

EXHIBIT Q
PUBLIC IMPROVEMENT AGREEMENT

PUBLIC IMPROVEMENT AGREEMENT

(Alameda Point- Site A, Phase ____; Map No. _____)

This Public Improvement Agreement ("Agreement") is made by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California, hereinafter called "City," and Alameda Point Partners, LLC, a Delaware limited liability company, hereinafter called "Developer" and dated this ____ day of _____, 20__ (the "Effective Date").

WITNESSETH:

WHEREAS, Developer is the owner of a tract of land lying in the City of Alameda, County of Alameda, State of California, commonly referred to as Phase __ of Alameda Point- Site A, and more particularly described in Exhibit A-1, attached hereto and incorporated herein by this reference, (hereinafter called the "Subdivision"); and

WHEREAS, Developer has a right to enter City specified publicly owned land in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A-2, attached hereto and incorporated herein by this reference, (hereinafter called the "City-Retained Property");

WHEREAS, the [Tentative Map No. _____ (the "Tentative Map")/Final Map No. _____ (the "Final Map")] of the Subdivision was approved with conditions by the City on _____, 20__, which conditions are on file in the Public Works Department and incorporated herein by this reference (the "Conditions of Approval"); and [**Note: Select whether PIA is being made part of Tentative Map approval or Final Map approval.**]

WHEREAS, Developer recognizes that approval of the [Tentative Map/Final Map] was subject to the findings and conditions in the Conditions of Approval and hereby acknowledges and agrees to be bound by such Conditions of Approval; and

WHEREAS, the Final Map has been reviewed by the City's Public Works and Planning Directors and found to be in compliance with the approved Tentative Map; and [**Note: Include only if accompanied by Final Map**]

WHEREAS, the Subdivision improvements required to be constructed by the Conditions of Approval (the "Public Infrastructure Improvements"), as more particularly described in the Public Infrastructure Improvement plans and specifications listed in Exhibit B, attached hereto (the "Plans and Specifications"), have not been completed as of the Effective Date; and

WHEREAS, as a condition precedent to the approval and acceptance of the [Tentative Map/Final Map] and pursuant to Sections 66462 and 66419(a) of the Government Code and Chapter 30 of the Alameda Municipal Code, the City is requiring the execution of this Agreement relating to

installation of the Public Infrastructure Improvements (including outside the boundaries of the Subdivision); and

WHEREAS, in accordance with Section 66499 of the Government Code, the City is requiring that this Agreement be secured by a surety bond or an instrument of credit issued by a financial institution subject to approval by the City and subject to regulation by the State or federal governments, or by a cash deposit; and

WHEREAS, Section 66499.3 of the Government Code establishes the types and amount of security to guarantee the performance of improvement agreements; and

WHEREAS, the City and the Developer have previously entered into that certain Disposition and Development Agreement, dated _____, 2015, regarding the Subdivision and other property included in Alameda Point – Site A (the “DDA”), which DDA includes certain requirements related to the construction of the Public Infrastructure Improvements.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto mutually agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

2. Construction Obligation; Offers of Dedication. Developer agrees at Developer's sole cost and expense to cause all Public Infrastructure Improvements to be made and completed to the City-Retained Property and the Subdivision pursuant to this Agreement prior to _____ (the “Completion Date”) as further detailed in the Phase _____ Milestone Schedule attached hereto as Exhibit C, incorporated herein by this reference; which at all times shall remain consistent with the DDA Milestone Schedule, as such may be amended pursuant to the terms of the DDA. The Completion Date is subject to extension pursuant to Section 1.3 of the DDA; provided, however, that any extension occurring after the “commencement of construction”(defined as performance of any work on the Public Infrastructure Improvements including clearing, grading, or other preliminary site work) of the Public Infrastructure Improvements shall be: (a) limited to extension pursuant to Section 1.3(b) of the DDA, (b) limited to a maximum of two (2) years, and (c) subject to the requirements of Section 1.3(c) of the DDA. Subject to the foregoing, any modification to the Completion Date shall be initiated by a written application made by Developer to the City Manager and Public Works Director stating fully the grounds of the application and facts relied upon for such an extension and in conformance with any requirements set forth in the DDA. Subject to the foregoing, any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither the modification or extension of the Completion Date nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety.

A copy of such conditions is on file in the Public Works Department.

If the Public Infrastructure Improvements are completed prior to the recordation of a Final Map for the Subdivision, Developer shall provide the City with such Irrevocable offers of Dedication for public right-of-way or easements as are necessary for the City's ownership, operation and maintenance of the applicable Public Infrastructure Improvements.

3. Easements and Permits. Subject to the City's obligations under Section 4.3(b)(14) of the DDA with regards to right of entry and access to the City-Retained Property, the Developer shall, at Developer's sole cost and expense: (a) provide any and all rights of way and easements, with cooperation from City when applicable or necessary, which may be necessary or convenient for the Subdivision and its required improvements; (b) obtain all necessary permits and licenses for the construction of the required improvements; (c) give all necessary notices; and (d) pay all fees and taxes required by law.

4. Performance of the Work. Construction of the required Public Infrastructure Improvements shall be performed in a workmanlike and professional manner, in accordance with the "Applicable Requirements" which shall include: (a) all requirements of State and local law, including the Alameda Municipal Code; (b) the Public Works Standard Specifications; (c) the Master Infrastructure Plan ("MIP") approved by the City Council on February 4, 2014; (d) the Conditions of Approval (defined in the third recital hereof) filed in the office of the City's Public Works Director; (e) the provisions of Article 5 and Section 8.3 of the DDA; (g) measures imposed to mitigate adverse environmental effects of the project under the MMR Program (as defined in the DDA); and (f) the Plans and Specifications (including all details and notes shown on the Plans and Specifications).

Developer shall provide personal supervision of the work on the Public Infrastructure Improvements or have a competent contractor, foreman or superintendent on the work at all times during progress with authority to act for Developer.

5. Modifications. Developer reserves the right to modify the Plans and Specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Public Works Director, and so long as such modifications are materially consistent with the Applicable Requirements. City also reserves the right to make or require reasonable modifications to the Plans and Specifications whenever field conditions and/or public safety require such modifications. Developer shall pay the City for all costs including, without limitation, plan check and inspection costs resulting from any such modifications.

Any alteration or alterations made to the Plans and Specifications or to any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to such bonds waive the provisions of Section 2819 of the California Civil Code.

6. Compliance and Inspection. All development activity shall be in compliance with Applicable Requirements, and all Public Infrastructure Improvements shall be inspected by the City for compliance with Applicable Requirements. Concurrent with the execution of this

Agreement Developer shall pay to City the sum of \$_____, which is to cover the costs of all inspections and Public Works charges, consistent with then applicable Master Fee Schedule.

7. Access to Work. Developer shall allow City's duly authorized representatives access to the work under this Agreement at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the Applicable Requirements. Developer is required to give at least one day's advance notice of the date upon which such work is commenced and the date upon which such work is to be completed. City may reject defective work and require its repair, replacement, or removal by Developer, all at no expense to City.

8. Acceptance of Offers of Dedication and Public Infrastructure Improvements. Subject to compliance with the requirements of Section 16 below, the City hereby agrees to accept the offers of dedication to the City [necessary for the operation of the Public Infrastructure Improvements/ shown on the Final Map] and accept the Public Infrastructure Improvements for permanent maintenance upon Developer's completion of the Public Infrastructure Improvements in accordance with the all Applicable Requirements and upon inspection pursuant to Section 6 of this Agreement.

9. City Services. Developer agrees to be financially responsible for all required City services provided to subdivision residents prior to acceptance of improvements by City.

10. Developer Not Agent of City. Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. Developer has full rights, however, to manage its employees in their performance of services under this Agreement. Developer is not authorized to bind City to any contracts or other obligations.

11. Developer Responsibility for Work. Until such time as the Public Infrastructure Improvements are accepted by City, Developer shall be responsible for, and bear the risk of loss to, any of the Public Infrastructure Improvements constructed or installed. Until such time as all Public Infrastructure Improvements required by this Agreement are fully completed, passed final inspection and, if to be dedicated to the City, are and accepted by City, Developer will be responsible for the care, maintenance of, and any repairs or reconstruction to remedy any damage to such Public Infrastructure Improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Developer.

12. Obligation to Warn Public. Until final acceptance of the Public Infrastructure Improvements, Developer shall give good and adequate warning to the public of each and every potentially dangerous condition which exists in said Public Infrastructure Improvements, and will take all reasonable actions to protect the public from such condition(s). Developer shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the tract site as may be necessary to prevent accidents to the

public and damage to the property. In addition, if the Developer exercises its rights to extend the Completion Date pursuant to Section 1.3 of the DDA, the Developer shall be obligated to comply with the requirements of this Section in addition to the requirements set forth in Section 1.3(c) of the DDA, as applicable.

13. Sale or Disposition of Subdivision. Developer is the owner of the Subdivision and has executed this Agreement to indicate consent to the terms herein. The sale or other disposition of any part of the Subdivision will not relieve Developer from the obligations set forth herein. If the Subdivision or any portion of the Subdivision is sold to any other person, the Developer may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Developer may obtain a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Developer of the obligations under Paragraphs 22 and 23 for the work or improvements done by or on behalf of Developer unless such a release is expressly approved by the City pursuant to the terms of the DDA. Developer shall give written notice to City within ten (10) days after close of escrow of any sale or transfer of all or any portion of the Subdivision and any assignment of this Agreement, specifying the name or names of the assignee, the Assignee's mailing address, the amount and location of the land sold or transferred, evidence of the express assumption of the obligations hereunder, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given. All transfers of property are subject to the requirements of the DDA, and nothing in this Agreement is intended to amend, modify or otherwise change the Developer's ability to transfer the Subdivision under the DDA.

14. Improvement Security. In order to insure full and faithful performance of this Agreement and in accordance with the requirements of the Subdivision Map Act and local implementing ordinances, Developer shall file with this Agreement the following security in the type and amounts specified:

(a) Performance Bond. Faithful performance security in an amount not less than one hundred percent (100%) of the total approved estimate for the cost of improvement including a ten percent (10%) contingency, sufficient to assure City that the improvements will be satisfactorily completed. Developer shall furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.1 or in a form reasonably satisfactory to the City Attorney.

(b) Labor and Material Bond. Labor and materials security to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public and private improvements, which is equivalent to one hundred percent (100%) of the total approved estimate for the costs of labor and materials including a ten percent (10%) contingency. Developer shall furnish City with the security listed in this Section in the forms specified in Government Codes Sections 66499.2 or in a form reasonably satisfactory to the City Attorney.

(c) Monumentation Bond. To guarantee payment of the installation of the required permanent monumentation, the Developer shall furnish to City either: (i) a bond; or (ii) cash deposit, in the amount of _____ (\$_____);

(d) Warranty Bond. Pursuant to Government Code Sections 66499, 66499.4 and 66499.9, to serve as a guarantee and warranty of the Work against any defective work or labor done or defective materials furnished (from the date when the City Council accepts the Work as complete until one year thereafter), Developer shall furnish to City either: (i) a cash deposit; (ii) a corporate surety bond issued by a company duly licensed to conduct a general surety business in the State of California; or (iii) an instrument of credit, in the amount of _____ (\$ _____) and in no event less than ten percent (10%) of the estimated cost of the Public Infrastructure Improvements in accordance with City Code Section 30-85.2.c.

15. Form of Security.

(a) All security shall be of a type specified in Government Code §66499(a)(1), (2), (3) or (5), as applicable, and must be satisfactory to and be approved by the City Attorney as to form. In conjunction with the submittal of bonds, the Developer shall furnish the following information:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bonds to do so; and

(2) Evidence that the issuing corporate surety or sureties are duly and legally licensed to conduct a general surety business in the State of California.

(3) A certificate from the Clerk Alameda County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.

(b) As an alternative to bonds, the Developer may:

(1) Submit an instrument of credit or certificate of deposit from one or more financial institutions subject to regulation by the State or Federal Governments with an office located in the nine Bay Area counties and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment.

(2) Make a deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public money.

(c) Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that the City is the owner of record of such funds.

(d) The City shall be the sole indemnity, beneficiary or loss payee (as applicable) named on any instrument required by this Agreement. In addition to the full amount

of the security, there shall be included costs and reasonable expenses and fees including attorney's and expert's fees incurred in enforcing the obligation secured.

16. Acceptance of Public Infrastructure Improvements. No Public Infrastructure Improvements shall be accepted by the City unless and until Developer submits a warranty bond in the amount required by Section 14(d) and such Public Infrastructure Improvements are free of all liens and encumbrances, free of all material defects and conditions which may create a hazard to the public health, safety, or welfare and until Developer has set and established survey monuments in accordance with the Final Map] and all Applicable Requirements. Upon completion of final inspection of the Public Infrastructure Improvements described herein, the Developer shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements, and other interests to be dedicated to the City shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances of any kind or character whatsoever and free of any and all material defects and conditions creating a hazard to public health or public safety.

City shall release any and all security provided by Developer in the manner described in Government Code Section 66499.7.

17. Guarantee and Security. Developer guarantees that all Public Infrastructure Improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of at least one (1) year from and after acceptance of such improvements by City as complete, and the Developer shall repair any defects in any such Public Infrastructure Improvements and replace any defective improvements which cannot be repaired and which occur or arise within said one (1) year period at Developer's own expense. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or contract for the necessary work and Developer shall pay to City the actual cost of such repairs as well as all administrative expenses incurred by City.

18. Exoneration of Surety. City shall not be required to exonerate any surety, release any security relating to satisfactory completion of the Public Infrastructure Improvements or issue occupancy permits until acceptance of proposed Public Infrastructure Improvements by the City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final inspection by City. In addition, release of security, exoneration of sureties and issuance of occupancy permits will be predicated upon the receipt of required warranty agreements and warranty security required under Section 14(d) therefore, as well as payment of all outstanding fees and reimbursements due City pursuant to this Agreement.

19. Building Permit Requirements. Prior to issuance of any building permit, Developer shall comply with all conditions precedent to issuance, including without limitation, the Uniform Fire Code requirements relating to access and water supply. Developer shall also

pay all required fees in the amounts set forth in the Development Agreement for the Subdivision which are to be paid prior to the issuance of a building permit.

20. Default of Developer. Default of Developer shall include, but not be limited to, Developer's failure to timely commence construction of the Public Infrastructure Improvements under this Agreement; Developer's failure to timely complete construction of the Public Infrastructure Improvements; Developer's failure to timely cure any defect in the Public Infrastructure Improvements; Developer's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work (subject to the exercise of Developer's rights set forth in Section 2 above); Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within sixty (60) days; the commencement of a foreclosure action against the Developer or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; a default under the DDA; or Developer's failure to perform any other obligation under this Agreement. Developer shall notify the Public Works Director of Developer's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

Upon the happening of any event described in this Section 20, the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the Developer shall cure the breach or failure as soon as practicable but in no event later than sixty (60) days from the date of receipt of such notice.

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to Force Majeure (as described in Section 1.3(b) of the DDA).

21. Remedies in Event of a Default. In the event of Developer's default: (beyond the applicable cure periods and subsequent to City's written notice to Developer of such default):

(a) City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Developer agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

(b) Developer, the surety and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property hereinabove described and each of them shall totally reimburse City for its reasonable costs and expenses (including reasonable attorney's fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in

connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on the subject property.

(c) City may enter onto the subject property, take over the work and prosecute the same to completion by contract or any other method City deems advisable, and, in such event, City, without liability for so doing, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer which may be on the site of the work and necessary performance of the work.

(d) City may record a Notice of Violation against all lots in the Subdivision, revert the Subdivision to acreage and/or withhold or revoke all building, zoning and occupancy permits.

(e) Declare a default under the DDA in accordance with Section 17.4 of the DDA, but only as to the applicable Phase.

(f) Notwithstanding the forgoing, in the event that the City elects to exercise its rights under Section 17.5 or 17.6 of the DDA in conjunction with an Event of Default under this Agreement, from and after the date the City obtains title to the Subdivision (or applicable portion thereof) pursuant to such provisions:

(1) (A) the City's right to avail itself of any rights under the bonds delivered pursuant to Section 14(a) and 14(b) shall be limited to those Infrastructure Sub-Phases (as defined in the DDA): (i) for which Developer has previously commenced construction (as defined in Section 2 above); and (ii) any necessary Public Infrastructure Improvements necessary for permanent access and utility services to serve vertical improvements Commenced as of the Event of Default; and (B) the City shall release/reduce any such bonds with respect to the balance of the Public Infrastructure Improvements, excepting the bonds related to the Ferry Terminal Sub-Phase, which are addressed in Section 21(f)(2) below; and

(2) solely with respect to the bonds related to the Ferry Terminal Sub-Phase, the City shall release such bonds upon the earlier to occur of: (A) Developer's payment of all obligations required under the Ferry Terminal Payment Note; or (B) Developer's completion of the Ferry Terminal pursuant to this Agreement.

22. Hold Harmless. The Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer's general contractor, subcontractor, consultants, employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

23. Duty to Defend and Indemnify. Claims Related to City's Approval and Implementation of Public Improvement Agreement: Developer shall, with counsel reasonably approved by the City, hold harmless, defend, and indemnify City, its officers, officials, directors, employees, and agents from and against any claim, action, or proceeding against the City or its agents, officers, and employees to attack set aside, void, or annul an approval of the City concerning the Public Improvement Agreement, which action is brought within the time period

provided for in Government Code Section 66499.37. The City of Alameda shall promptly notify the developer of any claim, action, or proceeding and the City shall cooperate fully in the defense.

Claims Related to Injury to Persons or Property: Developer further agrees that it will hold harmless, defend, and indemnify the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, lawsuit, costs (including costs of defense) and damages of every kind caused to any person or to the property of any person which may occur on any portion of the property then owned by Developer and caused by any acts or omissions of the Developer or its agents, servants, employees or contractors in any way arising from or related to the performance of its duties under this Agreement.

24. Insurance. Without limiting Developer's indemnification provided herein, Developer shall take out and maintain at all times during the term of this Agreement the following policies of insurance with insurers (if other than the State Compensation Fund) with a current A.M. Best's rating of no less than A:VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Developer, its agents, employees or subcontractors:

(a) Workers' Compensation with statutory limits as required by the California Labor Code. Said policy shall contain or be endorsed to provide that the policy shall not be canceled without thirty (30) days prior written notice to City and that the policy shall provide for a waiver of subrogation against City, its officers, employees and agents.

(b) Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001) in an amount of \$2,000,000.00 per occurrence. If work involves explosives, underground or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be three times the required occurrence limit. The amount of any deductible or self-insured retention over \$100,000.00 shall be declared to and security posted guaranteeing payment of losses and defense costs. Said policy shall contain, or be endorsed with, the following provisions:

(1) The City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, and volunteers (collectively, the "Additional Insureds"), are covered as insureds for liability arising out of the operations performed by or on behalf of the Developer, including materials, parts or equipment furnished in connection with such work or operations, with coverage to include products and completed operations of Developer and premises owned, occupied or used by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to City by certified mail.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(4) For claims related to the Developer Infrastructure, the Developer's insurance is primary coverage to the City, and any insurance or self-insurance programs maintained by the City is excess to Developer's insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to the Additional Insureds.

(c) Automobile Liability, with coverage at least as broad as Insurance Services Office form number CA 0001 06 92, Code 1 (any auto), in an amount of \$1,000,000.00 per accident. The amount of any deductible or self-insured retention over \$100,000.00 shall be declared to and approved by the City. Said policy shall contain, or be endorsed with, the provision that coverage shall not be canceled nor reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to City by certified mail.

(d) Prior to City's execution of Agreement, Developer shall provide properly executed Certificates of Insurance and Endorsements, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the insurance required herein on forms approved by the City. The amount of any policy deductible or self-insured retention over \$100,000.00 shall be included.

(e) Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

(f) In the event the City has agreed to allow the general contractor to provide the required insurance, Developer shall provide City with a letter naming such contractor. Work on the Developer Infrastructure may then only continue as long as that general contractor is engaged as the general contractor on the job. No other general contractor may be substituted unless and until a letter naming the new general contractor is provided to City along with the necessary evidence of all required insurance.

25. Attorney's Fees; Etc. In the event any party to this Agreement brings an action to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees from the other party, whether or not such action or proceeding is prosecuted to judgment. This provision shall be in addition to any provisions regarding attorney's fees set forth in Section 14, Section 20 or any other section of this Agreement.

26. Time of Essence. Time is of the essence.

27. Severability. The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

28. Entire Agreement. This Agreement, together with the Applicable Requirements, constitute the entire agreement with respect to the subject matter and all modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the City Manager and the Public Works Director. Modifications, amendments or waivers under the DDA are subject to the terms and conditions of the DDA.

29. Reference. Any reference to a department manager shall include his or her duly authorized deputy or representative.

30. No Pledging of City's Credit. Under no circumstances shall Developer have the authority or power to pledge the credit of City or incur any obligation in the name of City. Developer shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Developer under this Agreement.

31. Recordation. Upon request by City, Developer agrees to execute and acknowledge a memorandum of this Agreement for recordation with the County Recorder. By recordation of this Agreement or a memorandum hereof, it is parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. At its option City may record the agreement or memorandum or may require Developer, at Developer's cost, to record such Agreement or memorandum and may withhold City permits until proof of recordation is provided to City.

32. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Alameda, or if appropriate, in the United States District Court, Northern District of California, Oakland, California.

33. Captions. The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

34. Obligations Run With the Land. All obligations and provisions of this Agreement shall run with the real property described in attached Exhibit A-1 and shall bind the Parties and each of their respective successors and assigns.

IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

CITY OF ALAMEDA

By: _____

Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Jennifer Ott, Chief Operating Officer,
Alameda Point

Approved as to Form:

Farimah F. Brown
Senior Assistant City Attorney

Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

EXHIBIT A-1

PROPERTY LEGAL DESCRIPTION

*

EXHIBIT A-2

CITY-RETAINED PROPERTY
LEGAL DESCRIPTION

EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENT
PLANS AND SPECIFICATIONS

[Note: Exhibit B to include the improvements set forth in the applicable Infrastructure Phase of the Infrastructure Package described in the Tentative Map or Final Map.]

EXHIBIT C

PHASE __ MILESTONE SCHEDULE

EXHIBIT R
TRUST LEASE

TRUST LEASE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation
AS LANDLORD

and

ALAMEDA POINT PARTNERS, LLC

a Delaware Limited Liability Company
AS TENANT

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Exhibits

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- A-2 LEASED BUILDINGS AND PREMISES IN TIDELANDS PARCEL
- B COMMENCEMENT LETTER
- C ACKNOWLEDGMENT OF RECEIPT
- D ENVIRONMENTAL QUESTIONNAIRE
- E MEMO OF LEASE

TRUST LEASE AGREEMENT
BASIC LEASE INFORMATION

<i>Lease Date:</i>	Dated as of _____, 2015 for reference purposes only
<i>Landlord:</i>	City of Alameda, a charter city and municipal corporation
<i>Landlord's Address:</i>	<p>City of Alameda Alameda City Hall, Rm 320 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 747-4700 Attn: City Manager</p> <p>Notice Copy to: City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Ave. Alameda, CA 94501 Tel: (510) 747-4750 Attn: City Attorney</p>
<i>Tenant:</i>	Alameda Point Partners, LLC, a Delaware limited liability company
<i>Tenant's Address:</i>	<p>c/o SRM Ernst Development Partners 2220 Livingston Street Suite 208 Oakland, CA 94606 Telephone: 510-219-5376 Facsimile: 510-380-7056 Email: jernst@srmernst.com</p> <p>With copies to: Thompson Dorfman Partners 39 Forrest Street, Suite 201 Mill Valley, CA 94941 Telephone: 415-381-3001 Facsimile: 415-381-3003 Email: bd@thompsondorfman.com</p> <p>And to: Madison Marquette 909 Montgomery Street Suite 200 San Francisco, CA 94133 Telephone: 415-277-6828 Facsimile: 415-217-5368 Email: pam.white@madisonmarquette.com</p>

<i>Building and Premises:</i>	The premises subject to this Trust Lease shall consist of the Property described in Exhibit A, attached hereto (the “ Premises ”), located within the Property and on the Tidelands Parcel (each defined in Recital A) consisting of Building 113 and Building Pad 1 and Building Pad 2 identified in Exhibit A. “ Building ” as used in this Trust Lease, shall refer to, as applicable, Building 113 and, after its construction, any other Building constructed on the Premises or Partial Premises (as defined in <u>Article 3</u>) delivered to Tenant during the Term consistent with the Development Plan.
<i>Permitted Uses:</i>	Permitted Uses are described in <u>Section 3.6</u> .
<i>Length of Term:</i>	Sixty-six (66) years from the Commencement Date unless earlier terminated pursuant to the terms of this Trust Lease (“ Term ”). Under no circumstance shall the Term exceed sixty-six (66) years.
<i>Commencement Date:</i>	This Trust Lease shall commence upon the Commencement Date, as set forth in the Commencement Letter.
<i>Expiration Date:</i>	This Trust Lease shall expire on that date which is Sixty –Six (66) years after the Commencement Date unless earlier terminated pursuant to the terms of this Trust Lease.
<i>Extension Option:</i>	None
<i>Rent:</i>	Base Rent and Additional Rent are described in <u>Article 5</u> . Hold Over Rent is described in <u>Article 21</u> .
<i>Taxes and Utilities:</i>	Tenant shall pay all costs for services and utilities to the Premises, as defined in the Trust Lease. Tenant shall pay all taxes (including possessory interest taxes) levied on or against the Premises or its personal property.
<i>Security Deposit:</i>	N/A
<i>Parking:</i>	No parking is provided as part of this Trust Lease. Parking for the Premises shall be addressed via nearby public parking facilities.
<i>Brokers:</i>	N/A

TRUST LEASE AGREEMENT

THIS TRUST LEASE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and ALAMEDA POINT PARTNERS, LLC, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information, the Exhibits and this Trust Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Trust Lease**". Capitalized terms used in this Trust Lease have the meaning given them in the Disposition and Development Agreement ("**DDA**") between the Landlord and Tenant dated _____, 2015, unless otherwise defined herein. The Landlord and Tenant are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Trust Lease with reference to the following facts:

1. RECITALS.

A. Landlord is the fee title owner or has the right to acquire that certain portion of Alameda Point known as Site A which is approximately 68 acres and is located at the gateway into Alameda Point along the extension of Ralph Appezzato Memorial Parkway (the "**Property**") and is shown on **Exhibit A-1**. A portion of the Property consists of former tide and submerged lands and is or will be held by Landlord in trust for the people of California (the "**Tidelands Parcel**"). The Premises is located on the Tidelands Parcel portion of the Property. The Tidelands Parcel and other tide and submerged lands within the boundaries of the City, formerly owned by the State of California ("**State**"), were granted by the State to the City by Chapter 348 of the Statutes of 1913. That statute, as amended, most recently by Chapter 734 of the Statutes of 2000 (the Naval Air Station Alameda Public Trust Exchange Act, or "**Exchange Act**") is referred to herein as the "**Granting Act**." The Granting Act authorizes the City to enter into leases of the granted lands for terms not to exceed 66 years.

B. Beginning in 1930, the City, as authorized by the Granting Act, conveyed certain tidelands at Alameda Point, including the Tidelands Parcel, to the United States Navy ("**Navy**") for purposes of establishing NAS Alameda. The base closed operationally in 1997 and the property was made available for disposal pursuant to the Defense Base Closure and Realignment Act of 1990. The Navy approved a No-Cost Economic Development Conveyance (EDC) for most of the lands comprising NAS Alameda including the Property and the Tidelands Parcel. On June 6, 2013, the Navy transferred 1,379 acres of land to the City, including portions of the Property and the Tidelands Parcel, as the first phase of the EDC. The remainder of the Property and the Tidelands Parcel will be transferred to the City in later phases of the EDC.

C. Pursuant to the Exchange Act, the City and the State, acting by and through the State Lands Commission, entered into that certain Naval Air Station Alameda Title Settlement and Exchange Agreement dated February 18, 2014 ("**Exchange Agreement**"). The Exchange Agreement includes a boundary settlement by which the parties agreed that certain lands within the NAS Alameda site, including the Tidelands Parcel, will be subject to the public trust for commerce, navigation and fisheries ("**Public Trust**") once they are conveyed out of federal ownership, and that the City will hold those lands subject to the Public Trust and the terms and conditions of the Granting Act ("**Statutory Trust**"). The Public Trust and the Statutory Trust are referred to collectively herein as the "**Trust**."

D. Pursuant to the terms and conditions contained in the Disposition and Development Agreement between the Landlord as City and Tenant as Developer dated of even date herewith (“**DDA**”), Landlord agreed to transfer fee title to the Property and lease portions of the Tideland Parcel to Tenant in phases, upon a schedule mutually agreed to by the Parties and incorporated into the DDA (each a “**Phase**”).

E. Pursuant to the terms and conditions contained in the DDA, the Tenant is obtaining title to the portions of the Property defined in the DDA as the Transfer Property and the Lease Property unimproved and is responsible for all costs association with the infrastructure improvements necessary to develop the Property consistent with the terms of the DDA, which infrastructure is estimated to cost \$88 million. In addition to the infrastructure improvements to be installed by the Tenant, Tenant will pay Ten Million Dollars (\$10,000,000) toward the cost of construction of a ferry terminal (“**Ferry Terminal Payment**”) that will provide access to the Tideland Parcel and the Property. In addition, the DDA requires Tenant to construct the first phase of a permanent Seaplane Lagoon Plaza or waterfront promenade park , as part of Phase 1 as defined in the DDA. The Ferry Terminal Payment as well as the Developer’s obligations to construct infrastructure that benefits the Tideland Parcel are collectively referred to herein as the “**Consideration**”.

F. The Tidelands Parcel comprises approximately 12% percent of the area of Site A, but the infrastructure and improvements to be installed by the Tenant will provide significant benefits to the Trust and a substantial portion of the improvements will be located on Trust lands, including the ferry terminal, the Seaplane Lagoon Plaza/waterfront promenade park, and an initial phase of the sports complex. In addition, the extension of Ralph Appezato Memorial Parkway between Main Street and the Ferry Point, and the construction of permanent Main Street improvements along frontage of the Property, while not on the Property, will substantially benefit the Trust by creating new access to Trust lands located in and around the Seaplane Lagoon and connecting those lands to the Trust land Main Street Trust corridor that was created as part of the Exchange.

G. The Tidelands Parcel will be leased, if at all, pursuant to this Trust Lease.

H. The Parties anticipate that the Tenant will take possession of the Premises subject to this Trust Lease after providing the Landlord with an Election Notice in accordance with the terms of this Trust Lease.

In consideration of the foregoing and the promises and other provisions of this Trust Lease, the Parties agree as follows:

2. DEMISE.

2.1. Possession. In consideration for the rents and all other charges and payments payable by Tenant and other consideration provided to City under this Trust Lease, and for the agreements, terms and conditions to be performed by Tenant in this Trust Lease, Landlord and Tenant enter into this Trust Lease Agreement. On the Commencement Date, after receipt of an initial Election Notice from the Tenant pursuant to Section 3.2, the Landlord will (a) deliver possession of the Premises or the Partial Premises (as defined in Section 3.2 below) set forth in

the Election Notice to Tenant for Tenant's exclusive use and enjoyment for the Term hereinafter stated and (b) provide Tenant and its licensees and invitees with non-exclusive access to nearby public rights-of-way over adjacent lands owned by Landlord ("**Premises Access**") consistent with the Development Plan for Site A approved by the City Council on June 16, 2015 ("**Development Plan**"). The Landlord shall retain possession of the all portions of the Premises (subject to the provisions of the DDA) until the applicable Delivery Date for any such portion of the Premises occurs.

2.2. Operating Memoranda.

(a) Landlord and Tenant acknowledge that the provisions of this Trust Lease require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties to this Trust Lease. Landlord and Tenant desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of certain items covered in general terms under this Trust Lease. If and when, from time to time during the term of this Trust Lease and during any time that the City of Alameda is the Landlord under this Trust Lease, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Landlord and Tenant which, after execution, shall be attached to this Trust Lease as addenda and become a part hereof. This Lease may expressly describe some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(b) Operating Memoranda that implement the provisions of this Trust Lease or that provide clarification to existing terms of this Trust Lease, including, for example, the legal description of the Premises, or the incorporation of DDA terms after the expiration or termination of the DDA, may be executed on Landlord's behalf by the City Manager of the City of Alameda, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not materially change material terms of this Trust Lease: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Trust Lease. Any substantive or significant modifications to the terms and conditions of performance under this Trust Lease shall be processed as an amendment of this Trust Lease in accordance with applicable law, and must be approved by ordinance of the City Council.

3. **PREMISES AND PERMITTED USES.**

3.1. Premises. The Premises demised by this Trust Lease are generally described in **Exhibit A-2**, (Leased Premises in Tidelands Parcel), which sets forth the addresses and square footages of each Building and the approximate metes and bounds and square footages of each building pad, as well as a site map showing the Premises. The Premises are located on the Tidelands Parcel. The Building contains the square footage specified in **Exhibit A-2** and the building pads contain the square footages specified in **Exhibit A-2**; as such Exhibit A-2 may be updated by mutual agreement of the parties upon Tenant's delivery of an Election Notice, provided, however, that any statement of square footage set forth in this Trust Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less.

3.2. Tenant Election Notice. At any time after the Phase 1 Closing Date pursuant to the DDA, Tenant may deliver to Landlord, notice (“**Election Notice**”) of Tenant’s intention to take possession of all or such portion of the Premises as are specified in the applicable Election Notice, provided that any partial portion of the Premises specified in the Election Notice shall include not less than the full portion of at least one of (a) the Premises identified as Building 113, (b) Building Pad 1, or (c) Building Pad 2, as each is approximately depicted in **Exhibit A-2**. Any such partial premises may be collectively and/or individually referred to herein as the “**Partial Premises**”. Each Election Notice shall state the date upon which Tenant expects to take possession of the Premises or any Partial Premises (each such date shall be a “**Delivery Date**” with respect to the applicable Partial Premises), and each Delivery Date shall occur not more than ninety (90) days after the date of the Election Notice corresponding to the Premises or Partial Premises that is the subject of the Election Notice, except with respect to Building 113 in which event such Delivery Date shall occur one hundred eighty (180) days after the date of the Election Notice unless Landlord notifies the Tenant that Building 113 is ready for earlier delivery. An Election Notice including any of Building Pad 1 or Building Pad 2 shall also include evidence to the Landlord that Tenant has obtained the Additional Approvals – Vertical (as that term is defined in the DDA excepting a Final Map) for the construction of the Vertical Improvements required for the Building Pad that is part of the Premises by the DDA and the Development Plan and included in such Election Notice (“**Improvements**”).

3.3. Tenant Fails to Improve Premises After Commencement Date.

(a) Landlord is willing to lease the Premises to Tenant based upon Tenant’s covenants and assurances to improve the Building or construct the Improvements on the Premises required by the Development Plan and DDA in accordance with and subject to all the terms, covenants and restrictions of the DDA and the Development Plan.

(b) If Tenant fails to commence and then diligently prosecute to completion construction of the Improvements required by the DDA and the Development Plan, within the time period required in the Milestone Schedule attached to the DDA, as such Milestone Schedule may be extended in accordance with the terms of the DDA, Landlord can declare a Tenant Default and exercise any of the remedies set forth in Section 18.2. During the Term, Tenant shall own all of the Improvements and all appurtenant fixtures, machinery and equipment installed therein. At the expiration or earlier termination of this Trust Lease, title to the Improvements shall vest in Landlord without further action of any party and without compensation or payment to Tenant.

3.4. Possession. Upon each Delivery Date for each Partial Premises, Tenant shall accept the applicable Partial Premises and any improvements thereon, in “AS IS” “WITH ALL FAULTS” condition and configuration without any representations or warranties by Landlord except those expressly set forth in the DDA, and subject to the applicable Permitted Exceptions (defined in the DDA) and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises or any improvements thereon. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Premises, any improvements contained thereon or infrastructure for the conduct of Tenant’s business, except those expressly set forth in the DDA. Landlord shall not be liable for any latent or patent defects in the Building and/or on the Premises. Tenant shall be responsible for requesting an inspection

and obtaining a Certificate of Occupancy from the City of Alameda for the Building. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 7.1 below), and any other requirements mandated by the Certificate of Occupancy inspection.

3.5. Landlord's Reserved Rights. Landlord hereby reserves the right, and at any time and from time to time, without the same constituting an actual or constructive eviction, to change the arrangement and/or location of the Premises Access and other parking areas, drive isles, landscaping, curb cuts and paved and unpaved portions of the areas adjacent to the Premises; provided that such changes are consistent with the Development Plan. In connection with any of the foregoing activities, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Building and Premises and shall not, without the prior written approval of Tenant: do anything which would have a material and adverse effect on access to the Building, Premises or Premises Access. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Trust Lease.

3.6. Permitted Uses.

(a) Permitted Uses – Generally. Except as expressly set forth in Section 3.6(b), Tenant shall use the Building and Premises during the Term solely for those uses permitted in the Trust, the Development Plan approved on _____, 2015, the Town Center Plan adopted on July 15, 2014, and the DDA, all as consistent with this Trust Lease and for no other purpose ("**Permitted Uses**"). For purposes of this Section 3.6 only, if there is a conflict between the above documents as it relates to permitted uses, the Trust shall govern over the Development Plan which shall govern over the Town Center specific plan which shall govern over the DDA. Notwithstanding anything to the contrary in this Trust Lease, no use of the Building and/or Premises shall be made which: (i) is prohibited by federal, state or local law, ordinance or regulation; (ii) would cause a cancellation of fire insurance required under this Trust Lease, or (ii) would constitute a residential occupancy.

(b) Building 113. Under the Exchange Agreement, Building 113 has been designated a non-conforming, non-trust building that may be used for non-Trust purposes for the remainder of its useful life, which under the Exchange Agreement runs until the earlier of (i) September 27, 2040 or (ii) such time as the building is altered to enlarge its footprint or building envelope ("**Non-Conforming Period**"). During the Non-Conforming Period, Building 113 may be used for uses consistent with the Development Plan (whether or not such use is consistent with the Trust). Following the Non-Conforming Period, the uses of Building 113 shall be consistent with Section 3.6(d) below.

(c) Other Building and Premises. Areas not within public access areas, new buildings or structures permitted to be constructed in accordance with the DDA, the Town Center Plan and pursuant to any other applicable approval, and, following the Non-Conforming Period, Building 113, may be used for uses consistent with the Statutory Trust (or otherwise permitted under the Exchange Act) and the Development Plan, subject to the approval of Landlord in its sole and absolute discretion. Subject to the foregoing and without limiting the discretion of Landlord to disapprove a use, permitted uses may include full service or casual dining restaurants open to the general public; visitor-serving retail or recreational uses; visitor entertainment; and rental for events, fundraising, conferences, meetings and parties; maritime-

related uses, including ancillary office related thereto; public access; open space; and parking for approved uses.

(d) Residential Uses. Residential uses are prohibited under this Trust Lease.

(e) Regulatory Approvals Required. Nothing in this Trust Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City of Alameda for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. In approving a Permitted Use, improvement or other activity under this Trust Lease, Landlord is acting in its capacity as owner and trustee of the Building and Premises only, not in its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City of Alameda or other regulatory agency.

(f) Construction Activities. Tenant may use the Premises for construction activities related to the construction of the Improvements under this Trust Lease and the DDA; provided however, that such activities shall not unreasonably interfere with the ability of the public to access and use any areas of the Tidelands Parcel designated for open space and public access that have been opened to the public.

(g) Telecommunications Towers. At no time shall Tenant have the right to install, operate or maintain telecommunications towers on the roof or exterior areas of the Building and Personal Wireless Services Facilities within the meaning of the Telecommunications Act of 1996.

(h) Intentionally Omitted.

(i) Title to Improvements. During the Term, Tenant shall own all of the Improvements and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures, and other personal property of subtenants) and in the Building. At the expiration or earlier termination of this Trust Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and personal property of Tenant and its subtenants), and any fixtures, installed in the Building will automatically vest in Landlord without further action of any party, and without compensation or payment to Tenant.

4. TERM.

4.1. Term. The term of this Trust Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing ninety (90) days after Tenant has delivered to Landlord an Election Notice with respect to the Premises or the first of any Partial Premises ("**Commencement Date**"). This Lease shall terminate with respect to the entire Premises, including any Partial Premises with Delivery Dates occurring after the Commencement Date, at midnight on the sixty-sixth (66th) anniversary of the Commencement Date ("**Expiration Date**"), unless sooner terminated as hereinafter provided. Promptly following the receipt of the Tenant's Election Notice, Landlord shall send to Tenant a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date for Tenant's review and written endorsement. If Tenant fails to execute and

deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant.

4.2. DDA Termination. If the DDA is terminated for any reason prior to the completion of the Seaplane Lagoon Park improvements required pursuant to the Development Plan and the Infrastructure Package incorporated in the DDA, this Trust Lease shall also terminate unless the City, at the time of DDA termination is holding completion assurances for the Phase 1 Infrastructure Package and the City is able pursuant to the completion assurances, to obtain completion of the Seaplane Lagoon Park improvements located within Phase 1.

4.3. No Option to Renew. There is no option to renew this Trust Lease.

5. RENT.

5.1. Base Rent. The base rent for the Term of this Trust Agreement shall be the Consideration described in Recital F ("**Base Rent**"). In no event shall Base Rent be reduced, abated or refunded to Tenant for any reason, including any reduction in the Premises or early termination of this Trust Lease. Landlord acknowledges that the Base Rent for the entire term shall be deemed to have been paid in full upon the Phase 1 Close of Escrow.

5.2. Additional Rent. As used in this Trust Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent and Hold Over Rent, that are due and payable by Tenant under the terms of this Trust Lease including, but not limited to, Tenant's share of Utilities in accordance with Article 9 of this Trust Lease. The term "**Rent**," as used herein, shall mean all Base Rent (Section 5.1), Additional Rent (Section 5.2), Hold Over Rent (Article 21) and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant

5.3. Interest. Any installment of Rent and any other sum due from Tenant under this Trust Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Trust Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) ten percent (10%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

6. OPERATING EXPENSES AND TAXES.

6.1. Definitions. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, the amount payable by Tenant for Taxes and Operating Expenses shall be equitably adjusted for the Tax and Expense Years involved in any such change.

(b) **Taxes** shall mean all taxes, special taxes, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, excluding Landlord's interest in the Premises but including Personal Property Taxes, as defined in Section 6.3, or possessory

interest taxes, as defined in Section 6.4. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Trust Lease or any other lease of space in the Premises or any occupants thereof, on the use or occupancy of the Premises, on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Tenant or the Premises by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Parties on the date of this Trust Lease. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord any refunded or recovered Tax previously paid by Tenant (and the foregoing obligation shall survive the termination or expiration of this Trust Lease).

(c) **“Operating Expenses”** shall mean all costs of the management, operation, maintenance, insurance, repair and replacement of the Premises (including the exteriors, windows and roof of the Building).

6.2. Payment of Operating Expenses and Taxes. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall directly pay when due and before delinquency, all Operating Expenses and Taxes for the applicable Partial Premises. With reasonable promptness after the end of each Tax and Expense Year, Tenant shall submit to Landlord a statement showing the actual amount paid by Tenant with respect to Taxes and Operating Expenses for the past Tax and Expense Year (**“Tenant’s Statement”**). The Parties acknowledge that this Trust Lease is intended to be triple net to Tenant. Tenant is responsible for the entire cost of all Utilities, Taxes, maintenance and repair and other costs attributable to the management, operation, maintenance, insurance, repair and replacement of the Premises during the Term.

6.3. Personal Property Taxes. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the applicable Partial Premises or

Tenant's personal property or trade fixtures placed by Tenant in or about the applicable Partial Premises during the Term ("**Personal Property Taxes**").

6.4. Possessory Interest Taxes. The interest created by this Trust Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Trust Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

6.5. Payment. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall pay the Personal Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either: (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes; or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the applicable Partial Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Trust Lease.

7. COMPLIANCE WITH LAWS.

7.1. Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "ADA"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Building, Premises and any Improvements constructed on the Premises by Tenant and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Building and Premises into compliance with applicable ADA requirements and to ensure that the Building and Premises remain in compliance throughout the Term of this Trust Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Trust Lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Premises).

7.2. Compliance with Restrictions. The Premises are located on property known as the former Naval Air Station Alameda, portions of which was conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810, a quitclaim deed dated June 4, 2013 and recorded June 6, 2013 as Series No. 2013-199807 and a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199824 of Official Records in the Office of the

County Recorder, Alameda County, California (“**Quitclaim Deeds**”) and portions of which are subject to the Trust Lease in Furtherance of Conveyance dated June 6, 2000 as amended by the Amendment No. 1 dated November 28, 2000 and Amendment No. 20 dated March 30, 2009 (“**LIFOC**”). Those portions of the Premises subject to the LIFOC are expected to be conveyed to the City pursuant to a quitclaim deed which will contain covenants, conditions, restrictions, easements and encumbrances. Said Quitclaim Deeds and/or LIFOC conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County (“**Declaration of Restrictions**”). The Premises are also subject to a Site Management Plan and shall be subject to CC&Rs as defined in Section 8.2 of the DDA. Copies of the Quitclaim Deeds, LIFOC, Declaration of Restrictions and Site Management Plan have been delivered to Tenant and, concurrently with the execution of this Trust Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199838 and Series No. 2013 - 199837 in the office of the County Recorder, Alameda County, CA (the “**CRUP**”), the National Environmental Protection Act Record of Decision (“**ROD**”) for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. Copies of the CRUP and the ROD are available for review at Landlord’s office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deeds, Declaration of Restrictions, the Site Management Plan, the CRUP, the CC&Rs and the ROD, as they affect the Premises, are collectively referred to herein as the “**Restrictions.**” Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Trust Lease.

7.3. Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Building and Premises (collectively “**Use Permit**”).

8. SECURITY DEPOSIT.

No security deposit is required by Tenant under this Trust Lease.

9. UTILITIES.

9.1. Payments for Utilities and Services. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the applicable Partial Premises, together with all related installation or connection charges or deposits (“**Utilities**”). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay **directly** to Landlord, as Additional Rent, all utility costs associated with the Premises leased by Tenant pursuant to **Exhibit A-2** on or before the date that is thirty (30) days after billing by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods

designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

9.2. No Liability of Landlord. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, in no event shall Landlord be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the applicable Partial Premises, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises, or arising from the partial or total unavailability of the service or utility to the Premises, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its obligations under this Trust Lease. Nothing in this Section shall relieve Landlord, acting in its capacity as a utility provider of its liability for failing to provide utility services to the Premises.

10. ALTERATIONS.

10.1. Alterations. A material consideration of Landlord entering into this Trust Lease is the agreement by Tenant to make certain alterations to the Premises as required or approved for the Premises in connection with the Development Documents, including, without limitation, the Improvements to be made by Tenant and landscaping and site work consistent with the Development Plan (the "**Permitted Alterations**"). For so long as the DDA is in effect, notwithstanding anything to the contrary, Tenant shall have the right, without the further consent of Landlord to make any Permitted Alterations and, notwithstanding anything to the contrary in this Trust Lease, including in this Article 10 or Article 21, Tenant shall have no requirement to remove any Permitted Alterations during or upon the expiration of the Term. The foregoing shall not exempt or affect Tenant's obligation to comply with applicable laws or secure any necessary permits from Landlord in its capacity as a governmental entity. Alteration Requirements. Any Alterations to the Building or Premises made by Tenant shall be at Tenant's sole cost and expense, and made in compliance with all applicable Laws and (during the term of the DDA) the DDA. Further, Tenant hereby acknowledges that the Premises may be located within or adjacent to the national registered Naval Air Station Alameda Historic District ("**Historic District**") and, if so, Tenant shall comply with all applicable local, state, and federal requirements related to such Historic District. . Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem or other Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due. Landlord's review and approval of any Alterations pursuant to this Trust Lease shall be in its proprietary

capacity as Landlord and no such approvals shall constitute approval by the City of Alameda in its regulatory capacity. Tenant shall be obligated to obtain any permits and approvals from the City and any other governmental entities necessary for the Alterations.

10.2. Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Building or the Improvements) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., contacting Underground Service Alert or similar underground surveying services, potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval in its propriety capacity (which may also require the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.3. Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Building or on the Premises. Tenant shall remove within a reasonable period of time not to exceed thirty (30) days after notice of such lien, any mechanic liens or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Trust Lease for any labor or materials furnished to Tenant in connection with work performed in the Building or on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord and Landlord Related Parties (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

11. INTENTIONALLY OMITTED.

12. ENVIRONMENTAL PROTECTION PROVISIONS.

12.1. Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as

“hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted.

“**Hazardous Materials Laws**” shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer’s instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2. Reportable Uses Required Consent. Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant’s officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Building or Premises (for purposes of this Article 12, referred to collectively herein as “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or Building or transported to or from the Premises or Building without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises or the Building. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises or the Building, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Building. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Building, Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. The provisions of this Section shall not apply to any Hazardous Materials that existed at, on or under the Premises on the Commencement Date.

12.3. Remediation Obligations. If at any time during the Term, any contamination of the Building or Premises by the introduction of Hazardous Materials or the release or disturbance of Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties (“**Tenant’s Contamination**”), then Tenant, at Tenant’s sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Building and Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant’s Contamination in the Building or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant’s Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord’s reasonable

discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Building or Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Trust Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid or incurred by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by paid or pending invoices in support of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Building or Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "Tenant's Contamination" shall in no event include any site contamination or conditions at the Premises pre-existing the Term, whether known or unknown. Notwithstanding anything set forth herein, Landlord shall have no responsibility for the remediation or containment of any asbestos or lead dust found within the Building.

12.4. Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Trust Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5. Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Building or Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Building or Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Absent the gross negligence or intention misconduct of Landlord or Landlord Related Parties, Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such

Landlord officer, agent, employee, contractor or subcontractor into the Building or onto the Premises.

12.6. Hazardous Materials Handling Plan. From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises applicable to such Delivery Date, Tenant shall or shall cause any proposed subtenant for the applicable Partial Premises to complete, execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the “**Environmental Questionnaire**”), in the form of **Exhibit D** attached hereto prior to entering into any sublease. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises or Buildings, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the “**Hazardous Materials Handling Plan**”) which shall be consistent with the Restrictions in Section 7.2. For a period of fifteen (15) days following Landlord’s receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord’s disapproval thereof. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, the Site Management Plan and the Hazardous Materials Handling Plan. Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto in Tenant’s possession or control: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant’s use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant’s Permitted Use of the Building and Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord’s receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord’s disapproval thereof.

12.7. Hazardous Materials Indemnity. In addition to any other provisions of this Trust Lease from and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall, and does hereby agree, to indemnify, defend and hold harmless Landlord from any costs, expenses, liabilities, fines or penalties, including but not limited to reasonable attorneys’ fees, resulting from Tenant’s Contamination .

12.8. Tenant Release.

(a) Effective as of the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, the Tenant, on behalf of itself and

anyone claiming by, through or under the Tenant (including, without limitation, the Tenant Parties) hereby waives its right to recover from and fully and irrevocably releases the Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**Landlord Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Tenant may have or hereafter acquire against any of the Landlord Released Parties arising from or related to:

(i) Claims Related to the Applicable Partial Premises: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Partial Premises, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the applicable Partial Premises as of the applicable Delivery Date and; and (C) any information furnished by the Landlord Released Parties related to the applicable Partial Premises under or in connection with this Trust Lease or the DDA.

(ii) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the Commencement Date from any portion of the NAS Alameda property acquired by the Landlord to the applicable Partial Premises, whether such Incidental Migration occurs prior to or after the applicable Delivery Date.

(b) Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Landlord Released Parties in any way from, or be deemed a waiver of any Claims by the Tenant (or any Tenant Parties) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Landlord Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Delivery Date to the extent such claims are not based on the acts of the Tenant, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (iii) any violation of law by any of the Landlord Released Parties prior to the applicable Delivery Date; (iv) any breach by the Landlord of any of the Landlord's representations, warranties or covenants expressly set forth in this Trust Lease; or (v) the release (including negligent exacerbation) of Hazardous Materials by the Landlord Released Parties at, on, under or otherwise affecting the Premises, which release first occurs after the applicable Delivery Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the Landlord (collectively, the "Excluded Tenant Claims").

(c) Scope of Release. The release set forth in subsection 12.8(a) includes Claims of which the Tenant is presently unaware or which the Tenant does not presently suspect to exist which, if known by the Tenant, would materially affect the Tenant's release of the Landlord Released Parties. The Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Tenant agrees, represents and warrants that the Tenant realizes and acknowledges that factual matters now unknown to the Tenant may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light

of that realization and that the Tenant nevertheless hereby intends to release, discharge and acquit the Landlord Released Parties from any such unknown Claims. Accordingly, the Tenant, on behalf of itself and anyone claiming by, through or under the Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any right the Tenant and anyone claiming by, through or under the Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Tenant's Initials: _____

12.9. Landlords Release of the Tenant.

(a) From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, the Landlord, on behalf of itself and anyone claiming by, through or under the Landlord (including, without limitation, any successor owner of any portion of NAS Property acquired by the Landlord, whether prior to or after the applicable Delivery Date), hereby waives its right to recover from and fully and irrevocably releases the Tenant, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Tenant Released Parties**") from any and all Claims that the Landlord may have or hereafter acquire against any of the Tenant Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Delivery Date from the applicable Premises to any portion of the NAS Property acquired by the Landlord, whether such Incidental Migration occurs prior to or after the applicable Delivery Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Tenant Released Parties in any way from, or be deemed a waiver of any Claims by the Landlord (or anyone claiming by through or under the Landlord, including, but not limited to, any successor owner of the Premises) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Tenant Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Delivery Date to the extent such claims are not based on the acts of the Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Tenant Released Parties after the applicable Delivery Date; (iv) a breach of the Tenant's obligations under this Trust Lease or any other agreement between the Landlord and the Tenant; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials existing as of the applicable Delivery Date by any of the Tenant Released Parties at, on, under or otherwise affecting the Premises or any other portion of the NAS Property acquired by the Landlord, which release first occurs after the applicable Delivery Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Tenant.

(b) Scope of Release. The release set forth in subsection 12.9(a) includes claims of which the Landlord is presently unaware or which the Landlord does not presently suspect to exist which, if known by the Landlord, would materially affect the Landlord's release of the Tenant Released Parties. The Landlord specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Landlord agrees, represents and warrants that the Landlord realizes and acknowledges that factual matters now unknown to the Landlord may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Landlord further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Landlord nevertheless hereby intends to release, discharge and acquit the Tenant Released Parties from any such unknown Claims. Accordingly, the Landlord, on behalf of itself and anyone claiming by, through or under the Landlord, hereby assumes the above-mentioned risks and hereby expressly waives any right the Landlord and anyone claiming by, through or under the Landlord, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Landlord's Initials: _____

(c) Incidental Migration. For purposes of Section 12.8 and Section 12.9 Incidental Migration shall mean the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement and or other incidental transport of Hazardous Materials.

13. ASSIGNMENT AND SUBLETTING.

13.1. Assignment.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law: (a) except in connection with Tenant Financing (as defined below), mortgage, pledge, hypothecate or encumber this Trust Lease or any interest therein; (b) assign or transfer this Trust Lease or any interest herein, or any right or privilege appurtenant thereto or any portion thereof, without first obtaining the written consent of Landlord.

(b) Notwithstanding the foregoing, Tenant shall have the right but not the obligation (the "**Assignment Right**"), either concurrent with the delivery of the initial Election Notice or at any time thereafter, upon thirty (30) days' prior written notice to Landlord (the "**Assignment Notice**"), to assign Tenant's entire interest in this Trust Lease to any transferee permitted under Section 12.4 or 12.5 of the DDA (each, a "**Permitted Assignee**"). Any such Assignment Notice shall identify the Permitted Assignee and the date such assignment shall be effective (the "**Permitted Assignment Date**") and include a copy of a written agreement whereby Tenant assigns all its right, title, obligation and interest in this Trust Lease to Permitted Assignee and Permitted Assignee assumes all such right, title, obligation and interest. The Permitted Assignee shall expressly assume and agree to perform all the terms and conditions of

this Trust Lease to be performed by Tenant after the Permitted Assignment Date and to use the Premises only for a Permitted Use. On and after the Permitted Assignment Date, provided that the written assignment complies with the requirements in this subsection, Tenant shall be automatically and forever released of any and all liability and obligation under this Trust Lease other than the indemnity obligation and any obligations that arise after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date and prior to the Permitted Assignment Date.

13.2. Subletting. The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of sublease (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the Sublease between Tenant and the Subtenant.

13.3. Tenant Financing; Rights of Holders. Notwithstanding anything to the contrary contained in Section 13.1, but subject to the provisions of this Section 13.3, Tenant shall have the right during the Term to assign, mortgage or encumber Tenant's leasehold estate created by this Trust Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby (the "**Tenant Financing**").

(a) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any mortgagee of any Tenant Financing.

(b) The lender under any Tenant Financing permitted under this Section 13.3 shall be a "**Permitted Mortgagee**" and shall be entitled to the rights and, if applicable, subject to the obligations of a Permitted Mortgagee under Article 13 of the DDA. In addition, Landlord and Tenant expressly acknowledge that nothing in this Trust Lease shall be deemed a grant by Tenant of a security interest, or other lien, in favor of Landlord, upon any of Tenant's personal property situated in or upon the Premises, and Landlord expressly waives any rights, whether statutory or otherwise, that it may have to any lien against Tenant's personal property as may be required to secure the Tenant Financing, unless said lien is obtained pursuant to a judgment of a court of competent jurisdiction. Landlord further agrees to execute a reasonable form of Landlord lien waiver and nondisturbance agreement as may be required by a Permitted Mortgagee to secure the Tenant Financing.

13.4. No Release. No assignment, Sublease or other transfer other than the Permitted Assignment shall release or discharge Tenant of or from any liability, whether past, present or future, under this Trust Lease, and Tenant shall continue to be fully liable hereunder. Each Subtenant or assignee (including Permitted Assignee) shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Trust Lease. The assignment or Sublease, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Trust Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or Subtenant, then Tenant shall hold such sums in trust in the segregated account for the

benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sum shall not constitute an acceptance by Landlord of attornment by such assignee or Subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each assignment, Sublease or transfer agreement and an agreement of compliance by each such Subtenant or assignee.

13.5. Limitations on Transfer Reasonable. Given the long term and complex relationship between the Landlord and Tenant established by the DDA, Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Trust Lease or any other interests herein, to Sublease the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Trust Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Trust Lease or any interest herein, to Sublease the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

14. INDEMNITY AND WAIVER OF CLAIMS.

14.1. Tenant Indemnification.

(a) From and after the applicable Delivery Date and solely with respect to the applicable Partial Premises delivered on such Delivery Date, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Landlord and its City Council, boards, commissions, officers, employees, agents and volunteers ("**Landlord Related Parties**") against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Tenant's performance or non-performance under this Trust Lease or arising in connection with entry onto, ownership of, occupancy in, or construction on the applicable Partial Premises by Tenant, its contractors or its subtenants. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the applicable Landlord Related Party's gross negligence or willful misconduct. If Tenant effectuates an assignment permitted pursuant to Article 13 in the manner required by Article 13, then the assigning Tenant shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the assignment. Tenant's obligation to indemnify, defend and hold harmless under this Section 14.1 shall survive termination of this Trust Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. Notwithstanding the foregoing to the contrary, provisions of this Section 14.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 12.7 above.

(b) Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties against and from all Losses, arising from any gross negligence or intentional misconduct by Landlord and/or Landlord Related Parties. If any action or proceeding is brought against Tenant and/or Tenant Parties by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

14.2. Waiver of Claims. Except in the event of gross negligence or willful misconduct of Landlord or Landlord Related Parties or any obligation of Landlord under this Trust Leases, the DDA and the Development Agreement applicable to the applicable Partial Premises (the "**Excluded Obligations**"), Landlord shall not be liable to Tenant or any Tenant Party and Tenant

hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the applicable Partial Premises from any cause. Without limiting the foregoing, except with respect to the Excluded Obligations, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement of rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the applicable Partial Premises or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the applicable Partial Premises or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the applicable Partial Premises. The Parties agree that in no case shall either Party, or any Landlord Related Party or Tenant Party, be responsible or liable on any theory for any injury to the other Party's, Landlord Related Party's or Tenant Party's business, loss of profits, loss of income or any other form of consequential damage.

14.3. Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Trust Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Trust Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

15. INSURANCE.

15.1. Tenant's Insurance. Tenant shall maintain the insurance required by the DDA throughout the Term. Subrogation Waiver. Tenant hereby grants to Landlord and Landlord Related Parties, on behalf of itself and any insurer providing comprehensive general and automotive liability insurance to Tenant pursuant to this Trust Lease, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord and/or Landlord Related Parties by virtue of the payment of any loss under such insurance. Tenant further agrees to include a subrogation waiver in each of its subleases requiring a similar waiver by its subtenants and their insurers in favor of Landlord and Landlord Related Parties.

15.2. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under this Article 15, such failure shall be a Default. If such Default continues after notice and expiration of any applicable cure period pursuant to Article 18, such Default shall be an Event of Default entitling Landlord, at its election and in addition to such remedies as may otherwise be available under this Trust Lease, to procure and maintain the required coverage. Tenant shall reimburse Landlord for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable **directly** to Landlord as Additional Rent and shall be due on or before the date that is thirty (30) days after billing by Landlord, failing which payment Landlord may exercise any and all remedies available to it under this Trust Lease, at law or in equity. The failure by Landlord to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

16. DAMAGE OR DESTRUCTION.

16.1. Definitions.

(a) **“Premises Partial Damage”** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant’s Property (as defined at Section 16.1(c)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total and the estimated time for repairing said damage.

(b) **“Premises Total Destruction”** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant’s Property or Alterations which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Premises Partial Damage or Premises Total Destruction.

(c) **“Insured Loss”** shall mean damage or destruction to the Building or other improvements on the Premises, other than Tenant’s Property or Alterations which was caused by an event required to be covered by the insurance described in Article 15, irrespective of any deductible amounts or coverage limits involved.

(d) **“Replacement Cost”** shall mean the cost to repair or rebuild the Building or improvements owned by Landlord (including Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) **“Hazardous Material Condition”** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 12.1), in, on, or under the Premises which requires repair, remediation, or restoration.

(f) **“Premises”**, as used in this Article 16, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the damage or destruction.

16.2. Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Tenant shall repair such damage as soon as reasonably possible and this Trust Lease shall continue in full force and effect.

16.3. Total Destruction; Uninsured Loss. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs or a Premises Partial Damage that is not an Insured Loss, upon Tenant’s written election (delivered to Landlord within ninety (90) days after the subject loss and made in Tenant’s sole and absolute discretion), Tenant may elect to continue this Trust Lease or terminate this Trust Lease. If Tenant elects to terminate, Tenant shall promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord (and Tenant may use any available insurance proceeds to do so) and thereafter this Trust Lease shall terminate and be of no force or effect except for those obligations specified in this Trust Lease

that expressly survive the expiration or termination of this Trust Lease. If Tenant elects to continue this Trust Lease, Tenant shall repair such damage consistent with the Development Plan as soon as reasonably possible (and Tenant may use any available insurance proceeds to do so) and this Trust Lease shall continue in full force and effect. If Tenant fails to promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord and does not commence to repair and diligently pursue repair of damage as required hereunder within twelve (12) months after Tenant's notice of its election to continue this Trust Lease, the Trust Lease shall terminate, subject to this Section 16.3.

16.4. Limit on Claims. Tenant shall have no claim against Landlord for any Losses suffered by Tenant not caused by: (i) a breach of an Excluded Obligation by Landlord; or (ii) the gross negligence or intentional misconduct of Landlord or Landlord Related Parties. Tenant and Landlord each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such sections or laws apply to any Losses. The Parties intend that the provisions of this Trust Lease control in lieu of such laws.

17. CONDEMNATION.

"Premises", as used in this Article 17, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the Taking (as defined below). If the whole or if any material part of the Premises or Building under this Trust Lease are taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "Taking"), and (a) such Taking renders the Premises or Building unsuitable, in Landlord's reasonable opinion, for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, subject to the rights of Permitted Mortgagees (as defined in Article 13) terminate this Trust Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises are taken and if the Premises remaining after such Taking and any repairs by Tenant or its subtenants would be untenable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations or if such Taking will make more than twenty-five percent (25%) of the Premises unusable by Tenant or Subtenants for the Permitted Use for a period greater than the twelve (12) months, Tenant shall have the right to terminate this Trust Lease as of the date possession vests in the condemning party. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Trust Lease is not terminated, this Trust Lease shall remain in full force and effect as to the Premises not condemned. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Trust Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's leasehold interest in the Premises, and/or the value of the Tenant's Improvements, fixture, equipment and personal property (specifically excluding components of the Premises which under this Trust Lease or by law are or at the expiration of the

Term will become the property of Landlord, including, without limitations, fixtures and Alterations), or Tenant's loss of business goodwill, provided that such award does not reduce any award otherwise allocable or payable to Landlord.

18. DEFAULT.

18.1. Events of Default. "Premises", as used in this Article 18, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the Default, as defined herein. The occurrence of any of the following shall constitute a "Default" by Tenant:

- (a) Tenant fails to timely pay the Ferry Terminal Payment when due.
- (b) Tenant uses or permits the Building and Premises to be used for purposes or activities that are in violation of the Permitted Uses contained in Section 3.6.
- (c) Tenant abandons the Building and Premises as defined in Section 1951.3 of the California Civil Code.
- (d) Tenant fails timely to deliver any subordination document or estoppel certificate required to be given under this Trust Lease within the applicable time period specified herein below.
- (e) Tenant violates the restrictions on assignment, sublet or transfer set forth in Article 13.
- (f) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within ninety (90) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.
- (g) Tenant fails to perform or comply with any provision of this Trust Lease other than those described in (a) through (f) above, in which case Tenant's notice and cure period shall be extended to thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.
- (h) Tenant is in Default under the Disposition and Development Agreement after written notice and the expiration of the applicable cure period.

18.2. Remedies. Upon the occurrence of any Default under this Trust Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives

notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Subject to the rights of a Permitted Mortgagee (as set forth in Article 13), terminate this Trust Lease and Tenant's right to possession of the Building and Premises as Landlord sole remedy.

(b) Except to the extent caused by the gross negligence or intentional misconduct of Landlord, neither Landlord nor any Landlord Related Party shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located upon or within the Building or Premises, whether pursuant to this Trust Lease or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any portion of the Building or Premises whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above.

(c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, subject to the rights of a Permitted Mortgagee (as defined in Article 13) to terminate this Trust Lease and Tenant's right to possession of the Building and Premises and recover an award of damages as provided above.

(d) Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of a Default, subleased or leased by Tenant to others, Tenant hereby appoints Landlord to act as Tenant's agent under such circumstances and Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Base Rent, Additional Rent, Hold Over Rent and any other rents due hereunder without in any way affecting Tenant's obligations to Landlord hereunder except with respect to the reduction of such amounts due from Tenant. Said sums collected in excess of rents due hereunder will be treated as Additional Rent payable by Tenant to Landlord until the time when any such Default is cured. Such agency, being given for security, is hereby declared to be irrevocable.

18.3. No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Trust Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4. Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Trust Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Trust Lease following its termination as a result of Tenant's breach.

18.5. Remedies Cumulative. Except as expressly set forth herein, no right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other

right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Trust Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Trust Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6. Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Trust Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 18.6, the full amount of the costs and expense incurred or the payments so made or the amount of the Losses so sustained shall be immediately be owed by Tenant to Landlord. Tenant shall promptly pay **directly** to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of seven percent (7%) per annum, or the highest rate permitted by applicable law.

18.7. Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19. LIMITATION OF LANDLORD LIABILITY.

(a) Notwithstanding anything to the contrary contained in this Trust Lease, the liability of Landlord (and of any successor Landlord) shall be limited to the value of the Premises. Tenant shall look solely to Landlord's interest in the Premises for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

(b) If Tenant believes a material breach of this Trust Lease has occurred, Tenant shall first notify Landlord in writing of the purported breach, giving Landlord thirty (30) days from receipt of such notice to cure the breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that thirty (30) day period, begin to cure within thirty (30) days and thereafter diligently prosecute such cure to completion within a period not to exceed ninety (90) days, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this Trust Lease; (ii) prosecuting an action for damages within the limitations set forth in Section 19(a) above; (iii) seeking specific performance of this Trust Lease; or (iv) any other remedy available at law or equity.

20. SURRENDER OF PREMISES.

“Premises”, as used in this Article 20, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the expiration or termination of this Trust Lease. At the termination of this Trust Lease or Tenant’s right of possession, Tenant shall remove Tenant’s personal property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Building and Premises, and quit and surrender the Premises to Landlord in a broom clean condition and in a condition otherwise required by the CC&R’s (as defined in the DDA). . If Tenant fails to remove any of Tenant’s property, or to place the Building and Premises to the required condition, Landlord, at Tenant’s sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant’s property and/or place the Building and Premises in the required condition. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant’s property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant’s property from the Building and Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant’s property to be abandoned and, at Landlord’s option, title to Tenant’s property shall vest in Landlord or Landlord may dispose of Tenant’s property in any manner Landlord deems appropriate.

21. HOLDING OVER.

“Premises”, as used in this Article 21, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the expiration or termination of this Trust Lease. If Tenant fails to surrender all or any part of the Building and Premises at the termination of this Trust Lease, occupancy of the Building and/or Premises after termination shall be that of a tenancy at sufferance. Tenant’s occupancy shall be subject to all the terms and provisions of this Trust Lease. In addition, Tenant shall pay **directly** to Landlord, in monthly installments, a hold over rent equal to the Fair Market Rent for the Building and Premises as determined by Landlord (“**Hold Over Rent**”). No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Trust Lease, Tenant shall indemnify, defend and hold harmless Landlord and Landlord Related Parties from and against any and all losses or liability resulting from delay in Tenant so surrendering the Building and Premises including, without limitations, any loss or liability resulting from any claim against Landlord and/or Landlord Related Parties made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

22. NOTICE.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party’s respective Notice Address(es) set forth in the Basic Lease Information (“**Notice Address**”). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Building and Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is

deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

23. LABOR PROVISIONS.

23.1. DDA Provisions. With respect to the construction of the Improvements and any Permitted Alterations, Tenant hereby agrees to comply with the construction requirements set forth in Section 6.6 of the DDA for the DDA Term. "**Premises**", as used in this Article 23, shall mean the Premises or any applicable Partial Premises delivered to Tenant after an Election Notice prior to the applicable construction.

23.2. Equal Opportunity. During the Term of this Trust Lease, and with respect only to persons in the Building and at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through its subleases, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 23.2.

23.3. Convict Labor. In connection with the performance of work required by this Trust Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

23.4. Prevailing Wages and Related Requirements.

(a) Nothing in this Trust Lease constitutes a representation or warranty by Landlord regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after any applicable Delivery Date.

(b) Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code. Tenant's obligation to indemnify, defend and hold harmless under this Section 23.4(b) shall survive termination of this Trust Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

24. MISCELLANEOUS.

24.1. Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California. Any suit brought to defend or enforce the terms of this Trust Lease shall be filed with the courts of the County of Alameda, State of California. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such courts.

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

24.3. Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Trust Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Trust Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

24.4. Force Majeure. During the term of the DDA, the provisions of Section 1.3 shall apply to Tenant's obligations under this Trust Lease. Thereafter, whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing party ("**Force Majeure**"). The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension, provided however that under no circumstances may a Party request an extension for a cumulative period in excess of one (1) year.

24.5. Intentionally Omitted.

24.6. Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker specified in the Basic Lease Information in the negotiating or making

of this Trust Lease. Each party agrees to indemnify, defend 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 such claim or claims of any other broker or brokers to a commission in connection with this Trust Lease as a result of the actions of the indemnifying party. Provided that this Trust Lease is fully executed by the Parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

24.7. Access by Landlord. In addition to access provided by this Trust Lease, Landlord shall be allowed access to the Building and Premises at all reasonable times throughout the Term of this Trust Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Building and Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes, in which case Landlord shall notify Tenant as soon as reasonably possible of such entry. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Building and Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord one set of keys therefor. Upon written request, all keys must be returned to Landlord at the expiration or termination of this Trust Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving Alameda Point may be located within the Building or on the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Building and Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Building and Premises by Tenant.

24.8. Memorandum of Lease. This Trust Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Lease Agreement in the form of Exhibit E shall be executed by the Parties concurrently herewith and the Tenant may record the same in the County Recorder's Office of Alameda County. In addition, Tenant and/or Lender may record such instruments as are customary and required by Lender to secure Lender's interest in the Trust Lease.

24.9. Article and Section Titles. The article and section titles use herein are not to be considered a substantive part of this Trust Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

24.10. Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Trust Lease on behalf of Tenant does hereby covenant and warrant that: (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation; (b) Tenant has and is duly qualified to do business in California; (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Trust Lease and to perform all

Tenant's obligations hereunder; and (d) each person (and all of the persons if more than one signs) signing this Trust Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Trust Lease and identifying the person(s) authorized to execute this Trust Lease on behalf of Tenant.

24.11. Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Trust Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Building and applicable Partial Premises throughout the Term.

24.12. Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of their age, the Building may contain asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

24.13. Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("LBP"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 11 of this Trust Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Building and Premises, except to the extent already disclosed to the Tenant.

24.14. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Trust Lease.

24.15. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Building and Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

24.16. Time of the Essence. Time is of the essence of this Trust Lease and each and all of its provisions.

24.17. Entire Agreement. This Trust Lease contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Trust Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Trust Lease may be amended or added except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

24.18. Intentionally Omitted.

24.19. Relocation Waiver. Tenant acknowledges that upon the expiration or earlier termination of this Trust Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the “**Relocation Assistance Laws**”). Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Trust Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

24.20. Subdivision and Development of Property. Subject to Tenant’s rights under the DDA, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Building and Premises are located. As a material inducement for Landlord to enter into this Trust Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant’s rights under this Trust Lease.

24.21. Environmental and Planning Documents. Tenant acknowledges that its use of the Building and Premises and any Alterations thereto shall comply with the terms, conditions and requirements of Development Documents, which shall include, without limitation, the following: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); (d) the Alameda Point Transportation Demand Management Plan; and (e) the Site Management Plan.

24.22. Counterparts. This Trust Lease may be executed in multiple counterparts; each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Such executed counterparts may be delivered by electronic means, including by facsimile or electronic mail, and such delivery of copies shall have the same force and effect as the delivery of ink original signatures.

24.23. Independent Contractors. The relationship between the Parties is one of Landlord and Tenant acting as independent contractors, and not one of partnership, joint venture, agency, employment, trust or other joint or fiduciary relationship. This Lease is not for the benefit of any other third party.

[Remainder of this Page Intentionally Left Blank]

Landlord and Tenant have executed this Trust Lease as of the day and year first above written.

TENANT

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: 

Name: BRUCE DORFMAN

Title: VICE PRESIDENT

LANDLORD

City of Alameda,
a charter city and municipal corporation

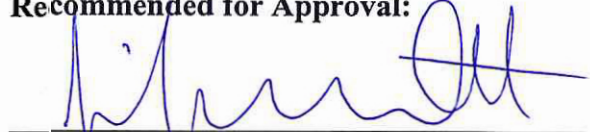
By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:


Lara Weisiger, City Clerk

Recommended for Approval:




Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:



Farimah F. Brown
Senior Assistant City Attorney




Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

EXHIBIT A-1

MAP OF SITE A PROPERTY

LEGEND
 TIDELANDS PARCEL

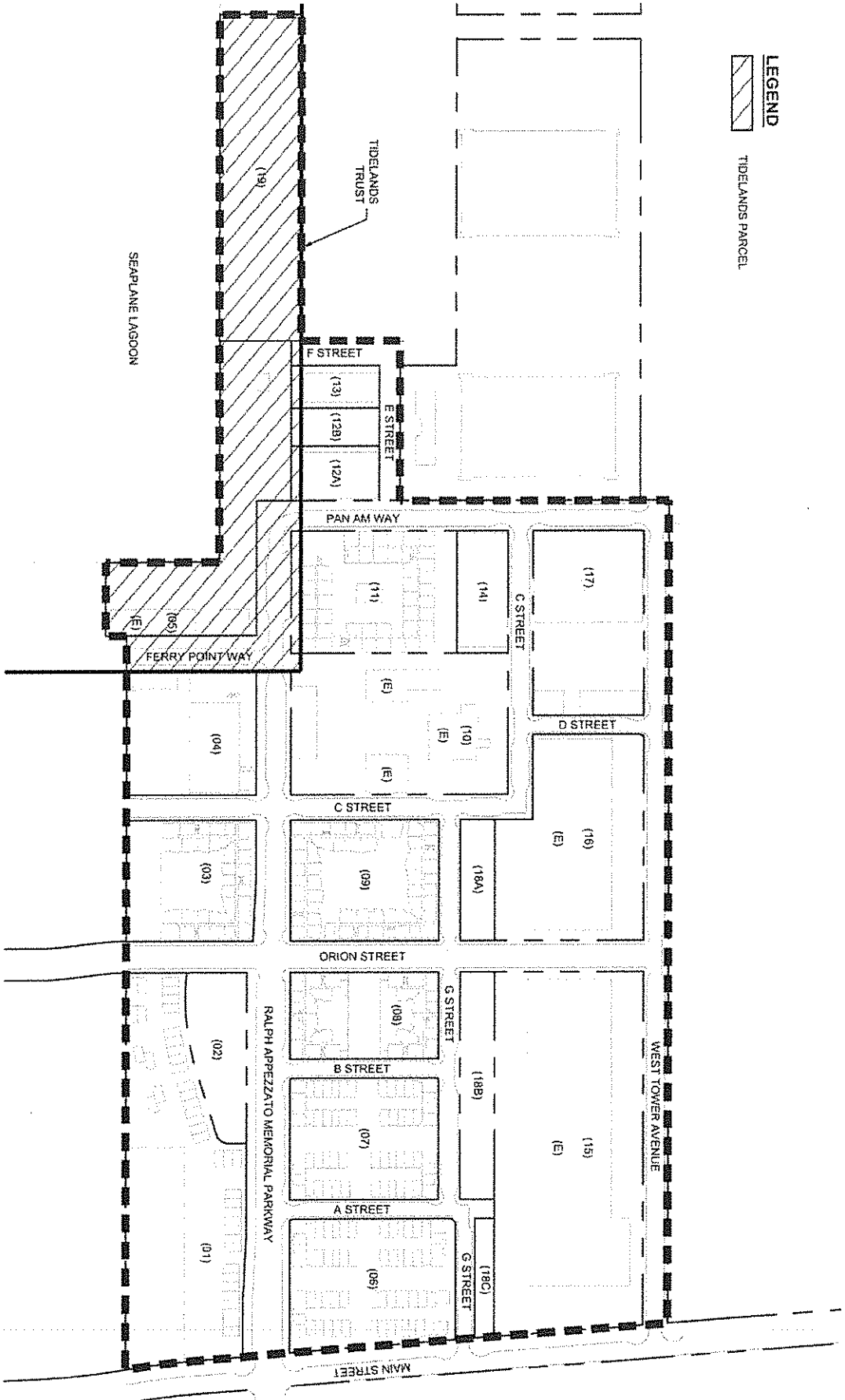


EXHIBIT A - 1
MAP OF SITE A PROPERTY AND TIDELANDS PARCEL

05/27/2015

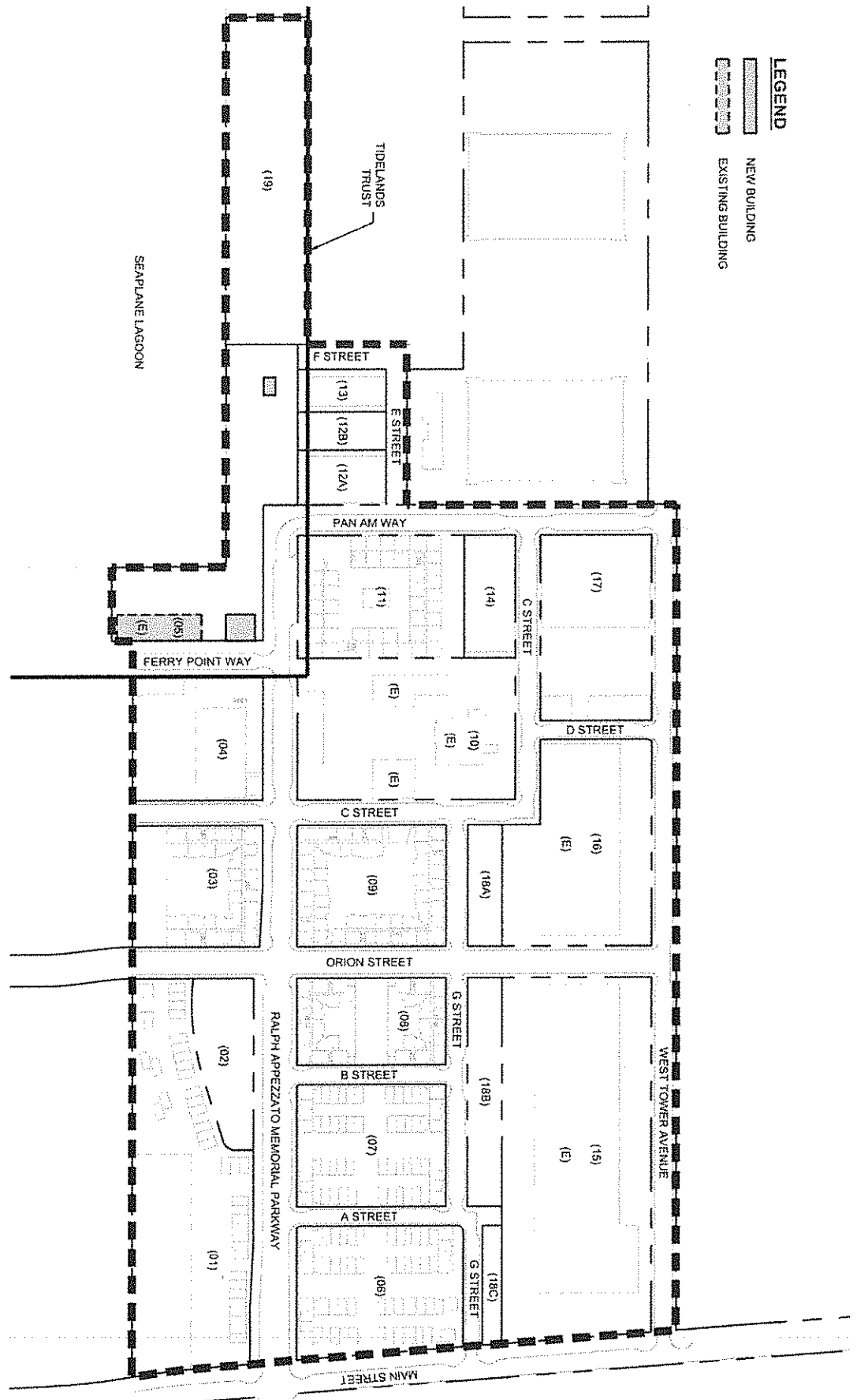
NOT TO SCALE

EXHIBIT A-2

LEASED BUILDINGS AND PREMISES

- Insert Site Map showing the Building and approximate Premises subject to lease
- Insert list of Building addresses and square footages under lease
- Insert description of the Premises by metes and bounds and square footages under lease.
- Insert description of Building 113 Partial Premises, Building Pad 1 Partial Premises and Building Pad 2 Partial Premises

LEGEND
 [Solid Line] NEW BUILDING
 [Dashed Line] EXISTING BUILDING



SITE A - BUILDING FOOTPRINT AREAS TO BE LEASED WITH TIDELANDS

04/29/2015

NOT TO SCALE

**EXHIBIT B
COMMENCEMENT LETTER**

Date: _____

Re: Lease dated as of _____, 2015, by and between City of Alameda, as Landlord, and Alameda Point Partners, LLC, a Delaware limited liability company, as Tenant, for _____ rentable square feet in Building _____ located at _____, Alameda, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises or Partial Premises described in the Election Notice attached hereto and agrees:

1. The Commencement Date of the Trust Lease is _____;
2. The Expiration Date of the Trust Lease is _____.
3. The Delivery Date of the Partial Premises described in the Election Notice attached here to is _____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda	Tenant: Alameda Point Partners
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

[Exhibit Do not sign]

EXHIBIT C

ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Partners, LLC, a Delaware limited liability company ("Tenant") dated as of _____, 2015 ("Lease") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deeds from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199807, Series No. 2013-199810 and Series No. 2013-199824 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed") and other future applicable Quitclaim Deeds from the Navy;
- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("Declaration of Restrictions").
- Covenants to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199838 and Series No. 2013-199837 in the Office of the County Recorder, Alameda County ("CRUP") and other future applicable CRUPs;
- Lease in Furtherance of Conveyance Dated June 6, 2000, as amended by the Amendment No. 1 dated November 28, 200 and Amendment No. 2 dated march 30, 2009 ("LIFOC"); and
- Site Management Plan for the Premises dated March 29, 2013 ("**Site Management Plan**") and other future applicable Site Management Plans.

Pursuant to Section 7.2 of the Trust Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Trust Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Trust Lease.

Signatures on next page

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT D

ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of Hazardous Materials (as defined in Section 13.1 of the Trust Lease and copied for convenience below) in the process proposed on the Building and Premises to be leased. Any such use must be approved in writing by Landlord. Tenant or prospective subtenants should answer the questions in light of their proposed operations in the Building and on or about the Premises. Existing tenants should answer the questions as they relate to ongoing operations in the Building and on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. Hazardous Materials is defined as follows:

“Hazardous Materials” shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, in the State of California or the United States Government, including, but not limited to, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all California environmental laws, and any other applicable environmental law, regulation or ordinance now existing or hereinafter enacted. “Hazardous Materials Laws” shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer’s instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, California 94501
(510) 747-4700
Attn: City Manager

1. **General Information.**

Name of Responding Company: _____

Check the Applicable Status: _____

Tenant Prospective Subtenant Existing Tenant

Mailing Address: _____

Contact Person and Title: _____

Telephone Number: (____) _____

Alameda Point Address of Proposed Premises to be Leased: _____

Length of Lease Term: _____

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

2. **Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes No
Hazardous Chemical Products Yes No

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes No

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes No

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes No

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes No

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

3. Storage Tanks and Pumps.

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes No

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes No Not Applicable

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes No Not Applicable

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes No Not Applicable

If so, describe. _____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes No Not Applicable

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes No Not Applicable

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. Spills.

4.1 During the past year, have any spills occurred on any site you occupy?

Yes No Not Applicable

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes No Not Applicable

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes No Not Applicable

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work _____

5. Waste Management.

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes No

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes No

If yes: EPA ID# _____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes No

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes No

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes No

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes No

If yes, what types and quantities? _____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes No

If yes, please describe any existing or proposed treatment, processing or recycling methods. _____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. Wastewater Treatment/Discharge.

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

_____ storm drain _____ sewer
_____ surface water _____ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes No

6.3 Is your wastewater treated before discharge?

Yes No Not Applicable

If yes, describe the type of treatment conducted.

6.4 Does your business conduct operations outside the building or store materials outside?

Yes No Not Applicable

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes No Not Applicable

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes No Not Applicable

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes No Not Applicable

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. Air Discharges.¹

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes No

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Dip tank	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Drying oven	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Incinerator	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other (please describe)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Boiler	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I/C Engine	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Emergency Backup Generator	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Processes that apply coatings, inks, adhesives or use solvents	Yes <input type="checkbox"/>	No <input type="checkbox"/>

7.3 Do you emit or plan to emit any toxic air contaminants?

Yes No

7.4 Are air emissions from your operations monitored?

Yes No

¹ NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. 8. Enforcement Actions, Complaints.

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes No

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes No

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes No

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes No

If so, discuss the results of the audit. _____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes

No

Please describe: _____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

_____ a _____

By: _____

Title: _____

Date: _____

EXHIBIT E

FORM OF MEMORANDUM OF LEASE

Prepared by and after
recording return to:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

**DOCUMENT EXEMPT FROM RECORDATION FEE
UNDER GOVERNMENT CODE SECTION 27383**

MEMORANDUM OF LEASE AGREEMENT

The **CITY OF ALAMEDA**, a charter city and municipal corporation (the "Landlord"), and Alameda Point Partners, LLC, a Delaware limited liability company (the "Tenant"), do hereby declare on this ___ day of _____, 2015 this Memorandum Lease Agreement (this "Memo"):

Pursuant to that certain Lease dated as of _____, 2015 (the "Lease"), the Landlord demised and leased unto the Tenant, and the Tenant leased and demised from the Landlord, that certain property described in the Trust Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Trust Lease.

The term of the Trust Lease commenced as of _____, 20__ and shall terminate on _____, 20__, unless sooner terminated or extended as provided in the Trust Lease.

1. Except as provided in the Trust Lease and with respect to subleases of the Premises, the Tenant shall not assign or transfer the Trust Lease without the prior written consent of the Landlord in accordance with the Trust Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Trust Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Trust Lease, the Trust Lease shall control.

3. Upon the earlier of termination or expiration of the Trust Lease, pursuant to the terms thereof, the Landlord shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Trust Lease has been properly terminated or has expired by its terms, then the

Landlord and the Tenant agree to execute the Release within 10 days after receipt of a written request for the same by either Party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Trust Lease.

5. This Memo may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[Signatures to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease Agreement as of the ___ day of _____, 20__.

TENANT

Alameda Point Partners, LLC
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

LANDLORD

City of Alameda, a charter city and municipal corporation

By: _____
Elizabeth D. Warmerdam,
Interim City Manager

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Jennifer Ott, Chief Operating Officer
Alameda Point

Approved as to Form:

Farimah F. Brown
Senior Assistant City Attorney

Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____ **[Exhibit: Do Not Sign]**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT S
INTENTIONALLY OMMITTED

EXHIBIT T
FERRY TERMINAL NOTE

PROMISSORY NOTE
(Alameda Point Site A, Ferry Terminal Payment)

Principal Amount: [Insert amount equal to \$10,000,000 less any amounts previously paid by Developer pursuant to Section 5.2(b)(4) of the DDA.]
Loan Effective Date: [Insert Phase 1 Closing Date.]
Maturity Date: [Insert date that is one year after the Completion Date set forth in the Ferry Terminal Plan.]

FOR VALUE RECEIVED, the undersigned, Alameda Point Partners, LLC, a Delaware limited liability company ("Developer"), promises to pay to the order of the City of Alameda, a California charter city (the "City"), at _____ or such other place as the City may designate to Developer in writing from time to time, the principal sum of _____ Dollars (\$_____) [Insert amount equal to \$10,000,000 less any amounts previously paid by Developer pursuant to Section 5.2(b)(4) of the DDA.], without interest, pursuant to the terms of this Promissory Note ("Note"). All payments required under this Note shall be made in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private.

ARTICLE I. – DDA

1.01 DDA. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, related to that certain real property commonly referred to as Site A of Alameda Point (the "DDA"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

1.02 Ferry Terminal Payment. This Note is given to evidence Developer's obligation to pay the Ferry Terminal Payment required by Section 2.2(b) of the DDA.

ARTICLE II - TERMS AND CONDITIONS

2.01 Maturity Date; Allocation of Payments:

Maturity Date: The loan evidenced by this Note shall mature upon _____ [Insert date that is one year after the Completion Date set forth in the Ferry Terminal Plan.], which date is subject to extension pursuant to the provisions of Section 1.3 of the DDA (the "Maturity Date"). On or before the Maturity Date, Developer shall pay all principal amounts and other charges as described herein then outstanding to the City.

2.02 Credit for DDA and Surety Bond Payments: All payments made by Developer pursuant to Section 1.3(a)(2) and 5.2(b)(4) of the DDA shall be credited to the amounts due under this Note. Further, all amounts paid by or on behalf of Developer's surety for the design, permitting and Completion of the Ferry Terminal pursuant to a bond provided pursuant to the applicable Public Improvement Agreement shall be credited to the amounts due under this Note.

2.03 Use of Funds Paid Hereunder. All funds paid by Developer pursuant to this Note shall be used for the purposes related to the Ferry Terminal as further set forth in Section 2.2(b) of the DDA.

2.04 Prepayment: Developer shall have the right at any time and from time to time to prepay the principal balance under this Note in whole or in part, upon five (5) business day's prior written notice to the City. No prepayment premium or penalty payment shall be due with respect to any such prepayment.

2.05 Cost of Collection: All costs, expenses, advances and/or attorney's fees incurred by the City relating to the enforcement of this Note shall be immediately owed by Developer to the City and shall be in addition to the principal amount of this Note.

ARTICLE III. TERMINATION OF DDA

3.01 Termination of DDA and Exercise of Right of Reverter/Option to Repurchase. In the event of (a) the occurrence of a Developer Event of Default under the DDA prior to the commencement of construction of the Ferry Terminal and (b) the City's election to terminate the DDA and exercise its rights pursuant to Section 17.5 or 17.6 and the City does reacquire the Property or any portion thereof:

(i) If the foregoing occurs prior to Developer's commencement of construction of any portion of Vertical Improvements, the City re-acquisition of the Property or any portion thereof pursuant to its exercise of its right of reverter or Developer's conveyance of the portion of the Property then owned by Developer to the City shall be deemed a full satisfaction of Developer's obligations under this Note;

(ii) If the foregoing occurs after Developer's commencement of construction of any portion of the Vertical Improvements, upon the City's reacquisition of the Property or portion thereof or the Developer's conveyance of the applicable portion of the Property to the City, Developer shall be entitled to a credit to the amounts due under this Note equal to a percentage of the outstanding principal amount of the Note, which percentage is equal to (A) the total acreage of the Property conveyed to the City (including any prior dedications of parks or rights-of-way) divided by (B) the total acreage of the Transfer Property and the Lease Property.

Notwithstanding the above, if the DDA is terminated after the commencement of construction of the Ferry Terminal, and Developer shall cease to continue construction of the Ferry Terminal pursuant to the DDA, the full amount owed under this Note shall be due and payable immediately.

ARTICLE IV. - GENERAL CONDITIONS

4.01 No Waiver. Amendment: No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (a) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of the City thereafter to insist upon strict compliance with the terms of this Note, or to insist upon strict compliance with the terms of this Note, or (b) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Developer hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part unless the City agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

4.02 Waivers: Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Developer. Developer hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any moratorium, reinstatement, marshaling, forbearance, valuation, stay, extension, redemption, appraisal, exemption now or hereafter provided by the Constitution and laws of the United States of America and the State of California, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note.

4.03 Miscellaneous: Developer's obligations under this Note are subject to the notice and cure provisions of Section 17.4(b) of the DDA. Upon default under the provisions of this Note, the City may declare the outstanding principal amount of this Note and all other charges payable hereunder to be due and payable immediately, and upon such declaration such principal and other sums shall immediately become and be due and payable without demand or notice. The undersigned consents to all renewals, replacements, and extension of the time for payment hereof and waives notice, demand, protest and applicable statute of limitations. Liability under this Note shall be governed by and construed in accordance with the laws of the State of California and the applicable laws of the United States of America. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof.

4.045 Attorney's Fees: In the event that either party institutes litigation for any dispute or default arising from this Note, the prevailing party shall be entitled to recover reasonable attorney's fees. In the case of attorneys' fee payable to the City when the City has been represented by legal counsel employed with the City Attorney's Office, the attorneys' fees shall be measured by the reasonable attorneys' fees that would have been paid by the City had it instead been represented by outside counsel in the matter.

4.05 Notices: Notice of any default under the provisions of this Note shall be sent to the following:

If to Developer to: Alameda Point Partners, LLC
c/o Trammel Crow Residential
39 Forrest Street, Suite 201
Mill Valley, CA 94941
Telephone: 415-381-3001
Facsimile: 415-381-3003
Email: bd@thompsondorffman.com

With copies to: SRM Ernst Development Partners
2220 Livingston Street Suite 208
Oakland, CA 94606
Telephone: 510-219-5376
Facsimile: 510-380-7056
Email: jernst@srmernst.com

With copies to: Madison Marquette
909 Montgomery Street Suite 200
San Francisco, CA 94133
Telephone: 415-277-6828
Facsimile: 415-217-5368
Email: pam.white@madisonmarquette.com

With copies to: Stice & Block, LLP
Attention: Marc Stice
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: (510) 735-0032
Facsimile: (510) 735-0440
Email: mstice@sticeblock.com

4.06 Time of the Essence: Time is of the essence with respect to all obligations of Developer under this Note.

Signatures on the following page.

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

[EXHIBIT DO NOT SIGN]

EXHIBIT U
CITY DISCLOSURE DOCUMENTS

Doc #	Document	Link
1.	Finding of Suitability of Transfer for Phase 1 (final, 4/13)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905889131/16720440507/1
2.	Petroleum Data Gap Investigation Report (final, 2/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900771/16720462783/1
3.	Petroleum Management Plan, App C, FL-155A (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900771/16720466513/1
4.	Petroleum Management Plan, App C, FL-200 (update 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900771/16720467839/1
5.	Site Management Plan, App. B, USTs 173 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720595085/1
6.	Site Management Plan, App. B, FL-126 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720593993/1
7.	Site Management Plan, App. B, FL-125 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720591773/1
8.	Site Management Plan, App. B, CAA-B South (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720589663/1
9.	Site Management Plan, App. B, ASTs 173 (draft, 3/14)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720586683/1
10.	Petroleum Management Plan, App C, USTs 398 (update, 2/12).	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720584313/1
11.	Petroleum Management Plan, App C, OWS 162 (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720582407/1
12.	Petroleum Management Plan, App C, M-07 & GAP 45 (update, 2/12)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720580973/1
13.	CAA-3 Corrective Action Summary Report (12/13)	https://cityofalameda1.app.box.com/s/7x01nq53vidrnkxkhp4z/1/1905900653/16720579655/1
14.	Final Site Management Plan, Phase 1 Transfer (3/15)	
15.	Fact Sheet FL-126 (final, 5/14)	
16.	NFA letter FL-126 (7/14)	
17.	Fact Sheet FL-125 (final, 5/14)	
18.	NFA letter FL-125 (7/14)	
19.	Fact Sheet USTs 398 (draft, 12/13)	
20.	NFA letter USTs 398 (10/14)	
21.	Petroleum Program Field Support CAA-3 (final, 8/14)	
22.	Remedial Design OU-2B, Groundwater (preliminary, 5/14)	
23.	Land Use Control Remedial Design OU-2B (draft, 5/15)	
24.	Field Summary Report for OU-2C Drain Lines (final, 7/13)	
25.	Historical Radiological Assessment, Vol. II, Use of General Radioactive Materials (final, 6/07)	
26.	Final Status Survey Report, Building 66 (final, 9/12)	
27.	Final Status Survey Report, Building 113 (final, 10/12)	

28.	Scoping Survey Report, Former Smelter Area(revised final, 8/12)	
29.	Finding of Suitability to Transfer Phase 2 (draft, 5/14)	
30.	Soil Remedial Action Work Plan for OU-2B (final, 7/14)	
31.	Record of Decision for OU-2B (final, 3/15)	
32.	Soil Remedial Action Completion Report OU-2B (draft, 5/15)	

EXHIBIT V-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

EXHIBIT V-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

**CITY OF ALAMEDA – OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED
UNDER GOVERNMENT CODE SECTION
37393 AND ENTITLED TO FREE
RECORDING UNDER GOVERNMENT CODE
SECTION 27383**

**RECORDING REQUESTED BY
AND RETURN TO:**

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS

(City)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____, 20__ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("**Developer**"), with respect to the real property more commonly known as Phase ____ of Site A of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, the City on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of the NAS Alameda Property, whether acquired prior to or after the applicable Phase Closing Date), provided Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") a waiver of its rights to recover from and fully

and irrevocably released the Developer Released Parties from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from the Property to any portion of the NAS Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date (the "Release of Claims").

The foregoing Release of Claims did not negate, limit, release, or discharge the Developer Released Parties in any way from, and shall not be deemed a waiver of any Claims by the City with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns, (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing, (iv) any breach by Developer of any of Developer's representations, warranties or covenants expressly set forth in the DDA or any other agreement between the City and the Developer, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the Developer Released Parties at, on, under or otherwise affecting any portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by Developer.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims contained in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of any portion of the NAS Alameda Property acquired by the City to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided hereby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of any portion of the NAS Alameda Property acquired by the City.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

ALAMEDA POINT PARTNERS, LLC,

a Delaware limited liability company

By: _____

Type or Print Name

Title: _____

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property and Lease Property.]

EXHIBIT B

DEFINITIONS

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

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

NAS Alameda Property: means the Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility, which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "Navy") in 1993 and closed in 1997.

EXHIBIT V-2

NOTICE OF DEVELOPER RELEASE OF ENVIRONMENTAL CLAIMS

**CITY OF ALAMEDA – OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED
UNDER GOVERNMENT CODE SECTION
37393 AND ENTITLED TO FREE
RECORDING UNDER GOVERNMENT CODE
SECTION 27383**

**RECORDING REQUESTED BY
AND RETURN TO:**

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS

(Developer)

This MEMORANDUM OF RELEASE OF CLAIMS ("Memorandum") dated as of _____, 20____ (the "Effective Date"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "City"), and ALAMEDA POINT PARTNERS, LLC, a California limited liability company ("Developer"), with respect to the real property more commonly known as Phase ____ of Site A of Alameda Point (the "Property"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2015, as amended, regarding the Property (the "DDA"). As more particularly set forth in the DDA, Developer on behalf of itself and anyone claiming by, through or under Developer (including, without limitation, any successor owner of the Property), provided the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") a waiver of its rights to recover

from and fully and irrevocably released the City Released Parties from any and all Claims that Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Property: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the Property as of the applicable Phase Closing Date; and (C) any information furnished by the City Released Parties related to the Property under or in connection with the DDA; and

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the NAS Alameda Property acquired by the City to the Property, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date (the "Release of Claims").

The foregoing Release of Claims did not negate, limit, release, or discharge the City Released Parties in any way from, and shall not be deemed a waiver of any Claims by Developer with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives, (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date, (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in the DDA, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the Property, which release first occurs after the applicable Phase Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of the Property, or any portion thereof, to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

3. This Memorandum and the notice provided hereby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of the Property or any portion thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

By: _____

Type or Print Name
Title: _____

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable Phase Transfer Property and Lease Property.]

EXHIBIT B

DEFINITIONS

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

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

NAS Alameda Property: means the Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility, which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "Navy") in 1993 and closed in 1997.

EXHIBIT W
APPRAISAL PROCESS

The Gross Proceeds deemed received by the Developer pursuant to Section 2.3(a)(3) for any portion of the Transfer Property transferred to an Affiliated Purchaser or retained by the Developer upon Final Completion (collectively, the “**Valuation Property**”) shall be determined as follows:

1. Fair Market Value. As used in this Agreement, the term “**Fair Market Value**” shall mean the purchase price that an unrelated party negotiating at arm’s length would pay to purchase the Valuation Property (a) in a bulk sale, (b) in an “improved parcel” condition (with rough grading, adjacent streets completed and all Phase Infrastructure Completed and, utilities subbed to the parcel line), (c) taking into account all then current market factors, (d) adjusting for all conditions specific to the Valuation Property (including, without limitation soils conditions, any special taxes or assessments, potential for Hazardous Materials and recorded land uses covenants and other matters of record), and (e) deducting an amount equal to five percent (5%) of the gross value otherwise determined pursuant to this Exhibit W to account for costs of sale (e.g. legal fees, brokerage fees, transfers tax and other transaction costs).

2. Appraisal Process. Within thirty (30) days following Final Completion, the parties shall each appoint in writing an appraiser, which appraiser shall be associated with a regionally recognized appraisal firm and have at least ten (10) years of appraisal experience with similar large-scale, mixed use, master-planned projects in Northern California. If one party has appointed an appraiser hereunder, and the other party fails to appoint an appraiser hereunder within the time period specified above, the Fair Market Value of the Valuation Property will be established by the determination of the appraiser appointed by such first party acting alone, and such other party hereby consents to the same. The two appraisers shall be instructed to complete their appraisals within thirty (30) days of the appointment of the last appraiser to be appointed and to appraise only the Fair Market Value of the Valuation Property (the “Original Appraisals”). If the Original Appraisals are within ten percent (10%) of each other (i.e., if the lower Original Appraisal is equal to or greater than ninety percent (90%) of the higher Original Appraisal), the mean of the Original Appraisals shall be deemed to be the Fair Market Value of the Valuation Property. If the Original Appraisals deviate by more than ten percent (10%) the parties shall cause the two appraisers previously selected to appoint a third appraiser meeting the criteria set forth above within fifteen (15) days of completion of the Original Appraisals. If the parties fail to appoint a third appraiser within said fifteen (15) day period, either party may request such appointment by the president or executive secretary of the chapter of the American Institute of Real Estate Appraisers located nearest to the Valuation Property. If the president or executive secretary fails to appoint a third appraiser within ten (10) days after request, then either party may petition the presiding judge of the state or federal court sitting in Alameda County where the Valuation Property is located to appoint an appraiser. Once the third appraiser has been selected, such appraiser shall conduct its own independent appraisal based in accordance with the procedures set forth herein. Upon completion of the third appraiser’s appraisal, the parties shall select the two appraisals closest in value and the average of those two appraisals shall be utilized for purposes of establishing the Fair Market Value of the Valuation Property. The parties shall bear the fees and costs of any appraiser appointed by such party and bear equal portions of the fees and costs of any third appraiser (including the appointment thereof).

2.1 Appraisal Methodology; Appraisal Date. All appraisers retained pursuant to this Exhibit W shall be instructed that, while all traditional methodologies may be considered, the residual land value (development approach) shall be the primary methodology for determining the fair market value of the Valuation Property. Further, the appraisal date for each portion of the Valuation Property shall be the date of the applicable Phase Completion.

Each party shall be entitled to provide each appraiser selected pursuant to this Exhibit W with relevant data regarding the Valuation Property, including, without limitation, actual or pro forma construction costs (as applicable), reports regarding the condition of the Valuation Property and proposed comparable sale properties/transactions.

3. Further Meet and Confer. The parties are authorized, but not required, to meet and confer regarding and agree upon the Fair Market Value of the Valuation Property until such time as the third appraiser has conclusively determined the Fair Market Value of the Valuation Property.

EXHIBIT X

LIST OF NAVY QUITCLAIMS DEEDS AND CRUPS

QUITCLAIM DEEDS:

1. Quitclaim Deed recorded on 6/6/13, Series No. 2013 J677267.
2. Quitclaim Deed recorded 6/6/13 for Parcel ALA-02, Series No. 2013 199790.
3. Quitclaim Deed recorded 6/6/13 for Parcel ALA-37, ALA-38, ALA-55, ALA-57, ALA-59 and ALA-61, Series No. 2013 199810.
4. Quitclaim Deed recorded 6/6/13 for Parcel ALA-42, Series No. 2013199814.
5. Quitclaim Deed recorded 6/6/13 for Parcel ALA-45, Series No. 2013 199816.
6. Quitclaim Deed recorded 6/6/13 for Parcel ALA-58, Series No. 2013 199825.

CRUPS:

7. Covenant to Restrict Use of Property – Environmental Restriction (re Parcel ALA-36), Series No. 2013 199836.
8. Covenant & Environmental Restriction on Property–recorded 6/6/13 (re Parcel ALA-26), Series No. 2013 199840.
9. Covenant to Restrict Use of Property – Environmental Restriction (re Parcel ALA-58), Series No. 2013 199788.