

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT FOR ENCINAL TERMINALS PROJECT BY AND BETWEEN THE CITY OF ALAMEDA AND NORTH WATERFRONT COVE, LLC ("DEVELOPER") GOVERNING THE ENCINAL TERMINALS PROJECT FOR REAL PROPERTY LOCATED AT 1521 BUENA VISTA AVENUE AND APPROVING AND AUTHORIZING THE ASSISTANT CITY MANAGER, OR DESIGNEE, TO EXECUTE A LAND EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR THE ENCINAL TERMINALS PROJECT BY AND AMONG THE STATE OF CALIFORNIA ACTING BY AND THROUGH THE STATE LANDS COMMISSION, THE CITY AND DEVELOPER SUBSTANTIALLY IN THE FORM ATTACHED HERETO

WHEREAS, the City of Alameda owns an approximately 6.4 acre parcel of former tidelands, held by the City in trust for the people of the State of California, identified by Assessor's Parcel Number (APN) 072-382-009 ("City Parcel"); and

WHEREAS, pursuant to California law, the City Parcel may only be used for purposes consistent with the public trust for commerce, navigation and fisheries ("Public Trust"), such as maritime purposes or public waterfront open space; and

WHEREAS, the current configuration of the City Parcel makes it unsuitable for maritime purposes, public waterfront open space, and other trust purposes because it is landlocked on three sides by land owned by North Waterfront Cove, LLC and by the Forman Marina parking lot on the fourth side; and

WHEREAS, North Waterfront Cove, LLC owns approximately 26 acres of waterfront and submerged lands ("Encinal Terminals Parcel"), which are suitable for maritime and public waterfront open space purposes; and

WHEREAS, the precise location of the boundary between the City Parcel and the Encinal Terminals Parcel is disputed and subject to uncertainty; and

WHEREAS, the City Parcel and the Encinal Terminals Parcel have been vacant for over 10 years and are currently financially infeasible to develop for maritime purposes, public open space purposes, or for housing purposes due to the current configuration of the properties; and

WHEREAS, the City of Alameda wishes to settle the boundary dispute, reconfigure the properties so that the waterfront, submerged lands, and central access are brought within public ownership subject to the Public Trust, and increase opportunities for maritime use, public open space use, and housing uses on the properties; and

WHEREAS, the City of Alameda Planning Board has recommended City Council approval of a revised Master Plan for the properties, which proposes a reconfiguration of the property lines to facilitate the development of public maritime uses, public open space uses, and residential uses to facilitate the accommodation of the City's Regional Housing Needs Allocation; and

WHEREAS, the proposed reconfiguration of the property lines would result in public ownership, public access and public use of (1) 7.25 acres of land to be improved by North Waterfront Cove, LLC for the Bay Trail and waterfront public promenades and plazas, public roads through the center of the site from Clement Avenue to the northern waterfront edge of the site, and completion of the waterfront Clement Avenue extension and Cross Alameda Trail from Atlantic Avenue to Entrance Road, and (2) 13.2 acres of submerged lands, which shall be improved by removal of the current deteriorating wharf and replaced with a 0.6 acre rehabilitated and improved wharf, a public kayak launch and a public water shuttle landing; and

WHEREAS, a disposition and development agreement between the parties, attached hereto as **Exhibit A** ("Disposition and Development Agreement") is necessary to ensure that the exchange of lands between the City and North Waterfront Cove, LLC is implemented in a phased manner to protect the interests of the public and ensure that at each phase of the project, the public's ownership, access and use of public lands is increased and improved; and

WHEREAS, the reconfiguration of the land as shown in the Disposition and Development Agreement ("trust exchange") requires approval of a Land Exchange and Title Settlement Agreement for the Encinal Terminals Project ("Exchange Agreement") between the City of Alameda, the State Lands Commission, and North Waterfront Cove, LLC, in accordance with Section 6307 of the Public Resources Code, attached hereto as **Exhibit B**; and

WHEREAS, based on an evaluation of the title evidence and an appraisal prepared for the trust exchange, the value of the lands to be exchanged into the Public Trust is greater than the value of the lands to be exchanged out of the Public Trust; and

WHEREAS, on January 4, 2022, the City Council conducted a public hearing to consider the Disposition and Development Agreement and the Exchange Agreement; and

WHEREAS, on July 17, 2007, the City Council adopted Resolution Nos. 14134 and 14135 certifying the Final Environmental Impact Report for the Northern Waterfront General Plan Amendment ("Northern Waterfront EIR") pursuant to the California Environmental Quality Act ("CEQA"), and on December 19, 2017, the City Council adopted Resolution No. 15337 certifying a Focused Supplemental Environmental Impact Report for development of the proposed Master Plan and Exchange Agreement ("Focused Supplemental EIR", and with the Northern Waterfront EIR, "Previous CEQA Documents").

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. The City Council, based on its independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. The proposed project would not require major revisions to the Previous CEQA Documents due to new significant impacts or due to a substantial increase in the severity of the significant environmental effects. There have been no substantial changes with respect to the circumstances under which the project would be undertaken that would require major revisions of the Previous CEQA Documents due to new or substantially increased significant environmental effects, and there has been no discovery of new information of substantial importance that would trigger or require major revisions to the Previous CEQA Documents due to new or substantially increased significant environmental effects. Thus, the City can rely on the Previous CEQA Documents and no further environmental review is required for the proposed project.

Section 2. The City Council hereby approves the Disposition and Development Agreement between the City of Alameda and North Waterfront Cove, LLC, the form of which shall be substantially as attached hereto as **Exhibit A**, and authorizes the Assistant City Manager of the City of Alameda or designee to execute, for and on behalf of the City of Alameda, the Disposition and Development Agreement on or after the effective date of this Ordinance.

Section 3. The City Council, as trustee of the tidelands parcel on behalf of the people of the state, hereby finds:

a. The trust 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 trust exchange will provide a significant benefit to the Public Trust.

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

d. The lands or interests in lands to be impressed with the Public 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 Public Trust. After each phase of the exchange, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Public 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 Public Trust, regardless of the order in which the phases proceed.

e. The lands in which the Public Trust will be terminated are a relatively small portion of the Public Trust 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 Public Trust uses and purposes and is consistent with and furthers the purposes of the Public Trust.

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

Section 4. The City Council hereby approves the Exchange Agreement with the State of California, acting by and through the State Lands Commission and North Waterfront Cove, LLC, the form of which shall be substantially as attached hereto as **Exhibit B**, and authorizes the Assistant City Manager of the City of Alameda or designee to execute, for and on behalf of the City of Alameda, the Exchange Agreement on or after the effective date of this Ordinance, subject to such further changes and revisions as deemed necessary and appropriate to implement this Ordinance.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance if, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this Ordinance, and each section, subsections, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared to be invalid and unconstitutional.

