

**TIDAL CANAL PARCEL
PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation

AS SELLER

and

a _____

AS BUYER

Residential Parcel:

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TIDAL CANAL PARCEL PURCHASE AND SALE AGREEMENT

THIS AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is entered into as of this ____ day of ____, 2016 (the "**Effective Date**"), by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**City**" or "**Seller**"), and _____, ("**Buyer**"), whose address is _____. Seller and Buyer are collectively referred to herein as the "**Parties**". The Parties have entered into the Agreement with reference to the following facts:

RECITALS

A. On October 20, 1884, the Superior Court of Alameda granted to the U.S. Army Corps of Engineers, a federal agency acting under the U.S. Department of Defense (the "**Corps**"), by judicial decree No. 3590, ownership of a strip of land connecting the cities of Alameda and Oakland for purposes of dredging and excavating a tidal canal out of uplands, which property became known as the Oakland Inner Harbor Tidal Canal (the "**Tidal Canal**").

B. Between approximately 1884-1905, the Corps excavated, dredged, and created the Tidal Canal, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay. The Corps has retained ownership of the Tidal Canal since its creation.

C. As a result of accretion and development over the past century, the outer edge of the Tidal Canal on the Alameda side now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners.

D. Over the past century, the Corps has issued various approvals and authorizations to adjacent property owners to use portions of the Tidal Canal through real estate licenses, leases and regulatory permits.

E. In 1990, the U.S. Congress authorized the Corps to transfer the Tidal Canal to the City of Alameda through the Water Resources Development Act of 1990. The Corps has been negotiating with the City of Alameda to transfer the Alameda side of the Tidal Canal out of federal ownership.

F. Starting in 2000 and continuing until present day, the Corps instituted a moratorium on issuing regulatory permits for any repairs, upgrades, improvements or new construction within the Tidal Canal (the "**Permitting Moratorium**"). The Permitting Moratorium has prevented necessary repairs and improvements to existing structures and docks along the waterfront, which has negatively affected adjacent property owners and the City's code enforcement program.

G. To lift the Permitting Moratorium and to remove the existing cloud on title along the Tidal Canal, the City has agreed to accept ownership of the Alameda-side of the Tidal Canal from the Corps, subject to certain conditions, with the intention of immediately transferring portions of the property to the adjacent property owners at fair market value, or the associated transaction costs for each.

H. The Corps desires to transfer the Alameda-side of the Tidal Canal to the City, and has agreed to take all steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) prior to transfer to facilitate the subsequent transfer of portions of the property to the adjacent property owners. The Tentative Map #8337 subdivides the Army Corps land into ninety-nine (99) individual parcels. The Army Corps will retain five (5) parcels: the Oakland side of the canal (Parcel 1), property adjacent to the federally-owned Navy Operational Support Center (Parcel 3), footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98) and the Park Street Bridge (Parcel 99). The City will retain Parcels 2 and 96 (the “**Open Water Parcels**”), which will be preserved for open navigation through the Tidal Canal. The City will offer at fair market value the remaining ninety-two (92) parcels consisting of eight (8) commercial parcels (the “**Commercial Appurtenant Parcels**”) and eighty-four (84) residential parcels (the “**Residential Appurtenant Parcels**”) to the adjacent property owners.

I. On [DATE], the Corps completed the Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act (42 U.S.C. 4321).

J. On [DATE], the Corps completed a Finding of Suitability of Transfer, which provides documentation that the Tidal Canal is environmentally suitable for transfer by deed.

K. On _____, 2016, the City entered into a Memorandum of Understanding with the Corps (“**MOA**”) with respect to the transfer of the Residential Appurtenant Parcels from the Corps to the City and the subsequent and immediate transfer of those parcels to the adjacent property owners. It is estimated that the Corps will convey the Residential Appurtenant Parcels to the City on December 13, 2016 (the date upon which the Residential Appurtenant Parcels are conveyed to the City by the Corps is referred to as the “**Army Corps Conveyance Date**”). The Estimated Closing Date for this Agreement (as defined at Section 8.3 below) is therefore December 13, 2016.

