RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

DA - _____
DEVELOPMENT AGREEMENT
WEST MIDWAY

This Development Agreement ("**Agreement**" or "**Development Agreement**") is entered into on _____, 2023 ("**Effective Date**"), between the City of Alameda, a municipal corporation ("**City**") and _____, a _____, and its permitted successors and assigns (the "**Developer**") regarding the Alameda Point West Midway project. The City and the Developer are sometimes referred to collectively as the "**Parties**" or individually as a "**Party**."

RECITALS

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

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

B. Pursuant to California Government Code Section 65865, the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. Such procedures and requirements are contained in the Alameda Municipal Code ("**AMC**") Chapter XXX, Article VII, Code Sections 30-91 through 30-95 (the "**City Development Agreement Regulations**"). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

C. The City and the Developer have entered into a Disposition and Development Agreement dated as of _____, 2023 and approved by the City Council by Ordinance No. _____ (the "**DDA**"), whereby the City is to convey a portion of the former Naval Air Station Alameda ("**NAS Alameda**") more particularly described in Exhibit A, attached hereto (the "**Property**") to Developer for the development of the Project (as defined below). Developer has a legal or equitable interest in the Property pursuant to the DDA.

D. The City is desirous of advancing the socioeconomic interests of the City and its residents by promoting the productive use of the former NAS Alameda consistent with the NAS Alameda Community Reuse Plan (the "**Reuse Plan**") adopted by the Alameda Reuse and Redevelopment Authority in 1996 and subsequently amended in 1997, and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base.

E. The City has determined that development of the Property in accordance with this Development Agreement will accrue clear benefits to the public which are over and above those dedications, conditions and exactions required by laws or regulations. These "**Public Benefits**" include, but are not limited to, increased public access and open space, transportation improvements, annual funding for new municipal services provided by inclusion of the Property into Community Facilities District CFD 17-1, extensive infrastructure improvements that serve not only the Project, but also deliver the necessary infrastructure to support the rebuilding of 200 existing supportive housing units and the construction of 109 new very low and low income housing units within the adjacent RESHAP project and future development of the remaining areas of the Main Street neighborhood to the north of the Property, the development of housing affordable to moderate income households, financial contributions for a future park, and retail opportunities, which will support new jobs at Alameda Point.

F. The "**Project**" is a high quality, mixed-use redevelopment of the Property that will create a walkable residential neighborhood with a strong "sense of place" designed to maximize transit usage consistent with the Alameda Point Transportation Management Plan and opportunities for walking and biking, in close proximity to transit, thereby providing a model for sustainable development. The Project is more fully described in the Development Plan, herein incorporated by reference without limitation to define the Project as including the following components:

a. At least 439 market rate residential units of which a minimum of 43 shall be affordable by design units as more specifically defined in the DDA;

b. 40 residential units deed restricted for households with a household income equal to or less than 120% of area wide median income as more specifically defined in the DDA ("**Moderate Income Units**");

c. Approximately 10,000 square feet of permitted and conditionally permitted non-residential uses (including but not limited to, retail, commercial, civic and other commercial space);

d. New and/or upgraded public utilities, including water distribution system, wastewater collection system, recycled water storage and distribution system, storm water collection and stormwater management control system and other improvements as more particularly described in the Infrastructure Package attached as Exhibit B;

e. Up to approximately 0.38 acres of publicly accessible parks and open space;

f. New and/or upgraded streets and public ways as more particularly described in the Infrastructure Package;

g. Bicycle, transit, and pedestrian facilities as more particularly described in the Infrastructure Package; and

h. Such additional improvements and contributions set forth in the Infrastructure Package and required under the DDA.

G. The City prior to entering into this Development Agreement has undertaken extensive actions in furtherance of redeveloping the former NAS Alameda consistent with the Reuse Plan. A list of all the actions is set forth in the recitals of the DDA and includes General Plan amendments, Zoning Ordinance amendments (e.g., the creation of the Alameda Point District under Alameda Municipal Code Section 30-4.24), a Transportation Demand Management Plan ("**TDM Plan**"), and a Master Infrastructure Plan ("**MIP**") (collectively, the "**Planning Documents**"). Following noticed public hearings, the City Council also approved the following "**Basic Approvals**" for the development of the Project:

a. A specific plan (the Main Street Neighborhood Specific Plan) for the Main Street Neighborhood (adopted on _____, by Ordinance No. ____) ("**Main Street Specific Plan**"); and,

b. Certification of a Final Environmental Impact Report ("**Alameda Point FEIR**") (State Clearinghouse No. 201312043) under the California Environmental Quality Act ("**CEQA**"), California Public Resources Code Section 21000 *et seq*. and adoption of written findings, a Mitigation and Monitoring Reporting Program ("**Alameda Point MMRP**") and adoption of a Statement of Overriding Considerations on February 4, 2014, by Resolution No. 14891, for the Alameda Point Project, including the Main Street Specific Plan.

c. Approval of 2021 Alameda General Plan ("**2021 General Plan**") and certification of the Final Environmental Impact Report for the 2021 General Plan ("**General Plan FEIR**") under CEQA and the adoption of written findings, a Mitigation and Monitoring Reporting program and a Statement of Overriding Considerations on November 30, 2021 by Resolution No. 15841 which considered the impacts of the West Midway and RESHAP projects.

H. Concurrently with the approval to enter into this Development Agreement, the City is approving the following land use approvals, entitlements and permits relating to the Project (collectively with this Development Agreement, "**Project Approvals**"):

a. A West Midway Development Plan (the "**Development Plan**") which sets forth the Project as required under the Main Street Specific Plan and AMC Section 30-4.13(j) including a Use Permit for Exceeding Maximum Off-Street Parking Requirements and Universal Design Waiver (Planning Board Resolution No._____).

d. Approval of an Environmental Checklist for Streamlined Review for the West Midway/RESHAP Residential Project pursuant to CEQA Section 21166 and 21083.3 and CEQA Guidelines Section 15162 and 15183 ("**West Midway CEQA Checklist**") incorporating the Statements of Overriding Consideration from the Alameda Point FEIR and the General Plan FEIR approval resolutions and adoption of written findings and a Mitigation and Monitoring Reporting Program ("**West Midway MMRP**") specifying mitigation measures applicable to the West Midway Project.

I. After entering into this Development Agreement, the City anticipates applications for additional land use approvals, entitlements, and permits to be submitted to implement and operate the Project in accordance with the terms of this Development Agreement and the DDA and consistent with the Planning Documents, Basic Approvals and Project Approvals. Such applications may include, without limitation: design review approvals, subdivision maps, improvement plans, conditional use permits, variances, demolition permits, improvement agreements, grading permits, building permits, street vacations, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, encroachment permits, Mello-Roos or other assessment financing, and amendments thereto and to the Project Approvals upon Developer's consent in its sole discretion (collectively, "**Subsequent Approvals**").

When any Subsequent Approval applicable to the Project is approved by the City, each such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement and shall be deemed and considered a "Project Approval" under this Development Agreement.

J. The City has determined that by entering into this Development Agreement the City will ensure: (1) the productive use of underdeveloped property and foster orderly growth and quality development in the City; (2) the development of substantial infrastructure in accordance with the Infrastructure Package, to achieve the productive reuse of the Property, the development of the RESHAP project, and NAS Alameda including necessary assistance to help fund and develop, as required by the terms of the DDA, planned improvements to public parks and other public improvements benefiting the community; (3) that any development of the Property will proceed in accordance with the goals and policies set forth in the 2021 General Plan and will implement City's stated 2021 General Plan policies; (4) a substantial increase in property tax and sales tax revenues to the City; and (5) the attainment of the Public Benefits.

