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Andrew Kershen
Staff Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

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**LAND EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR THE ENCINAL
TERMINALS PROJECT**

This LAND EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR THE ENCINAL TERMINALS PROJECT (“**Agreement**”) is dated for reference as of _____, 202___. The parties to the Agreement are the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION (“**Commission**”), the CITY OF ALAMEDA, a municipal corporation (“**City**”), and NORTH WATERFRONT COVE LLC, a California limited liability company (“**North Waterfront**”). The Commission, City, and North Waterfront are referred to together as the “**Parties**.” This Agreement is entered into pursuant to Public Resources Code section 6307.

RECITALS

A. This Agreement concerns approximately 32 acres of land located in the City commonly known as Encinal Terminals (“**Project Area**”). The Project Area is surrounded by the Alaska Basin to the west, the Oakland Estuary to the north, and the Fortman Marina to the east, and includes submerged lands.

B. This Agreement authorizes an exchange of lands that will impress or confirm the public trust on certain lands within the Project Area (“**Public Trust Lands**”), described in Exhibit A (Legal Description and Illustrative Plat of Public Trust Lands), and will terminate any public trust interest in certain other lands within the Project Area (“**Trust Termination Lands**”), described in Exhibit B (Legal Description and Plat of Trust Termination Lands). The Public Trust Lands and Trust Termination Lands are referred to together as the “**Exchange Lands**.”

C. Upon its admission to the Union on September 9, 1850, the State of California (“**State**”), by virtue of its sovereignty, received all right, title, and interest in certain tide and submerged lands (collectively “**tidelands**”) within its boundaries up to the ordinary high water mark, subject to the public trust for commerce, navigation and fisheries (“**Public Trust**”).

D. In 1913, the State granted to City all of the State's sovereign right, title and interest in tidelands within the then existing boundaries of the City in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in Chapter 348, Statutes of 1913 (as amended, "**Granting Act Trust**"). The Granting Act Trust and the Public Trust are collectively referred to herein as the "**Trust**."

E. The portion of the Project Area owned by North Waterfront was included within the 1820 grant of Rancho San Antonio by the Spanish Governor of California to Luís María Peralta. On February 2, 1848, the United States and Mexico signed the Treaty of Guadalupe Hidalgo, by which the United States agreed to recognize prior Spanish and Mexican land grants. The Rancho San Antonio grant was confirmed by the United States District Court in 1871. The portion of the Project Area owned by the City consists of historic tidelands that were granted by the State to the City subject to the Trust and were ultimately filled and reclaimed.

F. In the early 20th Century, the Alaska Packers Association built the Fortman Marina, just east of the Project Area, as the winter anchor for their salmon fishing fleet. The Alaska Packers went on to construct Alaska Basin and in 1925 built Encinal Terminals. By the 1950s, Encinal Terminals was a major port for a variety of goods and the first high-speed container-handling gantry crane in the United States was installed there in 1959. However, by the 1980s, the larger container ports such as Oakland and Long Beach had taken the lead and ultimately Encinal Terminals could not compete as a shipping terminal. By the late 1980's, the gantry cranes were disassembled and the Encinal Terminals ceased port operations. The site was used for container storage until approximately 2010 and has been vacant since then. The Project Area now consists of a few vacant warehouses and shed buildings amid asphalt and concrete paving, with concrete and wooden wharves comprising the northern and western waterfronts. The wharves are in a state of disrepair and in need of seismic upgrading and/or demolition. There is presently no public access to the Project Area.

G. The Trust lands owned by the City within the Project Area, as a result of their reclamation, have been cut off from the water and, with limited exceptions, are no longer useful for Trust purposes. At the same time, the former Rancho lands within the Project Area, which are owned by North Waterfront free of the Trust, include the wharf and waterfront lands on the western and northern portions of the site, former uplands that were dredged to create Alaska Basin and the Estuary, and certain lands capable of providing public access to the water and the waterfront. The current configuration of Trust and non-Trust lands within the Project Area severely limits the site's development potential and effectively prevents the site from serving Trust purposes.

H. North Waterfront has proposed a development plan for the Project Area that includes seismically upgrading a portion of the wharf, demolishing a portion of the wharf, converting the remaining wharf and the entire waterfront into a public promenade and park, extending the San Francisco Bay Trail to include the entire site perimeter, and providing a central boulevard connecting the waterfront to the rest of the City. These major public improvements would be financed by development of the interior of the site for residential and commercial uses. Implementation of the proposed development plan is not possible without a resolution of Trust title issues and a reconfiguration of the Trust within the Project Area. City has issued a number of approvals for the development plan ("**Development Approvals**"), conditioned on execution of this Agreement.

I. Public Resources Code section 6307 provides that the Commission may enter into an exchange, with any private or public entity, of filled or reclaimed tide and submerged lands that are subject to the Public Trust, for other lands or interests in lands, if the exchange is made for certain purposes, including, without limitation: to enhance the physical configuration of the shoreline or trust land ownership; to enhance public access to or along the water; to enhance waterfront and nearshore development or redevelopment for public trust purposes; to preserve, enhance or create open space; and to resolve boundary or title disputes. The Commission must also find that the exchange meets certain enumerated conditions. This Agreement sets forth the procedures for and the terms of an exchange pursuant to section 6307. The findings made in support of this Agreement are in accordance with section 6307.

J. The land exchange and title settlement described in this Agreement is needed to confirm the State's sovereign interest in certain lands subject to the Trust; to confirm or impress the Trust on the lands of greatest value to the Trust in the Project Area; to confirm as non-Trust or terminate the Trust in areas that are of little value to the Trust, thereby making development of those areas economically feasible; and to allow the Project Area to be used to the greatest benefit of the people of this State.

K. The exchange will place or confirm in the Trust all of the lands within the Project Area that are below the current mean high tide line, certain lands above the mean high tide line that are immediately adjacent to the waterfront, and certain interior lands that will provide public access to the waterfront or are otherwise useful to the Trust. Approximately 1.9 acres of lands currently subject to the Trust will remain in the Trust, and approximately 18.7 acres will be added to the Trust. The exchange will terminate the Trust interests on approximately 4.5 acres of former tidelands within the Project Area that have been filled and reclaimed, are cut off from access to the waterfront, and are no longer needed for Trust purposes. The Trust Termination Lands were filled pursuant to highly beneficial program of harbor development and constitute a relatively small portion of the lands granted to City by the State. The exchange will result in a net increase of approximately 14 acres of trust lands, to a total of approximately 20.6 acres.

L. The Parties have conducted independent studies and evaluations of the title evidence, the principles of law, and the merits of their legal positions. The Commission has reviewed an appraisal and other information prepared to analyze monetary values of the Trust Termination Lands and the Public Trust Lands and has reached an independent conclusion regarding the economic values of these properties. The monetary value of land or interests in land to be received as Public Trust Lands is equal to or greater than the monetary value of the land or interests in land to be given in the Trust Termination Lands.

M. The land title transfers provided for in this Agreement will be accomplished through the following recorded conveyances, subject to the phasing provisions, conditions of closing, and other terms and conditions of this Agreement:

(i) City will convey to the Commission all of its right, title and interest in the Exchange Lands by quitclaim deed;

(ii) North Waterfront will convey to the Commission all of its right title and interests in the Exchange Lands by quitclaim deed;

(iii) After accepting the above conveyances, the Commission will convey to City all of its right title and interest in the Public Trust Lands, subject to the Trust, or an interim Trust lease, as set forth in Section 3 of this Agreement; and

(iv) The Commission will convey by patent the Trust Termination Lands to North Waterfront, free of the Trust.

N. The conveyances authorized by this Agreement may occur in phases, each referred to as “**Closing Phase**.” The portions of the Project Area to be exchanged in each Closing Phase (each a “**Phase Area**”), as presently anticipated by the Parties, are depicted for illustrative purposes in Exhibit C (Illustrative Plat of Phase Areas). Each Closing Phase will effectuate the conveyance of the lands within one or more Phase Areas depicted in Exhibit C, as that exhibit may be modified by the Parties as provided in this Agreement.

O. The Alameda City Council authorized City to enter into this Agreement through Ordinance _____, adopted by the City Council on _____. The Commission approved this Agreement at its meeting of _____.

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the Parties hereby agree as follows:

1. Conveyances to Effectuate Exchange. Subject to the phasing provisions, conditions of closing, and other terms and conditions of this Agreement, the Parties shall make the following conveyances of property:

a. City Conveyance to State. City shall convey, remise, release, and forever quitclaim to the Commission all of City’s right, title, and interest in the Exchange Lands. The conveyance shall be by Quitclaim Deed in the form of Exhibit H (Form of City Quitclaim Deed).

b. North Waterfront Conveyance to State. North Waterfront shall convey, remise, release, and forever quitclaim to the Commission all of North Waterfront’s right, title, and interest in the Exchange Lands, which conveyance shall be by quitclaim deed in the form of Exhibit I (Form of North Waterfront Quitclaim Deed).

c. State Conveyance of Public Trust Lands to City. The Commission shall convey, remise, release, and forever quitclaim, in trust, to City all of the State’s right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in the Public Trust Lands, which conveyance shall be by Patent in the form of Exhibit J (Form of Public Trust Patent), and the lands conveyed shall be held by City as sovereign lands subject to the Trust; provided, however, that the Commission’s obligations under this section are subject to the Interim Trust Lease provision of Section 3.

d. State Conveyance of Trust Termination Lands to North Waterfront. The Commission shall convey, remise, release, and forever quitclaim to North Waterfront all of the State’s right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in the Trust Termination Lands, which conveyance shall be by Patent in the form of

Exhibit K (Form of Trust Termination Patent) and shall specifically release and terminate any Trust interest in the lands conveyed.

2. Conveyance Order and Timing. Each conveyance listed in Section 1, above, shall be recorded in the public records of Alameda County sequentially and on the same day.

3. Interim Trust Lease. The Parties agree to use reasonable efforts to promptly seek legislation (“**Trustee Legislation**”) granting to City as trustee, subject to the Granting Act Trust, that portion the Public Trust Lands not previously granted in trust to City (“**New Trust Lands**”). If no Trustee Legislation is in effect at the time of a Closing Phase, as defined in Section 7.a. below, then the Commission shall at the closing enter into and deliver to City an interim lease (“**Interim Trust Lease**”) in substantially the form of Exhibit L (Form of Interim Trust Lease) in lieu of a Public Trust patent for the New Trust Lands to be conveyed at that Closing Phase. If, following the Commission’s conveyance of an Interim Trust Lease, Trustee Legislation becomes effective, the Commission shall, within 30 days of the City’s written request, convey to City by patent the lands subject to the Interim Lease in the manner provided in Section 1.c above.

4. State Minerals Reservation. The Commission excepts from the conveyances of the Public Trust Lands made by the Commission pursuant to this Agreement and reserves unto the State, its successors and assigns, forever, any and all minerals and any and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered in the Public Trust Lands. Such mineral rights shall include, but are not limited to, oil and gas rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State or to its successors and assigns, except that, this reservation shall not include the right of the State or its successors or assigns in connection with any mineral reservation, removal, or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by City or City’s successor, assigns, or lessees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred (500) feet below the surface of the lands without written permission of City or its successors or assigns.

5. Commission Findings. The Commission, effective upon recordation of this Agreement, makes the following findings as required by Public Resources Code section 6307 and to comply with Article X, section 3 of the California Constitution:

a. The exchange is for purposes that include resolving boundary disputes; creating and enhancing open space; enhancing the physical configuration of the shoreline and trust land ownership; improving public access to and along the water; and enhancing waterfront and nearshore development and redevelopment for Public Trust purposes.

b. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust.

c. The exchange does not substantially interfere with public rights of navigation and fishing.

d. The lands or interests in lands to be impressed with the Trust have a monetary value equal to or greater than the monetary value of the lands or interests in lands to be exchanged out of the Trust. Based on the Commission’s consideration of the appraisals, legal analyses, and configuration of Public Trust Lands and Trust Termination Lands, the Commission

finds that, if City and North Waterfront elect to proceed with phased closings, then after each Closing Phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Trust, regardless of the order in which Closing Phases proceed.

e. The Trust Termination Lands are a relatively small portion of the lands granted to the City, have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes. The exchange will not result in substantial interference with Trust uses and purposes and is consistent with and furthers the purposes of the Trust.

f. The exchange is in the best interests of the state.

6. [intentionally omitted].

7. Phased Closings.

a. Each Closing Phase shall be consummated through the offices of First American Title Company, 4750 Willow Road Suite 275, Pleasanton, California, 94588 (the “**Title Company**”). Upon satisfaction of all pre-conditions to closing required pursuant to the North Waterfront Approvals, North Waterfront and City shall establish an escrow with the Title Company and provide written notice to the Executive Officer of the Commission and designated representative of North Waterfront (the “**Closing Notice**”). The Closing Notice shall include a list of all documents required to close escrow with required signatories indicated, and drafts of all deeds, instruments, certificates of acceptance, title commitments, and other documents that are required for the closing and are within City’s and/or North Waterfront’s responsibility and control. The Parties shall use commercially reasonable efforts to close within 120 days of receipt of the notice.

b. City and North Waterfront may proceed with a series of Closing Phases, each of which shall be completed in accordance with the following provisions:

i. The boundaries of the lands to be conveyed in each Closing Phase shall substantially conform to the boundaries in one or more Phase Areas.

ii. Closing Phases may proceed in any order, except that the first Closing Phase shall include the lands within “Phase Area 1” as depicted on Exhibit C.

iii. The Closing Notice shall include, in addition to the documents listed in Section 7.a above, a notice identifying the Phase Area(s) involved in the Closing Phase, any Revised Phase Area Plan submitted pursuant to Section 7.b.v of this Agreement, and the legal descriptions for the portions of the Public Trust Lands and Trust Termination Lands to be conveyed in the Closing Phase.

iv. Within 30 days after receiving the Closing Notice, the Executive Officer of the Commission (“**Executive Officer**”), in his or her sole discretion, shall determine whether the Closing Phase or Phases described therein substantially conform to the boundaries of one or more Phase Areas depicted in Exhibit C and communicate the determination to City and

North Waterfront in writing. A Closing Phase that differs from one depicted in Exhibit C solely due to an adjustment to the boundary of one or more parcels within the Closing Phase that does not constitute a Material Parcel Change, as defined in Section 8.a. below, shall be deemed to substantially conform with Exhibit C.

v. If City and North Waterfront wish to revise the Phase Areas in a manner that would substantially differ from those depicted in Exhibit C, City and North Waterfront may, at any time, submit to the Commission a complete set of diagrams depicting such revisions (“**Revised Phase Area Plan**”). The Commission may approve the Revised Phase Area Plan and replace Exhibit C with such upon the Executive Officer’s determination that after each Closing Phase under the Revised Phase Area Plan, the cumulative lands or interests in lands that have been exchanged into the Trust will be configured in a way that furthers the purposes of the overall exchange, including, but not limited to, meeting the equal value requirement described in Section 5.d.

8. Procedures for Adjusting Parcel Boundaries. The Parties anticipate that a number of development approvals within the Project Area, including the approval of detailed infrastructure plans, subdivision maps, and parcel maps, will be obtained after the effective date of this Agreement and, in some cases, after the exchange (or relevant exchange phase) has closed. The engineering and design information developed in connection with those approvals will assist in determining the precise location of land parcel boundaries and of project infrastructure, including streets to be held subject to the Trust. Accordingly, minor adjustments to the boundaries between the Public Trust Lands and the Trust Termination Lands, as those boundaries are depicted in the exhibits to this Agreement, or as they may be described in deeds implementing this Agreement, may become necessary or desirable as more detailed site information is developed. Such a change (“**Parcel Boundary Adjustment**”) shall proceed in accordance with the following procedures:

a. City may request from the Executive Officer approval of a Parcel Boundary Adjustment. City or North Waterfront shall provide the Executive Officer with any maps, legal descriptions, surveys, or other information necessary to review the proposed Parcel Boundary Adjustment. The Executive Officer shall approve the Parcel Boundary Adjustment if he or she finds in his or her sole discretion that the Parcel Boundary Adjustment would not constitute a material change in parcel boundaries (a “**Material Parcel Change**”). For purposes of this Agreement, a Material Parcel Change shall include, but not be limited to, any change in parcel boundaries that results in a decrease of more than 0.5 acres in the total Public Trust Lands. If the Executive Officer determines that the proposed Parcel Boundary Adjustment would constitute a Material Parcel Change, he or she shall refer the Parcel Boundary Adjustment to the Commission, whose consideration of the referral shall proceed pursuant to Section 8.b.

b. The Commission may approve a Parcel Boundary Adjustment if it determines that the Parcel Boundary Adjustment, based on final legal descriptions, would not constitute a Material Parcel Change, or would constitute a Material Parcel Change but the Commission makes the findings set out in Section 5 of this agreement as to the revised Public Trust Lands configuration. The Commission shall not unreasonably delay or withhold its approval, subject to the required findings.

c. Following Executive Officer or Commission approval, City, North Waterfront, and Commission staff shall cooperate in the actions necessary to effectuate the

Parcel Boundary Adjustment, including, as necessary, the preparation of legal descriptions, deeds, and revised exhibits to this Agreement, at North Waterfront's sole cost and expense. The Parties shall prepare, execute, and record a Memorandum of Parcel Boundary Adjustment including all revised exhibits, which shall, upon recordation, be deemed to replace the corresponding exhibits to this Agreement. If an approved Parcel Boundary Adjustment affects lands previously conveyed pursuant to this Agreement, the Parties shall cooperate in undertaking any conveyances, lot line adjustments or other actions necessary to effectuate the Parcel Boundary Adjustment as to such lands

9. Conditions Precedent to Closing.

a. Legal Descriptions. It is a condition precedent to a Party's obligation to close escrow for the conveyance or acceptance of real property that the Party has approved the legal description for the real property, which approval shall not be unreasonably withheld. For the Commission, the Executive Officer may grant such approval; for City, the City Manager may grant such approval.

b. Commission's Closing Conditions. As a condition precedent to the Commission's obligation to close escrow, the Executive Officer shall have approved:

i. The condition of title and the form of the standard form policy of CLTA title insurance to be issued by the title company, in the amount of coverage reasonably requested, for any portion of the Public Trust Lands to be conveyed in the closing.

ii. The physical condition of the Public Trust Lands to be conveyed in the closing, which may include, without limitation, a determination that all remedial action necessary to protect human health and the environment with respect to Hazardous Substances has been completed to the satisfaction of the Commission and in compliance with applicable Environmental Law. For purposes of this Agreement: (1) "**Hazardous Substances**" shall mean any substance which is defined or regulated under any Environmental Law; and (2) "**Environmental Law**" shall mean all present and future federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals, authorizations and similar requirements pertaining to the protection of human health and safety or the environment.

iii. The Record of Survey described in Section 11 of this Agreement.

c. City's Closing Conditions. As a condition precedent to City's obligation to close escrow for a Closing Phase, North Waterfront shall have satisfied all conditions precedent to the City's obligation to close on that Closing Phase as set forth in the Development Approvals.

d. North Waterfront's Closing Conditions. As a condition precedent to the North Waterfront's obligation to close escrow for a Closing Phase, City shall have satisfied all conditions precedent to North Waterfront's obligation to close on that Closing Phase as set forth in the Development Approvals.

10. Deposits into Escrow.

a. Commission Deposits. At least two (2) business days prior to the closing of a Closing Phase, the Commission shall deposit the following documents into escrow:

i. A certified copy of the Minute Item for Calendar Item No. ____, the Commission public hearing on _____20_____, showing the Commission's approval of this Agreement;

ii. The Executive Officer's written approval of (A) the condition of title to the portion of the Public Trust Lands included in the Closing Phase as shown in pro forma title commitments in coverage amounts acceptable to the Executive Officer, (B) the form of title insurance to be issued, and (C) the physical condition of the Public Trust Lands;

iii. A duly signed and attested patent in the form of Exhibit K, transferring to the North Waterfront, free of the Trust, the portion of the Trust Termination Lands included in the Closing Phase; and

iv. A duly signed and attested patent in the form of Exhibit J transferring to City, subject to the Trust, the portion of the Public Trust Lands included in the Closing Phase, or, if required by Section 3, a duly executed counterpart of an Interim Trust Lease in the form of Exhibit L for those lands.

b. City Deposits. At least two (2) business days prior to the closing of a Closing Phase, City shall deposit the following documents into escrow:

i. A certified copy of City Council Resolution ____ adopted on ____, 2017, authorizing the City to enter into this Agreement;

ii. A duly signed and acknowledged quitclaim deed from City in the form of Exhibit H, transferring to the Commission all of City's right, title and interest in the portion of the Exchange Lands included in the Closing Phase; and

iii. If applicable under Section 3, an executed counterpart of the Interim Trust Lease.

c. North Waterfront Deposits. At least two (2) business days prior to the closing of a Closing Phase, North Waterfront shall deposit the following documents into escrow:

i. A duly signed and acknowledged quitclaim deed from North Waterfront in the form of Exhibit I, transferring to the Commission the portion of North Waterfront's right, title and interest in the Exchange Lands included in the Closing Phase; and

ii. Pro forma title insurance commitments for the portion of the Public Trust Lands included in the Closing Phase, in a form and with coverage amounts approved by the Commission.

d. All patents and quitclaim deeds deposited into escrow which name either City or the Commission as grantee shall include a certificate of acceptance duly executed by the grantee (which certificate may be deposited into escrow separately by the grantee), the appropriate attestations or acknowledgments, and any ancillary documents required by state law

or the City's Assessor-Recorder, such as an executed Transfer Tax Affidavits and executed Preliminary Changes of Ownership Record.

e. The Parties shall submit to the escrow agent joint escrow instructions substantially conforming to the foregoing, together with any supplemental instructions necessary to effectuate the intent of this Agreement as may be agreed to in writing by the Parties.

11. Records of Survey. Immediately following the closing for each Closing Phase, City shall record (or cause to be recorded) in the Office of the Recorder of the County of Alameda a record of survey, reviewed and approved by the Parties and based on field surveys, showing the boundaries of the Public Trust Lands and Trust Termination Lands (or the portions thereof conveyed in that Closing Phase, as applicable). Each record of survey shall establish the physical location of boundaries and shall define same with sufficient controlling monuments appropriately placed. If any boundaries shown on a record of survey are later the subject of a Parcel Boundary Adjustment pursuant to Section 8 of this Agreement, City shall place or cause to be placed monuments sufficient to establish the adjusted boundary, and shall file or cause to be filed in the Office of the Recorder of the County of Alameda a record of survey, reviewed and approved by the Executive Officer of the Commission, reflecting the Parcel Boundary Adjustment. North Waterfront shall be responsible for the costs of preparing and recording any survey required by this section. The Commission's approval of the survey may be given by its Executive Officer.

12. Close of Escrow and Recordation. The joint escrow instructions for each Closing Phase shall direct the escrow agent to notify the Parties, upon the agent's receipt of all documents listed and described in the escrow instructions, of its intention to close escrow and to record this Agreement, if not already recorded, and all deeds and patents pertaining to the Closing Phase, in the manner specified in, and subject to the requirements of, the escrow instructions.

13. Impacts of Sea Level Rise.

a. The exchange authorized by this Agreement is intended to establish with certainty the boundary between lands free of the Trust and lands subject to the Trust within the Project Area, which boundary is intended to be fixed and not subject to change by erosion, accretion, reliction, or submergence, whether due to natural or artificial causes.

b. Nothing in this Agreement obligates the Commission to protect or cause to be protected any privately held uplands, including, but not limited to, constructing or causing to be constructed any protective structures that benefit any privately held uplands. Further, nothing in this Agreement shall be construed as creating any duty on the part of City or the Commission to the owners or lessees of any properties within the Project Area to provide protection against sea level rise, inundation from any cause, avulsions, or tsunamis.

c. Nothing in this Section is intended to limit (a) rights a Party may have under applicable law to take actions to preserve the boundaries established by this Agreement, including without limitation the rights of a Party to undertake measures to protect its property, including lands freed from the Trust at the locations established pursuant to this Agreement, or to file an action within the applicable limitations period to preserve the title interests of such lands established by this Agreement, or (b) rights the public has under applicable law to navigate, fish, or otherwise use navigable waters on Inundated lands, including but not limited to any rights

arising under *Bohn v. Albertson* (1951) 107 Cal.App.2d 738 and *People ex rel Baker v. Mack* (1971) 19 Cal.App.3d 1040.

14. Judicial Confirmation of Validity of Settlement. City or North Waterfront may choose to submit the settlement embodied in this Agreement to a court of competent jurisdiction to confirm the validity of the settlement by court judgment pursuant to Code of Civil Procedure sections 760.010 through 764.080, inclusive. The Commission shall cooperate with City and/or North Waterfront in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the settlement embodied in this Agreement, each Party shall be deemed to have waived any right to appeal from such judgment. Except as the parties may otherwise agree, North Waterfront shall be responsible for all costs incurred by the Commission and the City associated with their participation in a judicial action initiated by North Waterfront pursuant to this section, including without limitation reasonable attorneys' fees and costs.

15. Effect of a Judicial Finding of Invalidity. A judicial determination that any portion of this Agreement is invalid shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties shall amend this Agreement or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

16. Indemnification and Defense of Claims.

a. North Waterfront shall indemnify, defend and hold harmless the Commission and the City, and their respective officers, agencies, commissions, and employees from and against any and all claims, liability, losses, costs and expenses (collectively "**Claims**"), including third party Claims and Claims by any governmental agency, relating to any Hazardous Materials that (1) as of the date of a closing for a Closing Phase are located at, on, over, under, or flowing through any portion of that portion of Public Trust Lands to be conveyed (or to be under an Interim Trust Lease) at the closing within the area identified as the North Waterfront Indemnification Area on Exhibit M, and (2) are located at, on, over, under, or flowing through any portion of the Trust Termination Lands to be conveyed at the Closing Phase, except that this clause (2) shall not apply to any claim arising solely from a release occurring after the closing date for the Closing Phase, where the release is caused by the indemnified party's gross negligence or willful misconduct.

b. The Parties agree to use reasonable efforts to defend this Agreement, any deed, patent, agreement, or other instrument executed pursuant thereto, and any decision made by a Party to approve the foregoing, including the approval of any required findings related thereto, in any legal action challenging the validity or legality thereof. In any such action, North Waterfront shall reimburse the Commission and City for all reasonable costs incurred in connection with such action, including but not limited to reasonable staff time and attorneys' fees incurred by the Commission or City, and including but not limited to any award of attorney fees made by a court of competent jurisdiction against the Commission or City, on such reasonable terms and conditions as the Parties may establish by separate agreement. Nothing in this Section limits the discretion of the Commission or City, at its sole cost and expense, to conduct its own defense or take the lead in its own defense.

17. Execution Before a Notary Public. All signatures of the Parties to this Agreement and all deeds and other instruments of conveyance executed pursuant to this Agreement shall be

acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Office of the Clerk-Recorder of the County of Alameda, California. The Governor's signature shall be attested to by the Secretary of State.

18. Agreement for Compromise and Settlement. It is expressly understood by the Parties that the provisions set forth in this Agreement have been agreed upon for purposes of compromising and settling disputed interests in the Public Trust Lands and Trust Termination Lands.

19. No Determination of Trust Consistency. Nothing in this Agreement shall be construed as a determination by the Commission regarding the Public Trust consistency of any use of the Public Trust Lands authorized by the Development Approvals.

20. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests in or to those Public Trust Lands or Trust Termination Lands to be transferred at Closing (or portions thereof to be transferred in a Closing Phase, as applicable) prior to the consummation of the transfers of those parcels (or portions thereof) as provided for herein, without the prior written consent of the Party to receive fee title following consummation of the transfer. Notwithstanding anything to the contrary in the foregoing, neither Commission nor City shall unreasonably withhold, condition or delay its approval of a sale, transfer or assignment (each a "Transfer") of North Waterfront's interest in the Public Trust Lands, provided that the Transfer: (i) includes all of the Public Trust Lands not yet exchanged; (ii) is consistent with the Development Approvals, and (iii) is conditioned on the assumption by the transferee of all obligations of North Waterfront under this Agreement.

21. Further Assurances. So long as authorized by applicable laws to do so, the Parties will perform such other acts, and execute, acknowledge and deliver all further conveyances and other instruments that may be necessary to fully assure to the other Parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

22. Allocation of Costs and Expenses. North Waterfront shall pay the expenses and fees of the escrow agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. North Waterfront shall also pay all closing costs, including without limitation all expenses and fees associated with any title insurance policy.

23. No Admission or Effect if Agreement Not Made Effective. If this Agreement does not become effective, or becomes effective but is declared by a final non-appealable judgment of a court of competent jurisdiction to be invalid, nothing in it shall constitute, or be construed as, an admission by any Party hereto or evidence concerning the boundaries, physical character, or character of title or interest in the Project Area.

24. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the Project Area.

25. No Damages. No party shall have any remedy for monetary damages against another party for breach of this Agreement, excepting recovery of attorneys' fees to the extent provided by this Agreement.

26. Notice: Any notice required pursuant to this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or overnight mail, return receipt requested, with postage to the addresses shown below or to such other address as the applicable Party may provide. For the convenience of the Parties, notice also may be given by electronic mail in addition to one of the above methods, at the numbers listed below:

Commission:

State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attn: Chief Counsel
Email: _____

With copies to:

Office of the Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612
Attn: _____
Email: _____

City:

City of Alameda
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501
Attn: City Manager
Email: manager@alamedaca.gov

With copies to:

City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attn: City Attorney
Email: cityattorney@alamedacityattorney.org

and

Bill White
Shute, Mihaly & Weinberger, LLP
396 Hayes St.
San Francisco, CA 94102
Email: white@smwlaw.com

North Waterfront:

North Waterfront Cove LLC
12667 Alcosta Blvd., Suite 170
San Ramon, CA 94583
Attn: Michael S. O'Hara
Email: mohara@timlewis.com

With copies to:

Tim Lewis
North Waterfront Cove LLC
3500 Douglas Boulevard, Suite 270
Roseville, CA 95661
Email: tlewis@timlewis.com

and

Briscoe Ivester & Bazel
155 Sansome Street
7th Floor
San Francisco, CA 94194
Attn: John Briscoe
Email: jbriscoe@briscoelaw.net

27. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the Parties each agree to accept the conveyance of rights, titles, and interests in land referred to in this Agreement and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

28. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent or satisfaction shall be given on behalf of the Party by the representative(s) listed below. The City Manager is hereby expressly authorized to sign all deeds, leases, and other instruments and documents necessary to implement this Agreement on behalf of City.

a. If the Party is the Commission: by the Commission, as may be evidenced by appropriate document executed by the Executive Officer of the Commission.

b. If the Party is City: by the City Manager.

c. If the Party is North Waterfront: by North Waterfront's authorized representative.

29. Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement, in a legal description or the reference to or within any exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits, the Parties affected by the error by mutual agreement may correct such error by memorandum reflecting the intent of the Parties concerning the relevant exhibits, legal descriptions, or other provisions at the time of approval and execution of this Agreement. The Executive Officer of

the Commission, the City Manager of City, and North Waterfront may approve and execute such a “**Memorandum of Correction**” without the necessity of amendment of this Agreement.

30. Agreement Binding on Successors. All the terms, provisions, and condition of this Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors, and assigns of the Parties.

31. Modification. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the Parties to this Agreement.

32. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

33. Headings. The title headings of the Sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

34. Effective Date. This Agreement shall become effective upon execution by all Parties and the Governor. For purposes of bringing a validation action under Section 14, this Agreement shall be deemed entered into upon execution by the Executive Officer of the Commission, who shall be the last to sign prior to the signature of the Governor.

35. Termination. If the conveyances called for under this Agreement have not been completed by **[15 years from effective date]**, this Agreement shall terminate and be of no further force and effect unless extended in writing by both the City and the Commission, each in their sole and absolute discretion.

36. Exhibits A through M. Exhibits A through M, inclusive, are attached to this Agreement and are incorporated by reference as parts of it.

To witness this Agreement, a duly authorized officer of each Party has executed it below on the date opposite each signature.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED: _____

By: _____
Jennifer Lucchesi
Executive Officer

Approved as to form:

Rob Bonta
Attorney General of the
State of California

DATED: _____

By: _____
Deputy Attorney General

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DATED: _____

CITY OF ALAMEDA

By: _____

Eric J. Levitt
City Manager

Approved as to form:

DATED: _____

By: _____

Yibin Shen
City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DATED: _____

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: _____
J. Timothy Lewis, President

IN APPROVAL WHEREOF, I, Gavin C. Newsom, Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this _____, 20__.

Gavin C. Newsom
Governor, State of California

Attest:
SECRETARY OF STATE

By: _____
Dr. Shirley N. Weber
Secretary of State

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Name/Description</u>
A.	Legal Description and Illustrative Plat of Public Trust Lands
B.	Legal Description and Illustrative Plat of Trust Termination Lands
C.	Illustrative Plat of Phase Areas
D.	Intentionally omitted
E.	Illustrative Plat of North Waterfront Indemnification Area
F.	Intentionally omitted
G.	Intentionally omitted
H.	Form of City Quitclaim Deed
I.	Form of North Waterfront Quitclaim Deed
J.	Form of Public Trust Patent
K.	Form of Trust Termination Patent
L.	Form of Interim Trust Lease
M	North Waterfront Indemnification Area