L. On July 11, 2016, the Planning Board of the City of Alameda recommended that the City Council adopt a Final Negative Declaration, introduced as Ordinance Amending Chapter 30 of the Alameda Municipal Code Section 3-4.21 E, Estuary District, and approve Tentative Map #8337 (PLN16-0240) for a one hundred five (105) lot subdivision located along the Oakland Inner Harbor Tidal Canal from approximately one thousand eight hundred (1,800) feet northwest of the Park Street Bridge to approximately two thousand three hundred (2,300) feet south of High Street.

M. On or before the Army Corps Conveyance Date, the City caused to be recorded in the Official Records of the County of Alameda, a final subdivision map creating, inter alia, a single parcel designated as Parcel _____ (the property which is the subject of this Agreement), as shown on **Exhibit A** (the “**FINAL MAP**”) attached hereto and incorporated herein by this reference.

N. The City has obtained an appraisal dated August 2016 of the fair market value of the Residential Appurtenant Parcels (appraised as unimproved land) from Sara Cohn, M.A.I. of Watts, Cohn and Partners, Inc. (the “**Appraisal**”).

O. On September 20, 2016, the City Council: (i) approved the Negative Declaration for the project; (ii) approved and adopted the final subdivision map; (iii) approved the transfer of fee title of the Residential Appurtenant Parcels from the Army Corps to the City; (iv) approved the sale of the Residential Appurtenant Parcels from the City to various buyers at the greater of the fair market value or the transaction costs; and (v) authorized the City Manager to execute all documents and to take such action as necessary and desirable to consummate the transaction.

P. The undersigned Buyer is the owner of that certain parcel of improved property commonly known as [address], APN _____ (the “**Buyer’s Parcel**”) which is immediately adjacent to the Property (as defined in Section 1.1 below). To facilitate the lifting of the Permitting Moratorium, to lift the existing cloud on title to existing structures and docks on or about the Property and to provide Buyer with direct access from the Residential Parcel to the water frontage, it is the intent of the Parties hereto that Buyer purchase and the City sell the Property upon the terms and conditions set forth herein.

NOW THEREFORE for good and valuable consideration, including the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. THE TIDAL CANAL PARCEL. Seller hereby agrees to sell, assign and convey to Buyer, and Buyer hereby agrees to purchase from Seller, all of Seller’s right, title and interest in and to the following, upon all of the terms, covenants and conditions set forth in this Agreement.

1.1 Property. The property that is the subject of this transaction includes all of the following (subject to the exceptions, limitations and disclaimers listed in Section 1.2 below): (a) that certain real property located in the City of Alameda, County of Alameda, known as Parcel _____, as shown on the FINAL MAP attached hereto as Exhibit A; (b) all rights, privileges, easements and appurtenances thereto; (c) the improvements located thereon, if any; (d) all of Seller’s right, title and interest in and to any and all mineral and water rights, easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment thereof; and (e) all of Seller’s interests in any assignable permits, licenses, certificates, authorizations, variances, waivers and approvals, if any, relating to the property so conveyed (collectively hereinafter referred to as the “**Property**”).

1.2 Certain Improvements and Structural Encumbrances. Seller makes no representations or warranties with regard to any improvements on the Property, either with regard to their physical condition or compliance with government requirements. In addition, Buyer hereby acknowledges that the Property may contain docks, boat houses and other improvements or structural encumbrances for which parties other than Seller may claim ownership interest. Said improvements or structural encumbrances may already be owned by Buyer. It is expressly agreed by the Parties that the Seller shall have no obligation to remove these improvements and/or structural encumbrances prior to the Closing Date or at any time

thereafter. Buyer hereby expressly acknowledges that Buyer is fully aware of the improvements and/or structural encumbrances on the Property, if any, whether owned by Buyer or third parties. Buyer hereby expressly agrees to enter into this transaction, execute this Agreement and accept title to the Property in exchange for the Purchase Price, despite the presence of the improvements and/or structural encumbrances, if any, even is said improvements and /or structural encumbrances are owned by parties other than Buyer or Seller. Buyer is also directed to Article 3 below as to Buyer's duty of inspection and due diligence.