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

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

**DISPOSITION AND DEVELOPMENT AGREEMENT
FOR ENCINAL TERMINALS PROJECT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT FOR ENCINAL TERMINALS PROJECT (“**Agreement**” or “**DDA**”) is entered into by and between the City of Alameda, a municipal corporation and California charter city (“**City**”), and North Waterfront Cove, LLC, a California limited liability company (“**Developer**”). City and Developer are sometimes collectively referred to in this Agreement as the “**Parties**,” and individually as a “**Party**.”

RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Article 10 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

B. The Developer is the owner of approximately 25.91 acres of real property, consisting of approximately 17.33 acres of land and 8.58 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**”).

C. The City holds in trust approximately 6.4 acres of land-locked 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 (“**City Parcel**”, and together with the Encinal Terminals Parcel, the “**Property**”). The City currently leases the City Parcel to Developer pursuant to that certain Amended and Restated Lease dated January 6, 1984 (as amended, the “**Lease**”).

D. Developer proposes to develop the Project on the Property. The Project is a transit oriented mixed-use project that includes the development of certain waterfront park improvements and other public infrastructure on portions of the Encinal Terminals Parcel, and the development of housing and other private uses on portions of the City Parcel. Accordingly, the Project requires a reconfiguration of public and private lands within the Property.

E. The City Parcel consists of filled former tidelands that are subject to the public trust for commerce, navigation and fisheries (“**Public Trust**”). The Encinal Terminals Parcel consists in part of former uplands that have been dredged and are now submerged, and uplands that are on the waterfront or are otherwise useful to the Public Trust, but that are not, or may not be, subject to the Public Trust. In order to complete the Project, the Parties wish to enter into an agreement with the State of California, acting by and through the State Lands Commission (“**SLC**”) to exchange lands and settle boundary disputes in a manner that improves the configuration of Public Trust lands at the site (“**State Exchange Agreement**”). The State Exchange Agreement will accomplish this through a series of conveyances among the parties (“**Public Trust Exchange**”) that will terminate the Public Trust in the portions of the Property conveyed to Developer (“**Trust**”).

Termination Lands”) and place in the Public Trust the portions of the Property conveyed to the City (“**Public Trust Lands**”). This Agreement provides the terms and conditions by which the Parties may convey lands to effectuate the Public Trust Exchange in phases (each a “**Phase**”), in accordance with the State Exchange Agreement and the phasing plan set forth in the Tidelands Exchange Master Plan, as more specifically described in the Phasing Plan shown in Exhibit C attached hereto.

F. Developer understands and agrees that the Project must be consistent with the Project Approvals and other regulatory and policy documents, and that this DDA is entered into in furtherance of and is intended to implement the goals and policies contemplated by the Master Plan.

G. Consummation of the transactions contemplated in this DDA will permit Developer to develop and construct the Project consistent with the Project Approvals. Construction of the Project will (1) provide new market rate and affordable housing units during an unprecedented housing crisis; (2) place the waterfront and adjacent submerged lands in public ownership, for the use and enjoyment of the People of California; (3) remove blight, rehabilitate dilapidated and inaccessible wharves, and remove obstructions and pollutants from Alaska Basin that interfere with its use and enjoyment by the public; (4) provide new public open space along an improved and accessible public shoreline which will be maintained in perpetuity at no cost to the City, (5) provide commercial recreational opportunities and employment opportunities for residents of the City created by the businesses in the commercial space within the Project; (6) ensure the productive use of underdeveloped property and foster orderly growth and quality development in the City; (7) proceed in accordance with the goals and policies set forth in the City of Alameda General Plan (“**General Plan**”), implement the City’s stated General Plan policies, and transition old industrial vacant lands to mixed use, waterfront development; and (8) provide substantially increased property tax and sales tax revenues to the City.

H. The Trust Termination Lands to be conveyed to Developer include approximately 4.5 acres of the City Parcel. The Public Trust Lands to be conveyed to City include: (1) approximately 13.2 acres of submerged lands, of which 0.6 acres shall be improved with a publicly accessible and improved wharf; (2) approximately 4.25 acres of waterfront land for the Bay Trail and waterfront promenades and plazas; and (3) a minimum of 2.2 acres of land to be used for public roads through the center of the site from Clement Avenue to the northern waterfront edge of the site, and .25 acres of land for Clement Avenue right-of-way, each as more specifically described in the Phasing Plan. This Agreement also provides for the termination of the Lease with respect to the Public Trust Lands being exchanged in each Phase so that Developer may deliver said property to the City free and clear of any encumbrances.

I. On July 17, 2007, City adopted Resolution Nos. 14134 and 14135 certifying the Final Environmental Impact Report for the Northern Waterfront General Plan Amendment (“**Northern Waterfront EIR**”) pursuant to the California Environmental Quality Act (“**CEQA**”), and on December 19, 2017, City adopted Resolution No. 15337 certifying a Focused Supplemental Environmental Impact Report for the Project (“**Focused Supplemental EIR**”, and together with the Northern Waterfront EIR, “**EIR**”).

J. On January ____, 2022, the City Council, at a duly noticed public hearing, and after consideration of all matters in the record, including without limitation City staff's report on this Agreement, the Planning Board's recommendations thereon, all other evidence heard and submitted at such public hearing found that approval of the Agreement is in compliance with CEQA. The City determined that no further environmental review under CEQA was required in order to approve this Agreement based on CEQA Guidelines Section 15182 and 15183 and has made the required CEQA findings in connection with the certified EIR that has served as the environmental documentation under CEQA for the City's consideration of approval of this Agreement and the Project.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and obligations of the Parties set forth herein, the Parties agree as follows:

ARTICLE 1

TERM OF THE AGREEMENT

Section 1.1 Effective Date. The Effective Date of this Agreement is stated in the first paragraph of this Agreement and represents that date which is thirty (30) days after the date the ordinance approving this Agreement is adopted by the City Council. Within ten (10) days of the mutual execution of this Agreement, Developer shall record the DDA Memorandum substantially in the form attached as Exhibit D in the public records with the Alameda County Recorder (the "**Official Records**") against the Property.