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

L. This Development Agreement was adopted by ordinance of the City Council, after notice and public hearings before the Planning Board and City Council. The City Council previously certified the Alameda Point FEIR, the General Plan FEIR and approved the West Midway CEQA Checklist, which analyzed the development contemplated by the Planning Documents and Basic Approvals. The Project, including the Project Approvals, is consistent with the development density established by the Main Street Specific Plan and the 2021 General Plan and therefore qualifies for the streamlining provisions of CEQA under California Public Resources Code Sections 21083.3 and 21166 and CEQA Guidelines Sections 15162 and 15183. In approving the West Midway CEQA Checklist, the City Council found that any project-specific effects that are peculiar to the Project, including the Project Approvals, were addressed as significant effects in the Alameda Point FEIR and the General Plan FEIR or can be substantially mitigated by the imposition of uniformly applied development policies or standards, such that no additional environmental impact report need be prepared; the Project, including the Project Approvals, would not result in any significant off-site impacts or cumulative impacts that were not discussed in the Alameda Point FEIR or the General Plan FEIR; and there is no substantial new information that was not known at the time of the Alameda Point FEIR or the General Plan FEIR that would result in significant impacts previously identified in the Alameda Point FEIR or the General Plan FEIR being more severe than discussed in the those FEIRs. The Alameda Point FEIR, the General Plan FIER and the West Midway CEQA Checklist serve as the environmental review for this Development Agreement, and the City Council in approving this Development Agreement has made findings pursuant to Section 15162 and Section 15183 of the CEQA Guidelines.

M. The City and Developer for reasons cited herein have determined that the Project is a transit-oriented mixed-use project for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals, including Subsequent Approvals, thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property in accordance with this Development Agreement is anticipated to, in turn, provide substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1.
APPLICABLE LAW

Section 1.1 Development Standards for the Property; Applicable Law. The following development standards and restrictions set forth in this Section 1.1 govern the use and development of the Project and shall constitute the Applicable Law, except as otherwise expressly required by this Agreement. The City shall process, consider and review all Subsequent Approvals for the Project in accordance with the Applicable Law.

(a) Defined Terms. The following terms shall have the meanings set forth below:

(1) **"Applicable Law"** collectively means all of the following which are in force and effect as of the Approval Date of this Development Agreement: (a) the 2021 General Plan, Planning and Zoning Code (the Development Regulations in Chapter 30 of the Alameda Municipal Code), Subdivision Code, and all other applicable City land use planning, zoning, and development policies, rules and regulations that set forth standards for development, but that are not State Uniform Codes or City Uniform Codes Amendments as defined in Section 1.5, below, (b) the Planning Documents and Basic Approvals, and (c) any permitted Future Changes to the Applicable Law, as defined below.

(2) **"Approval Date"** means the date this Development Agreement was adopted by ordinance of the City Council.

(3) **"Future Changes"** collectively means all of the following which are adopted or approved subsequent to the Approval Date (as defined below), whether such adoption or approval is by the City Council, any department, division, office, board, commission or other agency of the City, by the people of the City through charter amendment, referendum, initiative or other ballot measure, by ordinance or resolution, or by any other method or procedure: (i) any amendments, revisions, additions or deletions to the Applicable Law; (ii) any moratorium; or (iii) new codes, ordinances, rules, regulations, standards, specifications and official policies of the City governing or affecting the grading, design, development, construction, occupancy or use of buildings or improvements or any exactions therefor.

All capitalized terms that are used herein but not defined herein shall have the meanings ascribed to such terms in the DDA.

(b) Project Approvals and Applicable Law Govern the Project. Except as provided in Section 1.2, development of the Project, including without limitation, the development standards for any demolition, grading, design, development, construction, occupancy or use associated with the Project, and any exactions therefor, shall be governed by the Project Approvals and the Applicable Law. If there is any conflict or inconsistency between the terms and conditions of the Project Approvals and the Applicable Law, the terms and conditions of the Project Approvals shall prevail. In the event of a conflict between the Project Approvals (other than the Development Agreement) and the Development Agreement, the Development Agreement shall prevail.

Section 1.2 Permitted Future Changes. Notwithstanding the terms of Section 1.1, this Agreement shall not prevent the City from applying to the Project the following Future Changes:

(a) City-wide processing fees and charges or processing fees and charges applied to all of Alameda Point imposed by the City on the Project to cover the cost of the City's review of applications for any permit or other review by the City departments and that are not considered Impact Fees (**"Processing Fees"**). Such Processing Fees shall include, but not be limited to, (i) all application, permit, and processing fees incurred for the processing of this Development Agreement, (ii) all building plan check and building inspection fees for work on the Property in effect at the time an application for a grading permit or building permit is applied for; (iii) any plan check fee and inspection fee for public improvements constructed and installed

by Developer and (iv) fees for monitoring compliance with any development approvals, or any environmental impact mitigation measures; provided that such fees and charges are uniformly imposed by the City at similar stages of project development on all similar applications and for all similar monitoring. Applications for Subsequent Approvals for the Project shall be charged the then-applicable City-wide or Alameda Point processing fees to allow the City to recover its actual and reasonable costs. Developer shall not receive any protection from rate escalators or rate increases on Processing Fees. City shall not add a City mark up to any third-party consultant costs.

(b) General or special taxes or assessments, including, but not limited to, property taxes, sales taxes, parcel taxes, transient occupancy taxes, business taxes, which may be applied to the Property or to businesses occupying the Property; provided that any such tax or assessment is validly adopted and is equally imposed on all other residential project within the jurisdiction of City, except for any Financing Mechanism, as defined in Section 4.6 which may be solely applicable to the Project. Nothing herein shall be construed to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

(c) Procedural regulations relating to hearing bodies, petitions, applications, notices, documentation of findings, records, manner in which hearings are conducted, reports, recommendations, initiation of appeals, and any other matters of procedure; provided such regulations are uniformly imposed by the City on all matters, do not result in any unreasonable decision-making delays and do not affect the substantive findings by the City in approving this Agreement or as otherwise established in this Agreement.

(d) Except as provided in Section 1.5, regulations of general application governing construction standards and specifications in the State Uniform Codes, the City Uniform Codes Amendments and the Future City Uniform Codes Amendments (all as defined in Section 1.5) provided that such construction standards and specifications are applied on a City-wide basis.

(e) Collection of such fees or exactions as are imposed and set by governmental entities not controlled by City but which are required to be collected by City.

(f) Regulations that do not conflict with the rights and approvals granted to Developer under this Development Agreement. For the purposes of this Section 1.2(f), regulations shall be deemed to conflict with Developer's rights or approvals if the regulations accomplish any of the results set forth in Section 1.4(a) through (l).

Section 1.3 Impact Fees. Notwithstanding any of the permitted Future Changes set forth in Section 1.2 above, the Project and Property shall only be subject to the Impact Fees (as that term is defined below), as set forth in Exhibit C. The City shall not impose any new Impact Fees on the development of the Project or the Property, or impose new exactions for the right to develop the Project (including required contributions of land, public amenities or services, or inclusionary housing requirements). The Developer shall not be subject to new categories of Impact Fees that are adopted by the City from and after the Approval Date in connection with the development of the Project or Property. Any substitute Impact Fees that directly replace (but do

not expand the purpose, scope, or amount of) any Impact Fees shown on Exhibit C shall apply to the Project, and shall not be considered new categories of Impact Fee as set forth below. If the City reduces the amount or rate of any Impact Fees shown on Exhibit C, the Project will be subject to the lesser amount or rate. Notwithstanding the above, the Project and the Property shall be annexed into the CFD 17-1 with a rate and method determined in accordance with the DDA and the annexation of the Project and the Property into CFD 17-1 shall not be considered a new or additional Impact Fee.

(a) **"Impact Fees"** shall mean monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval (including any Subsequent Approvals) for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction, or imposition imposed on the Project which is not a Processing Fee or a tax or assessment is an Impact Fee. For purposes of this Agreement, the term Impact Fees shall not include (i) impact fees imposed on the Project by the Alameda Unified School District, the State of California or any political subdivision of the State or other governmental entity except the City, (ii) the Park Contributions required by the DDA, or (iii) the Developer's obligation to construct the Infrastructure Package in accordance with the DDA.

(b) Any Impact Fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* (**"AB 1600"**). Developer retains all rights set forth in California Government Code Section 66020, and nothing in this Development Agreement shall diminish, eliminate or waive any of Developer's rights set forth in such section. The City and Developer acknowledge that the provisions contained within this section are intended to implement the intent of the Parties that the Developer has the right to develop the Project, and the Property, pursuant to specified and known criteria and rules agreed to by the City herein, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

(c) City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, that other public agencies request the City to impose at City's discretion on the Project or the Property after the Approval Date through the Term of this Agreement.

(d) Unless otherwise provided herein, City and Developer will cooperate to ensure that the phasing of pertinent assessments, fees, special taxes, dedications, or other similar levies coincides with and does not precede the actual construction of each increment of the Project, so that only currently developing properties within the Property are subject to such assessments, fees, special taxes, dedications, or other similar levies. This timing may be accomplished through a number of mechanisms including, among others, the phasing of assessment districts and the use of benefit districts in conjunction with assessment districts, thereby spreading the timing of the imposition of relevant levies.

