.** Notwithstanding any other provision hereof to the contrary, if Developer only transfers a portion of the Property, then Developer shall continue to be obligated under this Development Agreement with respect to the balance of the Property not so transferred.

13. **Mortgagee Protection**

a. **Mortgagee Protection.** This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity,

including any deed of trust beneficiary or mortgagee (“Mortgagee”), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

b. **Mortgagee Not Obligated.** Notwithstanding the provisions of Section 15.a. above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Development Agreement, or otherwise under the Project Approvals.

c. **Notice of Default to Mortgagee.** If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

14. **Estoppel Certificate.** Within twenty (20) days of a written request, either Party shall execute an estoppel certificate in writing that, to the knowledge of the responding Party as of the last Annual Review: (a) this Development Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (c) the requesting Party is not in Breach in the performance of its obligations under this Development Agreement, or if in Breach or Default, describe the nature and amount of any such Breach or Defaults.

15. **Remedies for Default.**

a. **Breach.** Subject to extensions of time under Section 15.c. or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Development Agreement shall constitute a breach of this Development Agreement. In the event of alleged breach of any terms or conditions of this Development Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice (“Cure Period”) to cure such breach, except that in the event of a breach of an obligation to make

a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall, within a thirty (30) day period following notice from the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances (“Extended Cure Period”); commence to cure such breach; and be proceeding diligently to cure such breach. Subject to the provisions of Section 15.c, the Extended Cure Period shall in no event exceed one hundred twenty (120) days unless otherwise agreed by the Parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 17.c., shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege that breach or any other breach at any other time.

b. **Default.** If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default (“Default”), and the non-breaching Party, at its option, may terminate the Development Agreement or institute legal proceedings pursuant to this Development Agreement and shall have such remedies as are set forth in Sections 17.c and 17.d. below.

c. **Withholding of Permits.** In the event of a Default by Developer, or following notice of breach by Developer and during the Cure Period or Extended Cure Period, upon a finding by the City Manager that Developer is in serious and substantial breach, City shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Development Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

d. **Remedies.**

i. **Termination by Developer.** In the event of a Default by City, the Developer shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to City of its intent to terminate.

ii. **Termination by City.** In the event of a Default by Developer, the City, through its City Manager, shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to Developer.

(1) If the City Manager elects to terminate, then within said 45 days, Developer shall have the right to ask the City Council (during public comment at a City Council meeting) for a hearing to reconsider the termination decision (“Reconsideration Hearing”).

(2) The City Council may accept, reject or refuse to respond to a Reconsideration Hearing request in its sole and absolute discretion. If the City Council grants the request for a Reconsideration Hearing, then the

matter shall be placed on the City Council's agenda as soon as practicable but no sooner than fourteen (14) days from the date the request is granted to allow the Developer time to prepare its presentation. If and only if the Reconsideration Hearing is scheduled for (or continued to) a date which is after the effective date of the termination notice, then the effective date of the termination notice is automatically extended until ten (10) days after the Reconsideration Hearing date.

(3) The Developer and City staff may, but neither is obligated to, provide the City Clerk with written materials to be included in the agenda packet for the City Council's review prior to the Reconsideration Hearing. Such materials, if any, must be submitted in time to comply with the City's Sunshine Ordinance and will become part of the public record.

(4) At the Reconsideration Hearing, Developer shall have the right to present verbal testimony and written materials to show that: (i) it has cured the Default(s); (ii) that it will cure the Default(s) in the near future if given more time; (iii) that it is willing to offer the City alternative or additional consideration to offset the Default(s); or (iv) that the Development Agreement should not be terminated despite the Default(s).

(5) At the Reconsideration Hearing, City staff may, at its option, present evidence in rebuttal.

(6) After consideration of the materials presented by the Developer and City staff, if any, and following public comment, the City Council may affirm or rescind the termination decision upon any terms or conditions it deems appropriate using its reasonable discretion.