Section 1.2 Term. The term of this Agreement ("**Term**") shall commence on the Effective Date and terminate on the earliest of: (a) the date which is fifteen (15) years after the Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; (c) the date of any termination of that certain Development Agreement (Encinal Terminals Project) dated ____, 2022 ("**Development Agreement**"); (d) 24 months after the Effective Date, if the State Exchange Agreement has not been fully executed by that date; © the date of any termination of the State Exchange Agreement; or (f) the date of issuance by the City of the final certificate of occupancy for the Project ("**Expiration Date**").

Section 1.3 Extension of the Term. Subject to the termination provisions in this Agreement, including without limitation Section 1.2, the term of this DDA shall automatically be extended to conform to any extension of the term of the Development Agreement.

ARTICLE 2

CONSIDERATION

Section 2.1 Consideration. In consideration for the City's conveyance of the Trust Termination Lands, Developer shall provide the Public Trust Improvements, and shall convey the Public Trust Lands to the City, through the State of California, pursuant to the State Exchange Agreement. The City has determined that Developer's conveyance of the Public Trust Lands, its

agreement to complete the Public Trust Improvements, and its release of its rights and claims under the Lease, equals or exceeds the value of the Trust Termination Lands to be conveyed to Developer.

ARTICLE 3

PHASING OF IMPROVEMENTS AND PUBLIC TRUST EXCHANGE

Section 3.1 Property Exchange. The Parties agree to exchange the Trust Termination Lands and the Public Trust Lands (collectively, as and when exchanged, the “Exchange Lands”) in accordance with the terms and conditions of the State Exchange Agreement and this Agreement.

Section 3.2 Phasing of Public Trust Exchange. The obligations of the Developer and the City to complete each Phase of the conveyances set forth in the State Exchange Agreement are subject to the satisfaction, prior to the Close of the property comprising each Phase, of the conditions contained herein. The Developer and the City agree that each will, in good faith, endeavor to remove all said contingencies and conditions that are within Developer and City’s respective control

Section 3.3 Phasing Plan. The conveyance of the Trust Termination Lands to Developer shall occur in four Phases, with each Phase conditioned on Developer’s completion of construction of certain Public Trust Improvements, in accordance with the Phasing Plan (Exhibit C). Construction of the Public Trust Improvements within each of the four public improvement areas (each a “**PIA**”), shown on the Phasing Plan, and the conveyance of the Trust Termination Lands within each of the three Tidelands Transfer Areas (each a “**TTA**”) shown on the Phasing Plan as shown in Exhibit C, will occur as follows, in all cases subject to the conditions precedent for closing as provided herein:

(a) Upon completion, and acceptance by the City, of all of the Public Trust Preparatory Improvements, and the Public Trust Improvements within PIA-C, Developer shall convey PIA-C to the City, and the Public Trust will be terminated in the Trust Termination Lands owned by Developer, in accordance with the State Exchange Agreement (“**Phase 1**”).

(b) Following or concurrently with the closing of Phase 1, the Parties may proceed with the closing of any of Phases 2, 3 and 4, in any order, in accordance with the following:

- (i) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-EREP, City shall convey TTA-EREP to Developer and Developer shall convey PIA EREP to City, in accordance with the State Exchange Agreement;
- (ii) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-AB, City shall convey TTA-AB to

Developer and Developer shall convey PIA-AB to City, in accordance with the State Exchange Agreement.

- (iii) Upon completion, and acceptance by the City, of the Public Trust Improvements within PIA-NW, City shall convey TTA-NW1 and TTA-NW2 to Developer and Developer shall convey PIA-NW to City, in accordance with the State Exchange Agreement.

ARTICLE 4 **CLOSING**

Section 4.1 Opening Escrow. Following completion and approval by the City of all Public Trust Improvements for the applicable Phase, Developer shall deliver written notice to the City and SLC that it is ready to proceed to Close the Public Trust Exchange for said applicable Phase and provide a proposed Closing Date, which Closing Date shall be no less than 60 days from the date such written notice is delivered to the City (each, a “**Closing Notice**”). The Closing of any Phase shall be completed through an escrow and the applicable Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement and the State Exchange Agreement as to each Phase.

Section 4.2 Close of Escrow. Subject to the satisfaction of the applicable conditions precedent set forth in Section 4.3 below, each escrow shall close in accordance with the terms set forth in the State Exchange Agreement. In all events the Parties shall use their best efforts to close on the exchange of the Property comprising each Phase no later than the proposed Closing Date identified in the Closing Notice. On the applicable Closing Date, the parties shall convey deeds and all other necessary documents as contemplated in the State Exchange Agreement, or required by Escrow Holder, with respect to the applicable portions of the Property.

Section 4.3 Conditions Precedent to Closing.

(a) Conditions Precedent to the City’s Obligation. The obligation of the City to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Closing Date of the following conditions, unless waived by the City in its sole discretion:

- (i) All conditions to City’s obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied.
- (ii) Developer has submitted to the City, and the City Manager has approved, the organizational documents of the entity intending to take title to the portion of the Property in the applicable Phase;
- (iii) There are no uncured Developer Events of Default.
- (iv) Developer, if it is an assignee approved by City in accordance with this Agreement, has executed an assignment and assumption of this

Agreement as it pertains to the applicable Phase, and City has approved the form of the assignment and assumption;

- (v) Developer has reimbursed the City for all costs incurred in negotiating and executing the State Exchange Agreement, and for all fees and costs incurred by the City in connection with the closing for the portion of the Property comprising the Phase, including, without limitation, any attorneys' fees, and any premiums paid for a title policy required by the State Exchange Agreement.
- (vi) Developer has granted to the City a public access easement over the entirety of the Perimeter Pathway, defined below, in a form approved by the City.
- (vii) Developer has executed an agreement to provide for labor peace, mutually agreed to by Developer and Building Trades Council of Alameda County, generally consistent with the standards set forth in Resolution 15740 or as otherwise exempted from this project stabilization agreement requirement by the City, through a subsequent act of the Alameda City Council. No construction work may commence until such a labor peace agreement has been executed or an exemption has been granted by the City.
- (viii) That certain lease of the City Property dated _____ ("**City Property Lease**") has been terminated, or Developer has deposited into escrow a duly executed counterpart of a termination of lease ("**Termination of Lease**") terminating the City Property Lease, in a form approved by the City.