(e) Subject to the limitations set forth in Section 1.2(b) above and Section 1.4 below, the City may impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district other than those contemplated in the DDA that includes the Property unless the new district is City-wide or Developer gives its prior written consent to such proceedings, which consent may be granted or withheld in the Developer's sole and absolute discretion and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely or disproportionately at the Property. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Property, or any space therein, that is enacted in accordance with law and applies to similarly situated property on a City-wide basis and is equally imposed on other properties within the jurisdiction of City.

(f) Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities that are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals or the DDA, such fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or the DDA.

Section 1.4 Conflicting Enactments. Except as provided in Section 1.2 above, any Future Change that would conflict in any way with or be more restrictive than the Project Approvals, the DDA and Applicable Law (collectively, the **"Vested Elements"**) shall not be applied by the City to any part of the Project or Property. For purposes of this Section, a Future Change to Applicable Law shall be deemed to conflict with the Vested Elements if it would accomplish any of the following results, either by specific reference to the Project, or as part of a general enactment, which applies to, or affects, the Project:

(a) Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footages of development type (for example, residential, commercial, retail, etc.) or the number of proposed buildings (including the number of residential units) or other improvements from that permitted under Applicable Law or the Project Approvals;

(b) Limit or reduce the height, bulk or massing of the Project or otherwise require any reduction in height, bulk or massing of individual proposed buildings or other improvements from that permitted under Applicable Law or the Project Approvals;

(c) Change any land use designation or permitted use of the Property that is permitted under Applicable Law or the Project Approvals;

(d) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) to the Project, or limit the Infrastructure Package as set forth in the Project Approvals, but only to the extent such public utilities, services or facilities are controlled by the City;

(e) Materially change the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals or Applicable Law;

(f) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth under the DDA, Project Approvals or Applicable Law;

(g) Materially or adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with the Project Approvals, the DDA or Applicable Law or require the issuance of additional Subsequent Approvals by the City other than those required by the Project Approvals or Applicable Law;

(h) Increase or impose any Impact Fees or exactions other than those in effect as of the Approval Date and applicable to the Project as set forth under Section 1.3 of this Development Agreement;

(i) Increase inclusionary housing requirements for the Project, including but not limited to the required number of Moderate Income Units or Affordable By Design units in the Project;

(j) Apply to the Project any Future Changes otherwise allowed by this Agreement that are not uniformly applied on a City-wide basis to all similar types of development projects and project sites;

(k) Establish, enact, increase, or impose against the Project or Property any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Development Agreement or the DDA or other connection fees imposed by third party utilities;

(l) Impose against the Project any condition, dedication or other exaction not specifically authorized by the Project Approvals, the DDA or Applicable Law; or

To the maximum extent permitted by law, City shall not apply Future Changes to the Project that would invalidate all or any part of this Development Agreement or violate the provisions of the Project Approvals or the DDA, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. Developer reserves the right to challenge in court any Future Change that would conflict

with the Vested Elements or reduce the development rights provided by the Project Approvals and the DDA.

Section 1.5 Applicability of Uniform Codes. Before commencing any construction on the Property, the Developer must obtain all necessary building or other permits required for such work as required under applicable law (including those permits required by Applicable Law and applicable Future Changes to Applicable Law). In considering applications for building permits, the City shall apply the provisions, requirements, rules, or regulations applicable City-wide that are contained in the then current California Building Standards Code or other State-wide uniform construction codes (**"State Uniform Codes"**) as well as any amendments to the State Uniform Codes adopted by the City in accordance with the California Health and Safety Code, including requirements by the City of Alameda Building and Housing Code, Fire Code, Sewer and Water Code, Green Building Code and other construction codes applicable Citywide (the **"City Uniform Codes Amendments"**) as of the Approval Date. Any City Uniform Codes Amendments adopted by the City after the Approval Date (**"Future City Uniform Code Amendments"**) shall apply to building permits issued for the Project, except if such provisions, requirements, rules, or regulations contained in the Future City Uniform Codes Amendments would accomplish any of the results set forth in Sections 1.4(a) through (l). In the event of such conflict, the particular provision, requirement, rule, or regulation in the Future City Uniform Codes Amendments shall not apply to or govern development or construction of the Project unless it is determined by the City Building Official to be required by the then current applicable State Uniform Codes. The Developer shall have the right to appeal any determination made by the City Building Official regarding the applicability of Future City Uniform Codes Amendments to the Housing and Building Code Hearing and Appeals Board in accordance with that Board's standard appeal procedures. In addition, upon submittal of Improvement Plans, the City shall apply its then-existing technical design standards and specifications with respect to public improvements to be dedicated to that City department, including any applicable standards or requirements of Non-City Responsible Agencies (as defined below) with jurisdiction (the **"Department Design Standards"**), so that public improvements integrate and function with existing City systems and applicable law; provided, however, that (i) the City cannot impose standards or requirements that exceed the minimum City standards; and (ii) such application shall not materially alter the location and dimensions of the streets and easement and sidewalks as set forth in the Development Plan, the Main Street Specific Plan, MIP and the Infrastructure Package. The Parties understand and agree that any public improvement identified in this Development Agreement, the DDA, the MIP or the Infrastructure Package will become part of a larger City system and that the proposed public improvements must be constructed so as to integrate and work with the existing City systems in every material respect.

Section 1.6 Changes in State and Federal Rules and Regulations. Notwithstanding any provision in this Development Agreement to the contrary, each City department having jurisdiction over the Project shall exercise its reasonable discretion under this Development Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the health and safety of the public (the **"Public Health and Safety Exception"**) or to comply with changes in Federal or State law, including applicable federal and state regulations (the **"Federal or State Law Exception"**), including the authority to condition or deny a Subsequent Approval or to adopt a

Future Change applicable to the Project so long as such condition or denial, or new regulation, is limited solely to addressing a specific and identifiable issue related to the protection of the public health and safety, or compliance with a Federal or State law, and not for independent discretionary policy reasons that are inconsistent with this Development Agreement. A Public Health and Safety Exception may only be invoked if the City Manager determines in writing that failure to invoke the Public Health and Safety Exception would have a specific, adverse impact upon the health and safety of the public, where **"**specific, adverse impact**"** means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact upon the health and safety of the public in accordance with the Vested Elements.

(a) Pursuant to Section 65869.5 of the Development Agreement Legislation, in the event that state or federal laws or regulations (collectively, **"State or Federal Laws"**) enacted after this Development Agreement have gone into effect preclude or prevent compliance with one or more provisions of this Development Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Development Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such amendment or change in State or Federal Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. Notwithstanding the foregoing, if such amendment or change in State or Federal Law is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. In the event that the State or Federal Law operates to frustrate irremediably and materially (i) the Vested Elements or (ii) the Public Benefits, then, upon written request of either Party, the Parties shall negotiate in good faith for a period of not less than one hundred twenty (120) days in an effort to identify an amendment to this Development Agreement that would satisfy, in each Party's discretion, both the Developer and the City. If the Parties cannot reach agreement on such amendments, then either Party may terminate this Agreement by giving written notice to the other Party. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise.

(b) This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation and City Development Agreement Regulations as those provisions existed as of the Approval Date. No amendment or addition to those provisions that would affect the interpretation or enforceability of this Development Agreement or increase the obligations or diminish the development rights to Developer hereunder, or increase the obligations or diminish the benefits to the City shall be applicable to this Development Agreement unless such amendment or addition is specifically required by law

or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Development Agreement shall not be affected, unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project.

Section 1.7 Compliance with Applicable Federal and State Laws. The Developer shall comply, at no cost to the City, with all applicable federal or state laws relating to the Project or the use, occupancy or development of the Property under this Development Agreement.

ARTICLE 2.
DEVELOPMENT OF PROPERTY

Section 2.1 Development Rights. Developer shall have the vested right to develop the Property in accordance with and subject to the provisions of the Vested Elements, all of which shall control the overall design, development and construction of the Project including, without limitation, all improvements and appurtenances therewith, the permitted and conditional uses, the density and intensity of uses, the maximum height, bulk and massing of buildings, the number of permitted and required parking spaces, all mitigation measures required to minimize or eliminate material adverse environmental impacts of the Project under the West Midway MMRP, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property. This Development Agreement, by stating that the terms and conditions of the Vested Elements control the overall design, development and construction of the Project, is consistent with the requirements of California Government Code Section 65865.2, which requires that a development agreement state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes. The Developer agrees that all improvements on the Property shall be constructed in accordance with the Vested Elements, and in accordance with all applicable laws.