(7) If the City Council conditionally rescinds the termination decision, then Developer shall have three (3) business days to accept or reject in writing, the conditions stated by the City Council. If the Developer accepts all of the conditions, then the Parties will work together diligently and in good faith to amend this Development Agreement or any other documents necessary to effectuate the new agreement. If Developer rejects, in whole or in part, the conditions set by the City Council or fails to respond in writing within three (3) business days, then the City Manager's notice of termination remains in full force and effect and this Development Agreement shall terminate pursuant thereto.

(8) Termination of this Development Agreement shall be subject to the Mortgagee Protection provisions of Section 15 of the Development Agreement.

iii. **Additional Developer Remedies.** City and Developer agree that in the event of Default by City, the Parties intend that the primary remedy for Developer

shall be specific performance of this Development Agreement. Developer may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (excluding monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. The Parties further acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages (including but not limited to actual, consequential, punitive or special damages) against City for breach of this Development Agreement. The foregoing notwithstanding, if Developer is the prevailing party in an action against the City to enforce or defend the provisions of this Development Agreement, then Developer shall be entitled to attorney's fees and costs pursuant to Section 19 below.

iv. **Additional City Remedies.** City and Developer agree that in the event of Default by Developer, the City, in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (including monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. If City issues an Approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

16. **Indemnification.** Developer agrees to defend, indemnify, release and hold harmless the City and its elected and appointed officials and employees from any litigation, claim, action or court proceeding brought against any of the foregoing individuals or entities (the "Indemnified Parties"), the purpose of which is to attack, set aside, void or annul this Development Agreement on any grounds. This indemnification shall include, without limitation, damages, costs, expenses, court awarded attorney fees or expert witness fees that may be asserted or incurred by the Indemnified Parties, arising out of or in connection with the approval or enforcement of this Development Agreement. City shall retain the right to approve counsel retained by Developer as well as any and all settlements proposed by Developer, which approval shall not be unreasonably withheld.

17. **Attorney's Fees.** If legal action is brought by one of the Parties to enforce or defend a provision of this Development Agreement, then the prevailing Party is entitled to its reasonable attorney's fees, expert witness fees, and court costs.

18. **Third Party Legal Action; Attorney's Fees.** If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of the City's approval of the development of the Project, including the environmental

review process, the Developer agrees to reimburse the City for attorney's fees, expert witness fees, and related costs as the City may incur in connection with its retention of outside counsel, and for any award of damages, court costs or fees against the City. City has the right to choose and retain such legal counsel as the City deems appropriate.

19. **Provisions that Survive Termination of this Development Agreement.** It is expressly agreed by the Parties that the following provisions survive the termination or expiration of this Development Agreement:

Section 18 – Remedies for Default
Section 19 – Indemnification
Section 20 – Attorney's Fees, and
Section 21 – Third Party Legal Action; Attorney's Fees.

20. **Severability.** If any term or provision of this Development Agreement or the application of any term or provision of this Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

21. **Recordation; Binding Effect.** This Development Agreement shall be recorded in the office of the Alameda County Recorder and shall be binding upon and inure to the benefit of successors in interest to the Parties. Where there is more than one Developer, the obligations are joint and several.

22. **Successors and Assigns.** Subject to the provisions of Section 14 relating to Transfer, the terms, covenants and conditions contained in this Development Agreement shall bind and inure to the benefit of City, Developer and their respective successors and assigns; provided, however, that the City shall have no obligation under this Development Agreement to, nor shall any benefit of this Development Agreement accrue to, any unapproved successor or assign of Developer where City approval of a successor or assign is required by this Development Agreement.

23. **Cooperative Drafting.** This Development Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Development Agreement reviewed and revised by legal counsel of their own choosing. No Party shall be considered the drafter of this Development Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Development Agreement.

24. **Integration.** This Development Agreement consists of ____ pages and ____ exhibits which constitute in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Development Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

25. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Development Agreement.

26. **Prevailing Wages.** If required by State law and Alameda Municipal Code Section 2-67, Developer agrees to comply with California Labor Code Section 1770 et seq. regarding the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements for any work on the Project.