(b) Conditions Precedent to Developer's Obligation. The obligation of the Developer to consummate the transactions hereunder shall be subject to the fulfillment on or before the Closing Date for the applicable Phase ("**Phase Closing Date**") of the following conditions, unless waived by the Developer in its sole discretion:

- (i) All conditions to City's obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied.
- (ii) Developer has received confirmation from the Escrow Holder that the Escrow Holder is irrevocably committed (upon payment of the applicable title premium and the Close of Escrow) to issue the a title policy to Developer subject only to the Permitted Exceptions;
- (iii) There has been no material adverse change between the date of this Agreement and the applicable Closing Date in the physical condition of the applicable Trust Termination Lands for the Phase that would render said property unsuitable for the development of

said property pursuant to the Project Approvals as applicable to that Phase;

- (iv) There are no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which did not exist as of the date of this Agreement and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for dwelling units subject to the Project Approvals within the applicable Trust Termination Lands being conveyed;
- (v) There is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Trust Termination Lands for the Phase or the development of said property pursuant to the Project Approvals;
- (vi) All of the representations and warranties of the City contained in this Agreement are true and correct in all material respects as of the Closing Date;
- (vii) There are no uncured City Events of Default;
- (viii) The City has provided Developer with approved copies of all right of entries, encroachment permits and/or temporary construction easements reasonably necessary to construct any on-site or off-site improvements that are located on the City Property or on off-site property owned by the City, and are allocated to the applicable Phase (the “**Rights of Entry**”); and
- (ix) The Project Approvals shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum.

(c) Mutual Conditions Precedent. The following are mutual conditions precedent to the Parties’ obligation to close any Phase of the Public Trust Exchange, unless waived by both Parties, each in their sole discretion:

- (i) The Parties shall have executed the State Exchange Agreement with the SLC, and all conditions to the SLC’s obligation to close on the portion of the Property comprising the applicable Phase under the State Exchange Agreement have been satisfied; and
- (ii) A community facilities district (“**CFD**”) or municipal services district (“**MSD**”) shall have been established to cover the costs of maintaining the Public Trust Improvements within the Project, including appropriate capital reserves. In addition, a geologic hazard abatement district (“**GHAD**”) or similar district, shall also have been formed to cover future costs for sea level rise adaptive measures or maintenance of other related Public Trust Improvements. Developer shall prepare and submit to the City all

documentation necessary for formation of any CFD or MSD and GHAD for the Project. The City shall work in good faith to facilitate the formation of any CFD and GHAD. Developer shall be solely responsible for all costs, including the City's costs, to establish any CFD or GHAD for the Project.

- (iii) Developer shall have completed all Public Trust Improvements for the applicable Phase in accordance with the terms of this Agreement, the Subdivision Improvement Agreement, and the Public Trust Improvement Plans (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations);
- (iv) The City, in its sole discretion, shall have approved the condition of title and the physical condition of the Public Trust Lands, including the condition of any Public Trust Improvements on those lands, to be conveyed in the applicable Phase; and
- (v) Developer shall have obtained approval from the City of a final parcel map or conveyance map that includes the applicable Phase.

Section 4.4 Closing Deliverables.

(a) City Deliverables. At least one (1) Business Day prior to the Closing Date for each Phase, the City shall deliver to Escrow Holder all documents that the City is required to deposit for the Closing under the State Exchange Agreement, and each of the following, if applicable:

- (i) A duly executed original of all required Rights of Entry;
- (ii) A duly executed original counterpart of the Termination of Lease, if applicable;
- (iii) Such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the City;
- (iv) An executed closing statement reasonably acceptable to the City; and
- (v) Such affidavits and other documents that are consistent with this Agreement and which are reasonably required by the Escrow Holder.

(b) Developer Deliverables. At least one (1) Business Day prior to the Closing Date for the Property comprising each Phase, Developer shall deliver to Escrow Holder all documents Developer is required to deposit for such Closing for each Phase under the State Exchange Agreement, and each of the following, if applicable:

- (i) Such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of Developer;
- (ii) A fully executed assignment and assumption agreement required by Section 4.3(a)(iv), if applicable;
- (iii) A duly executed counterpart of the Termination of Lease required by section 4.3(a)(viii), if applicable;
- (iv) An executed closing statement reasonably acceptable to Developer;
- (v) Such affidavits and other documents that are consistent with this Agreement and which are and reasonably required by the Escrow Holder; and
- (vi) Funds in the amount to cover all closing costs and fees, the premium for any title policy required by the State Exchange Agreement, and any unpaid amounts owed to the City as reimbursement for the City's costs incurred in connection with the State Exchange Agreement or the Closing for the portion of the Property comprising the applicable Phase.

Section 4.5 Condition of Title. The legal description of the Exchange Lands to be conveyed by City shall be approved by State Lands, the City and Developer prior to closing on the portion of the Property comprising the applicable Phase. At closing, the Trust Termination Lands shall be free of all encumbrances except for the Permitted Exceptions, and the Public Trust Lands shall be free of all encumbrances except for those approved by the City in its sole discretion.

Section 4.6 Costs of Escrow and Closing. City and Developer agree that the issuance of all title policies, the determination of Closing costs, and all matters related to the recording of documents necessary to complete a Closing of an applicable Phase shall be governed by the terms set forth in the State Exchange Agreement and any escrow instructions agreed to in writing by the City and Developer. Notwithstanding the foregoing, Developer shall be solely responsible for all costs, expenses and fees relating to each Closing.

Section 4.7 Condition of the Property to be Conveyed.

- (a) Natural Hazards Disclosure. Developer will provide at each Closing a Natural Hazards Disclosure applicable to that portion of the Property comprising the Phase.
- (b) Hazardous Materials Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), each Party has provided the other with copies of the documents in its possession related to hazardous materials affecting the Exchange Lands (the "**Hazardous Materials Documents**") as set forth in Exhibit F. To the best of each Party's knowledge, the Hazardous Materials Documents depict the condition of the Exchange Lands with respect to the matters

covered in such documents as of the date of such documents and as of the date of this Agreement. Neither Party is liable or bound in any manner by any oral or written statements, representations or information pertaining to the Exchange Lands furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.

(c) Investigation. Each Party and its agents have had the right and adequate opportunity to enter onto the Exchange Lands for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Exchange Lands and to undertake tests related to the existence of Hazardous Materials on the Exchange Lands.

(d) “As-Is” Exchange. Except for the express representations and warranties and covenants of each Party contained in this Agreement, and except to the extent provided in any SIA, each of the Parties specifically acknowledges and agrees that it is accepting the Exchange Lands acquired by it on an “as is with all faults” basis, and is not relying on any representations or warranties of any kind whatsoever, express or implied, from the other as to any matters concerning those lands, including without limitation:

- (i) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions);
- (ii) the quality, nature, adequacy, and physical condition of soils, geology and groundwater;
- (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Exchange Lands;
- (iv) the development potential of the Exchange Lands, and the Exchange Lands’ use, habitability, merchantability, or fitness, suitability, value or adequacy of the Exchange Lands for any particular purpose;
- (v) the zoning or other legal status of the Exchange Lands or any other public or private restrictions on the use of the Exchange Lands;
- (vi) the compliance of the Exchange Lands or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity;
- (vii) the presence or absence of Hazardous Materials on, under or about the Exchange Lands or the adjoining or neighboring property; and
- (viii) the condition of title to the Exchange Lands.