(a) The Parties have prepared two (2) sets of the Project Approvals and Applicable Law, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Law, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Law.

Section 2.2 Compliance with CEQA. The Parties acknowledge that the Alameda Point FEIR and the General Plan FEIR comply with CEQA. The Parties further acknowledge that (a) the Alameda Point FEIR and the General Plan FEIR contain a thorough analysis of the Project and possible alternatives to the Project, (b) mitigation measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the City Council adopted statements of overriding considerations in connection with the Basic Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons and, consistent with the CEQA streamlining policies applicable to specific plans, the City acknowledges that in

connection with Subsequent Approvals it is not obligated to prepare supplemental or subsequent EIRs, mitigated negative declarations, or negative declarations unless required by Public Resources Code Sections 21083.3 and 21166, and CEQA Guidelines Sections 15161, 15162 or 15183. The City shall rely on the streamlining provisions referenced in CEQA Guidelines Sections 15182 and/or 15183 to the fullest extent permitted by law. The City does not intend to conduct any further environmental review or require any additional mitigation under CEQA for any aspect of the Project vested by this Development Agreement, except as may be required by applicable law in taking future discretionary actions relating to the Project.

(a) Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval. If as a result of any additional CEQA review, additional mitigation measures or conditions requiring public improvements and/or public infrastructure are imposed on the Project, Developer shall be obligated to accept such mitigations or conditions unless such mitigations or conditions would result in any of the conditions set forth in Section 1.4 (a) through (l). If such mitigations or conditions result in any of the conditions set forth in Section 1.4 (a) through (l), Developer may elect to terminate this Development Agreement.

(b) The City shall not request, process or consent to any amendment to the West Midway MMRP that would affect the Property or the Project without Developer's prior written consent, such consent not to be unreasonably withheld.

Section 2.3 Subsequent Approvals. The Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Approvals, as defined herein. In connection with any Subsequent Approval, the City shall conduct its review as set forth in the Main Street Specific Plan in effect as of the Approval Date (except as it may amended in accordance with this Development Agreement) and exercise its discretion in accordance with Applicable Law, Project Approvals and, as provided by this Development Agreement, which grants the Developer a vested right to develop the Project. No conditions imposed on Subsequent Approvals shall be inconsistent with the Project Approvals or Applicable Law. Developer may protest any conditions, dedications, fees and/or other exactions while continuing to develop the Property; such a protest by Developer shall not delay or stop the issuance of Subsequent Approvals, including building permits or certificates of occupancy, provided, however, if Developer is protesting any Impact Fee, Developer shall be obligated to pay such Impact Fee under protest in accordance with the provisions of AB 1600.

Section 2.4 Life of Project Approvals. The term of each Project Approval (including each Subsequent Approval) shall be automatically extended such that each Project Approval remains in effect for at least as long as the Term of this Development Agreement, including any Design Review, Conditional Use approval and/or Variance granted thereunder; provided that each Project Approval shall extend for the greater of (a) the Term of this Development Agreement or (b) the maximum applicable time provided for under Applicable Law, as expanded, extended, enlarged, or broadened by future State or Federal Laws (as defined in Section 1.6(a)). Notwithstanding the foregoing each street improvement, building, grading,

demolition or similar permit shall expire at the time specified in the permit or the applicable public improvement agreement approved under the City's Subdivision Code in effect on the Approval Date, with extensions as normally allowed under the State Uniform Codes or as set forth in such public improvement agreement.

Section 2.5 Other Government Permits. The Parties acknowledge that certain aspects of the Project including certain community improvements and/or public improvements may require the approval of federal, state and local governmental agencies that are independent of the City and not a Party to this Agreement (**"Non-City Responsible Agencies"**). The City shall cooperate with reasonable requests by the Developer, to the extent appropriate and as permitted by law, to assist in Developer's efforts to obtain, as may be required, permits and approvals from Non-City Responsible Agencies. The Developer shall reimburse the City for reasonable costs that are incurred in assisting Developer obtain Project specific permits and approvals from Non-City Responsible Agencies.

Section 2.6 Development Timing.

(a) Timing of Development. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the parties' agreement. It is the intent of Developer and the City to cure that deficiency by expressly acknowledging and providing that any Future Change that purports to limit over time the rate or timing of development or to alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall not apply to the Property or the Project and shall not prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by the City on the amount of total square feet or the number of buildings, structures, residential units that can be built each year on the Property.

(b) No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development of the Project fails to occur. The DDA sets forth the Developer's obligations regarding development of the Property, and any failure to develop in accordance with the provisions of the DDA does not constitute a default under this Development Agreement.

(c) Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing, phasing, sequencing, height or density of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Development Agreement; provided, however, the provisions of this

Section 2.6 shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

Section 2.7 Cooperation.

(a) Agreement to Cooperate. Each Party to this Development Agreement shall in good faith cooperate with the other Party under this Development Agreement, provided that nothing in this Development Agreement obligates the City to spend any sums of money or incur any costs other than costs that the Developer must reimburse through the payment of Processing Fees and as otherwise required under the DDA.

(b) Role of Planning, Building and Transportation Department. The Parties agree that the Planning, Building and Transportation Department will act as the City's lead department to facilitate coordinated City review of applications for Subsequent Approvals. As such, Planning staff will: (i) work with Developer to ensure that all such applications are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Development Agreement to ensure that the City's review of such applications is concurrent and that the approval process is efficient and orderly and avoids redundancies.

(c) City Department Review of Individual Permit Applications. Concurrently with or following issuance of Design Review approval in accordance with this Development Agreement, the Parties agree to prepare and consider applications for construction level approvals, including any improvement plans, subdivision maps, as follows: the Developer will submit each application, including applications for the design and construction of public and/or community improvements, to applicable City departments, which will review submittals for consistency with any prior Project Approvals and in accordance with the Applicable Law, including without limitation the requirements of the Permit Streamlining Act and the Housing Accountability Act. The City shall exercise its discretion in reviewing such applications based on the Applicable Law in accordance with Article 1 of this Development Agreement. Any City Department denial of an application under this section shall include a statement of the reasons for such denial. Developer will work collaboratively with the City Departments to ensure that such application is discussed as early in the review process as possible and that Developer and the City act in concert with respect to these matters.

Section 2.8 Subdivision Maps.

(a) Developer may from time to time file subdivision map applications with respect to some or all of the Property (including but not limited to large lot maps, small lots maps, and maps for condominiums and townhomes) in accordance with the provisions in the DDA, the City of Alameda Subdivision Code in effect as of the Approval Date, and state law. The City shall exercise its discretion in reviewing such subdivision map applications in accordance with this Section 2.8 and the City of Alameda Subdivision Code in effect on the Approval Date and other Applicable Law. Any conditions imposed by the City as conditions on any subdivision map for the Project shall be consistent with the Project Approvals and shall not result in any of the conditions set forth in Section 1.4(a) through (l) unless the Developer consents in writing to such conditions.

(b) Vesting Tentative Maps. During the Term of this Development Agreement, the ordinances, policies and standards applicable to the vesting tentative map shall be the Applicable Law and any Future Changes to Applicable Law as set forth in this Development Agreement, and notwithstanding anything to the contrary in Section 66474.2 of the Subdivision Map Act or the City of Alameda Subdivision Code. If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting tentative map under the Subdivision Map Act, and if this Development Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting tentative maps shall survive.

Section 2.9 Reservation or Dedication of Land for Public Use. Development of the Property requires public facilities to support operations and services of the Project and to ensure an unfair burden is not placed on existing public facilities as a result of the Project. The Developer shall make available, reserve or dedicate, as required, land or facilities as provided in the Main Street Specific Plan in effect on the Approval Date and as more fully refined in the Development Plan and the Infrastructure Package, for open space and other community amenities. The Developer shall support the construction, operations and services of these public facilities on the Property in accordance with the terms of the DDA and the Development Plan. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Development Plan, the Infrastructure Package or the DDA.

Section 2.10 Infrastructure.

(b) Infrastructure Capacity. Subject to Developer**'**s installation and construction of the Infrastructure Package in accordance with the requirements of the Project Approvals, City hereby acknowledges that it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, electric service, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City**'**s control, water supply, treatment, distribution and service, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project except for reasons beyond City**'**s control.

