

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT ENCINAL TERMINALS PROJECT

This Development Agreement (“**Agreement**”) is entered into on _____, 2018, between the City of Alameda, a municipal corporation, (“**City**”) and North Waterfront Cove LLC, a Delaware limited liability company (“**Developer**”) regarding the Encinal Terminals Project. The City and the Developer are sometimes referred to collectively as the “**Parties**” and either individually as a “**Party**.” Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meaning given them in the Master Plan (defined in Recital I).

RECITALS

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

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

B. Pursuant to Government Code Section 65864, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Alameda Municipal Code Chapter XXX, Article VII, Code Sections 30-91 thru 30-95 (the “**City Development Agreement Regulations**”). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

C. The Developer is the owner of approximately 25.91 acres of real property, consisting of approximately 17.33 acres of land and 8.58 acres of submerged lands, located along the Oakland Estuary, north of Entrance Road, commonly known as Encinal Terminals, with an address of 1521 Buena Vista Avenue, City of Alameda, County of Alameda (APNs 72-0382-001, 72-0382-002 and 72-0383-003), as more specifically described in Exhibit A, attached hereto (“**Encinal Terminals Parcel**”).

D. City holds in trust approximately 6.4 acres of land-locked public trust property located adjacent to the Encinal Terminals Parcel, identified as assessor's parcel number 072-0382-009, as more specifically described in Exhibit B, attached hereto ("**City Parcel**"). The City Parcel and the Encinal Terminals Parcel are referred to collectively herein as the "Property".

E. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits described in Section 5, some of which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

F. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of underdeveloped property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Alameda General Plan ("General Plan") and will implement City's stated General Plan policies; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from increased public open space and commercial recreational opportunities, and employment opportunities for residents of City created by the businesses in the commercial space within the Project; and (5) City will receive the Public Benefits provided by the Project for the residents of City.

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

H. The Developer has applied to the City for Master Plan approval for the Property, Affordable Housing Density Bonuses and waivers (City file #PLN16-0117) and this Development Agreement.

I. Developer proposes to develop the Property into a transit-oriented residential mixed-use development, consistent with the Master Plan approved on _____ via Ordinance No. ____ ("**Master Plan**"). The Master Plan allows for development of up to 589 housing units (including seventy-nine (79) deed restricted affordable units), up to 50,000 square feet of retail/commercial space, a public marina with up to 160 slips, and seven acres of public open space

J. This Development Agreement was adopted by ordinance of the City Council, after notice and public hearings before the Planning Board and City Council and after City Council adoption of a Focused Supplemental Environmental Impact Report in accordance with the California Environmental Quality Act, Public Resources Code section 21000 and following.

K. For the reasons recited herein, City and Developer have further determined that the Project is a transit-oriented development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (as defined below), thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property in accordance with this Development Agreement is anticipated to, in turn, provide substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, the Parties agree as follows:

1. **The Property.** The Property which is the subject of this Development Agreement is described in Recitals C and D, above.
2. **The Project.** The Developer is authorized to develop and use the Property for a transit-oriented residential mixed-use development with up to 589 housing units (which includes seventy-nine (79) deed restricted affordable units), up to 50,000 square feet of retail/commercial space, and seven acres of public open space in conformance with the terms and conditions of the Master Plan (the "**Project**"). The Master Plan and this Agreement contain the required terms regarding the permitted uses of the Property, the intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes. (Government Code Section 65865.2.)
3. **Effective Date and Term.**
 - a. **Effective Date.** The Effective Date of this Development Agreement shall be the latest of: (a) thirty (30) days after the date the Ordinance approving this Development Agreement is adopted by the City Council; (b) five (5) business days after full execution of the agreement for the Public Trust Exchange (as defined below) by all parties thereto; and (c) if a referendum petition is timely and duly circulated and filed, the date the election results on the ballot measure by City voters approving this Development Agreement are certified by the City Council in the manner provided by the Elections Code. This Development Agreement shall be executed by the City within ten (10) days after the Effective Date and recorded as provided in Government Code Section 65868.5. If for any reason, the Effective Date has not occurred by January 1, 2020, then this Agreement shall be null and void and of no force or effect.
 - b. **Term.** The term of this Development Agreement is fifteen (15) years, beginning on the Effective Date. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits. In establishing and agreeing to such Term, City has determined that the Project Approvals and this Development Agreement incorporate sufficient provisions to permit City to adequately monitor and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the development of the Project.

c. **Termination Following Expiration.** Following the expiration of the Term, or the earlier completion of development of the Project and all of Developer's obligations in connection therewith, this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 20 hereof.

4. **Project Approvals.** Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, "Project Approvals" shall mean the Initial Project Approvals and the Subsequent Approvals (as defined herein). The term "**Initial Project Approvals**" shall mean all of the approvals, plans and agreements described in this Section 4.a through e.

a. **CEQA.** The documentation prepared under CEQA including the Original EIR (State Clearinghouse No. 2016042076), which was recommended for certification by the Planning Board on July 17, 2017, by Resolution No. PB-_____, and certified with findings by the City Council on ____ {date} _____, 2017, by Resolution No. _____ (certifying EIR) and Resolution No. _____ (adopting findings), and the Focused Supplemental Environmental Impact Report (the "FSEIR"), which was recommended for certification by the Planning Board on July 17, 2017, by Resolution No. PB-_____, and certified with findings by the City Council on ____ {date} _____, by Resolution No. _____ (adopting the FSEIR and adopting a mitigation monitoring and reporting program) and Resolution No. _____ (adopting findings).

b. **General Plan Amendment.** On _____, 2017, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, made findings that the Project was consistent with the City's General Plan (the "General Plan") as amended to allow for buildings over 60 feet in height.

c. **Master Plan.** On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved the Encinal Terminals Project Master Plan (the "Master Plan").

d. **Density Bonus Application.** On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, approved the density bonus application for the Project (the "Density Bonus Application") and authorized its execution.

e. **Development Agreement.** On ____ {date} _____, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved this Development Agreement and authorized its execution.

f. **Subsequent Approvals.** The Parties agree that in order to develop the Project (including the Public Benefits), the Developer may require development permits, and/or construction approvals other than those listed in Section 4 a. through e. above, which may include, without limitation: development plans, conditional use permits, variances,

subdivision approvals, design review approvals, demolition permits, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, parcel maps, landscaping plans, master sign programs, affordable housing agreement, and encroachment permits (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Project is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to the Initial Project Approvals and shall be treated as a “**Project Approval**” under this Development Agreement.

5. **Public Benefits.** In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits set forth below, some of which are over and above those dedications, conditions and exactions required by laws or regulations, and which include the public benefits resulting from the Developer obligations set forth in Sections 6.a. through e. Developer agrees to provide the following Public Benefits:

a. **Public Trust Exchange:** Grant to the City, as trustee for the California State Lands Commission (“SLC”), approximately 8.5 acres of submerged lands and approximately 9.5 acres of adjacent waterfront uplands within the Encinal Terminals Parcel (“**Transferred Property**”) in exchange for approximately five (5) acres of the City Parcel as depicted in Exhibit C (Public Trust Exchange Diagram) (the “**Public Trust Exchange**”).

b. **Public Open Space:** Construct and maintain in perpetuity approximately seven (7) acres of waterfront open space, parks, promenades, and plazas for public use as shown in Figure 2.2 of the Master Plan including the extension of the Bay Trail along the water’s edge from the adjacent Wind River property and around the Encinal Terminals Parcel to Fortman Marina and a public water shuttle facility, all as more specifically described in the Master Plan (the “**Open Space**”).

c. **Clement Avenue Extensions:** Facilitate the completion of the Clement Avenue extensions by: (i) contributing a fair share of funds to complete the extension of Clement Avenue from Atlantic Street to Entrance Road, including a new intersection at Sherman, Clement, and Atlantic, and installation of new signals at the intersection of Sherman/Atlantic/Clement and at Clement/Entrance Road, all as shown on the Master Plan for the Del Monte Project adopted by the City Council on December 16, 2014 by Ordinance No. 3115 (the “**Del Monte Extension**”); and (ii) funding the City’s acquisition and construction of the final extension of Clement Avenue from Hibbard Street to Grand Street on land currently owned by Pennzoil Products Company, a division of Shell Oil (“**Pennzoil**”), as shown in Exhibit E (the “**Pennzoil Extension**”).

d. **Infrastructure and Transportation:** Construct (or cause to be constructed) infrastructure improvements and transportation services that will benefit the Property and the surrounding community, including: (1) providing a system of bikeways and pedestrian paths to facilitate access to the waterfront and extension of the Bay Trail around the perimeter of the property; (2) implementing a Transportation Demand Management Program (“**TDM Program**”) that will reduce Project-related traffic and

associated noise and air quality impacts as more specifically described in the Master Plan; and (3) potable water, waste water, storm water, and utility improvements.

e. **Affordable and Middle-Income Housing:** Construct (or cause to be constructed) 79 deed restricted affordable housing units, and provide thirty percent (30%) “affordable by design” middle income units (or up to 153 units), all as described in the Master Plan. In addition, contribute to the Housing Authority, \$1 million for a down payment assistance program for middle income buyers.

f. **Economic Development:** Strengthen and diversify the economic base of the City and surrounding community by developing up to 50,000 square feet of new retail and commercial facilities, as more fully described in the Master Plan. The Master Plan also provides the opportunity for a marina containing up to 160 berths.

6. **Reciprocal Obligations**

a. **Public Trust Exchange.** The Parties wish to facilitate the Public Trust Exchange by entering into, and implementing, a land exchange and title settlement agreement among Developer, City, and SLC, substantially in the form attached as Exhibit D (“**Exchange Agreement**”). The Exchange Agreement shall ensure that approximately 1.4 acres of the existing City Parcel will remain in the public trust and that the Transferred Property will be permanently held by the City of Alameda in trust for the State of California. The portion of the City Parcel remaining in the Public Trust and the Transferred Property are referred to collectively herein as the “**Public Trust Property**”. The Parties agree to diligently negotiate and, if approved by the SLC, to execute the final Exchange Agreement and agree that the Public Trust Exchange shall be subject to the following requirements and conditions:

i. **Conditions Precedent to Closing.** For the purpose hereof, “**Closing**”, “**Close**”, and/or “**Closing Date**” with respect to the Public Trust Exchange is defined to mean the date one or more deeds is recorded transferring fee title to any portion of the City Parcel or the Transferred Property pursuant to an executed Exchange Agreement. The City’s obligation to Close is subject to the satisfactory performance of the following conditions precedent to Closing by the Parties:

(1) **Execution of the Exchange Agreement.** The Parties shall have executed an Exchange Agreement with the SLC. The Alameda City Manager shall have the authority to execute the Exchange Agreement and any and all ancillary documents and to perform all actions necessary and desirable to consummate the Public Trust Exchange as described herein.

(2) **Payment of Exchange Costs and Expenses.** Developer shall have reimbursed City for all costs incurred in negotiating and executing the Exchange Agreement. Developer shall be solely responsible for all costs, expenses and fees relating to the Closing.

(3) Construction of Public Trust Structural Improvements. Developer shall construct the Public Trust Structural Improvements (as defined below) in accordance with the following provisions:

A. The “**Public Trust Structural Improvements**” mean (a) all structural improvements required to provide seismic stability of the Transferred Property in accordance with State building codes; and (b) ground improvements, including deep soil mixing, within and/or adjacent to the Transferred Property. The Public Trust Structural Improvements shall be sufficient to allow use of the Transferred Property for recreational purposes; future marina development; and emergency vehicle, pedestrian and bicycle access, to the reasonable satisfaction of City Manager. The Public Trust Structural Improvements shall not include the Public Trust Surface Improvements, as defined and described below.

B. Developer shall submit to City, and obtain City Public Works and Community Development Department review and approval of, improvement plans for the Public Trust Structural Improvements (the “**Public Trust Structural Improvement Plans**”).

C. Upon approval of the Public Trust Structural Improvement Plans, Developer shall enter into a Public Improvement Agreement (as defined below) for the Public Trust Structural Improvements and Developer shall post payment and performance bonds for the full value of such improvements. For purposes hereof, (“**Public Improvement Agreement**” or “**PIA**”) shall mean one or more agreements between City and Developer establishing the terms under which certain improvements will be completed at the Project, including the requirements for the payment and performance bonds covering such improvements and the circumstances under which the City may call on such bonds in the event of a Developer default.