(e) Warranties and Reliance. Except for the representations and warranties and covenants of each Party contained in this Agreement, and except as provided in any SIA:

- (i) Each Party affirms that it has not relied on the skill or judgment of the other Party or any of its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents or volunteers to select or furnish the Exchange Lands for any particular purpose;
- (ii) Neither Party makes any warranty that the Exchange Lands are fit for any particular purpose;
- (iii) Each Party acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it made relative to the Exchange Lands and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Exchange Lands to be acquired by it (including, without limitation, whether such lands are located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency);
- (iv) As of the Closing of the portion of the Property comprising each Phase and with respect to that Phase only, each Party, as to the Exchange Lands to be acquired by it, undertakes and assumes all risks associated with all matters pertaining to the lands' location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency.

Without limiting the generality of the foregoing provisions of this subsection 4.7©, except for the express representations and warranties and covenants of each Party contained in this Agreement, and except as provided in any SIA, each Party specifically acknowledges and agrees that as between themselves, neither Party shall have any responsibility for the suitability of the Exchange Lands for the development of the Project.

(f) Acknowledgment. Each Party acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.7 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.7 are an integral part of this Agreement; and (3) neither Party would have agreed to exchange the Exchange Lands without the disclaimers and other agreements set forth in this Section 4.7. Nothing set forth in this Section 4.7 is

intended to affect either Party's right to enforce the other Party's obligations under this Agreement or seek remedies for a breach thereof.

(g) Release. Effective as of the Closing Date for each Phase and solely with respect to the Exchange Lands included in such Phase, each Party, on behalf of itself and anyone claiming by, through or under it (including, without limitation, any successor owner of the applicable Exchange Lands) hereby waives its right to recover from and fully and irrevocably releases the other Party, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that it may have or hereafter acquire against any of the Released Parties arising from or related to:

- (i) Any presence of Hazardous Materials that were existing at, on, or under the Exchange Lands acquired by the Party as of the applicable Phase Closing Date; and
- (ii) The Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the Exchange Lands acquired by the Party, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.
- (iii) The condition, valuation, salability or utility of the Exchange Lands acquired by the Party, but excluding Claims relating to the Public Trust Improvements.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Released Parties in any way from, or be deemed a waiver of any Claims by a Party (or anyone claiming by, through or under said Party, including, without limitation, any successor owner of the applicable Exchange Lands) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date; (iii) any violation of law by any of the Released Parties prior to the applicable Phase Closing Date; (iv) any breach by a Party of any of its obligations under this Agreement, including without limitation its indemnification obligations or any breach of its representations, warranties or covenants expressly set forth in this Agreement; (v) any breach by a Party of any of its obligations under any SIA, (vi) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the transferring Parties at, on, under or otherwise affecting the applicable Exchange Lands after the applicable Phase Closing Date or (vii) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the transferor Party (collectively, the "**Excluded Claims**").

(h) Scope of Release. The release set forth in subsection 4.7(g) includes Claims of which each Party is presently unaware or which each Party does not presently suspect to exist which, if known by said Party, would materially affect that Party's

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

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

Developer's Initials: _____

City's Initials: _____

(i) Effective as of the Closing Date for the portion of the Property comprising each Phase and solely with respect to the portion of the Exchange Lands included in such Phase, each Party specifically acknowledges and agrees that, as between themselves, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date, neither Party shall be responsible for any required remediation of any such Hazardous Materials on the Exchange Lands transferred to the other Party.

(j) The Parties hereby agree that nothing in this Section 4.7 shall release the Parties from their obligations under this Agreement, including, without limitation, Developer's Hazardous Materials indemnification obligation.

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

Section 4.9 Survival. The terms and conditions in this Article 4 shall expressly survive termination of this Agreement and shall expressly survive each Closing. The Parties have fully reviewed the disclaimers and waivers set forth in this Agreement with their respective counsel and understand the significance and effect thereof.

ARTICLE 5

HAZARDOUS MATERIALS

Section 5.1 Obligations Regarding Hazardous Materials. For purposes of this Article, a “**New Release**” means a release of Hazardous Material in, on, under or emanating from any portion of the Public Trust Lands, which release first occurs after the Phase Closing Date on which the City acquired title to the affected Public Trust Lands, but excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date. Developer shall not cause or permit a New Release that would cause the Public Trust Lands to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or environmental conditions, including, but not limited to, soil and ground water conditions. Developer shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Public Trust Lands that is leased or licensed to, or otherwise used by, Developer or its agents or invitees, or transport to or from such Public Trust Lands any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of residential developments or in accordance with law or this Agreement.

Section 5.2 Notification To City. Developer shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of any: (1) enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer, the Property, or the Project pursuant to any Hazardous Materials Law; (2) claims made or threatened by any third party against Developer, the Property, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as “**Hazardous Materials Claims**”); or (3) discovery by Developer of any occurrence or condition on any real property adjoining or in the vicinity of the Property or the Project that could cause part or all of the Property or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property or the Project under any Hazardous Materials Law. At its sole costs and expense, the City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

Section 5.3 Developer’s Hazardous Materials Indemnification. Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 7.2.

ARTICLE 6

CITY OBLIGATIONS

Section 6.1 Entitlements. The City shall, upon payment of all applicable fees by Developer, process the applications for the Supplemental Approvals for the Project in a timely fashion, and shall cooperate with Developer in obtaining any necessary approvals from other

governmental entities or public utilities which require City participation as a co-applicant; provided, however, the City shall not be required to incur any additional costs other than those costs associated with processing of applications and permits within the City's standard processing procedures unless Developer agrees to reimburse the City of any costs associated with expedited processing.

Section 6.2 Permits and Approvals.

- (a) City Assistance. The City shall provide reasonable cooperation to Developer in processing Developer's applications for City permits and approvals, and all other permits, approvals, and "will serve" letters necessary for construction of the Project.
- (b) City Retains Discretion. Nothing in this Agreement is intended to limit the discretion of the City in its consideration of any permit, application, allocation, mapping or other Supplemental Approval required for the Project. Developer must comply with the City's and other government entities' regulatory and administrative processes.
- (c) Residential Permitting. Developer shall not seek, and the City shall not issue, any residential building permits for vertical construction on any portion of the City Parcel until after Developer has acquired title to said portion thereof.