(c) Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project.

ARTICLE 3.
OBLIGATIONS OF DEVELOPER

Section 3.1 Cooperation by Developer. Developer shall, in a timely manner provide all documents, applications, plans and other information necessary for the City to comply with its obligations to process Subsequent Approvals under this Development Agreement and shall comply, in a timely manner, with all reasonable requests by the Community Development

Director and each City Department for production of documents or other information evidencing compliance with this Development Agreement.

Section 3.2 Expiration of Project Approvals. Expiration of any building permit or other Project Approval shall not limit the Developer's vested rights as set forth in this Development Agreement, and the Developer shall have the right to seek and obtain subsequent building permits or approvals consistent with this Development Agreement at any time during the Term.

Section 3.3 Compliance with Conditions and CEQA Mitigation Measures. The Developer shall comply with all applicable conditions of the Project Approvals and shall comply with all mitigation measures imposed upon the Project pursuant to CEQA and contained in the West Midway MMRP.

Section 3.4 Payment of Fees and Costs.

(a) Developer shall pay to the City all Impact Fees applicable to the Project or the Property in a timely manner, and in compliance with the terms of this Development Agreement.

(b) Developer shall pay to the City all Processing Fees applicable to the processing or review of applications in a timely manner and as required under Applicable Law and in accordance with Section 1.2 of this Development Agreement.

(c) To the extent the City has adopted an expedited processing fee program, then with respect to any element of City review of the Project, Developer may choose, at its sole election, to pay City "Expedited Processing Fees" which shall be the then-applicable current Processing Fees applicable throughout City for expedited processing (including the cost of retaining a consultant or extra-hire staff and City's customary overhead costs) and shall not, in any event at any time, be more than expedited processing fees required for similar expedited approvals, permits and entitlements in the City.

(d) In addition to the rights and remedies set forth in Article 10, the City shall not be required to process any requests for approval of Subsequent Approvals during any period in which payments from Developer are past due for a period of more than ninety (90) days, provided that payments paid under protest pursuant to AB 1600 shall not be considered past due. During such ninety (90) day period, the Parties shall meet and confer in good faith in an attempt to resolve any good faith disputes regarding the payments due under this Development Agreement.

Section 3.5 Developer's Right to Rebuild. The City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term of this Development Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by and consistent with the Vested Elements, and shall comply with the

Project Approvals, the State Uniform Codes and the City Uniform Codes Amendments existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

Section 3.6 Other Governmental Permits and Approvals. Developer or City (whichever is appropriate) shall apply in a timely manner for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project (such as, for example, but not by way of limitation through National Pollutant Discharge Elimination System ("**NPDES**") permits. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time, at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, at each stage of the development of the Project.

ARTICLE 4.
CITY OBLIGATIONS

Section 4.1 No Action to Impede Project Approvals. The City shall take no action nor impose any condition that would conflict with the Project Approvals or the DDA. An action taken or condition imposed shall be deemed to be **"**in conflict with**"** the Project Approvals or the DDA if such actions or conditions result in one or more of the circumstances identified in Section 1.4 of this Development Agreement.

Section 4.2 Expeditious Processing. To the extent a Subsequent Approval requires an action to be taken by the City, the City shall process such Subsequent Approvals in a timely manner and in accordance with the procedures set forth in Applicable Law and in cooperation with the Developer as provided in Section 2.7 above.

Section 4.3 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against the City or Developer relating the Project Approvals, the DDA or any other action taken in furtherance of the Project including actions related to the Property outside the control of the City or Developer, shall not delay or stop the development, processing or construction of the Project or the issuance of Subsequent Approvals unless the third party obtains a court order preventing the activity.

Section 4.4 Criteria for Approving Subsequent Approvals. The City agrees that the scope of the review of applications for a Subsequent Approval shall be limited to a review of substantial conformity/compliance with this the Project Approvals, the DDA and Applicable Law (including permitted Future Changes to Applicable Law). Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval. If the City denies any Subsequent Approval, the City must specify in writing the reasons for such denial and may suggest modifications. The City shall not unreasonably withhold, condition or delay approval of a Subsequent Approval. Nothing in this Development Agreement shall waive or be deemed to waive any of Developer**'**s rights under the Permit Streamlining Act (Government Code Section 65920 et seq.), the Housing Accountability Act (Government Code Section 65589.5), Assembly Bill No. 2234 (which added Sections 65913.3 and 65913.3.5 to the

Government Code), and/or the Housing Crisis Act of 2019, and Developer reserves and retains all such rights.

Section 4.5 Coordination of Off-Site Improvements.

(a) The City will use reasonable efforts to assist Developer in coordinating construction of offsite improvements specified in an approved Phase (as defined in the DDA) in a timely manner; provided, however, City shall not be required to incur any costs in connection therewith. Notwithstanding the foregoing, provisions in the DDA requiring City action on specific off-site improvements, such as, but not limited to, with respect to the Site A Improvements (as defined in the DDA) and the RESHAP Project and RESHAP Infrastructure Phases (as defined in the DDA), shall control over this Agreement.

(b) Upon completion of any and all public infrastructure to be completed by Developer, Developer shall offer for dedication to City from time to time as such public infrastructure is completed, and City shall promptly accept from Developer the completed public infrastructure in accordance with the terms of the applicable public improvement agreement or subdivision improvement agreement.

Section 4.6 Community Facilities Districts. In accordance with the terms of the DDA, the City shall diligently and in good faith cooperate with Developer in the formation of any assessment districts (in addition to annexation of the Property and Project into CFD 17-1 (as defined in the DDA)) and/or community facilities districts (a **"Financing Mechanism"**) that Developer in its sole discretion may elect to initiate related to the Project, including to fund costs of construction, development, and operation of public infrastructure improvements that are included in the Infrastructure Package and are to be owned and operated by the City, as and when so requested by Developer.

ARTICLE 5.
MUTUAL OBLIGATIONS

Section 5.1 Notice of Completion or Revocation. Upon the request of either Party, upon the Parties' completion of performance or revocation of this Development Agreement, a written statement acknowledging such completion or revocation or termination, signed by the appropriate agents of the City and Developer, shall be recorded in the Official Records.

Section 5.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Development Agreement is in full force and effect and a binding obligation of the Parties; (ii) either this Development Agreement has not been amended or modified either orally or in writing, or if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) either Developer is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Article 7 below. A Party receiving a request under this Section 5.2 shall execute and return such certificate within twenty (20) days following receipt of the request. The failure of either Party to provide the requested

certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Property or an assignee of all or part of this Development Agreement may rely upon such a certificate. A certificate provided by the City establishing the status of this Development Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

Section 5.3 Cooperation in the Event of Third-Party Challenge.

(a) The Parties shall cooperate in defending against any legal or equitable action or proceeding instituted by a third party challenging the validity of any of the Project Approvals, including any action taken pursuant to CEQA, or other approval under federal, state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (**"Third-Party Challenge"**). In the event of a Third-Party Challenge, the City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

Section 5.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Development Agreement and implementing the Project Approvals and shall, in the course of their performance under this Development Agreement, cooperate and undertake such actions as may be reasonably necessary to implement the Project.

Section 5.5 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out the Project Approvals in accordance with the terms of this Development Agreement (and subject to all applicable laws) and to provide and secure each Party the full and complete enjoyment of its rights and privileges hereunder.

ARTICLE 6.
EFFECTIVE DATE AND TERM

Section 6.1 Effective Date; Term. The Effective Date of this Development Agreement is stated in the first paragraph of this Development Agreement and represents the later of: (a) thirty (30) days after the date the Ordinance approving this Development Agreement is adopted by the City Council; or, (b) if a referendum petition is timely and duly circulated and filed, the date the election results on the ballot measure by City voters approving this Development Agreement are certified by the City Council in the manner provided by the Elections Code. This Development Agreement shall be executed by the City within ten (10) days after the Effective Date and recorded as provided in Government Code Section 65868.5.

(a) Term. The term of this Development Agreement (**"Term"**) shall commence upon the Effective Date and shall continue in full force and effect until the termination of the DDA, unless the Term is extended or earlier terminated as provided in this Development Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits. In establishing and

agreeing to such Term, the City has determined that the Project Approvals incorporate sufficient provisions to permit City to adequately monitor and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the development of the Project.

(b) Termination Following Expiration. Following the expiration of the Term or the earlier termination of this Development Agreement, this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions that expressly survive termination as set forth in Section 10.6. Subject to Section 2.4, the termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement).

(c) Release of Units, Release of Dedicated Property. Notwithstanding any provision of this Development Agreement to the contrary, (i) this Agreement shall terminate with respect to each for-sale or for-rent residential lot, for-sale or for-rent residential townhome or condominium unit, for-sale or for-rent non-residential lot, and for-sale or for-rent non-residential condominium unit, and such lot or unit shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder, and the transferees of such lots and condominiums and their successors and assigns shall have no obligations or liabilities under this Agreement (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution or recordation of any further document, when a Certificate of Occupancy has been issued for such lot or unit, as applicable, and (ii) this Development Agreement shall also terminate with respect to any portion of the Property that is dedicated to the City pursuant to the terms of an applicable public improvement agreement or subdivision improvement agreement, and such portion of the Property shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and recordation of any further document, at the time of such dedication.

ARTICLE 7.
ANNUAL REVIEW

Section 7.1 Initiation of Review. Developer shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date requesting an annual review of the Development Agreement. The periodic review of the Development Agreement shall be made at least every twelve (12) months, consistent with Government Code Section 65865.1 and AMC Section 30-95.1 (as of the Approval Date). A failure to timely request an annual review shall not constitute a breach of this Agreement or a Default by Developer.

Section 7.2 Review Procedure. At least thirty (30) days prior to each anniversary of the Effective Date during the Term of this Development Agreement, Developer shall submit a written report to City outlining Developer's good faith compliance with the material terms of this Development Agreement. The report may be the same report prepared to show compliance with the DDA and TDM Plans, provided, however, that the annual review process hereunder shall review compliance by Developer with its obligations under this Development Agreement only

and shall not review compliance with the DDA. The City's annual review shall be as set forth in AMC Section 30-95 (as of the Approval Date) and this Article 7.

(a) Delivery of Documents. At least five (5) business days prior to any City hearing (Planning Board or City Council) regarding Developer's compliance with this Development Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing. At any City hearing regarding Developer's compliance with this Development Agreement, Developer shall be given the opportunity to be heard in accordance with the rules and time limitations in place for the hearing body at the time of such hearing.

(b) Planning Board Finding; Referral to City Council. The Planning Director shall give notice to the Developer that the Planning Board intends to conduct a public hearing to undertake the annual review of the Development Agreement. The notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Board. If after the hearing the Planning Board finds that Developer has complied in good faith with the terms and conditions of the Development Agreement, the review for that period is concluded. City shall, at Developer's request, issue and have recorded a certificate of compliance indicating Developer's compliance with the terms of this Development Agreement. If, after the hearing, the Planning Board finds and determines on the basis of substantial evidence that Developer has not complied with the terms and conditions of the Development Agreement during the period under review, the City shall provide written notice to Developer specifying in detail the nature of the alleged noncompliance. The notice to the Developer and the Planning Board findings regarding noncompliance shall be forwarded to the City Council and the City Council shall hold a hearing regarding termination or modification of this Development Agreement. Notice of intention to modify or terminate the Development Agreement shall be delivered to Developer by certified mail containing: (i) time and place of the hearing; (ii) a statement as to whether the City proposes to terminate or to modify the Development Agreement; (iii) other information necessary to inform Developer of the nature of the proceedings. In no event shall termination of this Development Agreement be permitted except in accordance with Article 10 herein.

(c) Relationship to Default Provisions. The annual review procedures set forth in AMC Section 30-95 (as of the Approval Date) and this Article 7 shall supplement and shall not replace that provision of Article 10 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Breach and following the procedures set forth in Sections 10.2 and 10.3.

Section 7.3 Effect on Transferees. If a transfer of the Property or a portion of the Property has been effected by the Developer, the Developer shall not be responsible for collecting the required information from said Transferee to prepare a single annual review for the Property, but rather each such Transferee shall be responsible for submitting its own written report to City outlining said transferee's good faith compliance with the material terms of this Development Agreement with respect to the transferred portion of the Property. A failure by a Transferee to timely submit a written report or to otherwise comply with the annual review

requirements shall not constitute or be asserted as a default by Developer, and a failure by Developer to timely submit a written report or to otherwise comply with the annual review requirements shall not constitute or be asserted as a default by any Transferee.

ARTICLE 8.
AMENDMENTS; TERMINATION; EXTENSION OF TERM

Section 8.1 Amendments to Development Agreement. The Development Agreement may be amended by the Parties, upon mutual agreement, consistent with the procedures set forth in Government Code Section 65868, including any amendments thereto and AMC Section 30-94.3 (as of the Approval Date). Except as may otherwise be required by law or court order, all amendments to this Development Agreement shall: (i) be in writing; (ii) approved by the City Council in accordance with Applicable Law and this Development Agreement, by ordinance, at a public meeting; (iii) signed by both Parties; and (iv) entitled **"**Development Agreement **–** Alameda Point **–** West Midway, Amendment N**"** where **"**N**"** is the next number in order. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

Section 8.2 Amendments to the Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 8.1) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Article 1. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law, subject to Article 1. The City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer**'**s prior written consent.

Section 8.3 Extension Due to Legal Action, Referendum, or Excusable Delay.

(a) If any litigation is filed challenging this Development Agreement (including but not limited to any CEQA determinations) or the validity of this Development Agreement or any of its provisions, or if this Development Agreement is suspended pending the outcome of an electoral vote on a referendum, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension. The Parties shall document the start and end of this delay in writing within thirty (30) days from the applicable dates.

(b) In the event of Force Majeure (as defined in the DDA), the Parties agree to extend the time periods for performance of Developer's obligations under this Development Agreement impacted by the Force Majeure. In the event that a Force Majeure occurs, the Party claiming the Force Majeure shall notify the other Party in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of the Party claiming Force Majeure to perform under this Development Agreement. The Force Majeure extension shall commence upon the date of the written notice and shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time the Term of this Agreement will be adjusted to account for the extension period; provided, however, under no circumstances may delays for Force Majeure cause the term of this Agreement to exceed the Term of the DDA as the DDA may be extended for Force Majeure.

(c) In the event that Developer stops any work as a result of a Force Majeure as set forth above, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition.

Section 8.4 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 8.4 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 8.1 above, and nothing in this Section shall be construed as to require the City Manager to exercise his or her discretion or to prevent the City Manager from seeking City Council review and approval of an clarification that might otherwise fall within the City Manager's authority. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City. Without limiting the foregoing, any clarifications to Article 9 of this Development Agreement reasonably requested by a Mortgagee for a Developer to secure financing shall not constitute an amendments, so long as such clarification does not materially expose the City to additional risk of liability or subject City to any monetary obligations or damages.

ARTICLE 9.
TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES

[Article 9 subject to additional changes to conform to provisions in DDA]

Section 9.1 Transfer or Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to the Main Street Specific Plan,

particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Developer to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Main Street Specific Plan and this Development Agreement. Developer agrees to and accepts the restrictions set forth in this Article 9 as reasonable and as a material inducement to the City to enter into this Development Agreement.

Section 9.2 Definition of Transfer. As used in this Article 9, the term **"**Transfer**"** means:

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

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

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

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

(a) Any Transfer creating a Security Financing Interest or otherwise consistent with the provisions of Section 9.8.

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer consisting of the sale, rental or subletting of a Residential Unit or of commercial space in the Commercial Element of the Project in the normal course of the Developer's business operations.

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

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

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

(g) Any Transfer to an entity in which the Developer or a Developer Affiliate has the power to direct the affairs or management of the proposed transferee, whether by contract, other governing documents or operation of Law or otherwise.

(h) Any Transfer of a Sub-Phase to a Qualified Developer, as that term is defined in the DDA, after the completion of the applicable Infrastructure Phase pursuant to the applicable Subdivision Improvement Agreement.

Section 9.5 Other Transfers In City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 9.4 shall be subject to prior written consent by the City in accordance with this Section 9.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, the Developer shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of mixed-use developments containing a first-class retail/commercial component similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within thirty (30) days of the receipt from the Developer all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. A failure by the City to act within such thirty (30) day period shall constitute a disapproval of the proposed Transfer.