D. Developer shall secure all necessary State, Regional and City of Alameda permits and approvals to complete the improvements.

E. Developer shall construct all Public Trust Structural Improvements and shall be solely responsible for all costs to complete the work, including soft costs, permit fees, and hard costs.

(4) Design Review and PIA for Public Trust Surface Improvements. The Developer shall obtain design review approval from the Planning

Board and enter into a PIA for the Public Trust Surface Improvements (as defined below) in accordance with the following provisions:

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

B. Developer shall prepare and submit for design review approval by the Planning Board improvement plans for the Public Trust Surface Improvements.

C. Upon approval by the Planning Board of the design review plans for the Public Trust Surface Improvements, Developer shall submit to City Public Works and Community Development Department for review, improvement plans for the Public Trust Surface Improvements. Developer shall process such improvement plans to 90% construction drawing level sufficient to allow the Parties to execute a PIA with respect to the Public Trust Surface Improvements and shall post payment and performance bonds for the full value of such improvements.

(5) Formation of Assessment District(s). The Parties shall have established a Community Facilities District (“**CFD**”) to cover the costs of constructing and maintaining the proposed improvements within the Public Trust Property (and the Project as a whole), including appropriate capital reserves for the Public Trust Surface Improvements. In addition, a geologic hazards abatement district (“**GHAD**”) or similar financial obligation, may also be formed to cover future costs for sea level rise adaptive measures. Developer shall prepare and submit to City all documentation necessary for formation of any CFD and/or GHAD for the Project. City shall work in good faith to facilitate the formation of any CFD and/or GHAD. Developer shall be solely responsible for all costs, including City costs, to establish the necessary districts.

(6) Termination of the Existing Public Trust Lease. The Parties shall terminate by mutual written agreement the existing Public Trust Lease for the City Parcel on or before the Closing Date.

(7) Preparation and Execution of Access Agreements. The Parties shall have prepared and executed the necessary access agreements to allow (a) Developer a right of access to the Public Trust Property for the purpose of developing the Public Trust Surface Improvements and other improvements on the Public Trust Property consistent with the Master

Plan; and (b) Developer and/or any CFD and/or GHAD a right of access for maintaining the Public Trust Structural Improvements, the Public Trust Surface Improvements and any other improvements constructed by Developer on the Public Trust Property.

ii. **Public Trust Surface Improvement Construction Phasing.** Developer shall construct all Public Trust Surface Improvements at no cost to the City. Completion of the Public Trust Surface Improvements shall be phased to ensure completion of the Public Trust Surface Improvements adjacent to each residential structure prior to issuance of a Certificate of Occupancy for that residential building. In the event that an additional, non-adjacent portion(s) of the previously approved Public Trust Surface Improvements require completion in order to provide safe and sufficient access to a proposed residential structure, such additional portion(s) shall be determined by the Planning Board at the time of the design review approval for each structure to be constructed on the Property.

iii. **Marina Developer/Operator Request for Proposals.** Within ninety (90) days of first Closing, City shall issue a Request for Proposals for a Marina Developer/Operator to construct, operate and maintain a marina with up to 160 slips, together with associated infrastructure and improvements. The Developer is eligible to respond to this solicitation. However, selection of a Marina Developer/Operator or rejection of any and all responses shall be at the sole discretion of the City. Developer shall not be responsible for construction or maintenance of any marina improvements unless a Marina Developer/Operator Lease is executed with Developer, or any assignee, affiliate or partner of Developer.

b. **Pennzoil Extension.** The Parties wish to facilitate the completion of the Pennzoil Extension in accordance with the following provisions:

i. City shall be solely responsible for the acquisition (by voluntary sale, eminent domain or other lawful means) and construction of the Pennzoil Extension.

ii. Developer shall be responsible for paying all Acquisition Costs and Construction Costs, as defined below, incurred by City to acquire and construct the Pennzoil Extension (collectively, the "**Pennzoil Costs**"). For purposes of this Agreement, Acquisition Costs shall mean: (i) the purchase price paid for any land needed to allow construction of the Pennzoil Extension; and (ii) legal, staff and closing costs associated with the acquisition of such land. Construction Costs shall mean the soft and hard costs incurred for construction of the improvements for the Pennzoil Extension.

iii. Developer shall maintain funds on deposit with City to be used for Pennzoil Costs associated with the Initial Offer (as defined below) and subsequent negotiations with Pennzoil (the "**Acquisition Funds**"), as follows:

(1) Within thirty (30) days after the Effective Date, Developer shall make an initial deposit in the amount of Fifty Thousand Dollars (\$50,000).

(2) If, at any time, the balance of the Acquisition Funds on deposit with the City is at or below Twenty-Five Thousand Dollars (\$25,000) by reason of withdrawals by the City to pay for Pennzoil Costs, then, within thirty (30) days after written demand from City, Developer shall deposit an additional Twenty-Five Thousand Dollars (\$25,000) or such greater amount necessary to bring the Acquisition Funds balance back up to Fifty Thousand Dollars (\$50,000).

(3) Subject to Section 6.b.vi below, Developer further agrees that within three (3) business days after the City's execution of a purchase and sale agreement with Pennzoil or upon City's initiation of eminent domain proceedings for the Pennzoil Extension, whichever occurs first, Developer shall deposit with the City the appraised value of the land to be acquired from Pennzoil. If City enters into a purchase and sale agreement with Pennzoil, the necessary funds may be in the form of either cash or a letter of credit.

iv. City shall submit a written offer to purchase the necessary right of way no later than one (1) year from the Effective Date (the "Initial Offer").

v. City shall in good faith keep Developer informed of all material communications with Pennzoil and all material developments in the negotiations.

vi. City shall obtain the prior written consent of Developer before agreeing to a purchase price for the Pennzoil Extension by voluntary sale. If the City and Developer cannot agree on whether or not to accept a counter offer from Pennzoil, then: (i) City may proceed with such voluntary sale and Developer shall pay City the Pennzoil Costs up to One Million Five Hundred Thousand Dollars (\$1,500,000), at which point Developer's obligation to fund the acquisition and construction of the Pennzoil Extension shall be fulfilled; or (ii) City may initiate eminent domain proceedings at which point Developer's obligation to fund the Pennzoil Costs shall continue, subject to the provisions of subsections viii and ix below, or (iii) City may notify Developer that City has chosen to avoid or abandon efforts to acquire the Pennzoil Extension, in which case the provisions of subsection vii below shall apply.

vii. At any time, City may notify Developer in writing that City elects to avoid or abandon efforts to acquire the Pennzoil Extension. If, as of the date of such written notice, Developer has paid less than One Million Five Hundred Thousand Dollars (\$1,500,000) in Pennzoil Costs, Developer agrees to pay the difference between the Pennzoil Costs and One Million Five Hundred Thousand Dollars (\$1,500,000) to the Alameda Transportation Management Association ("ATMA") to fund transportation services in the Northern Waterfront area. Developer shall

make any such payment to the ATMA within thirty (30) days after the later of: 1) receipt of City's written notice, or 2) issuance of the first residential building permit. City shall have no obligation to reimburse Developer for any Pennzoil Costs paid by Developer prior to City's decision to avoid or abandon efforts to acquire the Pennzoil Extension.

viii. If the Acquisition Costs paid by Developer are equal to or exceed One Million Five Hundred Thousand Dollars (\$1,500,000), Developer shall remain obligated to pay the Acquisition Costs over \$1,500,000 until the property is acquired but shall be relieved from any obligation to contribute to the Construction Costs for the Pennzoil Extension.

ix. If the Acquisition Costs paid by Developer are less than One Million Five Hundred Thousand Dollars (\$1,500,000), Developer's remaining obligation to pay Construction Costs shall be limited to the difference between the Acquisition Costs and One Million Five Hundred Thousand Dollars (\$1,500,000). If the Pennzoil Costs are less than One Million Five Hundred Thousand Dollars (\$1,500,000), then Developer agrees to pay the difference between the Pennzoil Costs and One Million Five Hundred Thousand Dollars (\$1,500,000) to the ATMA to fund transportation services in the Northern Waterfront area. The payment to the ATMA shall be made within thirty (30) days after issuance of the first or next residential building permit.

x. City shall collect fair share contributions for the Pennzoil Costs in accordance with Section 7.d. below.

xi. City shall use good faith efforts to pursue transportation grants to contribute to the Pennzoil Costs. Any grant funds received and applied to the Acquisition Costs or Construction Costs shall reduce, dollar for dollar, the Developer's obligation to pay for or reimburse the City for those costs. In no event shall the Developer's obligation to fund Pennzoil Costs be less than zero.

xii. Developer's performance of its obligations pursuant to this Section 6.b. shall satisfy in full Developer's obligation to pay its fair share contribution for the Pennzoil Extension.

xiii. If City fails to: 1) submit the Initial Offer within one (1) year of the Effective Date; 2) execute a voluntary purchase and sale agreement within five (5) years of the Effective Date; or 3) pass a resolution of Needs and Necessity pursuant to California Code of Civil Procedure §1245.235 *et seq.* with respect to the Pennzoil Extension within five (5) years of the Effective Date ("**City Acquisition Default**"), then the Developer's obligations with respect to the Pennzoil Extension shall terminate and be of no further force or effect. In the event of a City Acquisition Default, City shall have no obligation to reimburse Developer for any Pennzoil Costs paid by Developer prior to the City Acquisition Default. If at the time of the City Acquisition Default, Developer has paid less than One Million Five Hundred Thousand Dollars (\$1,500,000) in Pennzoil Costs,

Developer agrees to pay the difference between the Pennzoil Costs and One Million Five Hundred Thousand Dollars (\$1,500,000) to the ATMA to fund transportation services in the Northern Waterfront area. Developer's payment to the ATMA shall be due within thirty (30) days after the issuance of the first or next residential building permit.

c. **Del Monte Extension.** Developer shall contribute its fair share of the costs for the construction of the Del Monte Extension, in accordance with the following provisions:

i. **Developer Fair Share Contribution.** Developer's fair share contribution shall be made directly to the City of Alameda for transmittal to the Del Monte Developer. Alternatively, Developer may pay the fair share directly to the Del Monte Developer in accordance with the terms of a separate cost-sharing agreement between Developer and the Del Monte Developer. In either event, Developer shall cause the Del Monte Developer to transmit to the City a letter signed by a person authorized to bind the Del Monte Developer and reasonably satisfactory to the City Attorney, acknowledging that the Del Monte Developer has received its fair share in full from Developer and that the City's obligation to obtain a fair share from Developer has been satisfied in full.

ii. **Developer Step-In Obligation.** In the event the Del Monte Developer has not commenced construction of the Del Monte Extension by the date Developer commences construction of the site improvements on the Property or if the Del Monte Developer otherwise defaults on its obligation to construct the Del Monte Extension, Developer shall complete the Del Monte Extension prior to issuance of the occupancy permit for the 250th housing unit at the Property. For purposes hereof, Developer's obligation shall include the curb-to-curb improvements from Entrance Road to the intersection of Sherman and Atlantic, reconfiguration of the intersection at Sherman and Atlantic and installation of all back of curb improvements on the north side of the Del Monte Extension from Entrance Road to the intersection of Sherman and Atlantic, including sidewalks, cycle track and landscaping. Developer shall not be responsible for constructing a permanent sidewalk on the south side of the Del Monte Extension fronting onto the Del Monte project. Developer shall construct at minimum a temporary asphalt sidewalk on the south side fronting the Del Monte project. Upon completion of the improvements, the Del Monte Extension right of way, including the travel lanes, bike lanes, landscaping strips, sidewalks, and cycle track shall be dedicated back to City at no cost.

d. **Public Open Space and Public Art.** Developer shall construct and maintain the "Open Space" at no cost to the City, subject to the following conditions and requirements:

i. **Distribution of Open Space.** The Open Space shall be distributed approximately as follows: a two (2) -acre Public Park, a two (2) acre public plaza at the northwest corner of the site, and three (3) acres of public promenade along

the waterfront portions fronting Alaska Basin and the Estuary (the "Open Space") as shown on Figure 2.2 of the Master Plan. The construction of the Open Space shall be consistent in scope and extent with design review application(s) reviewed and approved by the Planning Board pursuant to the requirements for Public Trust Surface Improvements and any subsequent design review submittals for portions of the Open Space located outside of the Public Trust Property.

ii. **Maintenance of Open Space.** Developer shall be responsible for all maintenance costs (including capital improvement reserves for the Public Trust Surface Improvements) for the Open Space in perpetuity. The maintenance obligation may be assumed by a CFD and/or GHAD formed pursuant to Section 6.a.i.(5) above.

iii. **Public Art Contribution.** Developer shall provide Two Hundred Fifty Thousand Dollars (\$250,000.00) in public art within the Open Space (the "**Public Art Contribution**"). The review and timing of the construction of the public art shall be in conformance with the requirements of the Public Art Ordinance, section 30-65.

iv. **Satisfaction of Open Space Requirements.** Upon construction and acceptance of the Open Space and payment of the Public Art Contribution, the Open Space shall satisfy all on-site open space requirements for the development of the Project.

e. **Affordable Housing.** Developer shall be responsible for:

i. **Deed Restricted Affordable Housing.** Funding and constructing a total of seventy-nine (79) affordable housing units as further described in the Master Plan. Prior to approval of the first final Map for the Project, Developer shall submit for City Manager review and approval in his/her reasonable discretion, an Affordable Housing Agreement for the provision of seventy-nine (79) affordable housing units, consistent with the requirements of the Master Plan and in a form acceptable to the City Attorney.

ii. **Down Payment Assistance Program.** Contributing One Million Dollars (\$1,000,000.00) to the Alameda Housing Authority Down Payment Assistance Program for first time home buyers at the Project whose incomes are between 120% and 180% of the median income for Alameda County (based on the then current calculations issued by the State of California Department of Housing and Community Development) (the "Encinal Down Payment Assistance Program"). Developer shall fund the Encinal Down Payment Assistance Program on the date that the first market rate units are made available for sale. After the initial One Million Dollars (\$1,000,000) in down payment assistance has been disbursed to Project home buyers or five (5) years after the date that the first market rate units are made available for sale, whichever occurs first, reuse of the Encinal Down Payment Assistance Program funds may be made available to income eligible first

time home buyers in any eligible residential or mixed use projects in Alameda as determined by the Alameda Housing Authority. Except for the initial preference to Project home buyers stated above, the potential home buyers must meet all other requirements of the Alameda Housing Authority Down Payment Assistance Program.

Failure of City or Developer, respectively, to timely comply with or implement the obligations in this Section 6 shall be deemed a Breach of this Development Agreement under Section 16.a.

7. **City Cooperation.** Subject to Developer's compliance with all applicable laws, including, but not limited to, any required vote of affected property owners, and further subject to reimbursement of its costs by Developer, the City shall cooperate with the Developer:

- a. **Assessment District(s).** In the establishment of a CFD, GHAD, Municipal Services District and/or a similar financing mechanism for the construction and maintenance of future improvements within the Public Trust Property and/or those portions of the Open Space not located within the Public Trust Property.
- b. **Grants.** To support and/or apply for grants for the funding of public facilities that may be required by the Project, including, without limitation, a potential emergency ferry dock, and/or affordable housing infrastructure.
- c. **Permit Process.** To expedite the permit process for the construction of the public facilities required by the Project.
- d. **Fair Share Contributions.** City shall, to the extent feasible collect fair share contributions for the Clement Avenue Extension from future development entitlements, when and if approved by the City during the Term of this Agreement (1) for residential development at Alameda Marina; (2) for new buildings on the Wind River office campus; (3) for residential development at the City Corporate Yard site; and/or (4) any new residential development on the Pennzoil site. Any such fair share contributions shall be based upon the adjusted average daily car trips from each project as determined by a project specific traffic study.

8. **Development of the Property.**

- a. **Vested Development Rights.** The Property is hereby made subject to the provisions of this Development Agreement. All development of or on the Property, or any portion thereof, shall be undertaken only in compliance with the Project Approvals, Applicable Law and the provisions of this Development Agreement. Developer shall have a vested right to develop the Property in accordance with the Project Approvals, Applicable Law and this Development Agreement. The Project shall be subject to all Subsequent Approvals (which, upon final approval, shall be deemed part of the Project Approvals hereunder).
- b. **Public Trust Property.** With respect to Public Trust Property which will be held by the City in trust for the SLC as public trust lands, no provision of this Agreement

is intended to limit or restrict the City with respect to its use, management or lease of any of the Public Trust Property or to restrict its authority with respect to such lands as necessary to comply with the City's public trust obligations.

c. **Subdivision Improvement Agreement.** Prior to filing its first final map, Developer and City shall execute a subdivision improvement agreement that is not inconsistent with this Development Agreement and that satisfies the requirements of California Government Code Sections 66462 and 66462.5(c).

d. **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals and this Development Agreement, and with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) as set forth below, to the extent not inconsistent with the Project Approvals, governing permitted uses, building locations, timing of construction, densities, design, heights, development impact fees and exactions in force and effect on the Effective Date ("Applicable Law"). Such laws include:

- i. The City's General Plan and Planning and Zoning Code in effect on the Effective Date;
- ii. The Master Plan for the site approved by the City Council on _____;
- iii. All other City policies, ordinances, resolutions, rules, regulations and standards applicable to development or use of the Property on the Effective Date, except that Developer shall:

- (1) Comply with Building Code requirements in effect on a city-wide basis during the construction;
- (2) Comply with changes in City laws, regulations, plans or policies applicable city-wide which are necessary to protect members of the public from a condition dangerous to their health or safety;
- (3) Following any subsequent environmental review, comply with required mitigation measures and all Subsequent Project Approvals which are consistent with this Development Agreement.
- (4) Comply with a change in City law, regulations, plans or policies which is/are:

A. Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or

B. A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or

C. Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the Property issued or granted to the City, County and/or Developer by any federal, state or regional agency.

e. **Processing Fees.** “Processing Fees” mean fees charged to the Project to cover the cost of City review of applications for any permit or other review by City departments. Applications for Project Approvals for the Project shall be charged the then-applicable Processing Fees to allow the City to recover its actual and reasonable costs. Notwithstanding anything to the contrary contained in this Development Agreement, Developer shall not receive any protection from rate escalators or rate increases on Processing Fees.

f. **Impact Fees.** “Impact Fees” means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval (including Subsequent Project Approvals) for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. For purposes of this Agreement, the term “Impact Fees” shall not include impact fees imposed on the Project by the Alameda Unified School District, the State of California or any political subdivision of the State except the City.

i. Only the specific Impact Fees, (including the applicable inflator, if any) listed in Exhibit F of this Development Agreement shall apply to the Project and any Subsequent Project Approval. The base year for any Impact Fee inflator shall be 2017.

ii. In consideration of Developer’s agreement to maintain the entirety of the Project open spaces, streets, and other public facilities in perpetuity, City agrees that the Project shall be exempt from the obligation to pay the Improvement Tax in accordance with Alameda Code of Ordinances Section 3-62.5.

iii. Except as provided in Section 8.f.i above, no change to an Impact Fee resulting in an increase in dollar amounts charged to the Project by the City that is adopted after the Effective Date shall apply to the Project. No new Impact Fee not listed on Exhibit F shall apply to the Project during the Term of this Development Agreement.

iv. Developer retains all rights set forth in California Government Code § 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer's rights set forth in such section.

g. **Development Timing.** The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that Developer shall have the vested right to develop the Project in such order, and at such rate and at such times, as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. Subject to the deadlines contained in this Development Agreement, Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and the Project Approvals.

h. **Life of Project Approvals.** The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Development Agreement or the term otherwise applicable to such Project Approvals, provided however, that the terms of use permits, design review, building permits and variances shall be the time period permitted by Applicable Law.

i. **Subsequent Project Approvals.** Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, as defined herein. In connection with any Subsequent Project Approval, the City shall conduct its review as set forth in the Master Plan and exercise its discretion in accordance with Applicable Law, the Project Approvals and, as provided by this Development Agreement.

j. **Tentative Maps.** If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting tentative map under the Subdivision Map Act, and if this Development Agreement is determined by a final judgment to be invalid or unenforceable that insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting tentative maps shall survive.

k. **Developer's Right to Rebuild.** City agrees that Developer may, subject to Section 8.c. above, renovate or rebuild portions of the Project at any time within the Term of this Development Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Development Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

l. **No Conflicting City Enactments.** Except as and to the extent required by State or Federal law; or as may be reasonably necessary to comply with requirements of, and/or pass through rate and/or connection fee increases established by, other local governmental agencies ("Other Local Agency Compliance Fees"); or as otherwise provided in this Development Agreement, City shall not impose on the Project any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure (each, individually, a "City Law") that is in conflict with the Applicable Law, this Development Agreement or the Project Approvals or that reduces the development rights or assurances provided by this Development Agreement. Without limiting the generality of the foregoing, any City Law enacted or adopted after the Effective Date of this Development Agreement, shall be deemed to conflict with this Development Agreement or reduce the development rights or assurances provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- i. Reduce the number of residential units permitted to be developed on the Property;
- ii. Reduce the square footage of commercial development permitted to be developed on the Property;
- iii. Change any land use designation or permitted use of the Property unless otherwise authorized by the Project Approvals;
- iv. Limit or control the availability of public utilities or any privileges or rights to public utilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- v. Limit or control the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals, Applicable Law or this Development Agreement;
- vi. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Development Agreement, Applicable Law or the Project Approvals; or

vii. Impose on the Project or Developer any fees or exactions other than those permitted by this Development Agreement, Applicable Law or the Project Approvals.

9. **Initiatives and Referenda.** Except as required under Section 8.c., if any City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Development Agreement or reduce the development rights or assurances provided by this Development Agreement, such City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Development Agreement is a legislative action subject to referendum. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals.

10. **Annual Review.** Developer shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date requesting an annual review of the Development Agreement. The periodic review of the Development Agreement shall be made at least every twelve (12) months, consistent with Government Code section 65865.1 and Alameda Municipal Code Section 30-95. At least thirty (30) days prior to each anniversary of the Effective Date during the term of this Agreement, Developer shall submit a written report to City outlining its efforts toward good faith compliance with the terms of this Agreement. The report shall specifically include but not be limited to the status of: the State Tidelands Exchange, the Clement Extensions, the Public Open Space and Public Art requirement, the Affordable Housing requirement, the Down Payment Assistance Program, and the Subdivision Improvement Agreement. The annual report from ATMA shall satisfy the annual reporting requirement for the TDM Program.

11. **Amendments.** The Development Agreement may be amended by the Parties, upon mutual agreement, consistent with the procedures set forth in Government Code section 65868 and Alameda Municipal Code Section 30-94.3, including any amendments to it. Except as may otherwise be required by law or court order, all amendments to this Development Agreement, whether approved by the City Council or the City Manager, shall: (i) be in writing; (ii) approved by the City Council in its sole discretion, by ordinance, at a public meeting or alternatively approved by the City Manager pursuant to Section 11.a below; (iii) signed by both Parties; and (iv) entitled "Development Agreement – Encinal Project, Amendment N" where "N" is the next number in order.

a. **Ministerial Amendments.** Without further action by the City Council, the City Manager shall have the authority, but not the obligation, to take the following action in his or her sole discretion:

i. Extend or adjust the deadline for the City or Developer to complete any obligation under this Development Agreement for up to one (1) year upon any terms or conditions he/she deems appropriate using his/her reasonable discretion, except extend the Term of this Development Agreement;

ii. Amend this Development Agreement as necessary to conform to any amendments or modifications to the Master Plan or any other Project Approvals approved by the Planning Commission and/or City Council;

iii. Amend Section 14 only to this Development Agreement as necessary to comply with the requirements of a Mortgagee but only to the extent necessary for Developer to secure needed financing; and so long as such amendments do not materially expose the City to additional risk of liability or subject City to any monetary obligations or damages; and

iv. Consent, on behalf of the City, to a Transfer pursuant to Section 13 herein and to amend this Development Agreement to correctly identify the new developer.

b. Nothing in this Section shall be construed as to require the City Manager to exercise his/her discretion or to prevent the City Manager from seeking City Council review and approval of an amendment that might otherwise fall within the City Manager's authority.

12. **Other Government Permits.** City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, permits and approvals from other governmental or quasi-governmental entities.

13. **Transfer.** No sale, transfer or assignment of all or a portion of the Property, or creation of a joint venture or partnership, shall require the amendment of this Development Agreement, provided that such sale, transfer or assignment is completed in conformance with the following requirements:

a. **Right to Assign.** Because of the necessity to coordinate development of the entirety of the Property pursuant to the Master Plan, particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Developer to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Master Plan and this Development Agreement. Developer agrees to and accepts the restrictions set forth in this Section 13 as reasonable and as a material inducement to City to enter into this

Development Agreement. For purposes of this Section 13, a change in the identity of the initial managing member of the Developer, (including the sale or transfer, in the aggregate, of the controlling stock or interest in said managing member) shall be deemed a transfer by Developer subject to the provisions of this Section. Developer shall have the right to sell, transfer, ground lease or assign the Property in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") subject to the prior written consent of City; provided that Developer may assign its rights and obligations under this Development Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with the Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("Affiliated Party"). City's consent shall not be unreasonably withheld, delayed or conditioned, and City shall consent if the Assignee reasonably demonstrates to City that it is able to perform the obligations of Developer under this Development Agreement. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Development Agreement with respect to all portions of the Property retained by Developer, and with respect to the dedication and installation of all infrastructure improvements to be provided by Developer, and all other Developer obligations not expressly assigned to and accepted by the Assignee, pursuant to the Project Approvals.

i. The sale, transfer, lease or assignment of any right or interest under this Development Agreement shall be made only together with the sale, transfer, ground lease or assignment of all or a part of the Property. Concurrently with any such sale, transfer, ground lease or assignment, Developer shall (i) notify City in writing of such sale, transfer or ground lease; and (ii) Developer and Assignee shall provide a written assignment and assumption agreement in form reasonably acceptable to the City Attorney pursuant to which Assignee shall assume and succeed to the rights, duties and obligations of Developer with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned.

ii. Subject to City's written consent as provided in this Section 13, City, upon request of Developer or Assignee, and following compliance with the notification provisions above, shall provide Assignee with a certificate of compliance, stating that this Development Agreement remains valid and in full force and effect and is binding upon City, Developer and the Assignee as of the last Annual Review pursuant to the provisions of Section 10, except that if City knows of any non-compliance, City shall not be required to issue a certificate of compliance.

b. **Release of Transferring Developer.** Except with respect to a permitted transfer and assignment under Section 13.a. to an Affiliated Party, notwithstanding any sale,

transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Development Agreement as to all or the portion of the Property so transferred unless City is satisfied the Assignee is fully able to comply with Developer's obligations under this Development Agreement (both financially and otherwise) and Developer is given a release in writing.

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

14. **Mortgagee Protection**

a. **Mortgagee Protection.** This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

b. **Mortgagee Not Obligated.** Notwithstanding the provisions of Section 13.a. above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Development Agreement, or otherwise under the Project Approvals.

c. **Notice of Default to Mortgagee.** If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is

attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

15. **Estoppel Certificate.** Within twenty (20) days of a written request, either Party shall execute an estoppel certificate in writing that, to the knowledge of the responding Party as of the last Annual Review: (a) this Development Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (c) the requesting Party is not in Breach in the performance of its obligations under this Development Agreement, or if in Breach or Default, describe the nature and amount of any such Breach or Defaults.

16. **Remedies for Default.**

a. **Breach.** Subject to extensions of time under Section 14.c. or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Development Agreement shall constitute a breach of this Development Agreement. In the event of alleged breach of any terms or conditions of this Development Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice (“**Cure Period**”) to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall, within a thirty (30) day period following notice from the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances (“**Extended Cure Period**”); commence to cure such breach; and be proceeding diligently to cure such breach. Subject to the provisions of Section 14.c, the Extended Cure Period shall in no event exceed one hundred twenty (120) days unless otherwise agreed by the Parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 16.c. shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege that breach or any other breach at any other time.

b. **Default.** If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default (“**Default**”), and the non-breaching Party, at its option, may terminate the Development Agreement or institute legal proceedings pursuant to this Development Agreement and shall have such remedies as are set forth in Sections 16.c and 16.d. below.

c. **Withholding of Permits.** In the event of a Default by Developer, or following notice of breach by Developer and during the Cure Period or Extended Cure Period, upon a finding by the City Manager that Developer is in serious and substantial breach, City shall have the right to refuse to issue any permits or other approvals to which Developer

would otherwise have been entitled pursuant to this Development Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

d. **Remedies.**

i. **Termination by Developer.** In the event of a Default by City, the Developer shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to City of its intent to terminate.

ii. **Termination by City.** In the event of a Default by Developer, the City, through its City Manager, shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to Developer.

(1) If the City Manager elects to terminate, then within said 45 days, Developer shall have the right to ask the City Council (during public comment at a City Council meeting) for a hearing to reconsider the termination decision ("Reconsideration Hearing").

(2) The City Council may accept, reject or refuse to respond to a Reconsideration Hearing request in its sole and absolute discretion. If the City Council grants the request for a Reconsideration Hearing, then the matter shall be placed on the City Council's agenda as soon as practicable but no sooner than fourteen (14) days from the date the request is granted to allow the Developer time to prepare its presentation. If and only if the Reconsideration Hearing is scheduled for (or continued to) a date which is after the effective date of the termination notice, then the effective date of the termination notice is automatically extended until ten (10) days after the Reconsideration Hearing date.

(3) The Developer and City staff may, but neither is obligated to, provide the City Clerk with written materials to be included in the agenda packet for the City Council's review prior to the Reconsideration Hearing. Such materials, if any, must be submitted in time to comply with the City's Sunshine Ordinance and will become part of the public record.

(4) At the Reconsideration Hearing, Developer shall have the right to present verbal testimony and written materials to show that: (i) it has cured the Default(s); (ii) that it will cure the Default(s) in the near future if given more time; (iii) that it is willing to offer the City alternative or additional consideration to offset the Default(s); or (iv) that the Development Agreement should not be terminated despite the Default(s).

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

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

(7) If the City Council conditionally rescinds the termination decision, then Developer shall have three (3) business days to accept or reject in writing, the conditions stated by the City Council. If the Developer accepts all of the conditions, then the Parties will work together diligently and in good faith to amend this Development Agreement or any other documents necessary to effectuate the new agreement. If Developer rejects, in whole or in part, the conditions set by the City Council or fails to respond in writing within three (3) business days, then the City Manager's notice of termination remains in full force and effect and this Development Agreement shall terminate pursuant thereto.

(8) Termination of this Development Agreement shall be subject to the Mortgagee Protection provisions of Section 14.

iii. **Additional Developer Remedies.** City and Developer agree that in the event of Default by City, the Parties intend that the primary remedy for Developer shall be specific performance of this Development Agreement. Developer may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (excluding monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. The Parties further acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages (including but not limited to actual, consequential, punitive or special damages) against City for breach of this Development Agreement. The foregoing notwithstanding, if Developer is the prevailing party in an action against the City to enforce or defend the provisions of this Development Agreement, then Developer shall be entitled to attorney's fees and costs pursuant to Section 18 below. As an additional Developer remedy, available only in the event that to the City through its use of or activity on the Public Trust Property pursuant to Section 8.b., prevents or makes it impossible for the Developer, CFD and/or GHAD (Maintenance Provider) to fulfill its maintenance obligations pursuant to Section 5.b., then the Maintenance Provider shall be excused from its maintenance obligation on a day for day basis by providing written notice to City describing in sufficient detail the maintenance activity that has been prevented and the City use or activity that has prevented said maintenance. The maintenance obligation shall be excused on a day for day basis for as long as the City's use or activity on the Public Trust Property reasonably prevents the Maintenance Provider from performing its maintenance obligations.

iv. **Additional City Remedies.** City and Developer agree that in the event of Default by Developer, the City, in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (including monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. If City issues an Approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

17. **Indemnification.** Developer agrees to defend, indemnify, release and hold harmless the City and its elected and appointed officials and employees from any litigation, claim, action or court proceeding brought against any of the foregoing individuals or entities (the "Indemnified Parties"), the purpose of which is to attack, set aside, void or annul this Development Agreement on any grounds. This indemnification shall include, without limitation, damages, costs, expenses, court awarded attorney fees or expert witness fees that may be asserted or incurred by the Indemnified Parties, arising out of or in connection with the approval or enforcement of this Development Agreement. City shall retain the right to approve counsel retained by Developer as well as any and all settlements proposed by Developer, which approval shall not be unreasonably withheld.

18. **Attorney's Fees.** If legal action is brought by one of the Parties to enforce or defend a provision of this Development Agreement, then the prevailing Party is entitled to its reasonable attorney's fees, expert witness fees, and court costs.

19. **Third Party Legal Action; Attorney's Fees.** If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of the City's approval of the development of the Project, including the environmental review process, the Developer agrees to reimburse the City for attorney's fees, expert witness fees, and related costs as the City may incur in connection with its retention of outside counsel, and for any award of damages, court costs or fees against the City. City has the right to choose and retain such legal counsel as the City deems appropriate.

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

Section 5.b. – Public Open Space (Maintenance)
Section 16 – Remedies for Default
Section 17 – Indemnification
Section 18 – Attorney's Fees, and
Section 19 – Third Party Legal Action; Attorney's Fees.

21. **Severability.** If any term or provision of this Development Agreement or the application of any term or provision of this Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

22. **Recordation; Binding Effect.** This Development Agreement shall be recorded in the office of the Alameda County Recorder and shall be binding upon and inure to the benefit of successors in interest to the Parties. Where there is more than one Developer, the obligations are joint and several.

23. **Successors and Assigns.** Subject to the provisions of Section 13 relating to Transfer, the terms, covenants and conditions contained in this Development Agreement shall bind and inure to the benefit of City, Developer and their respective successors and assigns; provided, however, that the City shall have no obligation under this Development Agreement to, nor shall any benefit of this Development Agreement accrue to, any unapproved successor or assign of Developer where City approval of a successor or assign is required by this Development Agreement.

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

25. **Integration.** This Development Agreement consists of ___ pages and ___ exhibits which constitute in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Development Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

26. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Development Agreement.

27. **Prevailing Wages.** If required by State law and Alameda Municipal Code Section 2-67, Developer agrees to comply with California Labor Code Section 1770 et seq. regarding the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements for any work on the Project.

28. **Notices.** The address of each party for the purpose of all notices permitted or required by this Development Agreement is as follows:

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

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

To Developer: North Waterfront Cove LLC
12667 Alcosta Blvd., Suite 170
San Ramon, CA 95583
Attn: James L. Meek

With a copy to: Buchalter, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra

The written address of either party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Development Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

CITY OF ALAMEDA

NORTH WATERFRONT COVE LLC,
a Delaware limited liability company

By: Marina View L.P., a California limited
partnership

Its: Managing Member

By: TL Management, Inc.
Its: General Partner

By: _____
Jill Keimach, City Manager

By: James L. Meek
James L. Meek
(Notary Acknowledgment Required)

Date: _____

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Debbie Potter, Community Development
Director

Approved as to Form:

Andrico Q. Penick
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. _____

Exhibits:

- A. Encinal Terminals Parcel – Legal Description**
- B. City Parcel – Legal Description**
- C. Property Exchange Diagram**
- D. Form of Exchange Agreement.**
- E. Clement Pennzoil Extension Improvements**
- F. List of Impact Fees**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

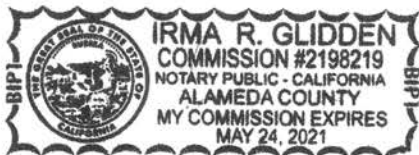
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Alameda)
 On Dec. 7, 2017 before me, Irma R. Glidden, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared James Lawrence Meek
 Name(s) of Signer(s)

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.



Signature Irma R. Glidden
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

EXHIBIT A

Encinal Terminals Parcel – Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY AND COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PORTION OF PARCEL 2 AS DESIGNATED ON PARCEL MAP NO. 2938, FILED JULY 19, 1983, BOOK 138 OF PARCEL MAPS, PAGES 76 TO 80 INCLUSIVE, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL 2 (138 PM 76); THENCE ALONG BOUNDARY OF SAID PARCEL 2 SOUTH 53° 51' 53" EAST, 127.66 FEET AND NORTH 68° 31' 35" EAST, 118.76 FEET TO THE POINT OF BEGINNING TO THE PARCEL TO BE DESCRIBED:

THENCE FROM SAID POINT OF BEGINNING ALONG THE BOUNDARY OF SAID PARCEL 2 (138 PM 76) THE FOLLOWING EIGHTEEN (18) COURSES: NORTH 68° 31' 35" EAST, 160.65 FEET, NORTH 88° 01' 35" EAST, 387.89 FEET; SOUTH 45° 23' 25" EAST, 366.65 FEET; SOUTH 30° 40' 44" WEST, 282.22 FEET; SOUTH 59° 19' 16" EAST, 143.14 FEET; SOUTH 30° 40' 44" WEST, 275.79 FEET; SOUTH 69° 09' 35" WEST, 489.88 FEET; NORTH 64° 20' 25" WEST, 283.80 FEET; SOUTH 7° 35' 25" EAST, 264.00 FEET; SOUTH 21° 09' 35" WEST, 323.40 FEET; SOUTH 77° 20' 25" EAST, 389.66 FEET; SOUTH 30° 40' 44" WEST, 34.71 FEET; SOUTH 7° 15' WEST, 60.00 FEET; NORTH 82° 45' WEST, 15.00 FEET; SOUTH 7° 15' WEST, 210.26 FEET; NORTH 67° 08' WEST, 34.01 FEET; SOUTH 26° 15' WEST, 14.85 FEET AND NORTH 76° 59' WEST, 49.27 FEET; THENCE NORTH 8° 53' EAST, 14.40 FEET, NORTH 41° 37' WEST, 19.24 FEET, NORTH 57° 38' WEST, 19.00 FEET, NORTH 62° 49' WEST, 19.34 FEET, NORTH 40° 12' WEST 38.12 FEET, NORTH 35° 33' WEST, 59.86 FEET, NORTH 4° 56' WEST, 19.65 FEET, NORTH 7° 09' EAST, 51.73 FEET, NORTH 82° 51' WEST, 119.72 FEET, SOUTH 7° 09' WEST, 82.60 FEET, SOUTH 32° 43' EAST, 12.50 FEET, NORTH 88° 39' WEST, 39.90 FEET, NORTH 80° 35' WEST, 11.59 FEET, NORTH 7° 14' 18" EAST, 1614.67 FEET TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING ALL OF THAT PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136981, AND THE EASTERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136980, ALL DOCUMENTS BEING OFFICIAL RECORDS AT THE OFFICE OF THE RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF THE PARCEL DESCRIBED IN SAID GRANT DEED RECORDED AS DOCUMENT NUMBER 96-136980, SAID CORNER ALSO BEING THE MOST SOUTHEASTERLY CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA; THENCE ALONG SAID WESTERLY LINE NORTH 4° 16. 11" EAST, A DISTANCE OF 1721.74 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL THE FOLLOWING FOUR COURSES:

1. SOUTH 41° 13. 49" EAST, A DISTANCE OF 295.87 FEET;
2. SOUTH 53° 15. 31" EAST, A DISTANCE OF 310.00 FEET TO THE TRUE POINT OF BEGINNING;
3. SOUTH 53° 15. 31" EAST, A DISTANCE OF 127.66 FEET TO AN ANGLE POINT;
4. NORTH 68° 31. 35" EAST, A DISTANCE OF 118.76 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL SOUTH 7° 14. 18" WEST, A DISTANCE OF 1592.93 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 82° 45. 42" WEST, A DISTANCE OF 26.06 FEET; THENCE NORTH 9° 27. 09" EAST, A DISTANCE OF 3.12 FEET; THENCE NORTH 80° 32. 51" WEST, A DISTANCE OF 108.02 FEET; THENCE NORTH 80° 53. 01" WEST, A DISTANCE OF 24.97 FEET; THENCE NORTH 5° 12. 24" EAST, A DISTANCE OF 1591.64 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C:

A PORTION OF PARCELS 1 AND 2 AS DESIGNATED ON PARCEL MAP NO. 2938, FILED JULY 19, 1983, BOOK 138 OF PARCELS MAPS, PAGES 76 TO 80, INCLUSIVE, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWESTERN BOUNDARY OF SAID PARCEL 1, AT THE NORTHWESTERN TERMINUS OF THE COURSE SHOWN AS "N33° 14'W-49.22" ON SAID PARCEL MAP; THENCE SOUTH 67° 27' 30" EAST, 36.20 FEET; THENCE SOUTH 65° 11' EAST, 150.08 FEET; THENCE SOUTH 80° 54' EAST, 191.34 FEET; THENCE SOUTH 80° 35' EAST, 238.53 FEET; THENCE SOUTH 88° 39' EAST, 39.90 FEET; THENCE NORTH 32° 43' WEST, 12.50 FEET; THENCE NORTH 7° 09' EAST, 82.60 FEET, THENCE SOUTH 82° 51' EAST, 119.72 FEET; THENCE SOUTH 7° 09' WEST, 51.73 FEET; THENCE SOUTH 4° 56' EAST, 19.65 FEET; THENCE SOUTH 35° 33' EAST, 59.86 FEET; THENCE SOUTH 40° 12' EAST, 38.12 FEET; THENCE SOUTH 62° 49' EAST, 19.34 FEET; THENCE SOUTH 57° 38' EAST, 19.00 FEET; THENCE SOUTH 41° 37' EAST, 19.24 FEET; THENCE SOUTH 8° 53' WEST, 14.40 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF SAID PARCEL 2; THENCE ALONG THE BOUNDARIES OF SAID PARCELS 2 AND 1, THE NINETEEN (19) FOLLOWING COURSES: NORTH 76° 59' WEST, 49.45 FEET; NORTH 71° 35' WEST, 40.20 FEET; NORTH 66° 58' WEST, 49.17 FEET; NORTH 62° 48' WEST, 28.00 FEET; SOUTH 73° 49' WEST, 39.68 FEET; NORTH 77° 22' WEST, 51.82 FEET; NORTH 79° 29' WEST, 50.04 FEET; NORTH 81° 09' WEST, 59.98 FEET; NORTH 81° 44' WEST, 69.89 FEET; NORTH 83° 41' WEST, 59.11 FEET; NORTH 85° 21' WEST, 109.41 FEET; NORTH 82° 36' WEST, 39.80 FEET; NORTH 77° 30' WEST, 29.76 FEET; NORTH 71° 07' WEST, 40.10 FEET; NORTH 62° 44' WEST, 49.98 FEET; NORTH 54° 20' WEST, 36.50 FEET; NORTH 47° 16' WEST, 50.92 FEET; NORTH 41° 36' WEST, 28.73 FEET AND NORTH 33° 14' WEST, 49.22 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PARCEL:

BEING THE WESTERLY AND SOUTHERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136980 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND THE NORTHERLY PORTION OF THE PARCEL AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1996 AS DOCUMENT NUMBER 96-136982 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF THE PARCEL DESCRIBED IN DOCUMENT NUMBER 96-136980, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 30, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE

OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, THENCE ALONG SAID WESTERLY LINE NORTH 4° 16' 11" EAST, A DISTANCE OF 1721.74 FEET (1721.75 FEET) TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL, THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL SOUTH 41° 13' 49" EAST, A DISTANCE OF 295.87 FEET (295.89 FEET), THENCE CONTINUING ALONG SAID LINE SOUTH 53° 15' 31" EAST, A DISTANCE OF 310.00 FEET, THENCE LEAVING SAID LINE SOUTH 5° 12' 24" WEST, A DISTANCE OF 1591.64 FEET, THENCE SOUTH 80° 53' 01" EAST 24.97 FEET, THENCE SOUTH 80° 32' 51" EAST 108.02 FEET, THENCE SOUTH 09° 27' 09" WEST 3.12 FEET, THENCE SOUTH 82° 45' 42" EAST 26.06 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL, THENCE ALONG SAID EASTERLY LINE SOUTH 07° 14' 18" WEST 21.74 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL, THENCE SOUTH 07° 14' 18" WEST 24.06 FEET TO A POINT 9.50 FEET PERPENDICULAR TO AND NORTHERLY OF THE CENTERLINE OF AN EXISTING RAILROAD TRACK, THENCE PARALLEL WITH AND 9.50 FEET NORTHERLY OF SAID CENTERLINE THE FOLLOWING SEVEN COURSES;

1. NORTH 80° 48' 36" WEST, A DISTANCE OF 47.84 FEET;
2. NORTH 80° 43' 03" WEST, A DISTANCE OF 119.82 FEET;
3. NORTH 80° 34' 01" WEST, A DISTANCE OF 100.75 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
4. ALONG SAID CURVE BEING CONCENTRIC WITH SAID CENTERLINE HAVING A RADIUS OF 490.50 FEET, THROUGH A CENTRAL ANGLE OF 15° 14' 32", AN ARC LENGTH OF 130.49 FEET;
5. NORTH 65° 19' 28" WEST, A DISTANCE OF 162.95 TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
6. ALONG SAID CURVE CONCENTRIC WITH SAID CENTERLINE, HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 6° 52. 33", AN ARC LENGTH OF 50.46 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN DOCUMENT NUMBER 96-136982;
7. LEAVING SAID LINE AND CONTINUING ALONG SAID CONCENTRIC CURVE HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 4° 54' 40", AN ARC LENGTH OF 36.04 FEET TO A POINT ON THE EASTERLY LINE OF PARCEL B DESCRIBED IN AN INDENTURE FROM THE SOUTHERN PACIFIC COMPANY TO THE ALAMEDA BELT LINE RECORDED JUNE 1, 1927 IN BOOK 1597 OF OFFICIAL RECORDS AT PAGE 211;

THENCE LEAVING SAID PARALLEL LINE AND ALONG SAID EASTERLY LINE NORTH 4° 16' 11" EAST, A DISTANCE OF 158.06 TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL, SAID POINT ALSO BEING AN ANGLE POINT ALONG THE WESTERLY LINE OF SAID PARCEL ONE DESCRIBED IN DOCUMENT NUMBER 96-136980, THENCE ALONG SAID WESTERLY LINE SOUTH 85° 43' 49" EAST, A DISTANCE OF 22.00 FEET TO THE POINT OF BEGINNING.

THE BEARING NORTH 4° 16' 11" EAST ALONG THE EASTERLY LINE OF TRACT 30 AS SAID LINE IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 3231" FILED FOR RECORD ON APRIL 30, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA WAS USED AS THE BASIS OF BEARINGS.

PARCEL C-1:

A PORTION OF THE PARCEL DESCRIBED IN THE GRANT DEED RECORDED AS DOCUMENT NUMBER 96-136980 OF OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE WESTERLY LINE OF SAID PARCEL, SAID CORNER ALSO BEING THE MOST SOUTHEASTERLY CORNER OF TRACT 30 AS SAID CORNER IS SHOWN ON THAT CERTAIN MAP ENTITLED .PARCEL MAP 3231. FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL THE FOLLOWING FIVE COURSES:

1. NORTH 85°43.49. WEST, A DISTANCE OF 22.00 FEET;
2. SOUTH 4°16.11. WEST, A DISTANCE OF 94.83 FEET;
3. SOUTH 9°52.00. EAST, A DISTANCE OF 44.25 FEET;
4. SOUTH 23°56.00. EAST, A DISTANCE OF 43.34 FEET TO A POINT ON A NON-TANGENT CURVE THAT IS 9.50 FEET NORTHERLY OF AND CONCENTRIC WITH THE CENTERLINE OF THE EXISTING RAILROAD TRACK, SAID POINT ALSO BE THE TRUE POINT OF BEGINNING;
5. SOUTH 23°56.00. EAST, A DISTANCE OF 5.79 FEET;

THENCE ALONG THE SOUTHERLY LIE OF SAID PARCEL SOUTH 67°27.30. EAST, A DISTANCE OF 29.93 FEET TO A POINT ON SAID CONCENTRIC CURVE FROM WHICH A RADIAL LINE BEARS NORTH 26°52.02. EAST;

THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 420.50 FEET, THROUGH A CENTRAL ANGLE OF 4°41.03., AN ARC LENGTH OF 34.39 FEET TO THE TRUE POINT OF BEGINNING. THE BEARING NORTH 4°16.11. EAST ALONG THE EASTERLY LINE OF TACT 30 AS SAID LINE IS SHOWN ON THAT CERTAIN MAP ENTITLED .PARCEL MAP 3231. FILED FOR RECORD ON APRIL 15, 1983 IN BOOK 138 OF PARCEL MAPS AT PAGES 11 THROUGH 13, INCLUSIVE, IN THE OFFICE OR THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA WAS USED AS THE BASIS OF BEARINGS.

BEING PARCEL B OF ADJUSTED PARCEL 12 AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 24, 1997 AS INSTRUMENT NO. 97282539 OF ALAMEDA COUNTY OFFICIAL RECORDS.

PARCEL D:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR UTILITIES AS DESCRIBED ON THAT CERTAIN DECLARATION OF EASEMENTS RECORDED ON JUNE 6, 1996 AS DOCUMENT NO. 96136983 THAT IS SPECIFICALLY LOCATED WITHIN PARCEL C OF TRACT 7170 FILED FOR RECORD MARCH 2, 2002 IN BOOK 263 OF MAPS, PAGES 52-62, AND AS LOCATED WITHIN A PORTION OF PARCEL 13 OF PARCEL MAP 2938 RECORDED ON JULY 19, 1983 IN BOOK 138 OF MAPS, PAGES 76-80, AS SPECIFICALLY DESCRIBED ON THE "AMENDMENT AND SUPPLEMENT TO DECLARATION OF EASEMENTS. RECORDED DECEMBER 28, 2012 AS DOCUMENT NO. 2012432243.

PARCEL E:

A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCELS C AND C-1 ABOVE, FOR INGRESS AND EGRESS AS DESCRIBED IN THAT CERTAIN GRANT OF ACCESS EASEMENT RECORDED OCTOBER 24, 1997 AS DOCUMENT NO. 97282552, ALAMEDA COUNTY OFFICIAL RECORDS.

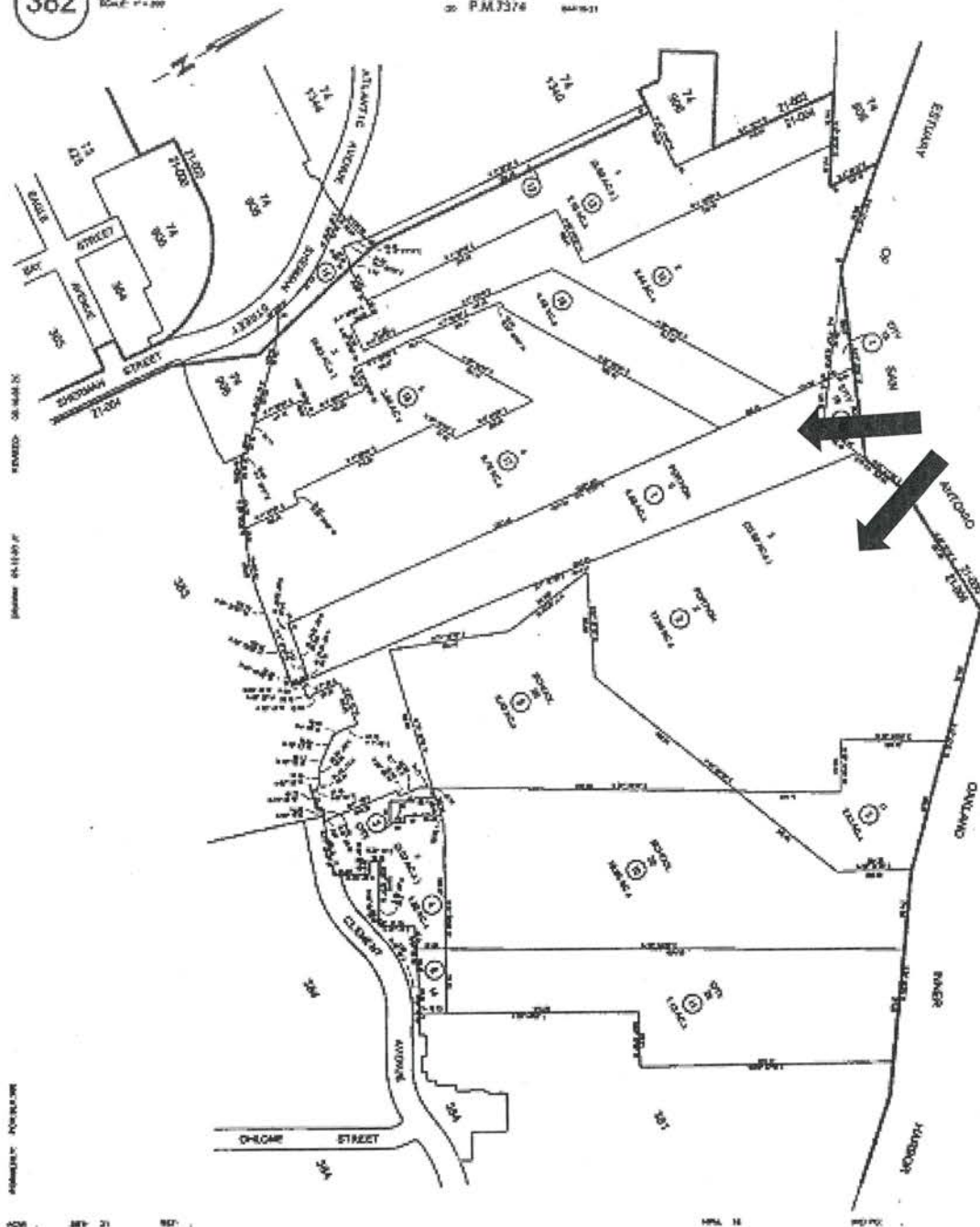
APN: 072-0382-002 (Parcel A), 072-0382-001 (Parcel B) and 072-0383-003 (Parcels C and C-1)

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Edwards, D. 1994. p. 100.

96 P.M.2938 79076-29

98 P.M.7374 84215-73



ASSESSOR'S MAP 72

383

SCALE: 1" = 100'

Code Area Nos. 21-002 21-004

- (A) MAP OF 144 LOTS IN PAGE TRACT
- (B) TAYLOR AND PAGE TRACT
- (C) P.M. 2938 13879-40
- (D) TR. 7170 20941-42

REVIEWED: 12/14/02 BY: JAC

DRAWN: 05-11-03 BY: JAC

FORWARDED: 05-11-03 BY: JAC

ACR: 31 REF: 31

HPN: 4 HED PO: 1

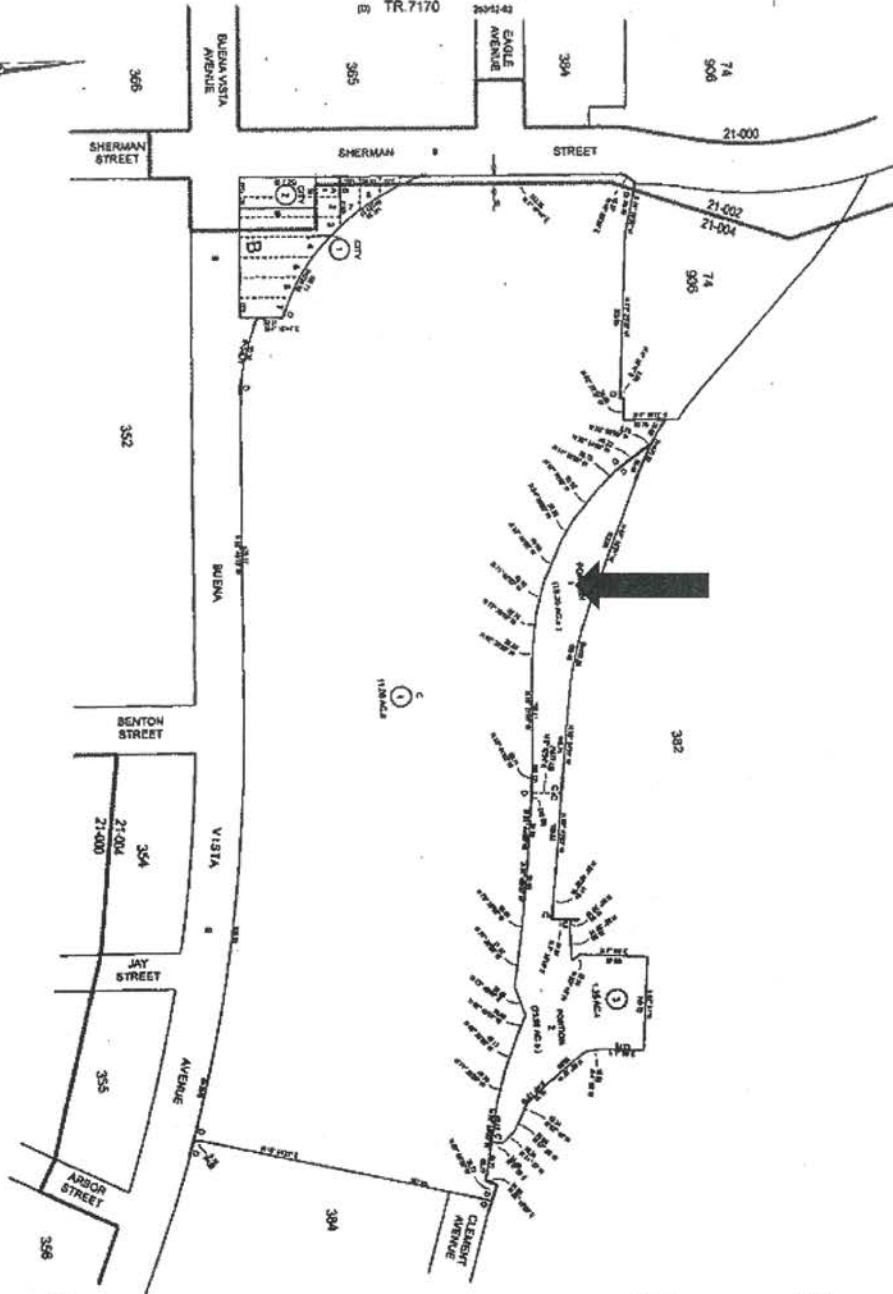


EXHIBIT B

State Tidelands Parcel – Legal Description

Real property in the City of Alameda , County of Alameda, State of California, described as follows:

PARCEL 20, PARCEL MAP 2938, FILED JULY 19, 1983, MAP BOOK 138, PAGE 76, ALAMEDA COUNTY RECORDS.

APN: 072-0382-009

382

Environ Biol Fish (2015) 98:1031–1040

36	P.M.2938	1997-0-00
38	P.M.7374	8447-0-31

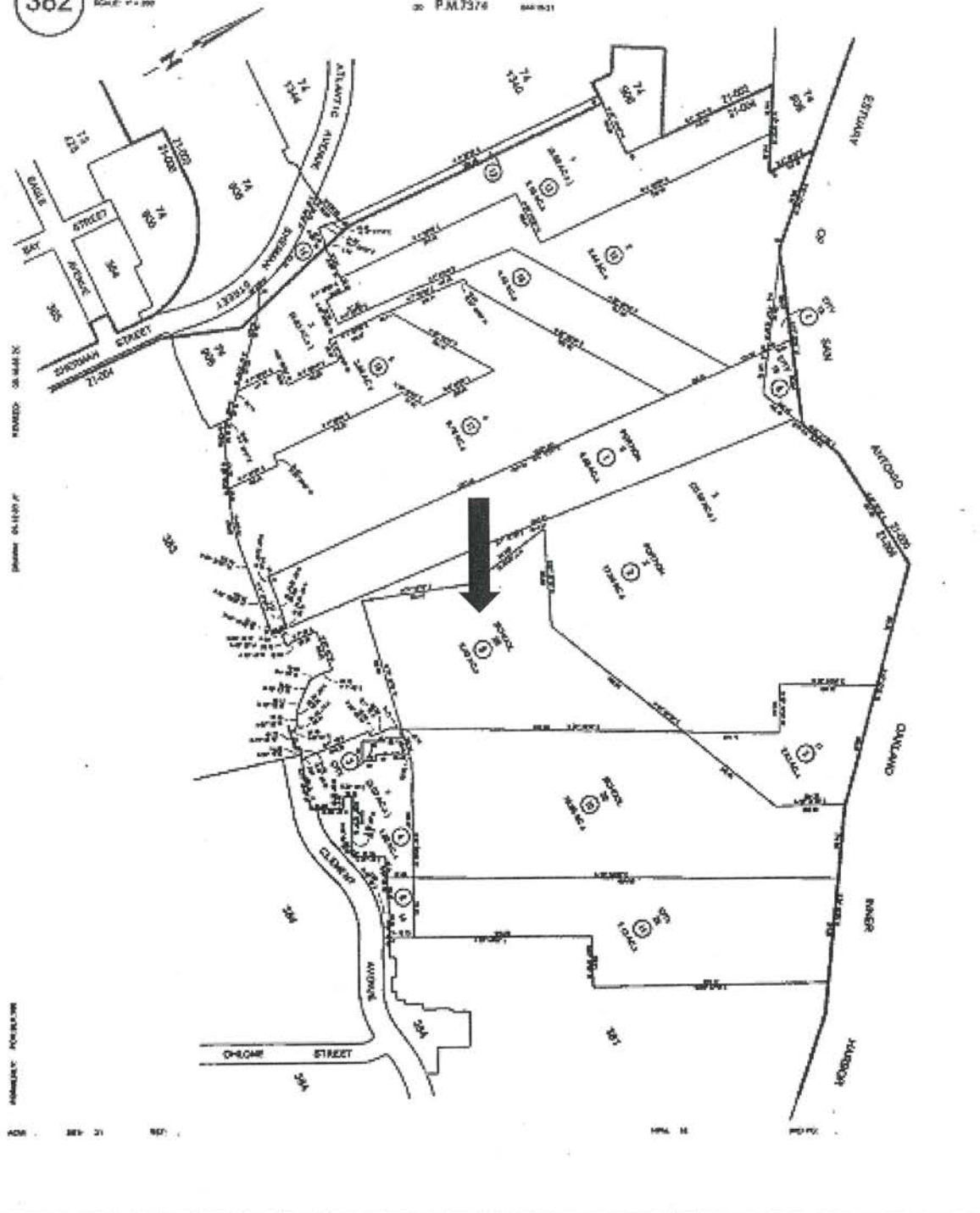
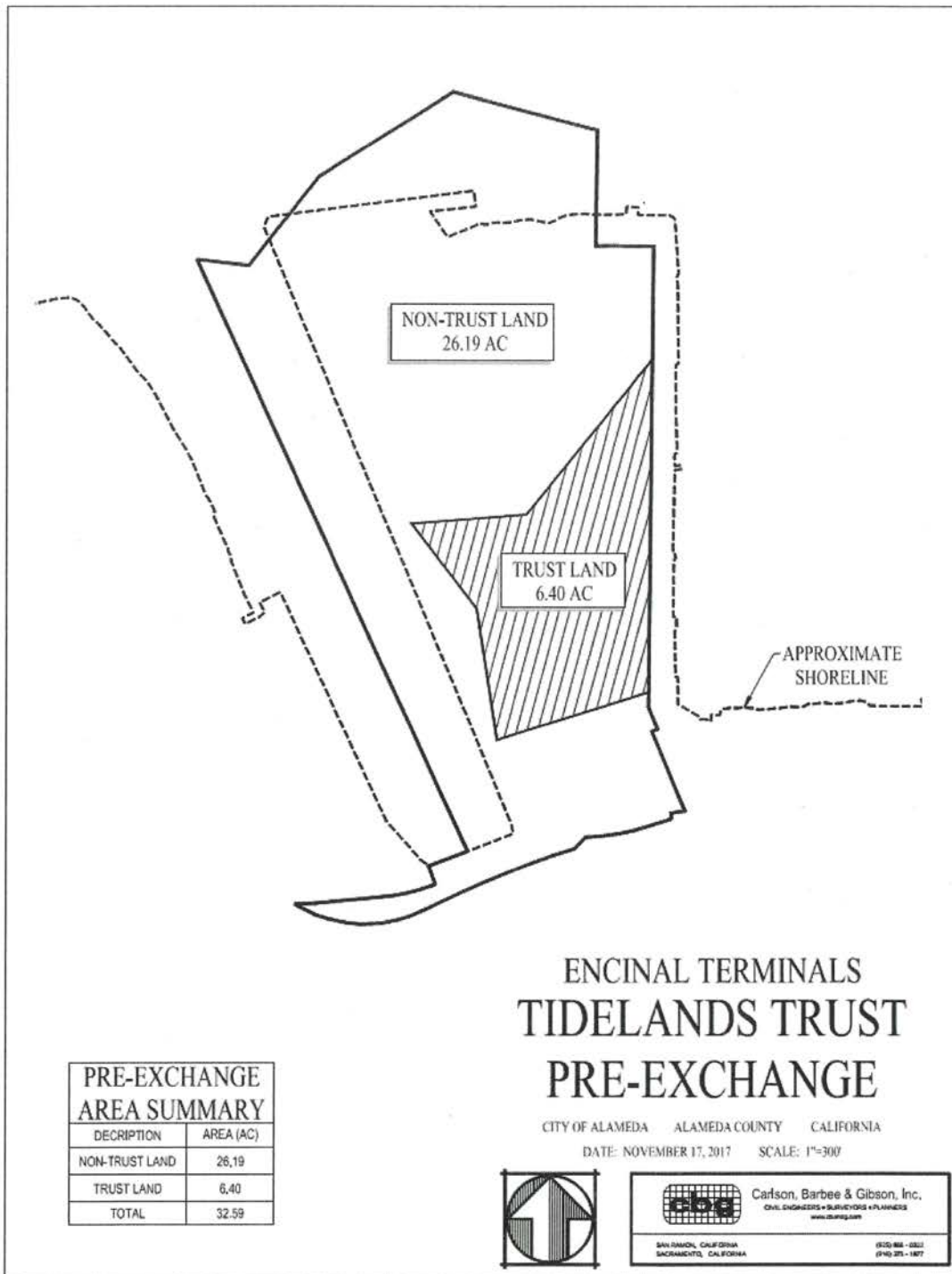
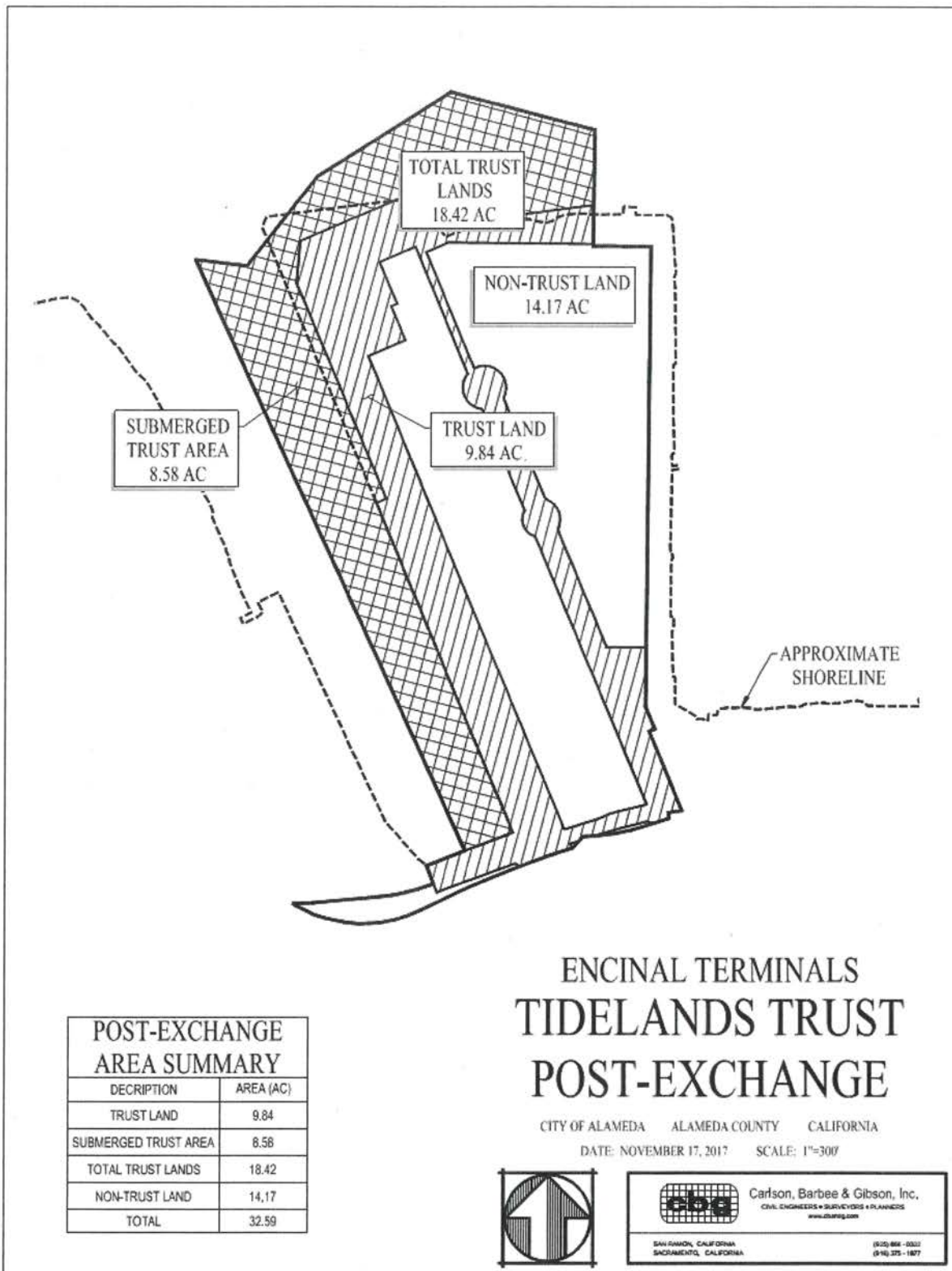


EXHIBIT C

State Tidelands Exchange





DRAFT 11/15/2017

Recorded at the Request of and
When Recorded Mail to:

Sharron Scheiber
Senior Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

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

[Space Above for Recorder's Use]

SLC File No.: _____
APNs: _____

LAND EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR THE ENCINAL TERMINALS PROJECT

This LAND EXCHANGE AND TITLE SETTLEMENT

AGREEMENT FOR THE ENCINAL TERMINALS PROJECT ("**Agreement**") is dated for reference as of _____, 201_. The parties to the Agreement are the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION ("**Commission**"), the CITY OF ALAMEDA, a municipal corporation ("**City**"), and NORTH WATERFRONT COVE LLC, a California limited liability company ("**North Waterfront**"). The Commission, City, and North Waterfront are referred to together as the "**Parties**." This Agreement is entered into pursuant to Public Resources Code section 6307.

RECITALS

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

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

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

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

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

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

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

H. North Waterfront has proposed a development plan for the Project Area that includes seismically upgrading the wharf, converting the wharf and the entire waterfront into a public promenade and park, and providing a central boulevard connecting the waterfront to the rest of the City. These major public improvements would be financed by development of the interior of the site for residential and commercial uses. Implementation of the proposed

development plan is not possible without a resolution of Trust title issues and a reconfiguration of the Trust within the Project Area. City has issued a number of approvals for the development plan ("**Development Approvals**"), conditioned on execution of this Agreement.

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

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

K. The exchange will place or confirm in the Trust all of the lands within the Project Area that are below the current mean high tide line, certain lands above the mean high tide line that are immediately adjacent to the waterfront, and certain interior lands that will provide public access to the waterfront or are otherwise useful to the Trust **[add acres]**. The exchange will terminate the Trust interests on approximately five (5) acres **[check]** of former tidelands within the Project Area that have been filled and reclaimed, are cut off from access to the waterfront, and are no longer needed for Trust purposes. The Trust Termination Lands were filled pursuant to highly beneficial program of harbor development and constitute a relatively small portion of the lands granted to City by the State.

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

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

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

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

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The lands or interests in lands to be impressed with the Trust have a monetary value equal to or greater than the monetary value of the lands or interests in lands to be exchanged out of the Trust. Based on the Commission's consideration of the appraisals, legal analyses, and configuration of Public Trust Lands and Trust Termination Lands, the Commission finds that, if City and North Waterfront elect to proceed with phased closings, then, after each Closing Phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Trust, regardless of the order in which Closing Phases proceed.

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

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

6. Additional Findings. The Commission, effective upon execution and recordation of this Agreement, has made findings under CEQA based on the Environmental Impact Report for the Encinal Terminals project, certified by the City on _____.

7. Closing; Phased Closings.

a. **"Closing" or "Closing Date"** shall mean the date that this Agreement (if not previously recorded) and the conveyances described in Section 1 above are recorded in the public records of the County of Alameda. The Closing shall be consummated through the offices of First American Title Company, 6683 Owens Drive, Pleasanton, California, 94588 (the **"Title Company"**), Escrow No. [_____] , attention [_____] (the **"Escrow"**). Upon satisfaction of all pre-conditions to Closing required pursuant to the North Waterfront Approvals, North Waterfront and City shall establish an escrow with the Title Company and provide written notice to the Executive Officer of the Commission and designated representative of North Waterfront (the **"Closing Notice"**). The Closing Notice shall include a list of all documents required to close escrow with required signatories indicated, and drafts of all deeds, instruments, certificates of acceptance, title commitments, and other documents that are required for the closing and are within City's and/or North Waterfront's responsibility and control. The Parties shall use commercially reasonable efforts to close within 120 days of receipt of the notice.

b. In the event City and North Waterfront mutually determine it is impractical or infeasible to complete all conveyances in a single Closing, City and North Waterfront may proceed with a series of Closing Phases, each of which shall be completed in accordance with the following provisions:

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

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

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

iv. Within 30 days after receiving the Closing Notice, the Executive Officer of the Commission ("**Executive Officer**"), in his or her sole discretion, shall determine whether the Closing Phase or Phases described therein substantially conform to the boundaries of one or more Phase Areas depicted in Exhibit C and communicate the determination to City and North Waterfront in writing. A Closing Phase that differs from one depicted in Exhibit C solely due to an adjustment to the boundary of one or more parcels within the Closing Phase that does not constitute a Material Parcel Change, as defined in Section 8.a. below, shall be deemed to substantially conform with Exhibit C.

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

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

a. City may request from the Executive Officer approval of a Parcel Boundary Adjustment. City or North Waterfront shall provide the Executive Officer with any maps, legal descriptions, surveys, or other information necessary to review the proposed Parcel Boundary Adjustment. The Executive Officer shall approve the Parcel Boundary Adjustment if he or she finds in his or her sole discretion that the Parcel Boundary Adjustment would not

constitute a material change in parcel boundaries (a “**Material Parcel Change**”). For purposes of this Agreement, a Material Parcel Change shall include, but not be limited to, any change in parcel boundaries that results in a decrease of more than 0.5 acres in the total Public Trust Lands. If the Executive Officer determines that the proposed Parcel Boundary Adjustment would constitute a Material Parcel Change, he or she shall refer the Parcel Boundary Adjustment to the Commission, whose consideration of the referral shall proceed pursuant to Section 8.b.

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

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

9. Conditions Precedent to Closing.

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

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

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

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

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licenses, approvals, authorizations and similar requirements pertaining to the protection of human health and safety or the environment.

iii. The Record of Survey described in Section 10 of this Agreement.

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

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

10. Deposits into Escrow.

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

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

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

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

iv. A duly signed and attested patent in the form of Exhibit J transferring to City, subject to the Trust, the Public Trust Lands (or the portion thereof included in the Closing Phase, as applicable), or, if required by Section 2, a duly executed counterpart of an Interim Trust Lease in the form of Exhibit L for those lands.

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

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

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

iii. If applicable under Section 2, an executed counterpart of the Interim Trust Lease.

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

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

ii. Pro forma title insurance commitments for the Public Trust Lands (or the portion thereof included in the Closing Phase, as applicable), in a form and with coverage amounts approved by the Commission.

d. All patents and quitclaim deeds deposited into escrow which name either City or the Commission as grantee shall include a certificate of acceptance duly executed by the grantee (which certificate may be deposited into escrow separately by the grantee), the appropriate attestations or acknowledgments, and any ancillary documents required by state law or the City's Assessor-Recorder, such as an executed Transfer Tax Affidavits and executed Preliminary Changes of Ownership Record.

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

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

12. Close of Escrow and Recordation. The joint escrow instructions for the (or for each Closing Phase, as applicable) shall direct the escrow agent to notify the Parties, upon the

agent's receipt of all documents listed and described in the escrow instructions, of its intention to close escrow and to record this Agreement, if not already recorded, and all deeds and patents pertaining to the Closing (or the closing for each Closing Phase, as applicable), in the manner specified in, and subject to the requirements of, the escrow instructions.

13. Impacts of Sea Level Rise.

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

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

c. Nothing in this Section is intended to limit (a) rights a Party may have under applicable law to take actions to preserve the boundaries established by this Agreement, including without limitation the rights of a Party to undertake measures to protect its property, including lands freed from the Trust at the locations established pursuant to this Agreement, or to file an action within the applicable limitations period to preserve the title interests of such lands established by this Agreement, or (b) rights the public has under applicable law to navigate, fish, or otherwise use navigable waters on Inundated lands, including but not limited to any rights arising under *Bohn v. Albertson* (1951) 107 Cal.App.2d 738 and *People ex rel Baker v. Mack* (1971) 19 Cal.App.3d 1040.

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

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

16. Indemnification and Defense of Claims.

a. North Waterfront shall indemnify, defend and hold harmless the Commission and the City, and their respective officers, agencies, commissions, and employees from and against any and all claims, liability, losses, costs and expenses (collectively “**Claims**”), including third party Claims and Claims by any governmental agency, relating to any Hazardous Materials that (1) as of the date of Closing (or any closing for a Closing Phase, as applicable) are located at, on, over, under, or flowing through any portion of that portion of Public Trust Lands to be conveyed (or to be under an Interim Trust Lease) at the Closing (or at any closing for a Closing Phase, as applicable) within the area identified as the North Waterfront Indemnification Area on Exhibit M, and (2) are located at, on, over, under, or flowing through any portion of the Trust Termination Lands to be conveyed at Closing (or at closing in the Closing Phase, as applicable).

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

17. Execution Before a Notary Public. All signatures of the Parties to this Agreement and all deeds and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Office of the Clerk-Recorder of the County of Alameda, California. The Governor’s signature shall be attested to by the Secretary of State.

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

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

20. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests in or to those Public Trust Lands or Trust Termination Lands to be transferred at Closing (or portions thereof to be transferred in a Closing Phase, as applicable) prior to the consummation of the transfers of those parcels (or portions thereof) as provided for herein, without the prior written consent of the Party to receive fee title following consummation of the transfer.

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

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

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

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

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

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

Commission:

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

With copies to:

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

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Email: _____

City:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Email: _____

With copies to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Email: _____

and

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

North Waterfront:

North Waterfront Cove LLC
12667 Alcosta Blvd., Suite 170
San Ramon, CA 94583
Attn: James L. Meek
Email: jmeek@timlewis.com

With copies to:

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

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

28. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent or satisfaction

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shall be given on behalf of the Party by the representative(s) listed below. The City Manager is hereby expressly authorized to sign all deeds, leases, and other instruments and documents necessary to implement this Agreement on behalf of City.

- a. If the Party is the Commission: by the Commission, as may be evidenced by appropriate document executed by the Executive Officer of the Commission.
- b. If the Party is City: by the City Manager.
- c. If the Party is North Waterfront: by North Waterfront's authorized representative.

29. Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement, in a legal description or the reference to or within any exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits, the Parties affected by the error by mutual agreement may correct such error by memorandum reflecting the intent of the Parties concerning the relevant exhibits, legal descriptions, or other provisions at the time of approval and execution of this Agreement. The Executive Officer of the Commission, the City Manager of City, and North Waterfront may approve and execute such a "**Memorandum of Correction**" without the necessity of amendment of this Agreement.

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

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

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

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

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

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

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

DRAFT 11/15/2017

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

[SIGNATURES BEGIN ON FOLLOWING PAGE]

DRAFT 11/15/2017

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED: _____

By: _____
Jennifer Lucchesi
Executive Officer

Approved as to form:

Xavier Becerra
Attorney General of the
State of California

DATED: _____

By: _____
Deputy Attorney General

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DRAFT 11/15/2017

DATED: _____

CITY OF ALAMEDA

By: _____
Jill Keimach
City Manager

Approved as to form:

DATED: _____

By: _____
Janet Kern
City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DRAFT 11/15/2017

DATED: _____

NORTH WATERFRONT COVE LLC,
a Delaware limited liability company

By: Marina View L.P., a California
limited partnership
Its: Managing Member

By: TL Management, Inc.,
Its: General Partner

By: _____
J. Timothy Lewis, President

DRAFT 11/15/2017

IN APPROVAL WHEREOF, I, Edmund G. Brown Jr., Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this _____, 2017.

Edmund G. Brown Jr.
Governor, State of California

Attest:
SECRETARY OF STATE

By: _____
Alex Padilla
Secretary of State

LIST OF EXHIBITS

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

EXHIBIT E

Pennzoil Extension

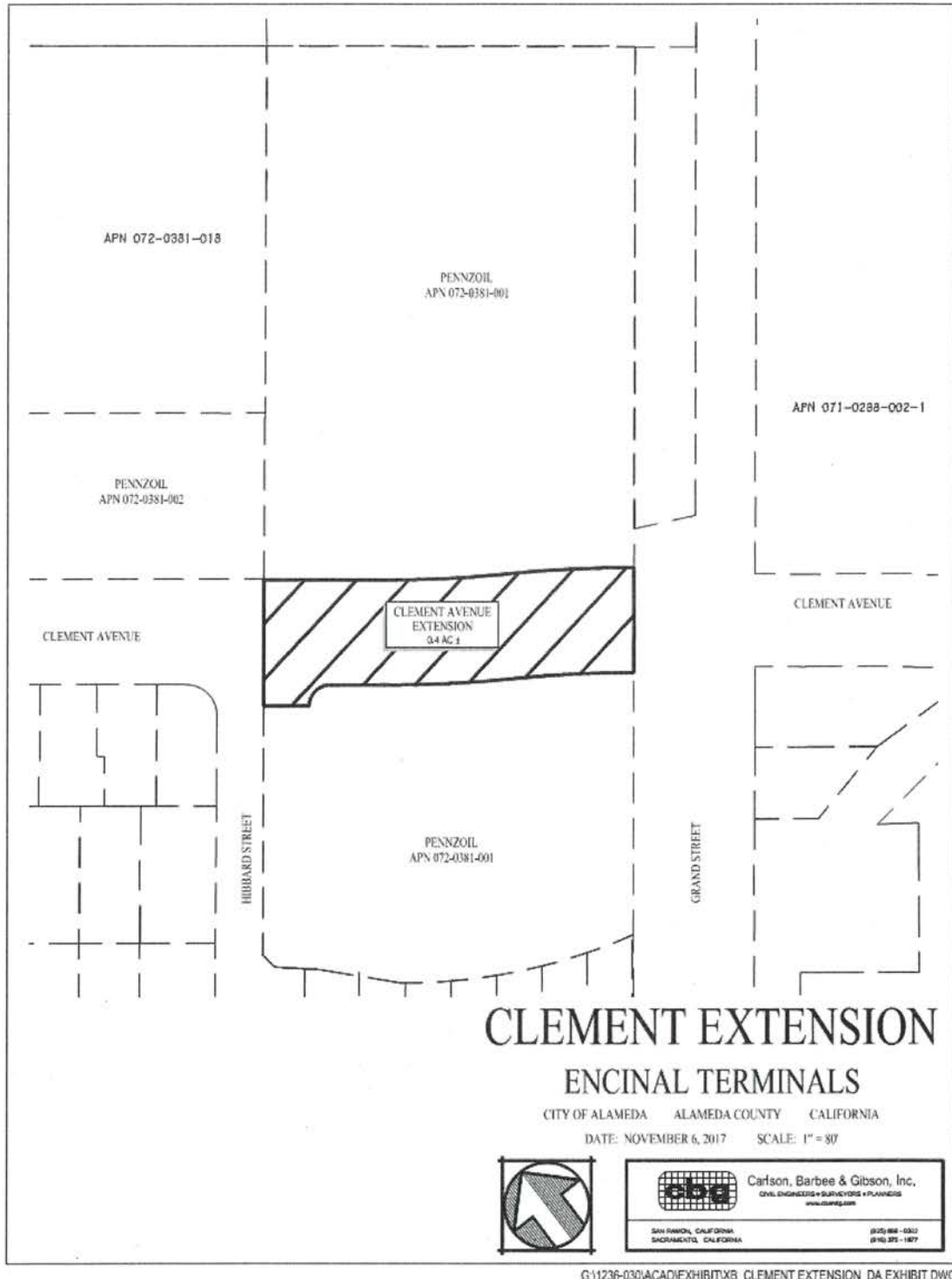


EXHIBIT F

Impact Fees to Be Collected at Building Permit

<u>Impact Fee Name</u>	<u>Alameda Municipal Code</u>
Improvement Tax	Exempt per AMC 3-62.6
Affordable Housing Fee	AMC Section 27-1
Development Impact Fee	AMC Section 27-3
Sewer Connection Fee	AMC Section 18.3.
Community Planning Fee	Master Fee Schedule (added per Resolution 13748)