Section 6.3 City Representations. The City acknowledges that the execution of this Agreement by Developer is made in material reliance by Developer on each and every one of the representations and warranties made by the City in this Section 6.3.

- (a) Authority. The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 6.3 are subject to and qualified by the effect of: (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (ii) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.
- (b) No Actions. To the City's knowledge, as of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the City Parcel or that adversely affects the City's ability to perform its obligations under this Agreement.
- (c) Commitments to Third Parties. To the City's knowledge, the City has not made any commitment, agreement or representation to any government authority,

or any adjoining or surrounding property owner or any other third party that would in any way be binding on Developer or would materially interfere with Developer's ability to develop and improve the Property that has not been disclosed to Developer.

(d) Hazardous Materials. Except as disclosed herein, to the City's knowledge, the City has received no written notice from any government authority regarding any violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the City Property, or releases of Hazardous Materials that have occurred during the City's possession of the City Property, excluding Incidental Migration. To the City's knowledge, the City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. City makes the representations in this Section 6.3(d) as of the Effective Date, and as of each Phase Closing Date except to the extent the City has given Developer reasonable advance written notice prior to the Phase Closing Date that the representations are no longer accurate.

ARTICLE 7

DEVELOPER'S OBLIGATIONS

Section 7.1 General Indemnification. Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties against all third party Claims arising out of Developer's performance or non-performance under this Agreement, including but not limited to, any Claims arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by Developer. This defense, hold harmless and indemnity obligation shall not extend to any Claim arising solely from the applicable Indemnified Party's gross negligence or willful misconduct. Notwithstanding the foregoing to the contrary, provisions of this Section 7.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 7.2 below.

Section 7.2 Hazardous Materials Indemnification. Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to Developer), and hold harmless the Indemnified Parties from and against all third party Claims directly or indirectly arising out of or attributable any Hazardous Materials that (A) as of the Phase Closing Date, are located at, on, over, under, or flowing through any portion of the Encinal Terminals Parcel to be conveyed as Public Trust Lands in that Phase, and (B) are located at, on, over, under, or flowing through any portion of the Trust Termination Lands to be conveyed in that Phase, except that this clause (B) shall not apply to any claim arising solely from a release occurring after the Phase Closing Date that is caused by Indemnified Party's gross negligence or willful misconduct. Claims include, without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the City in connection with clause (1), including but not limited to reasonable attorneys' fees.

Section 7.3 Scope of Indemnification. Developer's indemnification obligation shall apply to Claims that reasonably fall or are otherwise determined to fall within this indemnity even if the Claims may be groundless, fraudulent, or false. If a Claim is made against an Indemnified Party that may be within the scope of this indemnity, that Indemnified Party shall provide notice to Developer of the Claim within a reasonable time after learning of the Claim; provided, however, that an Indemnified Party's failure to provide the notice will not affect the Developer's obligations except to the extent of prejudice caused by the lack of notice. Developer's defense obligation will arise when an Indemnified Party tenders the Claim to the Developer and will continue until finally resolved. The Indemnified Party's defense costs will be due and payable within 30 days after the Indemnified Party delivers to the Developer an invoice for the costs.

Section 7.4 Developer Representations. The Developer acknowledges that the execution of this Agreement by City is made in material reliance by City on each and every one of the representations and warranties made by Developer in this Section 7.4.

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

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

(c) Commitments to Third Parties. To Developer's knowledge, the Developer has not made any commitment, agreement or representation to any government authority, or any adjoining or surrounding property owner or any other third party that would in any way be binding on City or would materially interfere with City's ability to use the Public Trust Lands for their intended purposes, that has not been disclosed to City.

(d) Hazardous Materials. Except as disclosed herein, to Developer's knowledge, the Developer has received no written notice from any government authority regarding any, and to Developer's knowledge, without any duty of investigation, there are no, violations with respect to any Law, whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of

the date hereof, or releases of Hazardous Materials that have occurred during Developer's possession of the Property, excluding Incidental Migration. To Developer's knowledge, Developer has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. Developer makes the representations in this Section 7.4(d) as of the Effective Date, and as of each Phase Closing Date except to the extent the Developer has given City reasonable advance written notice prior to the Phase Closing Date that the representations are no longer accurate.

Section 7.5 Survival. Developer's obligations under this Article shall survive termination of this Agreement.

ARTICLE 8

DEFAULT AND REMEDIES

Section 8.1 Application of Remedies. This Article 8 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 8.2 Breach by City.

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

- (i) The City fails to convey any requisite portion of the Property within the time and in the manner specified in Article 4 and Developer is otherwise entitled to such conveyance after satisfaction of all conditions precedent to City's obligation to do so;
- (ii) The City breaches any other material provision of this Agreement;
or
- (iii) The material breach of any of the City's representations or warranties set forth in this Agreement.

(b) Notice and Cure. Upon the happening of an event described in Section 8.2(a), Developer shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days.

(c) Remedies. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default, and Developer shall be entitled to (1) terminate the Agreement by written notice to City or (2) seek specific performance of this Agreement against the City. The foregoing

remedies shall constitute the exclusive remedies of Developer for a City Event of Default. In no event shall Developer be entitled to damages.

Section 8.3 Breach by Developer.

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

- (i) Developer fails to close within the time and in the manner specified in Article 4 after satisfaction of all conditions precedent to Developer’s obligation to do so;
- (ii) Developer fails to deliver a Termination of Lease or release the Lease within the time and as required pursuant to this Agreement or Developer violates the terms of the Termination of Lease;
- (iii) Developer attempts or completes an Assignment or Transfer except as permitted under Section 9.1;
- (iv) Developer breaches any material provision of this Agreement;
- (v) Developer is in material breach of any representation or warranty of Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement;
- (vi) A court having jurisdiction has made or entered any decree or order: (A) adjudging Developer to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of Developer seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor’s relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of a Developer;
- (vii) Developer has assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon has been returned or released within ninety (90) days after such event; or
- (viii) Developer has voluntarily suspended its business, or Developer has been dissolved or terminated.

(b) Notice and Cure. Upon the happening of any event described in Section 8.3(a), the City shall first notify Developer in writing of its purported breach or failure. Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and Developer has commenced the cure within such thirty day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (vii) or (viii) of Section 8.3(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure.

(c) Remedies. Upon a Developer Event of Default, the City shall be entitled to (i) terminate in writing this Agreement and/or (ii) exercise any other remedy against Developer permitted by law or under this Agreement; provided, however in no event shall the City be entitled to seek or receive consequential damages.