27. **Notices.** The address of each party for the purpose of all notices permitted or required by this Development Agreement is as follows:

To City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Developer: North Waterfront Cove LLC
12667 Alcosta Blvd., Suite 170
San Ramon, CA 95583
Attn: James L. Meek

With a copy to: Buchalter, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra

The written address of either party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Development Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

CITY OF ALAMEDA

NORTH WATERFRONT COVE LLC,
a Delaware limited liability company

By: Marina View L.P., a California limited
partnership

Its: Managing Member

By: TL Management, Inc.

Its: General Partner

By: _____
Jill Keimach, City Manager

By: _____
James L. Meek
(Notary Acknowledgment Required)

Date: _____

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Andrew Thomas, Assistant Community
Development Director

Approved as to Form:

Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

Exhibits:

- A Encinal Terminals Parcel – Legal Description**
- B State Tidelands Parcel – Legal Description**
- C Clement Pennzoil Extension Improvements**
- D State Tidelands Exchange**
- E List of Impact Fees**

EXHIBIT A

Encinal Terminals Parcel – Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY AND COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PORTION OF PARCEL 2 AS DESIGNATED ON PARCEL MAP NO. 2938, FILED JULY 19, 1983, BOOK 138 OF PARCEL MAPS, PAGES 76 TO 80 INCLUSIVE, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL 2 (138 PM 76); THENCE ALONG BOUNDARY OF SAID PARCEL 2 SOUTH 53° 51' 53" EAST, 127.66 FEET AND NORTH 68° 31' 35" EAST, 118.76 FEET TO THE POINT OF BEGINNING TO THE PARCEL TO BE DESCRIBED:

THENCE FROM SAID POINT OF BEGINNING ALONG THE BOUNDARY OF SAID PARCEL 2 (138 PM 76) THE FOLLOWING EIGHTEEN (18) COURSES: NORTH 68° 31' 35" EAST, 160.65 FEET, NORTH 88° 01' 35" EAST, 387.89 FEET; SOUTH 45° 23' 25" EAST, 366.65 FEET; SOUTH 30° 40' 44" WEST, 282.22 FEET; SOUTH 59° 19' 16" EAST, 143.14 FEET; SOUTH 30° 40' 44" WEST, 275.79 FEET; SOUTH 69° 09' 35" WEST, 489.88 FEET; NORTH 64° 20' 25" WEST, 283.80 FEET; SOUTH 7° 35' 25" EAST, 264.00 FEET; SOUTH 21° 09' 35" WEST, 323.40 FEET; SOUTH 77° 20' 25" EAST, 389.66 FEET; SOUTH 30° 40' 44" WEST, 34.71 FEET; SOUTH 7° 15' WEST, 60.00 FEET; NORTH 82° 45' WEST, 15.00 FEET; SOUTH 7° 15' WEST, 210.26 FEET; NORTH 67° 08' WEST, 34.01 FEET; SOUTH 26° 15' WEST, 14.85 FEET AND NORTH 76° 59' WEST, 49.27 FEET; THENCE NORTH 8° 53' EAST, 14.40 FEET, NORTH 41° 37' WEST, 19.24 FEET, NORTH 57° 38' WEST, 19.00 FEET, NORTH 62° 49' WEST, 19.34 FEET, NORTH 40° 12' WEST 38.12 FEET, NORTH 35° 33' WEST, 59.86 FEET, NORTH 4° 56' WEST, 19.65 FEET, NORTH 7° 09' EAST, 51.73 FEET, NORTH 82° 51' WEST, 119.72 FEET, SOUTH 7° 09' WEST, 82.60 FEET, SOUTH 32° 43' EAST, 12.50 FEET, NORTH 88° 39' WEST, 39.90 FEET, NORTH 80° 35' WEST, 11.59 FEET, NORTH 7° 14' 18" EAST, 1614.67 FEET TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING ALL OF THAT PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136981, AND THE EASTERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136980, ALL DOCUMENTS BEING OFFICIAL RECORDS AT THE OFFICE OF THE RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF THE PARCEL DESCRIBED IN SAID GRANT DEED RECORDED AS DOCUMENT NUMBER 96-136980, SAID CORNER ALSO BEING THE MOST SOUTHEASTERLY CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA; THENCE ALONG SAID WESTERLY LINE NORTH 4° 16. 11" EAST, A DISTANCE OF 1721.74 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL THE FOLLOWING FOUR COURSES:

1. SOUTH 41° 13. 49" EAST, A DISTANCE OF 295.87 FEET;
2. SOUTH 53° 15. 31" EAST, A DISTANCE OF 310.00 FEET TO THE TRUE POINT OF BEGINNING;
3. SOUTH 53° 15. 31" EAST, A DISTANCE OF 127.66 FEET TO AN ANGLE POINT;
4. NORTH 68° 31. 35" EAST, A DISTANCE OF 118.76 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL SOUTH 7° 14. 18" WEST, A DISTANCE OF 1592.93 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 82° 45. 42" WEST, A DISTANCE OF 26.06 FEET; THENCE NORTH 9° 27. 09" EAST, A DISTANCE OF 3.12 FEET; THENCE NORTH 80° 32. 51" WEST, A DISTANCE OF 108.02 FEET; THENCE NORTH 80° 53. 01" WEST, A DISTANCE OF 24.97 FEET; THENCE NORTH 5° 12. 24" EAST, A DISTANCE OF 1591.64 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C:

A PORTION OF PARCELS 1 AND 2 AS DESIGNATED ON PARCEL MAP NO. 2938, FILED JULY 19, 1983, BOOK 138 OF PARCELS MAPS, PAGES 76 TO 80, INCLUSIVE, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWESTERN BOUNDARY OF SAID PARCEL 1, AT THE NORTHWESTERN TERMINUS OF THE COURSE SHOWN AS "N33° 14'W-49.22" ON SAID PARCEL MAP; THENCE SOUTH 67° 27' 30" EAST, 36.20 FEET; THENCE SOUTH 65° 11' EAST, 150.08 FEET; THENCE SOUTH 80° 54' EAST, 191.34 FEET; THENCE SOUTH 80° 35' EAST, 238.53 FEET; THENCE SOUTH 88° 39' EAST, 39.90 FEET; THENCE NORTH 32° 43' WEST, 12.50 FEET; THENCE NORTH 7° 09' EAST, 82.60 FEET, THENCE SOUTH 82° 51' EAST, 119.72 FEET; THENCE SOUTH 7° 09' WEST, 51.73 FEET; THENCE SOUTH 4° 56' EAST, 19.65 FEET; THENCE SOUTH 35° 33' EAST, 59.86 FEET; THENCE SOUTH 40° 12' EAST, 38.12 FEET; THENCE SOUTH 62° 49' EAST, 19.34 FEET; THENCE SOUTH 57° 38' EAST, 19.00 FEET; THENCE SOUTH 41° 37' EAST, 19.24 FEET; THENCE SOUTH 8° 53' WEST, 14.40 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF SAID PARCEL 2; THENCE ALONG THE BOUNDARIES OF SAID PARCELS 2 AND 1, THE NINETEEN (19) FOLLOWING COURSES: NORTH 76° 59' WEST, 49.45 FEET; NORTH 71° 35' WEST, 40.20 FEET; NORTH 66° 58' WEST, 49.17 FEET; NORTH 62° 48' WEST, 28.00 FEET; SOUTH 73° 49' WEST, 39.68 FEET; NORTH 77° 22' WEST, 51.82 FEET; NORTH 79° 29' WEST, 50.04 FEET; NORTH 81° 09' WEST, 59.98 FEET; NORTH 81° 44' WEST, 69.89 FEET; NORTH 83° 41' WEST, 59.11 FEET; NORTH 85° 21' WEST, 109.41 FEET; NORTH 82° 36' WEST, 39.80 FEET; NORTH 77° 30' WEST, 29.76 FEET; NORTH 71° 07' WEST, 40.10 FEET; NORTH 62° 44' WEST, 49.98 FEET; NORTH 54° 20' WEST, 36.50 FEET; NORTH 47° 16' WEST, 50.92 FEET; NORTH 41° 36' WEST, 28.73 FEET AND NORTH 33° 14' WEST, 49.22 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PARCEL:

BEING THE WESTERLY AND SOUTHERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136980 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND THE NORTHERLY PORTION OF THE PARCEL AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136982 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF THE PARCEL DESCRIBED IN DOCUMENT NUMBER 96-136980, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 30, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE

OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, THENCE ALONG SAID WESTERLY LINE NORTH 4° 16' 11" EAST, A DISTANCE OF 1721.74 FEET (1721.75 FEET) TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL, THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL SOUTH 41° 13' 49" EAST, A DISTANCE OF 295.87 FEET (295.89 FEET), THENCE CONTINUING ALONG SAID LINE SOUTH 53° 15' 31" EAST, A DISTANCE OF 310.00 FEET, THENCE LEAVING SAID LINE SOUTH 5° 12' 24" WEST, A DISTANCE OF 1591.64 FEET, THENCE SOUTH 80° 53' 01" EAST 24.97 FEET, THENCE SOUTH 80° 32' 51" EAST 108.02 FEET, THENCE SOUTH 09° 27' 09" WEST 3.12 FEET, THENCE SOUTH 82° 45' 42" EAST 26.06 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL, THENCE ALONG SAID EASTERLY LINE SOUTH 07° 14' 18" WEST 21.74 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL, THENCE SOUTH 07° 14' 18" WEST 24.06 FEET TO A POINT 9.50 FEET PERPENDICULAR TO AND NORTHERLY OF THE CENTERLINE OF AN EXISTING RAILROAD TRACK, THENCE PARALLEL WITH AND 9.50 FEET NORTHERLY OF SAID CENTERLINE THE FOLLOWING SEVEN COURSES;

1. NORTH 80° 48' 36" WEST, A DISTANCE OF 47.84 FEET;
2. NORTH 80° 43' 03" WEST, A DISTANCE OF 119.82 FEET;
3. NORTH 80° 34' 01" WEST, A DISTANCE OF 100.75 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
4. ALONG SAID CURVE BEING CONCENTRIC WITH SAID CENTERLINE HAVING A RADIUS OF 490.50 FEET, THROUGH A CENTRAL ANGLE OF 15° 14' 32", AN ARC LENGTH OF 130.49 FEET;
5. NORTH 65° 19' 28" WEST, A DISTANCE OF 162.95 TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
6. ALONG SAID CURVE CONCENTRIC WITH SAID CENTERLINE, HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 6° 52. 33", AN ARC LENGTH OF 50.46 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN DOCUMENT NUMBER 96-136982;
7. LEAVING SAID LINE AND CONTINUING ALONG SAID CONCENTRIC CURVE HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 4° 54' 40", AN ARC LENGTH OF 36.04 FEET TO A POINT ON THE EASTERLY LINE OF PARCEL B DESCRIBED IN AN INDENTURE FROM THE SOUTHERN PACIFIC COMPANY TO THE ALAMEDA BELT LINE RECORDED JUNE 1, 1927 IN BOOK 1597 OF OFFICIAL RECORDS AT PAGE 211;

THENCE LEAVING SAID PARALLEL LINE AND ALONG SAID EASTERLY LINE NORTH 4° 16' 11" EAST, A DISTANCE OF 158.06 TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL, SAID POINT ALSO BEING AN ANGLE POINT ALONG THE WESTERLY LINE OF SAID PARCEL ONE DESCRIBED IN DOCUMENT NUMBER 96-136980, THENCE ALONG SAID WESTERLY LINE SOUTH 85° 43' 49" EAST, A DISTANCE OF 22.00 FEET TO THE POINT OF BEGINNING.

THE BEARING NORTH 4° 16' 11" EAST ALONG THE EASTERLY LINE OF TRACT 30 AS SAID LINE IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 30, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA WAS USED AS THE BASIS OF BEARINGS.