2. PURCHASE PRICE. The Purchase Price for the Property is _____ Thousand and 00/100 Dollars (\$_____.00) together with closing costs (the "**Purchase Price**") which is the fair market value of the Property, as determined by the Appraisal on a per parcel basis, plus the closing costs as determined by the Escrow Agent. The Purchase Price shall be paid by Buyer as follows:

2.1 Deposit. Within ten (10) business days of the Effective Date of this Agreement, Buyer shall deliver to Chicago Title Company, 675 N. First Street, Suite 300, San Jose, CA 95112 ("**Escrow Agent**" and "**Title Company**") an initial earnest money deposit in the amount of Five Hundred and 00/100 Dollars (\$500.00) (the "**Deposit**"). The Deposit paid by Buyer pursuant to the terms hereof shall be held by Escrow Agent, pursuant to a separate escrow agreement, in an interest bearing account insured by the federal government. In the event the purchase and sale of the Property is consummated as contemplated hereunder, the Deposit shall be credited against the Purchase Price Balance at Closing. A copy of this Agreement, duly executed by both parties, shall also be deposited with Escrow Agent promptly after execution.

2.2 Balance of Purchase Price. No later than fifteen (15) days before the estimated Closing Date (as defined in Section 8.3(a) below), Buyer shall deposit with Escrow Agent additional cash by wire transfer of immediately available funds in the amount of _____ Thousand and 00/100 Dollars (\$_____.00) together with estimated closing costs ("**Purchase Price Balance**").

2.3 Independent Consideration. The Deposit being delivered by Buyer includes the amount of One Hundred and No/100 Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement ("**Independent Consideration**"), which shall be retained by Seller and, except as otherwise specified herein, shall be nonrefundable to Buyer. If the Closing occurs, the Independent Consideration shall be applied to the Purchase Price Balance at Closing. The Independent Consideration has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection and termination rights during the Due Diligence Period, and such consideration is adequate for all purposes under any applicable law or judicial decision.

2.4 Obligations and Duties of Escrow Agent.

(a) The duties and obligations of the Escrow Agent are only as herein specifically provided, and are purely ministerial in nature. The Escrow Agent shall incur no liability for any error in judgment, for any act done or step taken or omitted to be taken by it in good faith, for any mistake of fact or law or for any reason whatsoever except for its own willful misconduct or failure to follow an escrow instruction signed by both Seller and Buyer.

(b) In the event that Seller and Buyer cannot agree on the disbursement of the Deposit, the Escrow Agent may place the Deposit with a court of competent jurisdiction and request that the court resolve the dispute.

3. BUYER'S INVESTIGATION OF PROPERTY CONDITIONS. Buyer is aware of Buyer's affirmative duty to exercise reasonable care in the acquisition of real property, including but not limited to investigating (with the advice and assistance of an attorney or other professionals as appropriate) the facts that are known to or within the diligent attention and observation of the Buyer including, but not limited to, with respect to the following:

3.1 Property Lines and Boundaries. Fences, hedges, walls, and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines are verifiable only by survey.

3.2 Separate Parcels. Upon conveyance of the Property to Buyer, the Property and the Buyer's Parcel will remain two separate parcels which may be merged into one parcel only in compliance with the Subdivision Map Act (California Government Code Section 66410-66413.5), and at Buyer's sole cost and expense. If Buyer chooses to merge the Property and Buyer's Parcel, such merger must occur after the Closing Date (as defined at section 8.3(a) below).

3.3 Governmental Requirements, Fees and Permits. The need for governmental permits, inspections, certificates, or other determinations affecting the Property and any improvements located thereon; limitations, restrictions, and requirements affecting the use of the Property; future development, zoning, building, size, governmental permits, and inspections; and application, processing, inspection, and in-lieu fees and expenses associated therewith. Buyer should investigate the need for regulatory permits for new and existing structures. Any such uses or permits may be governed by the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 - 1376).

3.4 Water and Utilities. Water and utility availability and use restrictions; hook-up fees, facility fees, and other costs and expenses associated with the provision of utilities to the Property.

3.5 Environmental Hazards. Potential environmental hazards contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

3.6 Geologic/Seismic Conditions. Geologic/seismic conditions, soil and terrain stability, suitability, and drainage. Some parts of the East Bay have expansive, or adobe, soil which will expand and contract with the wet and dry seasons. This expansion and contraction can cause movement or shifting of structures. Like all regions in the Bay Area, the Property is considered to be subject to high seismic activity. Local moderate seismic activity association with any area faults could produce severe ground shaking.

3.7 Condition of Improvements. The physical condition of any docks, piers or other improvements, the issue of whether such improvements possess necessary permits or authorizations and whether such improvements are located exclusively upon the Property.

3.8 Zoning. Any use or development of the Property must be in conformity with its zoning designation, E, Estuary District, as defined at Section 30-4.21 of the Alameda Municipal Code of Ordinances.

4. RECEIPT OF DISCLOSURE DOCUMENTS. Buyer is hereby advised to thoroughly review all reports and disclosures related to the Property referenced herein or otherwise provided to Buyer (with the advice and assistance of a lawyer or other professionals as appropriate). The following documents in Seller's possession related to the Property (the "**Property Information**") are delivered to Buyer (via the City's website at the following link: <https://alamedaca.gov/tidal-canal-project> or, at Buyer's request, hard copies or electronic copies will be delivered to Buyer) concurrently herewith:

- (a) Subdivision Map;
- (b) ____ __, 2016 MOU between the City and the Corps;
- (c) ____ __, 2016 Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act;
- (d) ____ __, 2016 Finding of Suitability of Transfer;
- (e) June 2014 Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture (Environmental Baseline Survey);
- (f) May 12, 2015 Summary Report on Oakland Inner Harbor Tidal Canal Environmental Contamination Issues prepared by Russell Resources, Inc.;
- (g) Mitigated Negative Declaration Determination;
- (h) Declaration of Restrictions;
- (i) Appraisal report from Watts, Cohn and Partners, dated August 2016 showing the aggregate fair market value of the Residential Appurtenant Parcels and the Property on a per parcel basis.

Seller will provide to Buyer, without charge, a hard copy or pdf of any of the above documents upon written request.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF ALL OF THE ABOVE-REFERENCED DOCUMENTS

Buyer's Initials: _____/_____/

5. DUE DILIGENCE PERIOD. As used in this Agreement, the term “**Due Diligence Period**” shall mean the period commencing on the date Buyer executes this Agreement and ending at 5:00 p.m. on the fifteenth (15th) business day after Buyer executes this Agreement. During said Due Diligence Period Buyer is encouraged to undertake such investigations of property conditions, to review documents and undertake such other investigations as it deems prudent.

5.1 Access to Property. Buyer acknowledges that, prior to the Army Corps Conveyance Date, Seller neither possesses nor controls the Property, the same remaining under the ownership of the Corps. Thus Seller will not have title to, nor possession of any of the Property and therefore has no authority to grant Buyer access to conduct environmental, geotechnical or other tests on the land. The foregoing notwithstanding, Buyer acknowledges that Buyer has direct access and/or actual use and possession of the Property with the actual or implied consent of the Corps. Thus Buyer hereby acknowledges that Buyer has sufficient access to the Property to conduct its due diligence during the due diligence period.

5.2 Additional Documents. Seller agrees that any additional documents relating to the Property, beyond those identified in Article 4 above, which come into the possession, custody or control of Seller after the Effective Date but before the Closing Date will be promptly delivered by Seller to Buyer via the City’s website at the link as identified at Section 4 above or, at Buyer’s request, by hard or electronic copies delivered to Buyer.

5.3 Due Diligence Satisfaction. Buyer may, at any time prior to 5:00 p.m. on the last day of the Due Diligence Period (the “**Due Diligence Satisfaction Date**”), elect to proceed with the purchase of the Property or terminate this Agreement in its sole and absolute discretion for any reason or no reason, by sending to Seller written notice indicating Buyer’s election to terminate the Agreement. In the event of such termination, the Deposit (exclusive of the Independent Consideration) then held by Escrow Agent shall be returned to Buyer. If Buyer fails to deliver such notice prior to 5:00 p.m. on the Due Diligence Satisfaction Date in accordance with the provisions of this Section 5.3, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 5.3. If Buyer so terminates this Agreement, Seller may thereafter offer the Property to a third party purchaser.

6. CONDITION OF THE PROPERTY.

6.1 Property Sold in an “As Is” Condition and “With All Faults”. Except for the representations or warranties of Seller expressly set forth in this Agreement, Buyer and Seller mutually acknowledge and agree that, the Property is being sold in an “AS IS” condition and “WITH ALL FAULTS,” known or unknown, contingent or existing. Buyer has the sole responsibility to fully inspect the Property, to investigate all matters relevant thereto, including, without limitation, the condition of the Property and to reach its own, independent evaluation of any risks (environmental or otherwise) or rewards associated with the ownership of the Property. Effective as of the Closing, Buyer hereby waives and releases the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from and against any and all claims, obligations and liabilities arising out of or in connection with the physical condition of the Property.

6.2 Waiver of Environmental Conditions. To the fullest extent permitted by law, and except as expressly set forth in this Agreement, Buyer does hereby unconditionally waive and release the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of Hazardous Substances in, on, at, from, under or about the Property or any adjacent property, including, without limitation, any claims under or on account of any environmental law, regardless of whether such Hazardous Substances are located in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing. In addition, Buyer does hereby covenant and agree to defend, indemnify, and hold harmless Seller, its City Council, boards, commissioners, officials and its employees, agents, successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, known or unknown, existing in future, to the extent relating to any Hazardous Substances that are placed, located or released on the Property after the Closing and, with respect to releases, that did not exist on the Property prior to the Closing, including any action or proceeding brought or threatened or ordered by governmental authorities. For purposes of this Agreement, “**Hazardous Substances**” means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal, state or local laws, ordinances or regulations.

6.3 Waiver of Natural Hazards. Buyer further acknowledges that “Natural Hazards” described in the following California Code Sections (the “**Natural Hazard Laws**”) may affect the Property: Government Code Sections 8589.4; 8589.3; Government Code Sections 51183.4, 51183.5 (Fire Hazard Severity Zone); Public Resource Code Section 2621.9 (Earthquake Fault Zone); Public Resource Code Section 2694 (Seismic Hazard Zone); and Public Resource Code Section 4136 (Wildlands Area). Buyer acknowledges and agrees that Buyer has had the opportunity independently to evaluate and investigate whether any or all of such Natural Hazards effect the Property and Seller shall have no liabilities or obligations with respect thereto. Buyer further acknowledges that pursuant to California Civil Code section 1103.1, this transfer is exempt from the natural hazard disclosure requirements set forth in sections 1103 et. seq. Without limiting the foregoing, Buyer acknowledges and agrees that Buyer knowingly and intentionally waives and releases Seller from any disclosures, obligations or requirements of Seller with respect to Natural Hazards, including, without limitation, any disclosure obligations or requirements under the aforementioned Code Sections or under California Civil Code Section 1102.

6.4 Dredging. Buyer shall be solely responsible for any dredging that may be necessary or desirable for Buyer’s use of the Property.

6.5 Disclaimer and Release of Claims. The Purchase Price reflects that the Property is being purchased by Buyer on an “as-is,” “where is” and “with all faults” basis. Buyer hereby waives and relinquishes all rights and privileges arising out of, or with respect to, any representations, warranties or covenants, whether express or implied, which may have been made or given, or which may be deemed to have been made or given, by Seller or its representatives, except for those representations, warranties and covenants set forth in this

Agreement. Buyer has not relied upon and will not rely upon, and Seller expressly disclaims, any representations or warranties with respect to: (a) the presence of any Hazardous Substances in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing; or (b) the matters referenced in Sections 3.1 through 3.8 above (the “**Buyer’s Release Claims**”).

6.6 Waiver of Unknown Claims. Buyer hereby acknowledges that Buyer is familiar with and understands the meaning of California Civil Code Section 1542 which provides as follows:

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

Buyer waives and relinquishes any right or benefit which Buyer has or may have under Section 1542 of the California Civil Code to the fullest extent that it may lawfully waive such rights and benefits. In connection with such waiver and relinquishment, Buyer acknowledges that it is aware that it or its consultants may hereinafter discover facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement, but that it is Buyer’s intention hereby to fully, finally and forever settle and release all of Buyer’s Released Claims, known or unknown, suspected or unsuspected, which now exist or may exist hereafter between Buyer and Seller with regard thereto.

6.7 Waivers Bargained For. Buyer acknowledges and represents that the waivers set forth in this Article 6 have been negotiated and each is an essential aspect of the bargain between the parties.

6.8 Title. Upon and subject to Close of Escrow, Seller shall convey title to the Property to Buyer by quitclaim deed in the form of **Exhibit B**, subject to any exceptions or restrictions to which the Property is subject upon its conveyance from the Corps to the City.

6.9 Survival. The terms and provisions of this Article 6 shall survive the Closing hereunder until expiration of any applicable statute of limitations.

7. CONDITIONS PRECEDENT TO CLOSING. The obligations of Buyer to purchase and Seller to sell the Property are expressly conditioned upon the satisfaction, prior to said closing, of each of the conditions precedent set forth in this Article 7 (the “**Conditions Precedent**”), any of which conditions may be waived by the party to whose benefit such condition inures. If this Agreement is deemed terminated as a result of the failure or non-occurrence of a Condition Precedent, the Deposit (including the Independent Consideration except as otherwise set forth in Sections 5.3 and 7.2) then held in Escrow shall be returned to Buyer.

7.1 Army Corps Conveyance. The conveyance by the Corps of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels shall

have occurred in accordance with the terms and conditions of the MOA and Recital K above. If the Army Corps Conveyance Date has not occurred by January 13, 2017, then this Agreement shall be deemed terminated.

7.2 No Termination by Buyer during Due Diligence Period. Buyer shall not have timely exercised the right to terminate this Agreement before the Due Diligence Satisfaction Date in accordance with Section 5.3. If Buyer terminates in accordance with Section 5.3, the Deposit (less the Independent Consideration) shall be returned to Buyer.

7.3 Commitment for all Residential Appurtenant Parcels. The obligation of the Corps to convey the Residential Appurtenant Parcels to the City, and the City's obligation to convey the Property to Buyer are conditioned upon there being buyers for one hundred percent (100%) of the Residential Appurtenant Parcels. For purposes of satisfying this Condition Precedent, the buyer need not be the owner of the adjacent residential parcel. All Residential Appurtenant Parcels must be under contract and the purchase price and documents required to be deposited into escrow shall have all been deposited on or before the Closing Date (as defined in Section 8.3(a) below).

7.4 No Pendency of Legal Challenge. There shall be no pending legal action challenging the conveyance of the Residential Appurtenant Parcels, or any of them, from the Corps to the City, or challenging the reconveyance by the City of the Residential Appurtenant Parcels, or any of them, or challenging the validity of this Agreement or any action to be taken by Seller or Buyer pursuant thereto.

7.5 Alameda City Council Approval. The Alameda City Council in its sole and absolute discretion shall approve by at least four (4) affirmative votes to acquire the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels and shall have directed the City Manager to execute any and all documents to consummate the transaction upon terms and conditions the City Council deems appropriate.

8. CLOSING.

8.1 Seller Deposits into Escrow. Seller shall deposit the following into Escrow:

(a) Quitclaim deed. A duly executed and acknowledged quitclaim deed conveying the Property to Buyer;

(b) Certificate of Non-Foreign Status. A Non-Foreign Certificate executed by the City (the "**FIRPTA Certificate**") and a California Form 593-C executed by the City (the "**Cal-FIRPTA Certificate**");

(c) Escrow instructions. Written escrow instructions to Escrow Agent instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement.

(d) Other Documents. Such other documents and instruments as may be required by the provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

8.2 Buyer Deposits into Escrow. Buyer shall deposit the following into Escrow:

(a) Balance of Purchase Price. Cash or immediately available funds in the amount of the Purchase Price Balance and estimated closing costs by no later than thirty (30) days in advance of Closing;

(b) Escrow Instructions. Written escrow instructions to Escrow Holder instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement;

(c) Other Documents. Such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

8.3 Close of Escrow.

(a) Closing Date. The Escrow shall close upon the same date as the Army Corps Conveyance Date and immediately following such conveyance of the Tidal Canal Conveyance Parcels from the Corps to the City (the “**Closing Date**”). For purposes of Buyer’s obligation to deposit the Purchase Price Balance into Escrow in accordance with Section 8.2, the estimated Closing Date for this transaction is **December 13, 2016**. For purposes of satisfying a Condition Precedent Seller may, at its sole and absolute discretion, elect to continue the Closing Date for a period of not to exceed thirty (30) days by giving written notice of the same to Escrow Holder and Buyer.

(b) Closing of Escrow. When the contingencies listed in Section 7.1 have been satisfied or waived in writing by Buyer and Seller and Escrow Agent has received all necessary cash and documents, Escrow Agent shall immediately close Escrow as provided below (the “**Closing**”). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement.

(c) Procedure. Escrow Agent shall close Escrow as follows:

(i) Record quitclaim deed. Record quitclaim deed conveying the Property to Buyer;

(ii) Issue title policy. Issue and deliver to Buyer a CLTA owner’s policy of title insurance in the amount of the Purchase Price showing title to the Property vested of record of the Closing Date with Buyer;

(iii) Pay to Seller. Pay to Seller the funds in Escrow equal to the Purchase Price, reduced by the closing costs to be paid by Seller as hereinafter set forth;

(iv) Closing statement. Prepare and deliver to Buyer and Seller one (1) signed copy of Escrow Agent's closing statement showing all receipts and disbursements from the Escrow.

8.4 Closing Costs. Buyer shall pay all City and County documentary transfer taxes due on the transfer of the Property from Seller to Buyer, all premium costs and expenses incurred in connection with the issuance of a CLTA owner's policy of title insurance, together with all escrow fees. Each party shall bear the expense of its own counsel.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

(a) Due Authority. Seller has obtained approval of the Alameda City Council authorizing the City Manager to execute this Agreement on its behalf.

(b) Litigation. Seller has received no written notice of any pending action or proceeding which challenges the validity of this Agreement or any action taken or to be taken by Seller pursuant hereto.

9.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that the foregoing matters are true and correct in all material respects as of the execution of this Agreement, and will also be true and correct in all material respects as of the Closing.

(a) Organization, Authorization and Consents. Buyer: (i) is a natural person(s) or is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) is and shall remain in good standing and qualified to do business in the state of California; (iii) has the full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the "**Buyer's Documents**"); and (iv) is lawfully able to perform all obligations arising under this Agreement and under the Buyer's Documents, and such performance does not conflict with any obligations of Buyer. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(b) Authorization of Buyer. Buyer has taken all necessary action to authorize the execution, deliver and performance of this Agreement, and upon the execution and delivery of documents to be delivered by Buyer on or prior to the Closing, this Agreement and such documents shall constitute the valid and binding obligation and agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may

be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(c) Buyer not an Employee Benefit Plan. Buyer is not an employee benefit plan (a “**Plan**”) subject to the Employee Retirement Income Security Act of 1974, as amended “**ERISA**”), or Section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”), nor a person or entity acting, directly or indirectly, on behalf of any Plan or using the assets of any Plan to acquire the Property, Buyer is not a “party in interest” (as that term is defined in Section 3(14)) of ERISA with respect to any Plan that is an investor in Seller, and Buyer’s acquisition of the Property will not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

(d) No Violation of Agreements. Neither the execution, delivery or performance of this Agreement by Buyer, nor compliance with the terms and provisions hereof, will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Buyer is bound.

(e) Litigation. Buyer has no knowledge of any pending action or proceeding which challenges the validity of the Agreement or any action taken or to be taken by Buyer pursuant hereto.

10. DISPUTES TO BE RESOLVED BY JUDICIAL REFERENCE.

(a) Any action, proceeding or counterclaim brought by either Party hereto against the other on any matters arising out of or connected with this Agreement shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the “**Referee Sections**”). Each Party hereby acknowledges that in agreeing to resolve any disputes arising hereunder by means of a judicial reference in accordance with the Referee Sections constitutes a waiver of the right to a trial by jury.

(b) Within ten (10) days of receipt by any Party of a written request to resolve any dispute or controversy pursuant to this Article 10, the Parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the Parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter file a lawsuit in Alameda County Superior Court the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., ADR Services, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections.

(c) The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies

available at Law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Agreement. The Parties shall be entitled to conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law. The Parties agree that the Parties and the referee shall use best efforts to ensure that (i) discovery be conducted for a period no longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (ii) a trial date be set within nine (9) months of the date the referee is appointed.

(d) In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure.

11. GENERAL PROVISIONS.

11.1 Capacities. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to find the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

11.2 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11.3 Entire Agreement. This Agreement including all recitals and exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Seller and Buyer, and pursuant to a resolution or ordinance (as applicable) approved and adopted by the Alameda City Council.

11.4 Attorney's Fees. In the event either party to this Agreement institutes an action or proceeding brought pursuant to Article 10 or otherwise, to interpret or enforce the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the referee or court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought on the action or proceeding. In the event Seller is represented in a proceeding by attorneys employed with the City Attorney's Office, any award of

attorney fees to Seller shall be measured by the reasonable fees that would have been paid by Seller had it instead been represented by outside counsel.

11.5 Brokers' Commission. Seller and Buyer each represent and warrant to the other that neither party has dealt with any real estate brokers or finders with respect to the transaction contemplated hereby. Each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any claim or claims of any broker or brokers to a commission in connection with this transaction as a result of the actions of the indemnifying party.

11.6 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California. The venue of any action brought pursuant to this Agreement shall be the County of Alameda.

11.7 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

11.8 Time. Time is of essence of every provision herein contained in this Agreement.

11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

11.10 Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, or transmitted by electronic mail addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Seller: City of Alameda
 Alameda City Hall
 2263 Santa Clara Ave.
 Alameda, CA 94501
 Tel: (510) 747-4700
 Attn: City Manager

with a copy to: City of Alameda
 Alameda City Hall
 2263 Santa Clara Ave.
 Alameda, CA 94501
 Tel: (510) 747-4750
 Attn: City Attorney

To Buyer: _____

Notices which are delivered by hand shall be deemed received upon delivery or the date on which delivery is refused; Notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery, or the date on which delivery is refused. The foregoing addresses may be changed by notice to the other party as herein provided.

11.11 Escrow Instructions. The Parties agree to execute such instructions to Escrow Agent and such other instruments and do such other and further acts as may be reasonably necessary to carry out any of the provisions of this Agreement.

11.12 Construction. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to “sections” are the Sections of this Agreement, unless otherwise specifically provided.

11.13 Possession. Possession of the Property shall be delivered to Buyer upon Closing.

11.14 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Buyer, or any successor in interest, in the event of a default under or breach of this Agreement by Seller.

11.15 Severability. If any section, term or provision of this Agreement is held invalid by the referee or a court of competent jurisdiction, all other sections, terms or severable provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the Parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

SELLER:

City of Alameda,
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager

Date: _____

Approved as to Form

By: _____
Andrico Q. Penick
Assistant City Attorney

BUYER:

By: _____
Name: _____

Date: _____

By: _____
Name: _____

Date: _____

EXHIBIT A
FINAL MAP

EXHIBIT B

QUITCLAIM DEED