Section 8.4 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 8.2 or Section 8.3, then Developer shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project.

Section 8.5 Survival. The provisions of this Article shall survive termination of this Agreement. Upon termination of this Agreement, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 8.6 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

ARTICLE 9

MISCELLANEOUS

Section 9.1 Transfer and Assignment.

(a) No party shall delegate or assign this Agreement or any rights or duties hereunder (including without limitation by the merger or consolidation of a party with any third person) (“**Assignment**”) without the prior written consent of the other, which consent shall not be unreasonably conditioned, withheld or delayed; provided that in no event shall Developer assign its rights and obligations under this Agreement to a third party unless that third party has acquired title to all of the Public Trust Lands within the Encinal Terminal Parcel that have not already been exchanged pursuant to this Agreement.

(b) Developer shall not transfer or convey Developer's title in any portion of the Public Trust Lands within the Encinal Terminals Parcel to any third party ("**Transfer**") without the consent of the City, which consent shall not be unreasonably conditioned, withheld or delayed; provided that in no event shall Developer make a Transfer unless (i) all of the Public Trust Lands within the Encinal Terminals Parcel that have not already been exchanged are included in the Transfer, (ii) the Transfer is authorized under the Development Agreement, and (iii) the Transfer is conditioned on the Assignment to and assumption by transferee of all of Developer's rights and obligations under this Agreement.

(c) Developer may transfer its interest in any portion of the Trust Termination Lands acquired by Developer after a Closing, provided that the Transfer is authorized under the Development Agreement.

(d) Nothing in this Section 9.1 shall limit the grant or dedication of a utility easement, public right of way, maintenance easement, or access easement in the Public Trust Lands reasonably necessary for the development of the Project.

Section 9.2 This Agreement creates no rights as a third-party beneficiary or otherwise in any person not a party.

Section 9.3 Notices. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if served personally; by United States Mail, postage prepaid, registered or certified mail, return receipt requested; by overnight delivery by reputable service with proof of delivery; or sent by electronic mail as follows:

(a) If to City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700

Email: manager@alamedaca.gov

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4750
Email: cityattorney@alamedacityattorney.org

- (b) If to Developer: North Waterfront Cove, LLC
12667 Alcosta Boulevard, Suite 170
San Ramon, CA 94583
Attn: Michael S. O'Hara, Director of Forward
Planning
Telephone: 925-380-1223
Email: mohara@timlewis.com
- (c) With a copy to: North Waterfront Cove, LLC
3500 Douglas Boulevard, Suite 270
Roseville, CA 95661
Attn: Tim Lewis
Telephone: 916-787-3410
Email: tlewis@timlewis.com
- (d) With a copy to: Buchalter
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra
Telephone: 415-227-0900
Email: aguerra@buchalter.com

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this section. Notice by electronic mail shall be deemed given upon receipt by the noticed Party representative (whether or not opened or read). Each Party representative noticed by email shall provide acknowledgement of receipt as soon as reasonably possible. An auto-reply from the noticed Party representative shall be deemed an acknowledgement of receipt by that representative. If another method of service is permitted and used, the notice shall be deemed given on the date delivered in person, or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to (or delivery was refused at) the address of the receiving Party, as applicable.

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

Section 9.4 Entire Agreement. This Agreement, including the attached exhibits, and the State Exchange Agreement constitute the entire agreement between the parties relating to the conveyance of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Developer and City.

Section 9.5 Arbitration of Disputes. Any controversy or claim arising out of this Agreement or a breach thereof may, by mutual written agreement of the Parties, be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

Section 9.6 Further Acts. In addition to the acts and deeds stated herein and contemplated to be performed, executed and delivered by the respective parties hereto, each of the parties hereto agrees to cooperate with each other and perform, execute and deliver or cause to be performed, executed and delivered all such further acts, deeds and assurances as may be reasonably necessary to consummate the transaction contemplated hereby.

Section 9.7 Severability of Provisions. This Agreement shall not be severable or divisible; provided, however, that a judicial or administrative determination by any jurisdiction of the invalidity or unenforceability of any one or more of the provisions hereof, or any one or more of the provisions of any instrument or Exhibit related hereto or referred to herein shall not invalidate the remaining provisions of this Agreement or any instrument or Exhibit related hereto or referred to herein, or the application of such provision(s) to persons or circumstances other than those with respect to which it is determined to be invalid or unenforceable, all the provisions of the same being deemed for purposes of the aggregate validity thereof to be separate. It is the intent and belief of the parties that each and every provision of applicable law required to be inserted in this Agreement should be and is hereby deemed to be inserted and that this Agreement in all respects comports with applicable law. If any provision(s) required to be inserted in this Agreement by law is/are not inserted, or not inserted in correct form, then this Agreement shall forthwith, upon the request of either party be deemed amended so that such provision(s) required by law is/are deemed inserted herein in correct form without prejudice to the rights of either party.

Section 9.8 Calculation of Time. If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required herein must be performed expires on a Saturday, Sunday or legal holiday (as determined in the jurisdiction in which the Property is located), then such time period shall be automatically extended to the close of business on the next regular Business Day.

Section 9.9 Reservation of Rights. Notwithstanding anything to the contrary in this Agreement, until such time as the Lease is terminated with respect to each Phase, any and all rental income earned from the Existing Encinal Terminals Parcel shall be deemed earned by, and remitted to, Developer and City shall at no time have any right to said rental income.

Section 9.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 9.11 Governing Law. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel

for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 9.12 Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

Section 9.13 Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

Section 9.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which, assuming they have not been modified, shall be deemed an original and shall be binding upon the parties hereto.

Section 9.15 Authority to Sign. Each person executing this Agreement on behalf of either party does hereby personally represent and warrant that he or she had the authority to execute the Agreement on behalf of and to fully bind such party.

Section 9.16 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Developer, or any successor in interest, in the event of a City Event of Default.

Section 9.17 Time of the Essence. Time is of the essence in this Agreement.

Section 9.18 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction.

Section 9.19 Approvals.

(a) Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, without further approval by the City Council, and any such action shall be in writing.

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

Section 9.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 9.21 Board Approval/Ratification. This Agreement shall be subject to approval/ratification by the Alameda City Council.

ARTICLE 10

DEFINITIONS

Section 10.1 “**Approved Construction Documents**” means the construction plans and specifications submitted by a Developer and approved by the City in connection with the City’s grant of the necessary grading, demolition, building, and related permits for the Project, together with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

Section 10.2 “**Business Day**” means a day on which the offices of the City are open to the public for business.