PARCEL C-1:

A PORTION OF THE PARCEL DESCRIBED IN THE GRANT DEED RECORDED AS DOCUMENT NUMBER 96-136980 OF OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF SAID PARCEL, SAID CORNER ALSO BEING THE MOST SOUTHEASTERLY CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED .PARCEL MAP 3231. FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL THE FOLLOWING FIVE COURSES:

1. NORTH 85°43.49. WEST, A DISTANCE OF 22.00 FEET;
2. SOUTH 4°16.11. WEST, A DISTANCE OF 94.83 FEET;
3. SOUTH 9°52.00. EAST, A DISTANCE OF 44.25 FEET;
4. SOUTH 23°56.00. EAST, A DISTANCE OF 43.34 FEET TO A POINT ON A NON-TANGENT CURVE THAT IS 9.50 FEET NORTHERLY OF AND CONCENTRIC WITH THE CENTERLINE OF THE EXISTING RAILROAD TRACK, SAID POINT ALSO BE THE TRUE POINT OF BEGINNING;
5. SOUTH 23°56.00. EAST, A DISTANCE OF 5.79 FEET;

THENCE ALONG THE SOUTHERLY LIE OF SAID PARCEL SOUTH 67°27.30. EAST, A DISTANCE OF 29.93 FEET TO A POINT ON SAID CONCENTRIC CURVE FROM WHICH A RADIAL LINE BEARS NORTH 26°52.02. EAST;

THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 4°41.03., AN ARC LENGTH OF 34.39 FEET TO THE TRUE POINT OF BEGINNING. THE BEARING NORTH 4°16.11. EAST ALONG THE EASTERLY LINE OF TACT 30 AS SAID LINE IS SHOWN ON THAT CERTAIN MAP ENTITLED .PARCEL MAP 3231. FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OR THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA WAS USED AS THE BASIS OF BEARINGS.

BEING PARCEL B OF ADJUSTED PARCEL 12 AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 24, 1997 AS INSTRUMENT NO. 97282539 OF ALAMEDA COUNTY OFFICIAL RECORDS.

PARCEL D:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR UTILITIES AS DESCRIBED ON THAT CERTAIN DECLARATION OF EASEMENTS RECORDED ON JUNE 6, 1996 AS DOCUMENT NO. 96136983 THAT IS SPECIFICALLY LOCATED WITHIN PARCEL C OF TRACT 7170 FILED FOR RECORD MARCH 2, 2002 IN BOOK 263 OF MAPS, PAGES 52-62, AND AS LOCATED WITHIN A PORTION OF PARCEL 13 OF PARCEL MAP 2938 RECORDED ON JULY 19, 1983 IN BOOK 138 OF MAPS, PAGES 76-80, AS SPECIFICALLY DESCRIBED ON THE "AMENDMENT AND SUPPLEMENT TO DECLARATION OF EASEMENTS. RECORDED DECEMBER 28, 2012 AS DOCUMENT NO. 2012432243.

PARCEL E:

A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCELS C AND C-1 ABOVE, FOR INGRESS AND EGRESS AS DESCRIBED IN THAT CERTAIN GRANT OF ACCESS EASEMENT RECORDED OCTOBER 24, 1997 AS DOCUMENT NO. 97282552, ALAMEDA COUNTY OFFICIAL RECORDS.

APN: 072-0382-002 (Parcel A), 072-0382-001 (Parcel B) and 072-0383-003 (Parcels C and C-1)

EXHIBIT B

State Tidelands Parcel – Legal Description

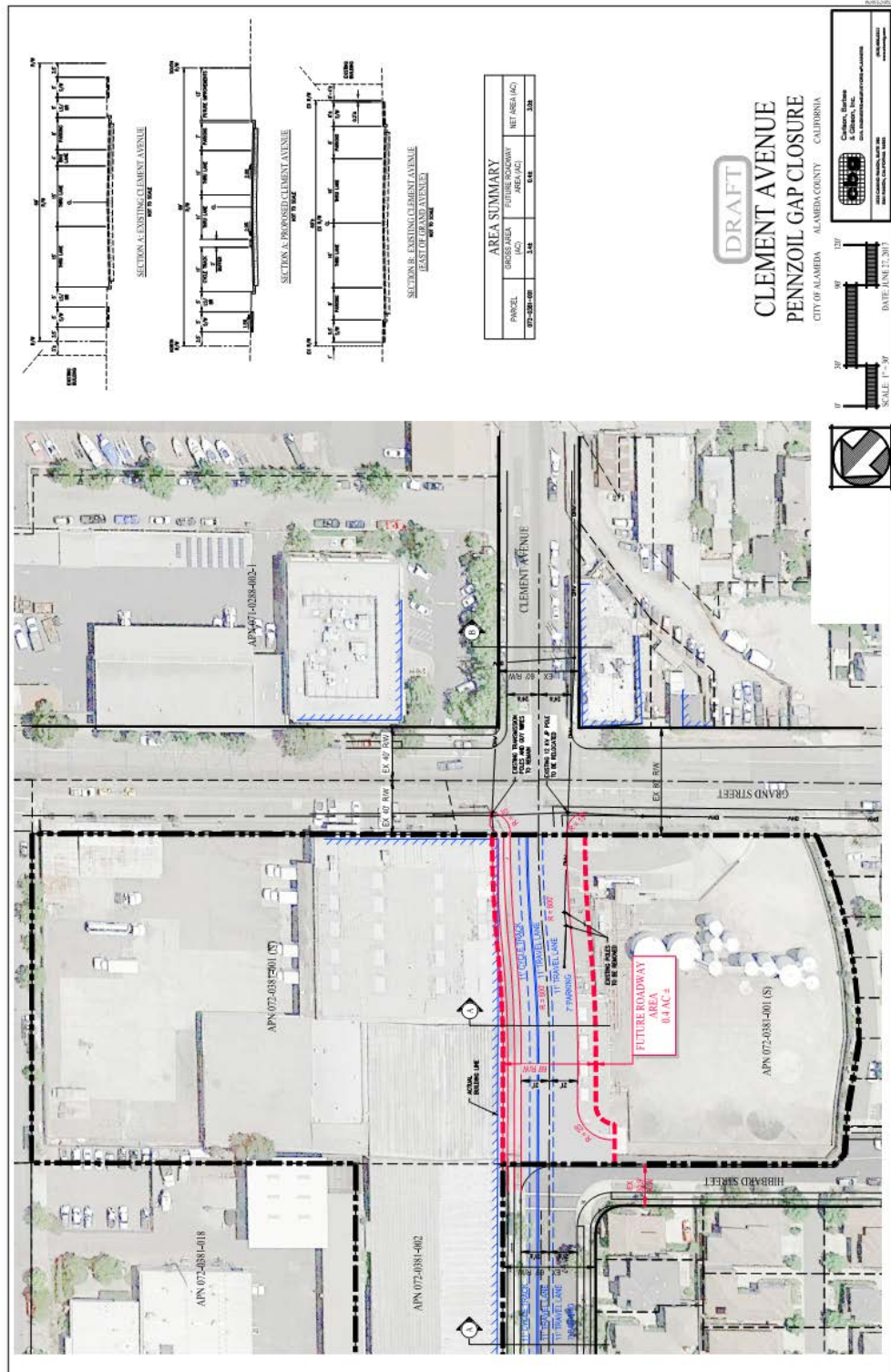
Real property in the City of Alameda , County of Alameda, State of California, described as follows:

PARCEL 20, PARCEL MAP 2938, FILED JULY 19, 1983, MAP BOOK 138, PAGE 76, ALAMEDA COUNTY RECORDS.

APN: 072-0382-009

EXHIBIT C

Clement Extension – Hibbard to Grand



State Tidelands Exchange



EXHIBIT E

Impact Fees to Be Collected at Building Permit

<u>Impact Fee Name</u>	<u>Alameda Municipal Code</u>
Improvement Tax	AMC Section 3-62
Affordable Housing Fee	AMC Section 27-1
Development Impact Fee	AMC Section 27-3
Sewer Connection Fee	AMC Section 18.3.
Community Planning Fee	