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

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

(b) No Transfer, whether permitted pursuant to Section 9.4 or 9.5 shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City Attorney and in form recordable among the land records of the County, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of the Developer under this Agreement and any ancillary agreements entered into by the Developer pursuant to this Agreement with respect to the portion(s) of the Property and the Project being transferred; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation prior to transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof shall not be required to give to the City such written agreement until such holder or other person is in possession of the Property, or applicable portion thereof, or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

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

Section 9.7 Release of Transferring Developer. Developer shall continue to be obligated under this Development Agreement as to all or the portion of the Property so transferred unless it is a Permitted Transfer or otherwise Approved Transfer as defined in the DDA and/or the City is satisfied the Transferee is fully able to comply with Developer**'**s obligations under this Development Agreement (both financially and otherwise) with respect to the portion of the Property or the Project transferred and Developer is given a release in writing by the City.

Section 9.8 Partial Transfer. Notwithstanding any other provision hereof to the contrary, if Developer only transfers a portion of the Property, then Developer shall continue to be obligated under this Development Agreement with respect to the balance of the Property not so transferred.

Section 9.9 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 9.9. Any security instrument and related interest authorized by this Section 9.9 is referred to as a **"**Security

Financing Interest." Until the Developer is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the purpose of securing any approved Security Financing Interest.

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

Section 9.10 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated by, or to perform, any of the Developer's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 9.11 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 10, delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Project, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the development and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to the Project under this Agreement. The holder in that event must agree to complete the Project, in the manner provided in this Agreement.

Section 9.12 Failure of Holder to Complete the Project. In any case where six (6) months after default by the Developer in completion of construction of the Project under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement.

Section 9.13 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Project, and if the holder has not exercised its option to complete the Project, upon five (5) Business Days' prior written notice to the Developer, the City may, in its sole discretion (but with no obligation to do

so) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the holder to effect such subordination.

Section 9.14 Right of City to Satisfy Other Liens. After the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer thereof, and has failed to do so, in whole or in part, the City may in its sole discretion (but with no obligation to do so), upon five (5) Business Days' prior written notice to the Developer, satisfy any such lien or encumbrances. Nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.15 Holder to be Notified. The Developer shall insert each term contained in this Article 9 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.16 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

ARTICLE 10.
ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

Section 10.1 Enforcement. The only Parties to this Development Agreement are the City and the Developer. This Development Agreement is not intended and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

Section 10.2 Breaches and Defaults.

(a) Breach. The failure or delay by either Party to perform any material term or provision of this Development Agreement shall constitute a breach of this Development Agreement except that the Parties may by mutual consent in writing, or subject to the extensions of time set forth in Section 8.3, extend the time for performance. In the event of alleged breach of any terms or conditions of this Development Agreement, the Party alleging such breach shall first give the other Party notice in writing specifying in detail the nature of the breach, all material facts constituting substantial evidence of such breach known to the Party alleging the breach, and the manner in which said breach may be satisfactorily cured (**"Notice of Breach"**), and the Party in breach shall have sixty (60) days following such notice (**"Cure Period"**),

subject to any extensions of time by mutual consent of the Parties, a Mortgagee's right to cure pursuant to Article 9 hereof and the provisions of Section 8.3(b) hereof regarding Force Majeure delays, to cure such breach; provided, however, that if the breach is of a type that cannot reasonably be cured within sixty (60) days, the breaching Party shall within the sixty (60) day period following notice from the non-breaching Party commence to cure such breach; and thereafter be proceeding diligently and in good faith to cure such breach (**"Extended Cure Period"**). During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings or issuance of any Subsequent Approval. The failure of any Party to give Notice of Breach shall not be deemed to be a waiver of that Party's right to allege that breach or any other breach at any other time.

(b) Default. If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if applicable, subject to any extensions of time by mutual consent of the Parties, a Mortgagee's right to cure pursuant to Article 9 hereof and the provisions of Section 8.3(b) hereof regarding Force Majeure delays, such Party shall be in default (**"Default"**), and the non-breaching Party, at its option, may terminate the Development Agreement pursuant to Section 10.3 of this Development Agreement or institute legal proceedings pursuant to Section 10.3 of this Development Agreement and shall have such remedies all as set forth in Section 10.3 below. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer or the City has caused a breach or failure of performance of this Development Agreement, then the Developer or City, as applicable, shall not be deemed to have caused such breach or failure of performance until the Developer or the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement.

(c) Withholding of Permits. In the event of a Default by Developer, upon a finding by the City Manager that in his or her reasonable opinion, as supported by substantial evidence, Developer is in serious and substantial breach, the City shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Development Agreement, however if this Agreement has been partially transferred to a third party and the third party is not in default of any of the Agreement, the City shall not withhold permits from the third party; and nor shall the City have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Development Agreement due to any default caused by any permitted transferee. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

Section 10.3 Termination.

(a) Termination by Developer. The Parties mutually agree pursuant to Government Code Sections 65865.1 and 65868 to the following termination process. In the event of a Default by City, the Developer shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice of termination to the City, delivered via certified mail.

(b) Termination by City. In the event of a Default by the Developer, the City, through its City Manager, shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice of termination to Developer, delivered via certified mail, and the following procedures shall apply:

(1) If the City Manager elects to terminate, Developer shall have the right, upon written request to the City Manager within the said forty-five (45) days, to a City Council hearing to reconsider the termination decision (**"Reconsideration Hearing"**).

(2) If the Developer requests a Reconsideration Hearing, the matter shall be placed on the City Council**'**s agenda as soon as practicable but no sooner than thirty (30) days from the date of Developer**'**s request, to allow the Developer time to prepare its presentation. Notice of a Reconsideration Hearing shall be delivered to Developer in accordance with Section 11.14 containing the time and place of the hearing and other information necessary to inform Developer of the nature of the proceedings. If and only if the Reconsideration Hearing is scheduled for (or continued to) a date that is after the effective date of the termination notice, then the effective date of the termination notice is automatically extended until ten (10) days after the final Reconsideration Hearing date.

(3) The Developer and City staff shall have the right to, but neither is obligated to, provide the City Clerk with written materials to be included in the agenda packet for the City Council**'**s review prior to the Reconsideration Hearing. Such materials, if any, will become part of the public record and, if submitted by City staff, must be submitted in time to comply with the City**'**s Sunshine Ordinance. At least five (5) business days prior to the Reconsideration Hearing, City shall deliver to Developer any and all staff reports and all other relevant documents pertaining to the Reconsideration Hearing.

(4) At the Reconsideration Hearing, the Developer shall have the right to present oral testimony and written materials to show that: (i) no Developer Default has occurred; (ii) it has cured the Default(s); (iii) that it will cure the Default(s) in the near future if given more time; (iv) that it is willing to offer the City alternative or additional consideration to offset the Default(s); or (v) that the Development Agreement should not be terminated despite the Default(s).

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

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

(7) If the City Council conditionally rescinds the termination decision, then the Developer shall have to accept or reject in writing, the conditions stated by the City Council. If the Developer accepts all of the conditions, then the Parties will work together diligently and in good faith to amend this Development Agreement or any other documents necessary to effectuate the new agreement. If the Developer rejects, in whole or in part, the

conditions set by the City Council or fails to respond in writing within ten (10) calendar days, then the City Manager's notice of termination remains in full force and effect and this Development Agreement shall terminate pursuant thereto.

(8) Termination of this Development Agreement shall be subject to the Mortgagee Protection provisions of Article 9 of the Development Agreement.

(9) For purposes of this Development Agreement, and notwithstanding anything to the contrary contained herein, (i) Developer shall not be liable for nor shall Developer's rights under this Agreement be affected in any manner by any Default caused by any Transferee; (ii) no Transferee shall be liable for any Default caused by Developer or any other Transferee under this Agreement nor shall such Transferee's rights under this Agreement be affected in any manner by any such Default caused by Developer or by any other Transferee; and (iii) without limiting the foregoing, the Parties acknowledge and agree that this provision shall be interpreted such that Developer shall hold its right, title and interest in this Development Agreement and Project free and clear of any rights that the City may have against a Transferee and each such Transferee shall hold its right, title and interest in this Agreement free and clear of any rights that the City may have against Developer, any other Transferee or any other portion of the Project as if the Developer and the City entered into a separate agreement on the terms described herein for its portion of the Project and each Transferee and the City entered into a separate agreement on the terms described herein for its portion of the Project without any such agreements being cross-defaulted or the obligations thereunder being cross-collateralized in any way.

(10) Compliance with the procedures set forth in Section 10.2 and 10.3 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 et seq.) including, but not limited to, the Notice of Breach hereunder constituting full compliance with the requirements of Government Code Section 910.

(11) In the event that this Development Agreement is terminated by the City pursuant to this Article 10, and a court of competent jurisdiction determines in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

(c) Additional Remedies.

(1) *Specific Performance*. In the event of a Default under this Agreement, the remedies available to a Party shall include specific performance of the obligations and rights of the Parties under this Agreement in addition to any other remedy available at law or in equity, subject to the limitation on damages set forth in Section 10.3(c)(2). Notwithstanding the foregoing, the City's specific performance remedy with respect to any obligation of Developer to complete any public improvements that Developer has commenced shall be limited to exercise of rights under payment and performance bonds and any other rights the City may have under any applicable public improvement agreement or subdivision improvement agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

(2) *No Monetary Damages*. The Parties have determined that except as set forth in this Section 10.3(c)(2), (i) monetary damages are inappropriate and (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages, but including termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, the Developer agrees that City shall not be liable to the Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except that this limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

(3) *No Impact on Remedies Available Under the DDA*. For the avoidance of doubt, nothing in this Development Agreement shall reduce, limit, or restrict the Parties' remedies available under the DDA for breaches or defaults under the DDA or the election of remedies under the DDA.

(4) *Effects of Litigation*. Notwithstanding Section 10.3(c)(2), in the event that litigation is instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then Developer shall have no obligations whatsoever under this Development Agreement.

Section 10.4 Indemnification. Developer agrees to defend (with counsel chosen by the City and reasonably acceptable to Developer), indemnify, release, and hold harmless the City and its elected and appointed officials and employees (**"Indemnified Parties"**) from any third party litigation, claim, action or court proceeding (**"Claim"**) brought against any of the Indemnified Parties arising out of or in connection with the City's approval of the Project Approvals, including the environmental review process therefor pursuant to CEQA or other City approval under federal, state or City codes, statutes, regulations or requirements and any combination thereof relating to the Project or a portion thereof (**"Third-Party Challenge"**). This indemnification shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs. Developer shall reimburse the City for its actual and reasonable costs in defense of the Third-Party Challenge, including but not limited to the time and expenses of the City Attorney's Office and any consultants as such costs are incurred and bills transmitted; provided, however, (i) Developer shall have the right to monthly invoices for all such costs, and (ii) Developer may elect at any time to terminate this Development Agreement by giving the

City written notice of such election with any such termination being effective thirty (30) days after the City's receipt of such notice of termination, and upon any such termination being effective, Developer's and City's obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. If this Agreement is the subject of a Third-Party Challenge and Developer fails to comply with the requirements of this section with regards to the payment of the Indemnified Parties' attorney's fees or other costs associated with such Third-Party Challenge, the City shall have no obligation to defend the Agreement from such Third-Party Challenge. Developer shall control its participation and conduct in the litigation in all respects permitted by law, provided however, neither Party shall settle any such litigation without the consent of the other Party.

Section 10.5 Revision to Project. In the event of a court order issued as a result of a successful Third-Party Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

Section 10.6 Provisions that Survive Termination of this Development Agreement. It is expressly agreed by the Parties that the following provisions survive the termination or expiration of this Development Agreement:

(a) Section 2.4 – Life of Project Approvals and Subdivision Maps

(b) Section 2.8(b) – Vesting Tentative Maps

(c) Section 4.5 – Coordination of Off-Site Improvements

(d) Section 6.1(b) – Termination Following Expiration

(e) Section 6.1(c) – Release of Units

(f) Section 10.3 – Remedies

(g) Section 10.4 – Indemnification

ARTICLE 11.
MISCELLANEOUS PROVISIONS

Section 11.1 Entire Agreement. This Development Agreement, including the preamble paragraphs, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

Section 11.2 Severability. If any term, provision or condition of this Development Agreement, or the application of any term, provision or condition of this Development Agreement to a set of facts or circumstances is held by a court of competent jurisdiction to be

invalid, void or unenforceable, the remaining terms, provisions and conditions of this Development Agreement and its application shall continue in full force and effect unless amended or modified by mutual consent of the Parties provided that, if the invalidation, voiding or enforceability would deprive either City or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement not feasible, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to City.

Section 11.3 Applicable Law and Venue. This Development Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California. Any legal action under this Agreement shall be brought in the Alameda County Superior Court or the United States District Court for the Northern District of California.

Section 11.4 Time of the Essence. Time is of the essence in this Development Agreement. All reference to days shall mean calendar days unless otherwise noted. All reference to year shall mean the City's fiscal year unless otherwise noted.

Section 11.5 Binding Upon Successors; Covenants to Run With Land. This Development Agreement shall be binding upon and inure to the benefit of the heirs, devisees, administrators, heirs, executors, successors (by merger, reorganization, consolidation, or otherwise) and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer of this Development Agreement by the Developer except as permitted in Article 9. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any heir, administrator, executor, successor in interest, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under applicable law.

Section 11.6 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 Development Agreement or the Project, this Development Agreement constitutes an arms-length transaction and the City has not provided any other subsidies, fee waivers, or other special treatment.

Section 11.7 Title of Parts and Sections. Any titles of the Sections or subsections of this Development Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 11.8 Cooperative Drafting. This Development Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Development Agreement reviewed and revised by legal counsel of their own choosing. No Party shall be considered the drafter of this Development Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Development Agreement.

Section 11.9 Integration. This Development Agreement consists of [___] pages and three (3) Exhibits, which constitute in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 11.10 Waivers. All waivers of the provisions of this Development Agreement shall be in writing and signed by the appropriate authorities of the City and the Developer.

Section 11.11 No Third Party Beneficiaries. There are no third party beneficiaries to this Development Agreement.

Section 11.12 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commissioner, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to the Developer, or any successor in interest, in the event of a City Default and no direct or indirect principal, member, partner, shareholder, officer, director, employee, affiliate, manager, representative, attorney or agent of Developer or their respective successors and assigns shall be personally liable to the City, or any successor in interest, for any Default of this Development Agreement by Developer, or for any amount which may become due to City or such successor or on any obligation under the terms of this Development Agreement.

Section 11.13 Signature in Counterparts. This Development Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

Section 11.14 Notices and Communications.

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

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

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

(b) Addresses. The address of each party for the purpose of all notices permitted or required by this Development Agreement is as follows:

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

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

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

and

Catellus Development Corporation
2000 Powell Street, Suite 500
Emeryville, CA 94608
Attn: Sean Whiskeman
Email: swhiskeman@catellus.com
Telephone: 510-267-3424

With copies to:
Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Margo Bradish
Email: mbradish@coxcastle.com
Telephone: (415) 262-5101

(c) Special Requirement. If failure to respond to a specified notice, request, 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 Development Agreement, the notice, request 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 11.15 Approvals.

(a) City Actions. Except as otherwise specified in this Development Agreement, 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 or his or her designee, without further approval by the City Council, and any such action shall be in writing.

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

Section 11.16 Adverse Decisions. If as a result of any administrative or judicial decision, the Project or the Developer shall become subject to State or federal requirements that adversely affect the Vested Elements, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, at the election of Developer in its sole and absolute discretion, this Development Agreement shall be reformed such that each provision of this Development Agreement that results in adverse impact will be removed from this Development Agreement as though such provisions were never a part of the Development Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Development Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the adverse impact, provided, the removal of such provisions and replacements does not diminish the Public Benefits, increase the obligations of the City or result in a substantial change to the Project Approvals.

Section 11.17 Actions and Instruments. Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

[Remainder of Page Intentionally Left Blank]

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

CITY OF ALAMEDA

By: _____
Jennifer Ott, City Manager

Date: _____

Attest:

_____
Lara Weisiger
City Clerk

Recommended for Approval:

_____
Lisa Maxwell
Community Development Director

Approved as to Form:

_____
Len Aslanian
Assistant City Attorney

Authorized by City Council Ordinance No. _____

Signatures continue on next page

DEVELOPER

_____,

a _____

By: _____

Name: _____

Its: _____

Exhibits:

A Property Legal Description
B Infrastructure Package
C List of Impact Fees

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

EXHIBIT B
INFRASTRUCTURE PACKAGE

EXHIBIT D
IMPACT FEES

The Project shall be subject to and the Developer shall be required to pay the Impact Fees listed below subject to any Impact Fee Inflator.

Sewer Connection Fee AMC Section 18.3
Improvement Tax - AMC Section 3-62
Community Planning Fee –AMC Section _____