Section 10.3 “**CEQA Approvals**” means the documentation prepared under the California Environmental Quality Act for the Project certified by the City, including, but not limited, to the EIR.

Section 10.4 “**City Council**” means the Alameda City Council.

Section 10.5 “**City Manager**” means the Alameda City Manager or the City Manager’s designee.

Section 10.6 “**Closing**”, “**Close**”, and/or “**Closing Date**” means the date one or more deeds is recorded in which the City will convey its fee interest or any portion thereof in each Phase of the City Parcel to Developer and Developer will convey its fee interest or any portion thereof in each Phase of the Encinal Terminals Parcel to City in accordance with the State Exchange Agreement.

Section 10.7 “**DDA Memorandum**” means the memorandum of this Agreement, substantially in the form of the attached Exhibit D, to be recorded as provided in Section 1.1.

Section 10.8 “**Density Bonus Application**” means that certain density bonus application for the Project as approved by the City Council by Ordinance No. _____.

Section 10.9 “**Escrow Holder**” means the Pleasanton, California office of First American Title Insurance Company, or such other title company or qualified escrow holder upon which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in Article 4 of this Agreement.

Section 10.10 “**Hazardous Materials**” means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal, state or local laws, ordinances or regulations.

Section 10.11 “**Hazardous Materials Laws**” means any applicable federal, state or local laws, ordinances, or regulations related to any Hazardous Materials.

Section 10.12 “**Incidental Migration**” means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

Section 10.13 “**Indemnified Parties**” means, collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

Section 10.14 “**Master Plan**” means that certain Tidelands Exchange Master Plan as approved by the City Council on _____, 2022 via Ordinance No. _____.

Section 10.15 “**Permitted Exceptions**” means the following liens, encumbrances, clouds and conditions, rights of occupancy or possession, as they may relate to the Trust Termination Property:

- (a) Applicable building and zoning laws and regulations;
- (b) The provisions of the applicable deed;
- (c) Any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of any deed;
- (d) Liens, encumbrances, clouds and conditions, rights of occupancy or possession shown as exceptions in the Preliminary Title Report that are marked as “accepted” in Exhibit G. Developer and the City shall cooperate to remove any exceptions shown on the Preliminary Title Report that are not marked as “accepted” in Exhibit G, provided however, the City shall not be obligated to incur any costs related to the removal of any such exceptions. The Parties agree that the removal of any exceptions related to the Public Trust shall be accomplished through the Trust Exchange, and such exceptions are Permitted Exceptions for purposes of closing;
- (e) Any exceptions created by this Agreement or the Project Approvals; and
- (f) Any other matters approved by Developer.

Section 10.16 “**Phasing Plan**” means the Phasing Plan attached as Exhibit C hereto.

Section 10.17 “**Preliminary Title Report**” means the preliminary title report for the Property attached as Exhibit G hereto.

Section 10.18 “**Project**” means the transit-oriented residential mixed-use development proposed by Developer as described in the Master Plan and other Project Approvals..

Section 10.19 “**Project Approvals**” means collectively, the CEQA Approvals, the Master Plan, the Density Bonus Application, and Supplemental Approvals.

Section 10.20 “**Public Trust Improvements**” means, collectively, the Public Trust Preparatory Improvements and the Public Trust Surface Improvements.

Section 10.21 “**Public Trust Preparatory Improvements**” mean (a) all structural improvements required to provide seismic stability of the Public Trust Lands in accordance with State building codes; (b) all ground improvements, including deep soil mixing, within and/or adjacent to the Public Trust Lands; (c) removal of portions of the wharf; and (d) a temporary, sixteen-foot wide asphalt public pathway along the Alaska Basin and Estuary sides of the Property, connecting the Southwest corner of the Project to the Fortman public shoreline access (“**Perimeter Pathway**”), which will provide a continuous trail around the perimeter of the Project. The final plans for the Preparatory Improvements shall be approved by the City and included as part of the Subdivision Improvement Agreement, as described in Article 3.

Section 10.22 “**Public Trust Improvement Plans**” means those plans reviewed and approved by the City Public Works and Community Development Department to construct the Public Trust Improvements, which plans shall be included as an exhibit to the applicable Subdivision Improvement Agreement.

Section 10.23 “**Public Trust Surface Improvements**” means surface treatments, railings, curbs, gutters, landscaping, lighting, parking and other improvements depicted in the Master Plan to be constructed on the Public Trust Lands and which are necessary to support the use of the Public Trust Lands consistent with the Master Plan.

Section 10.24 “**Subdivision Improvement Agreement**” or “**SIA**” shall mean one or more agreements between City and Developer, substantially in the form attached as Exhibit E, establishing the terms under which Public Trust Improvements will be completed for each Phase within the Project, including the requirements for the payment and performance bonds covering such improvements and the circumstances under which the City may call on such bonds in the event of a Developer default.

Section 10.25 “**Supplemental Approvals**” means collectively any and all City approvals related to and necessary for development of the Project, consistent with this Agreement, the Project Approvals, and the Approved Construction Documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

DEVELOPER:

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., a California
corporation
Its: General Partner

By: _____
Jay Timothy Lewis
Its: President

CITY:

CITY OF ALAMEDA, a municipal
corporation and California charter
city

By: _____
Name: Gerry Beaudin
Title: Assistant City Manager

Attest:

Lara Weisiger, City Clerk

Andrew Thomas, Director, Planning,
Building and Transportation

Approved as to form:

Celena Chen, Assistant City
Attorney

EXHIBIT A
LEGAL DESCRIPTION OF ENCINAL TERMINALS PARCEL

[To Be Added]

EXHIBIT B
LEGAL DESCRIPTION OF CITY PARCEL

[To Be Added]

EXHIBIT C
PHASING PLAN

[To be Attached]

EXHIBIT D
FORM OF DDA MEMORANDUM

[To be Attached]

EXHIBIT E
FORM SUBDIVISION IMPROVEMENT AGREEMENT

[To be Attached]

EXHIBIT F
LIST OF HAZARDOUS MATERIALS DOCUMENTS

[To be Attached]

EXHIBIT G
PRELIMINARY TITLE REPORT

[To be Attached]

**Recorded at the Request of and
When Recorded Mail to:**

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

STATE OF CALIFORNIA
OFFICIAL BUSINESS:
Document entitled to free
Recordation Pursuant to
Government Code Section 27383
NO TAX DUE

[Space Above for Recorder's Use]

SLC File No.: _____
APNs: _____

**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](mailto: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: _____

Gerry Beaudin
Assistant 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

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____ 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____ 2022.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda