

Exhibit F: Development Agreement

DEVELOPMENT AGREEMENT (Alameda Point Redevelopment Project)

THIS DEVELOPMENT AGREEMENT (Alameda Point Redevelopment Project) (the "Development Agreement") is made and entered on this ___ day of _____, 20___, by and between the City of Alameda, a municipal corporation (the "City"), and [*a person other than a governmental entity having a legal or equitable interest in the real property more particularly described in Exhibit 1 and depicted in Exhibit 2 attached hereto*] (the "Developer"), pursuant to the authority of California Government Code sections 65864 *et seq.* ("Development Agreement Statute"). City and Developer are referred to individually as a "Party," and collectively as the "Parties."

RECITALS

This Development Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

A. The United States of America, acting by and through the Department of the Navy ("Navy"), is the owner of the real property located within the City of Alameda commonly referred to as the former Alameda Naval Air Station ("NAS Alameda"), which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510). The property that is the subject of this Development Agreement is a portion of the former NAS Alameda, consisting of approximately 918 acres of uplands and 166 acres of submerged lands as described in Exhibit 1 and depicted in Exhibit 2 (the "Property").

B. In accordance with procedures established under federal and California state law governing the planning, disposition and reuse of closed military bases, the Alameda Reuse and Redevelopment Authority ("ARRA") adopted the Alameda Point Community Reuse Plan on January 31, 1996, with subsequent amendments in 1997 and on March 4, 2009 (collectively and as amended from time to time, the "Community Reuse Plan"). In October 1999, the Navy issued a Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility. The Record of Decision regarding the disposal and reuse was issued by the Navy on February 29, 2000. The Navy and the ARRA entered into a Lease in Furtherance of Conveyance dated June 6, 2000, as amended by that certain Amendment No. 1 to the Lease in Furtherance of Conveyance dated November 28, 2000 and that certain Amendment No. 2 to the Lease in Furtherance of Conveyance dated March 4, 2009 (as amended from time to time, the "LIFO"). The Navy and the ARRA are also parties to that certain No Cost Economic Development Conveyance Memorandum of Agreement dated June 6, 2000, as amended (the "EDC MOA"). Pursuant to the EDC MOA, the Navy agrees to convey to ARRA fee simple title to certain lands of the former NAS Alameda, including, without limitation, the Property. After the Navy conveys the Property to the ARRA pursuant to the EDC MOA, it is expected that the ARRA will convey portions of the Property to the Developer pursuant to a disposition and development agreement or other contract (the "DDA").

C. The Property consists of lands that will be conveyed in fee simple to the Developer as well as other lands that will be leased to the Developer. Portions of the Property

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are subject to the Naval Air Station Alameda Public Trust Exchange Act (the "Exchange Act"). Under the terms of the Exchange Act, the City and/or the ARRA will be the public trust administrator for certain lands granted to the City by the State of California pursuant to the Exchange Act. The lands described in the Exchange Act after the consummation of the land exchanges described therein are defined in this Development Agreement as the "Public Trust Lands." The Navy currently owns the Public Trust Lands and, upon their release from federal ownership under the terms of the EDC MOA, the Navy will convey the Public Trust Lands to the ARRA. After completing any other necessary procedures required by the California State Lands Commission pursuant to the terms of the Exchange Act, the ARRA is expected to lease portions of the Public Trust Lands in the Property to the Developer pursuant to the DDA.

D. On March 3, 1998, the City approved and adopted the Alameda Point Community Improvement Plan (the "APIP"), a redevelopment plan covering the Property pursuant to the Community Redevelopment Law of the State of California (Health & Safety Code sections 33000 *et seq.*), for the benefit of the Community Improvement Commission of the City of Alameda, a public body corporate and politic (the "CIC"), acting as the redevelopment agency pursuant to California redevelopment law. It is expected that the CIC will enter into the DDA between the ARRA and the Developer, or will enter into a separate written agreement with the Developer, governing among other things: (i) phasing and build out requirements for the Developer's development program, (ii) financing commitments by the CIC to the Developer, (iii) compliance with the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA"), (iv) Developer's provision of public benefits, and (v) Developer's financing plan and financial assurances, and timing and sequence of development.

E. To provide land use controls over this important area, a citizen's charter amendment and initiative entitled the Alameda Point Revitalization Initiative (the "Initiative") was circulated to affirm the planning vision for the Property. The Initiative includes: (1) an amendment to Article XXVI of the Charter of the City of Alameda, California, to permit construction of multifamily dwellings at the Property, (2) General Plan amendments including the adoption of a Community Plan for the Property, (3) adoption of a new Alameda Point Specific Plan that describes and regulates development of a transit-oriented, mixed-use residential, commercial/retail and open space project at Alameda Point (the "Alameda Point Project"), (4) zoning ordinance amendments to adopt a new "Alameda Point Specific Plan" zoning district for the Property, and (5) the implementing ordinance and procedures for the City's execution, acknowledgement, and recordation of this Development Agreement. The date that the Initiative was submitted for a vote of the voters is referred to herein as the "Election Date." The date that the Initiative becomes effective pursuant to Elections Code Section 9217 is referred to herein as the "Effective Date." The approved charter amendment, General Plan amendments, Community Plan, Specific Plan adoption, rezoning and this Development Agreement are referred to herein as the "Initiative Approvals."

F. 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 sections 65864 *et seq.* of the Government Code (the "Development Agreement Legislation"). To implement the voters' intent to encourage private investment in a blighted area of the City, to increase the speed of redevelopment of the former NAS Alameda west of Main Street which has been closed since 1997 without new development, and to ensure that the City will receive certain public benefits from the Developer

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in exchange for establishing certain development rights in the Property, the voters of the City of Alameda enacted Section 8 of the Initiative, which adopts this Development Agreement, the City and any person having a legal or equitable interest in the Property on the Effective Date that is not a public entity to enter into a binding, long-term agreement in the form of this Development Agreement.

G. The provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan, as amended by the Initiative Approvals, and the Alameda Point Specific Plan.

H. The Alameda Point Project would provide significant public benefits to the City, including providing a range of housing types (including affordable housing), retail and commercial opportunities, a sports complex, as well as park and open space, regional transit, and municipal services improvements, including a branch library and fire station upgrades. The Alameda Point Project achieves the City's objective of encouraging a sustainable, transit-oriented development that incorporates environmentally sensitive and sustainable practices. This Development Agreement will encourage planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment and tax benefits, housing, and other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation and the Initiative were enacted.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

Article 1 General Provisions.

1.1 Description of Property. The real property which is the subject of this Development Agreement is described in the attached Exhibit 1 and depicted in Exhibit 2.

1.2 Effective Date. This Development Agreement shall be signed and acknowledged by the City, by and through its City Manager, and the Developer in accordance with Section 8 of the Initiative. Pursuant to Government Code section 65868.5, the clerk of the City shall record with the Alameda County Clerk-Recorder a fully executed and acknowledged copy of this Development Agreement. The Term shall commence from and after the date of recordation of this Development Agreement (the "Effective Date"). The Alameda Point Project shall be subject to the Applicable Rules (as defined in Section 2.2 below), the Vested Elements (as defined in Section 2.3 below) in effect as of the Election Date and the Exactions (as defined in Section 2.11.3 below) that are permitted by this Development Agreement. Any changes to the Applicable Rules or the Vested Elements or Exactions that occur after the Election Date shall not be applicable to the Alameda Point Project, except as explicitly permitted by this Development Agreement.

1.3 Term. The term of this Development Agreement shall commence on the Effective Date and terminate twenty-five (25) years thereafter (the "Term"), unless extended or earlier terminated as provided in this Development Agreement. The Term has been established

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by the Parties as a reasonable estimate of the time required to develop the Alameda Point Project and obtain the public benefits of the Project.

1.3.1 Term Extension Due to the Phased Transfer of the Property. The Term of this Development Agreement shall be extended by any period of time during which the ARRA's conveyance of fee title or granting of a leasehold estate in all or a portion of the Property to Developer (such interest in all or a portion of the Property, a "Parcel") is delayed beyond the anticipated delivery dates established under the DDA. If there is such a delay, the Term shall be extended as to the Parcel that is so delayed by a period, commencing from the date of anticipated conveyance under the DDA and ending on the date of actual conveyance or lease of the Parcel to Developer. If, after acquiring a fee simple or leasehold interest in a Parcel, the Developer cannot feasibly develop the Parcel consistent with the Vested Elements without Developer's holding fee simple title or a leasehold estate in another adjacent Parcel which has not yet been conveyed to Developer, the Term shall be extended for the former Parcel until the latter Parcel has been transferred to Developer.

1.3.2 Term Extension Due to Environmental Remediation. The Term of this Development Agreement shall be extended by any period of time during which Developer is prohibited from developing all or a portion of the Property consistent with the Vested Elements because of a requirement under applicable hazardous materials laws to obtain a "no further action" letter, clearance letter or other similar letter or certificate (a "Clearance Certificate") issued by the applicable governmental authority, confirming remediation or response action necessary to investigate and/or remediate any release of hazardous materials that occurred or began occurring on or before the applicable portion of the Property was conveyed, transferred or leased to the Developer. If there is such a prohibition on development, the Term shall be extended as to the Parcel that is subject to the prohibition, commencing on the date of conveyance to Developer and ending on the date a Clearance Certificate is received by Developer permitting Developer to commence construction on the Parcel consistent with the Vested Elements. If development of a Parcel consistent with the Vested Elements is not feasible because another adjacent Parcel is subject to a prohibition on development without a Clearance Certificate being issued, the Term shall be extended for the dependent Parcel until the Developer receives a Clearance Certificate for the Parcel on which the former Parcel's development depends.

Article 2 Development of the Property.

2.1 Project Development. Subject to the provisions of this Development Agreement, Developer shall have the vested right to develop the Alameda Point Project on the Property in accordance with the Vested Elements. Developer shall be entitled to all the rights under this Development Agreement during any time period in which it holds a legal or equitable interest in the Property.

2.2 Applicable Rules. The "Applicable Rules" as defined in this Development Agreement are:

2.2.1 The City Charter of the City of Alameda on the Election Date, as modified by the Initiative Approvals (the "Charter");

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2.2.2 The General Plan of the City on the Election Date, including the new Alameda Point Community Plan and other modifications made by the Initiative Approvals (the "General Plan");

2.2.3 The Alameda Point Specific Plan (the "Specific Plan");

2.2.4 The Zoning Ordinance (i.e., Chapter XXX of the Alameda Municipal Code) of the City on the Election Date, as modified by the Initiative Approvals (the "Applicable Zoning Ordinance");

2.2.5 All other provisions of the Alameda Municipal Code and other rules, regulations, ordinances and policies of City applicable to development of the Property on the Election Date, as the same may be modified by the Initiative Approvals.

2.3 Vested Elements. The permitted uses of the Property, the maximum density and number of residential units, the intensity of use of the Property, the maximum height, bulk and size of the proposed buildings, and other terms and conditions of development applicable to the Property, shall be as set forth in the Applicable Rules and this Development Agreement, as they may be amended from time to time upon Developer's consent (such consent to be granted at the sole discretion of Developer) and City's approval of (i) any Subsequent Approvals (as defined in Section 2.5) adopted pursuant to Section 2.6 or (ii) any future amendments in accordance with Section 6.3 of this Development Agreement (the "Vested Elements"). The Vested Elements are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement. City hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement. The intent of this Section 2.3 is to cause all development rights which may be required to develop the Alameda Point Project in accordance with the Applicable Rules and this Development Agreement to be deemed vested in Developer.

2.4 Effect of Vested Elements and Applicable Rules.

2.4.1 Environmental Review. Nothing herein is deemed to waive the obligation of the City to comply with the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA") with respect to the Subsequent Approvals. Prior to City's approval of its first discretionary Subsequent Approval, an environmental document for the whole of the Project shall be prepared and certified in accordance with CEQA.

2.4.2 Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to the Applicable Rules. Developer and the City will prepare two (2) sets of the Applicable Rules, one (1) set for City and one (1) set for Developer, within thirty (30) days after the Effective Date of this Development Agreement. If it becomes necessary in the future to refer to any of the Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Applicable Rules.

2.4.3 Changes in State or Federal Laws. A change in the Applicable Rules which conflicts with the Vested Elements shall nonetheless apply to the Property if such change is required by applicable federal and state laws or regulations ("Federal Law" and "State Law"). In the event of the application of such a change in law or regulation, the Parties shall meet in

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good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such new Federal Law or State Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the change in Federal Law or State Law operates to frustrate irremediably and materially the vesting of development rights to the Alameda Point Project as set forth in this Development Agreement, Developer may terminate this Development Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State Law or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree in writing otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge, the Term shall be extended for the period of any such challenge.

2.4.4 Expansion of Development Rights. If any future local law or regulation, State Law or Federal Law expands, extends, enlarges or broadens Developer's rights to develop the Alameda Point Project, then, (a) if such law is mandatory, the provisions of this Development Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Development Agreement shall be modified, upon the mutual agreement of Developer and City, as may be necessary to comply or conform with such new law. Immediately after enactment of any such new law, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Development Agreement, and in the event such challenge is successful, this Development Agreement shall be modified to comply with, or conform to, the new law.

2.4.5 Conflicts. In the event of an irreconcilable conflict between the provisions of the Initiative Approvals (on the one hand) and other provisions of the Applicable Rules (on the other hand), the provisions of the Initiative Approvals shall apply. In the event of a conflict between the Applicable Rules (on the one hand) and this Development Agreement, in particular (on the other hand), the provisions of this Development Agreement shall control.

2.5 Subsequent Approvals. The City and the Developer anticipate that subsequent to the Effective Date, Developer will seek from City certain other implementing non-legislative project level land use approvals, entitlements, and permits that are necessary or desirable for the Project (the "Subsequent Approvals"). The Subsequent Approvals may include, without limitation, tentative maps, vesting tentative maps, parcel maps, final maps, subdivision approvals, street abandonments, design review approvals, financing plans, improvement agreements, infrastructure agreements, right-of-way permits, lot line adjustments, lot splits, site plans, landscaping plans, sewer and water connection permits, certificates of occupancy, demolition permits, use permits, variances, grading permits, sign permits and programs, transportation demand management programs, encroachment permits, foundation and building

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permits, master demolition, infrastructure and grading plan ("MDIGP") and any amendments to the foregoing that are substantially consistent with the Vested Elements.

2.6 Processing Subsequent Approvals. City agrees that it will accept, make completeness determinations, and process, promptly and diligently, all applications for Subsequent Approvals for the Alameda Point Project in accordance with the terms of this Development Agreement and the Applicable Rules unless the Parties agree otherwise in writing. City will use its best efforts to anticipate and communicate to Developer issues and concerns that may arise in connection with any application prior to the application submittal if possible and as early as feasible in the permit process. Developer will use its best efforts to keep City informed of development applications as they mature, and anticipate and communicate issues of mutual concern prior to submittal of permit applications. City agrees that the scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 2.4) and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Alameda Point Project. Consistent with the Initiative, unless agreed to by Developer, the City shall not require any further legislative level entitlements to enable Developer to build out the Project.

2.7 Life of Subdivision Maps and Subsequent Approvals.

2.7.1 Life of Subdivision Maps. The terms of any tentative map or vesting tentative map in the Alameda Point Project, any amendment or reconfiguration thereto, or any subsequent tentative map or vesting tentative map, shall be automatically extended such that such maps remain in effect for a period of time coterminous with the term of this Development Agreement.

2.7.2 Life of Other Subsequent Approvals. The term of all other Subsequent Approvals (with the exception of building permits) shall be automatically extended such that these approvals remain in effect for a period of time at least as long as the term of this Development Agreement. The terms of building permits for the Project shall be the longer of (i) one (1) year or (ii) the time period permitted by the Applicable Rules.

2.8 Development Timing. Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. 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 to prevail over such parties' agreement, it is the desire of the parties hereto to avoid that result. Notwithstanding the adoption of a charter amendment or initiative after the Election Date by City's electorate to the contrary, and in consideration of the Public Benefits promised by Developer in Article 3, the Parties acknowledge that, unless otherwise provided for in this Development Agreement and the DDA, 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. To the extent consistent with State Law (and excepting a declaration of a local emergency or state emergency as defined in Government Code section 8558), if any ordinance, resolution or other measure is enacted subsequent to the Effective Date,

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whether by action of City, by charter amendment, initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Alameda Point Project on all or any part of the Property, City agrees that such ordinance, resolution or other measure shall not apply to the Alameda Point Project, the Property, this Development Agreement, the Initiative Approvals, or the Subsequent Approvals, if any, during the Term. Nothing in this Development Agreement limits the discretion of the ARRA, CIC and/or the Developer in establishing in the DDA, or such other contract between the CIC and Developer, certain development and phasing obligations of the Developer.

2.9 No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Alameda Point Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development fails to occur. Other agreements among the ARRA and/or the CIC and the Developer will establish obligations regarding development of the Alameda Point Project, and any default under those separate agreements (including failure to develop in accordance with the timing provisions of such agreements) does not constitute a default under this Development Agreement.

2.10 Verification of Water Supply. To the extent any vesting tentative maps or tentative maps approved for the Project would trigger the application of Government Code section 66473.7, the Project shall comply with provisions of Government Code section 66473.7.

2.11 Development Fees, Exactions and Conditions.

2.11.1 General. All fees, exactions, dedications, reservations or other impositions to which the Alameda Point Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as "Processing Fees" (as defined in Section 2.11.2), or "Exactions" (as defined in Section 2.11.3).

2.11.2 Processing Fees. "Processing Fees" means fees, including any Expedited Processing Fees (as defined below), charged to the Alameda Point Project to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Alameda Point Project shall be charged Processing Fees to allow the City to recover its actual and reasonable costs of processing Subsequent Approvals with respect to the Alameda Point Project. Alternatively, with respect to any element of City review of the Alameda Point Project, Developer may choose, at its sole election, instead to pay City "Expedited Processing Fees" which shall be the then-applicable current Processing Fees applicable throughout City for expedited processing (including the cost of retaining a consultant or extra-hire staff and City's customary overhead costs) and shall not, in any event at any time, be more than Expedited Processing Fees required for similar expedited approvals, permits and entitlements in City.

2.11.3 Exactions. "Exactions" means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Alameda Point Project individually or as part of a class of projects, that are imposed by the City, the ARRA, and/or CIC on the Alameda Point Project in connection with any of the Applicable Rules (including Subsequent Approvals) as a condition of developing the Alameda Point Project including, but not limited to, any "Fee" as that term is defined by Government Code section

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66000(b), in-lieu payments, requirements for acquisition, dedication or reservation of land or the construction or financing of public benefits other than those specified in Exhibit 4, Section A. Any fee, exaction or imposition imposed on the Alameda Point Project which is not a Processing Fee is an Exaction. No Exactions shall be applicable to the Alameda Point Project except as provided in this Development Agreement. Mitigation measures imposed by a local agency to mitigate impacts to the environment caused by the Project pursuant to CEQA are not Exactions; provided, however, that the public benefits and other features of the Project shall be considered in the evaluation of mitigation measure feasibility and the determination (if any) of any overriding considerations as part of the CEQA process. City understands that long-term assurances by City concerning Exactions are a material consideration for Developer agreeing to develop the Alameda Point Project, to provide the Exactions set forth in Exhibit 3 of this Development Agreement and to provide the Public Benefits described in this Development Agreement.

a. Only the specific Exactions listed in Exhibit 3 shall apply to the Alameda Point Project, except as otherwise explicitly permitted by this Section 2.11.3 and 2.12. No change to an Exaction in Exhibit 3 (other than by the inflator, if any, permitted in Exhibit 3) resulting in an increase in dollar amounts charged to the Alameda Point Project that is adopted after the Election Date shall apply to the Alameda Point Project. If, after the Election Date, City decreases the rate of any of its Exactions existing as of the Election Date, Developer shall pay the reduced Exaction in effect at the time of payment. No Exactions other than those listed in Exhibit 3 may be imposed on the Alameda Point Project. Developer shall receive a dollar for dollar credit against police and fire fees, equal to the sum of (a) the value of lands dedicated for facilities, (b) the aggregate amount of funds expended for design and construction of fire facilities, and (c) the purchase of public safety and firefighting equipment. At Developer's election, if the City collects police and fire fees from a third party developer within the Alameda Point Project, Developer shall be entitled to receive a cash reimbursement from the City in lieu of such third party developer's right to apply Developer's credits against the payment of such fees. Developer and City shall compute the credits and/or reimbursements on a quarterly basis. The City acknowledges that City shall credit Developer the sum of all costs associated with constructing, acquiring, and/or installing public infrastructure, including, without limitation, costs for design, engineering, surveying, permits, fees, taxes, bonds, labor, materials, land and construction administration. The right to the foregoing credits or reimbursements shall survive the termination of the Development Agreement.

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

2.12 Conditions of Subsequent Approvals.

2.12.1 General. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those required by this Development Agreement or the Specific Plan. In addition, any and all conditions imposed on Subsequent Approvals for the Alameda Point Project must comply with Sections 2.11.2 and 2.11.3.

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2.12.2 Subdivision Maps. City agrees that any and all conditions it shall impose as conditions on parcel maps, tentative maps or vesting tentative maps subdividing the Alameda Point Project must comply with Sections 2.11.2 and 2.11.3.

2.13 Building Regulations. "Building Regulations" consist of the Uniform Building Code and the State Historic Building Code as modified by the California Building Code and the Alameda Building Code and any ordinances which interpret these codes where such ordinances establish construction standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure. Building Regulations applicable to building and construction throughout the City at the time Developer applies for the applicable permits for construction of any portion of the Alameda Point Project (including without limitation Infrastructure) shall be applicable to the building and construction authorized by such permit, except if such Building Regulations conflict in any manner with the Vested Elements. In the event of such conflict, the particular Building Regulation which is in conflict with the Vested Elements shall not apply to or govern development or construction of the Alameda Point Project (including without limitation the Infrastructure) unless it is determined by City to be required by the most current Uniform Building Code, or, if applicable, the Historic Building Code. In the event of a dispute as to whether or not the particular Building Regulation in conflict with the Vested Elements is required by the most current Uniform Building Code, or, if applicable, the Historic Building Code, Developer shall have the right to have the City Council hear such dispute and make a determination evidenced through findings of fact based on substantial evidence as to whether such Building Regulation is so required by the current applicable Uniform Building Code, or, if applicable, the Historic Building Code. For purposes of this Development Agreement, the term "Infrastructure" means roads, public and private utilities and other necessary backbone and in-tract infrastructure necessary for the development of the Alameda Point Project.

Article 3 Public Benefits.

3.1 Public Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits ("Public Benefits") described in Exhibit 4.

3.2 Public Benefits Contingency. In order to ensure the financial feasibility of the Project, the Developer's obligations to provide the Public Benefits set forth in Section A of Exhibit 4 are contingent upon (i) the CIC programming the maximum amount of the total non-housing fund redevelopment tax increment allocated and received by the CIC for improvements in, on or under the Property that are of benefit to the Project and conform to the requirements of California redevelopment law, less administrative costs, reserves and Educational Revenue Augmentation Fund ("ERAF") costs, and amounts required to be paid to the State of California pursuant to State Law and (ii) the City's formation and implementation of a community facilities district in accordance with Section 4.3 of this Development Agreement; provided the Developer's failure to perform its obligations under Section 4.3 shall not excuse Developer from its obligations under Section 3.1 above. It is expressly acknowledged, understood and agreed by the Parties that (x) the CIC reserves full and complete discretion with respect to legally required findings that must be made in connection with the programming of tax increment, (y) nothing in this Development Agreement is intended to or shall limit the CIC's ability to adopt legally required findings with respect to the use of tax increment, and (z) nothing in this Development

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Agreement is intended to or shall prejudice or commit the CIC regarding the findings and determinations to be made with respect thereto.

Article 4 City Rights and Obligations.

4.1 Conveyance of Infrastructure. Upon completion of any and all Infrastructure to be completed by Developer for the City, Developer shall offer for dedication to City from time to time as such future public Infrastructure is completed, and City shall promptly accept from Developer the completed Infrastructure (and promptly release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds). Developer may offer dedication of Infrastructure in phases and City shall not refuse to accept such phased dedications if all other conditions for acceptance have been satisfied.

4.2 Fiscal Neutrality. In consideration of, and in reliance on, City agreeing to the provisions of the Development Agreement, Developer agrees to cooperate in good faith to achieve the City's established policy of "Fiscal Neutrality" (Resolution No. 13643, November 5, 2003), balancing the City's cost of providing municipal services against revenues generated by the Alameda Point Project to assure there is no adverse fiscal impact upon the City.

4.3 Community Facilities District. City understands and agrees that the formation of one or more community facilities districts ("CFD") to fund a portion of the cost of public facilities, including without limitation, design, acquisition and construction costs, and public facilities maintenance costs or public services, is a critical element for the economic feasibility of the development of the Property. City and Developer agree to cooperate in good faith to form one or more CFDs pursuant to the Mello-Roos Act (Government Code section 53311 *et seq.*). Upon the filing of a petition by Developer pursuant to Government Code section 53318(c), the City Council shall consider adoption of a resolution of intention to establish the CFD and, following adoption, City shall use good faith, diligent efforts, in compliance with law, to establish and implement the CFD, including the scheduling of necessary public hearings and adoption of a resolution of formation. The CFD shall finance the design and construction, or acquisition, of those public facilities necessary for development of the Alameda Point Project and, to the extent the Developer and City agree, public service costs related to the Project, which may lawfully be financed under the Mello-Roos Act and other applicable law. The City and Developer will enter into a funding and acquisition agreement in a form reasonably acceptable to City's bond counsel setting forth, among other things, the procedures for and mechanism by which Developer will be reimbursed, out of available proceeds of the bonds issued by the CFD and/or special taxes, for public facilities constructed and/or paid for by Developer. Developer and the City will negotiate in good faith the terms of the rate and method of apportionment for the CFD. Developer shall advance to City the actual out-of-pocket costs of formation of the CFD, sale of the CFD bonds, and other costs associated with the CFD ("Advanced Costs"). All such Advanced Costs, together with the reasonable out-of-pocket legal, engineering, marketing studies, appraisals and financial services costs incurred by Developer directly related to establishment and implementation of the CFD which have been approved by the City Manager or his or her designee in his or her reasonable discretion and which may be lawfully financed under the Mello-Roos Act and other applicable law, shall be reimbursed to Developer from proceeds of the sale of CFD bonds and/or special taxes. Upon successful formation of the CFD and approval of the special tax, bonds shall be issued, the proceeds of which shall be used to finance public facilities, to the extent that public facilities legally and feasibly may be financed using this

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method of financing. The amounts, timing and terms of the issue and sale of the CFD bonds shall be determined by the City, in consultation with Developer and the City's bond counsel, financial advisors and/or underwriters. Subject to the state of development of the Property and prevailing bond market conditions, the timing of the sale of the CFD bonds shall be coordinated, as closely as possible, with the phasing of development of the Property to provide financing for the public facilities in a timely fashion to meet the needs of the respective phases of development of the Project. If necessary, the CFD bonds may be issued in series to help correspond to such phases. It is expressly acknowledged, understood and agreed by the Parties that (i) the City Council reserves full and complete discretion with respect to legally required findings that must be made in connection with formation of the CFD, (ii) nothing in this Development Agreement is intended to or shall limit City's ability to adopt legally required findings with respect to formation of a CFD, and (iii) nothing in this Development Agreement is intended to or shall prejudice or commit the City regarding the findings and determinations to be made with respect thereto.

4.4 Geologic Hazard Abatement District. Upon the written petition of the Developer, the City shall use good faith efforts to conduct such procedures as are necessary to form a Geologic Hazard Abatement District ("GHAD"), as authorized by law to provide for prevention, mitigation, abatement or control of geologic hazards as defined under applicable law. If the City has not adopted a resolution declaring that it will be subject to the statutory provisions for initiating formation proceedings, it agrees to adopt such resolution and forward a copy to the State Controller. Developer shall prepare, with the assistance of a certified engineering geologist, the plan of control attached to the formation petition.

4.5 Participation in Landscaping and Lighting Assessment District or Landscape and Lighting Maintenance District. The Parties understand and acknowledge that the formation and participation of the Property in a district that runs in perpetuity to provide for the long-term operation and maintenance of the on-site streets, lighting and landscaping would be beneficial to the Alameda Point Project. Upon the written request of the Developer, pursuant to applicable law, the City agrees to commence the proceedings necessary to form a Landscaping and Lighting Assessment District ("LLA District") or Landscaping and Lighting Maintenance District ("LLMD") over the Property. Developer and the City will cooperate with each other to create the LLA or LLMD, to establish the amount of the assessments, and to take other actions reasonably necessary to implement Developer's request.

4.6 Overall Tax Rate Cap. Developer and City agree that the total property tax burden (including, without limitation, ad valorem property taxes, special taxes, assessments and other impositions) imposed on the Property or any portion thereof shall not exceed two percent (2%) of the anticipated fair market value of taxable property within the Property upon completion of all public and private improvements contemplated by the Specific Plan.

Article 5 Annual Review.

5.1 Annual Review. The annual review required by California Government Code section 65865.1 and Section 30-95.1 of the Alameda Municipal Code shall be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, City and Developer shall have a reasonable opportunity to assert action(s) which either Party believes have not been undertaken in accordance with this Development Agreement, to

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explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. The procedure set forth in this article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process shall review compliance by Developer and City with the obligations under this Development Agreement but shall not review compliance with other Subsequent Approvals.

5.2 Commencement of Process. The City shall commence the annual review process by notifying the Developer in writing approximately forty-five (45) days prior to the anniversary of the Effective Date each year that the annual review process shall commence as specified in Section 5.1. The City's notice shall be in lieu of any requirements set forth in Section 30-95.1(a) of the Alameda Municipal Code. Failure of the City to send such notification shall be deemed to extend the time period in which annual review is required until at least forty-five (45) days after such notice is provided.

5.3 Developer Compliance Letter. Not less than thirty (30) days after receipt of the City's notice pursuant to Section 5.2, Developer shall submit a letter to the Director of City's Department of Planning ("Planning Director") demonstrating Developer's good faith compliance with the material terms and conditions of this Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code section 65865.1.

5.4 Planning Director Review. Within thirty (30) days after the receipt of Developer's letter, the Planning Director shall review Developer's submission and determine whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and conditions of this Development Agreement.

5.5 Planning Director Compliance Finding. If the Planning Director finds that Developer has so complied, the Planning Director shall schedule the annual review for the next available meeting of the Planning Board and shall prepare a staff report to the Planning Board which shall include, in addition to Developer's letter, (i) a demonstration of City's good faith compliance with the material terms and conditions of this Development Agreement; and (ii) the Planning Director's recommendation that the Planning Board find Developer to be in good faith compliance with the material terms and conditions of this Development Agreement.

5.6 Planning Director Non-Compliance Finding. If the Planning Director (or the Planning Board, on review of the Planning Director's recommendation pursuant to Section 5.5) finds and determines that there is substantial evidence that Developer has not complied in good faith with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the Planning Director shall issue and deliver to Developer a written "notice of default" specifying in detail the grounds therefor and all facts demonstrating substantial evidence of material noncompliance on a point-by-point basis.

5.7 Cure Period. If the Planning Director finds that Developer is not in compliance it shall grant a reasonable period of time for Developer to cure the alleged default. The Planning Director shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the Planning Director may either (i)

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find that Developer is in compliance and refer the matter to the Planning Board as specified in Section 5.5; or (ii) find that Developer is not in compliance and refer the matter to the Planning Board as specified in Section 5.8.

5.8 Referral of Default to Planning Board. The Planning Director shall refer the alleged default to the Planning Board if Developer fails to cure the alleged default to the Planning Director's reasonable satisfaction during the prescribed cure period and any extensions thereto. The Planning Director shall refer the alleged default to the Planning Board if Developer requests a hearing before the Planning Board. The Planning Director shall prepare a staff report to the Planning Board which shall include, in addition to Developer's letter, (i) the Notice of Default and (ii) a description of any cure undertaken by Developer during the cure period.

5.9 Delivery of Documents. At least five (5) days prior to any City hearing regarding Developer's compliance with this Development Agreement, City shall deliver to Developer staff reports and all other relevant documents pertaining to the hearing on the Alameda Point Project.

5.10 Planning Board Compliance Finding. If the Planning Board, following a noticed public hearing pursuant to Section 5.8, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, and that determination is not appealed to the City Council, the annual review shall be deemed concluded. City shall, at Developer's request, issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement.

5.11 Planning Board Non-Compliance Finding; Referral to City Council. If the Planning Board, at a properly noticed public hearing pursuant to Section 5.8, finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms or conditions of this Development Agreement and that Developer is in material breach of this Development Agreement, the Planning Board shall issue and cause to be delivered to Developer a written "notice of default" specifying in detail the grounds therefore and the facts demonstrating substantive evidence of material non-compliance on a point-by-point basis. Developer shall have a reasonable time determined by the Planning Board to meet the reasonable terms of compliance approved by the Planning Board, which time shall be not less than thirty (30) days. If Developer does not complete the terms of compliance within the time specified, the Planning Board shall forward its recommendations to the City Council and the City Council shall hold a public hearing regarding termination or modification of this Development Agreement. Notification of intention to modify or terminate this Development Agreement shall be delivered to Developer by certified mail containing: (i) the time and place of the City Council hearing; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At the time of the hearing, Developer shall be given an opportunity to be heard. The City Council may impose conditions to the action it takes as necessary to protect the interests of City; provided that any modification or termination of this Development Agreement pursuant to this provision shall be proportional in severity to the magnitude of the alleged breach and in no event shall termination be permitted except in accordance with Article 7 herein.

5.12 Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 7.4 of this Development Agreement whereby either

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City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written notice of default and following the procedures set forth in said Section 7.4.

Article 6 Amendments

6.1 Amendments to or Cancellation of Development Agreement. This Development Agreement is being adopted by ordinance by the voters of the City of Alameda pursuant to State Law and local law. This Development Agreement may only be amended in accordance with Section 14 of the Initiative. Operating Memoranda are not amendments and may be approved pursuant to Section 6.2.

6.2 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 6.2 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.1 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.3 Amendments to Vested Elements (Including Subsequent Approvals). Developer may seek and City may review and grant Subsequent Approvals and amendments or modifications to the Vested Elements (including the Subsequent Approvals for the Alameda Point Project), so long as such Subsequent Approvals and amendments are consistent with the Initiative. The Vested Elements (except for this Development Agreement, the amendment process for which is set forth in Section 6.1) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion), consistent with the Section 14 of the Initiative and in accordance with Sections 2.4 and 2.5. All amendments to the Vested Elements shall automatically become part of the Vested Elements. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the provisions for public improvements and financing of public improvements, and the terms and conditions of all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Vested Elements shall be governed by the Vested Elements, the Applicable Rules, and this Development Agreement subject to Sections 2.4 and 2.5. The City shall not request, process or consent to any amendment to the Vested Elements that would affect the Property or the Alameda Point Project without Developer's prior written consent, such consent not to be unreasonably withheld.

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Article 7 Default Remedies and Termination.

7.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.3 hereof regarding permitted delays and a mortgagee's right to cure pursuant to Section 10.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (but specifically excluding any failure by Developer to perform any term or provision of any other Vested Element) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is in addition to any (60) day cure period under Section 5.7, if Section 5.7 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing Party claims constitutes the Event of Default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Alameda Point Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.2 Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 60-day cure period referred to in Section 7.1 (even if the 60-day cure period itself is extended pursuant to Section 7.1(ii)) unless the Parties agree otherwise in writing.

7.3 Remedies and Termination. If after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal or arbitration proceedings pursuant to Sections 7.4 or 7.6 of this Development Agreement and/or terminate this Development Agreement.

7.4 Legal Action by Parties.

7.4.1 Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the obligations and rights of the Parties hereto or seek any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any change to the Applicable Rules that would conflict

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with the Vested Elements (including the Subsequent Approvals) for the Alameda Point Project or reduce the development rights provided by the Vested Elements.

7.4.2 No Damages. In no event shall either Party, or its boards, commissions, partners, directors, members, managers, shareholders, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

7.5 Effects of Litigation. In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then Developer shall have no obligations whatsoever under this Development Agreement. In the event that any payments have been made by or on behalf of Developer to City, City shall give to Developer a refund of the monies remaining in any segregated City account into which such payments were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in a segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 7.5, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 7.5 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Alameda Point Project. In the event that Developer has already developed or is developing a portion of the Alameda Point Project at the time of any invalidation of the Development Agreement, then any such refund or credit shall be limited to the amount paid by Developer which exceeds, on a pro rata basis, the proportion and uses of the Property retained by Developer to the entire Property. This Section 7.5 shall survive the termination of this Development Agreement.

7.6 Arbitration. Upon the mutual agreement by both Parties, any legal action shall be submitted to non-binding arbitration in accordance with rules to be mutually agreed upon by the Parties.

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7.7 Termination.

7.7.1 Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement, as the same may be extended pursuant to the provisions hereof.

7.7.2 Survival of Obligations. Upon the termination of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to this Development Agreement except with respect to any obligation which is specifically set forth as surviving this Development Agreement. The termination of this Development Agreement shall not affect the validity of the Vested Elements (including the Subsequent Approvals) other than this Development Agreement for the Alameda Point Project.

7.7.3 Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term, unless (i) City complies with all termination procedures set forth in the Development Agreement Legislation, (ii) there is an alleged Event of Default by Developer, (iii) such Event of Default is not cured pursuant to Article 5 or Article 7, (iv) Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council, and (v) this Development Agreement is terminated only with respect to that portion of the Property to which the default applies.

7.7.4 Automatic Termination Upon Transfer to End User. The provisions of this Development Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Development Agreement (without the exception of recordation of any further document or the taking of any further action) upon the satisfaction of both of the following conditions: (i) the lot has been finally subdivided and sold or leased (for a period longer than one (1) year) to a member of the public or any other ultimate user; and (ii) a certificate of occupancy has been issued for the building or buildings on the lot or a final inspection of the building(s) has been approved by the City authorizing occupancy. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor in title of Developer in and to any of the aforescribed lots) may submit to confirm the termination of this Development Agreement as to any such lot.

Article 8 Cooperation and Implementation.

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

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8.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property.

8.3 Other Governmental Permits and Approvals. Developer or City (whichever is appropriate) shall apply in a timely manner for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Alameda Point Project as may be required for the development of, or provision of services to, the Alameda Point Project (such as, for example, through National Pollutant Discharge Elimination System (“NPDES”) permits). Developer shall have the right to challenge (by any method, including litigation) any such permit determination preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree in writing otherwise, except that if the Term of the Development Agreement would otherwise terminate and Developer has not commenced with the development of the Alameda Point Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time, at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, at each stage of the development of the Alameda Point Project.

8.4 Revision to Project. In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Initiative Approvals (including the Development Agreement) and avoid or minimize to the greatest extent possible (i) any impact to the development of the Alameda Point Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

Article 9 Transfers and Assignments.

9.1 Right to Assign. Developer shall have the right to sell, assign or transfer in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the term of this Development Agreement without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so transferred or assigned except through a transfer of any interest therein, including Developer's legal or equitable interest in the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to transfer its rights, duties and obligations, under this Development Agreement which are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property.

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9.2 Release Upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Development Agreement pursuant to Section 9.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property sold, transferred or assigned and any subsequent default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City notice of such transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property sold, transferred or assigned. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 9.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

9.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

9.4 Assignment to Community Association. The City and Developer agree that certain on-going ownership, operation and maintenance obligations with respect to any private streets, alleys and common areas within the Property may be assigned to one or more community association(s) to be established by Developer pursuant to California Civil Code section 1350.5 *et seq.* ("Community Association"); provided, however, that such assignment to a Community Association shall be accompanied by evidence that such assignee has the financial ability to assume and commitment to perform the Developer's obligations hereunder.

Article 10 Mortgage Protection: Certain Rights Of Cure.

10.1 Mortgage 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 this Development Agreement, including the lien of any deed of trust or mortgage (each, a "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

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and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee (each, a "Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, the Initiative Approvals, the Applicable Rules and the Subsequent Approvals, as the same may be modified as provided for herein and in the Initiative.

10.3 Notice of Default to Mortgagee: Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any notice of default given to Developer hereunder and specifying the address for service thereof, then City shall 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 a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) 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.

10.4 No Supersedure. Nothing in this Article 10 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Alameda Point Project outside this Development Agreement, nor shall any provision of this Article 10 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 10.3.

10.5 Technical Amendments to this Article 10. City agrees to reasonably consider and approve technical amendments to the provisions of this Article 10 which are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders. Amendments to this Article 10 may be made pursuant to Section 6.1 or refinements and clarifications may be made by the City Manager pursuant to Section 6.2.

Article 11 Miscellaneous.

11.1 Limitation on Liability and City Funds.

11.1.1 Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Development Agreement by Developer, or for any amount which may become due to City under the terms of this Development Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

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11.1.2 In no event shall the City's general fund or any funds of the City in any way become subject to any of the CIC's obligations under the DDA as a result of any provision of this Development Agreement.

11.2 No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

11.3 Force Majeure. The Term of this Development Agreement and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, enemy action, civil disturbances, fire, unavoidable casualties, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Alameda Point Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Subsequent Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Alameda Point Project or the conveyance of the Property to Developer; (iii) the CIC fails to perform its obligations under any agreement with Developer or the ARRA fails to perform its obligations under any agreement with Developer; (iv) there is any mediation, arbitration, litigation or other administrative or judicial proceeding pending involving the Vested Elements (including the Subsequent Approvals), the Initiative, or any CEQA approval in connection with one or more of the foregoing. The Term of this Development Agreement and any Subsequent Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Alameda Point Project or the conveyance of the Property to Developer in accordance with any agreements with the ARRA or the CIC; the amount of time any failure by CIC to perform its obligations under any agreement with Developer or failure by the ARRA to perform its obligations under any agreement with the Developer that prevents, prohibits or delays the construction, funding or development of the Alameda Point Project or the conveyance of the Property to the Developer; the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements (including the Subsequent Approvals), the Initiative Approvals, or other CEQA approvals. Furthermore, in the event the issuance of a building permit for any part of the Alameda Point Project is delayed as a result of Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement shall be extended by the period of any such delay.

11.4 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized

Exhibit F: Development Agreement

overnight courier service, or by electronic facsimile transmission followed by delivery of a “hard” copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 11.4.

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

with copies to: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: Planning Director

City of Alameda
City Hall – West
950 West Mall Square, Suite 215
Alameda, CA 94501
Attn: Project Manager

Developer: _____

Attn: _____

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received on the date of sender transmission and electronic confirmation of delivery if before 5:00 p.m. (if after 5:00 p.m. transmission is deemed the following business day), provided that a “hard” copy is delivered as provided above.

11.5 Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provisions of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to

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other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either City or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice, of such termination to City.

11.6 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

11.7 Construction of Development Agreement. No presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

11.8 Entire Development Agreement. This Development Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Development Agreement.

11.9 Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults. The Party receiving a request hereunder shall execute and return such certificate within fifteen (15) days following the receipt thereof. The failure of either Party to provide the requested certificate within such fifteen (15) day period shall constitute a confirmation that no default exists. Either the City Manager or the Planning Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

11.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be

Exhibit F: Development Agreement

construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

11.11 Time. Time is of the essence of this Development Agreement. All references to time in this Development Agreement shall refer to the time in effect in the State of California.

11.12 California Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.13 Attorneys' Fees. In any legal action or other proceeding brought by either Party to enforce or interpret a provision of this Development Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related costs incurred in that proceeding in addition to any other relief to which it is entitled.

11.14 Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

11.15 Extension of Time Limits. The time limits set forth in this Development Agreement may be extended by mutual consent in writing of the City Council and the Developer in accordance with the provisions of this Development Agreement.

11.16 Counterparts. This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

11.17 Authority. The individuals executing this Development Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Development Agreement on behalf of the respective legal entities of Developer and the City.

11.18 Exhibits. The following exhibits are attached to this Development Agreement and incorporated herein for all purposes:

- 11.18.1 EXHIBIT 1- Legal Description of Property
- 11.18.2 EXHIBIT 2- Depiction of Property
- 11.18.3 EXHIBIT 3- Exactions
- 11.18.4 EXHIBIT 4- Public Benefits

CITY:

City of Alameda, a California municipal corporation

By: _____

Name: _____

Title: _____

Exhibit F: Development Agreement

DEVELOPER:

By: _____
Name: _____
Title: _____

Exhibit F: Development Agreement

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit F: Development Agreement

Exhibit 1
Legal Description of Property

**LEGAL DESCRIPTION
SUBMERGED LAND
ALAMEDA POINT
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, RECORDED JUNE 6, 2003, IN BOOK 28 OF RECORD OF SURVEYS AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING A PORTION OF SECTION 9 AND SECTION 10, TOWNSHIP 2 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE BOUNDARY LINE OF SAID PARCEL 1, SAID POINT BEING THE WEST CORNER OF LOT 16, SECTION 9, TOWNSHIP 2 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDAIN, AS SAID CORNER IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (28 RS 14);

THENCE, FROM SAID POINT OF COMMENCEMENT, LEAVING SAID BOUNDARY LINE, NORTH 64°11'08" WEST 2,268.42 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, NORTH 04°47'18" EAST 1,592.18 FEET;

THENCE, SOUTH 85°12'42" EAST 3,008.56 FEET;

THENCE, SOUTH 04°47'18" WEST 1,217.28 FEET;

THENCE, SOUTH 12°41'39" WEST 62.04 FEET;

THENCE, SOUTH 46°07'57" WEST 392.14 FEET;

THENCE, SOUTH 62°32'28" WEST 58.63 FEET;

THENCE, SOUTH 76°20'50" WEST 11.38 FEET;

THENCE, SOUTH 88°56'29" WEST 41.96 FEET;

THENCE, SOUTH 15°37'31" WEST 16.50 FEET;

Exhibit F: Development Agreement

THENCE, SOUTH 04°02'03" WEST 17.14 FEET;

THENCE, NORTH 85°12'45" WEST 647.50 FEET;

THENCE, SOUTH 47°55'03" WEST 24.58 FEET;

THENCE, SOUTH 05°02'19" WEST 16.06 FEET;

THENCE, SOUTH 35°46'57" EAST 23.78 FEET;

THENCE, SOUTH 85°06'58" EAST 636.30 FEET;

THENCE, NORTH 80°08'22" EAST 13.98 FEET;

THENCE, NORTH 07°08'34" EAST 5.54 FEET;

THENCE, SOUTH 85°12'42" EAST 53.51 FEET;

THENCE, SOUTH 46°07'57" WEST 609.77 FEET;

THENCE, ALONG THE ARC OF A TANGENT 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 49°04'59", AN ARC DISTANCE OF 119.93 FEET;

THENCE, NORTH 84°47'04" WEST 320.09 FEET;

THENCE, NORTH 85°14'57" WEST 836.65 FEET;

THENCE, ALONG THE ARC OF A TANGENT 7.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 89°47'36", AN ARC DISTANCE OF 10.97 FEET;

THENCE, SOUTH 04°57'27" WEST 66.05 FEET;

THENCE, ALONG THE ARC OF A TANGENT 6.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°06'05", AN ARC DISTANCE OF 9.44 FEET;

THENCE, SOUTH 85°08'38" EAST 1,268.14 FEET;

THENCE, SOUTH 40°35'42" EAST 191.57 FEET;

THENCE, SOUTH 04°47'18" WEST 370.98 FEET;

THENCE, SOUTH 48°55'58" WEST 84.67 FEET;

THENCE, SOUTH 88°51'24" WEST 44.30 FEET;

THENCE, NORTH 85°15'15" WEST 47.40 FEET;

Exhibit F: Development Agreement

THENCE, NORTH 85°09'42" WEST 1,043.32 FEET;

THENCE, ALONG THE ARC OF A TANGENT 7.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°06'04", AN ARC DISTANCE OF 11.01 FEET;

THENCE, SOUTH 04°44'13" WEST 137.82 FEET;

THENCE, ALONG THE ARC OF A TANGENT 5.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 89°52'23", AN ARC DISTANCE OF 7.84 FEET;

THENCE, NORTH 85°10'05" WEST 5.00 FEET;

THENCE, NORTH 49°04'24" WEST 1,360.00 FEET;

THENCE, NORTH 04°57'28" EAST 584.27 FEET;

THENCE, NORTH 85°03'51" WEST 131.06 FEET;

THENCE, NORTH 04°52'11" EAST 14.68 FEET TO SAID POINT OF BEGINNING.

CONTAINING 165.98 ACRES OF LAND, MORE OR LESS.

Exhibit F: Development Agreement

**LEGAL DESCRIPTION
UNSUBMERGED LAND
ALAMEDA POINT
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, RECORDED JUNE 6, 2003, IN BOOK 28 OF RECORD OF SURVEYS AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING A PORTION OF SECTION 9 AND SECTION 10, TOWNSHIP 2 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE OF SAID PARCEL 1, SAID POINT BEING THE SOUTHEAST CORNER OF LOT 21, SECTION 10, TOWNSHIP 2 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDAIN, AS SAID CORNER IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (28 RS 14);

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE BOUNDARY LINE OF SAID PARCEL 1, THE FOLLOWING FIFTEEN (15) COURSES;

- 1) NORTH 01°05'59" EAST 1,664.52 FEET,
- 2) NORTH 50°51'40" WEST 27.30 FEET,
- 3) ALONG THE ARC OF A NON-TANGENT 711.34 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 60°46'38" EAST, THROUGH A CENTRAL ANGLE OF 32°21'46", AN ARC DISTANCE OF 401.79 FEET,
- 4) NORTH 03°08'24" EAST 451.56 FEET,
- 5) NORTH 86°51'36" WEST 95.00 FEET,
- 6) NORTH 03°08'24" EAST 850.54 FEET,
- 7) NORTH 03°01'15" EAST 50.03 FEET,
- 8) NORTH 03°29'37" WEST 201.46 FEET,
- 9) NORTH 11°23'41" WEST 51.68 FEET,

Exhibit F: Development Agreement

- 10) NORTH 00°34'41" EAST 19.09 FEET,
- 11) NORTH 00°33'45" EAST 2,344.59 FEET,
- 12) ALONG THE ARC OF A TANGENT 960.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 28°15'00", AN ARC DISTANCE OF 473.33 FEET,
- 13) NORTH 27°41'15" WEST 580.60 FEET,
- 14) ALONG THE ARC OF A TANGENT 700.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 45°54'32", AN ARC DISTANCE OF 560.88 FEET, AND
- 15) NORTH 01°05'59" EAST 218.12 FEET;

THENCE, LEAVING SAID BOUNDARY LINE, NORTH 88°54'01" WEST 150.00 FEET;

THENCE, NORTH 01°05'59" EAST 181.41 FEET;

THENCE, SOUTH 80°11'56" WEST 309.21 FEET;

THENCE, SOUTH 75°55'40" WEST 197.19 FEET;

THENCE, SOUTH 80°49'53" WEST 139.96 FEET;

THENCE, SOUTH 89°28'57" WEST 323.46 FEET;

THENCE, NORTH 87°54'03" WEST 343.06 FEET;

THENCE, NORTH 84°37'41" WEST 273.02 FEET;

THENCE, ALONG THE ARC OF A TANGENT 4,380.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 07°43'20", AN ARC DISTANCE OF 590.34 FEET;

THENCE, NORTH 10°53'57" EAST 86.17 FEET;

THENCE, NORTH 79°33'41" WEST 178.59 FEET;

THENCE, SOUTH 85°02'30" WEST 120.47 FEET;

THENCE, NORTH 73°04'46" WEST 883.42 FEET;

THENCE, NORTH 69°52'52" WEST 582.44 FEET TO A POINT ON SAID BOUNDARY LINE OF PARCEL 1;

THENCE, ALONG SAID BOUNDARY LINE, THE FOLLOWING THREE (3) COURSES:

Exhibit F: Development Agreement

- 1) NORTH 74°11'24" WEST 334.24 FEET,
- 2) NORTH 72°49'42" WEST 6,085.24 FEET, AND
- 3) NORTH 64°57'02" WEST 378.36 FEET;

THENCE, LEAVING SAID BOUNDARY LINE, SOUTH 31°57'28" WEST 195.57 FEET;

THENCE, NORTH 85°54'58" WEST 76.30 FEET;

THENCE, SOUTH 45°00'45" WEST 30.75 FEET;

THENCE, SOUTH 11°36'59" WEST 50.62 FEET;

THENCE, SOUTH 47°09'22" WEST 173.49 FEET;

THENCE, ALONG THE ARC OF A TANGENT 50.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 47°04'04", AN ARC DISTANCE OF 41.07 FEET;

THENCE, SOUTH 00°05'18" WEST 157.85 FEET;

THENCE, SOUTH 14°23'33" EAST 177.90 FEET;

THENCE, SOUTH 28°43'18" EAST 299.52 FEET;

THENCE, SOUTH 13°10'28" EAST 294.61 FEET;

THENCE, SOUTH 86°08'10" WEST 21.40 FEET;

THENCE, SOUTH 02°51'49" EAST 395.72 FEET;

THENCE, SOUTH 02°53'39" WEST 150.11 FEET;

THENCE, SOUTH 34°45'38" WEST 79.37 FEET;

THENCE, SOUTH 00°25'06" EAST 503.59 FEET;

THENCE, SOUTH 85°49'09" EAST 1,368.45 FEET;

THENCE, SOUTH 86°42'56" EAST 42.82 FEET;

THENCE, SOUTH 85°27'47" EAST 25.33 FEET;

THENCE, SOUTH 85°25'57" EAST 3,776.82 FEET;

THENCE, SOUTH 85°26'59" EAST 31.48 FEET;

Exhibit F: Development Agreement

THENCE, SOUTH 85°29'31" EAST 775.72 FEET;
THENCE, SOUTH 04°14'35" WEST 149.86 FEET;
THENCE, NORTH 87°21'05" WEST 16.52 FEET;
THENCE, SOUTH 04°14'28" WEST 2,150.56 FEET;
THENCE, SOUTH 05°38'54" WEST 183.41 FEET;
THENCE, SOUTH 36°01'38" EAST 25.33 FEET;
THENCE, SOUTH 04°00'48" WEST 209.09 FEET;
THENCE, SOUTH 02°52'51" WEST 1,049.23 FEET;
THENCE, SOUTH 80°51'17" EAST 45.31 FEET;
THENCE, SOUTH 02°06'38" WEST 44.14 FEET;
THENCE, SOUTH 85°02'29" EAST 280.50 FEET;
THENCE, SOUTH 04°55'09" WEST 371.40 FEET;
THENCE, SOUTH 84°57'36" EAST 56.22 FEET;
THENCE, SOUTH 04°58'59" WEST 180.51 FEET;
THENCE, NORTH 85°03'32" WEST 174.89 FEET;
THENCE, SOUTH 04°18'17" WEST 531.27 FEET;
THENCE, SOUTH 85°12'42" EAST 450.24 FEET;
THENCE, NORTH 04°47'18" EAST 1,592.18 FEET;
THENCE, SOUTH 85°12'42" EAST 3,008.56 FEET;
THENCE, SOUTH 04°47'18" WEST 1,217.28 FEET;
THENCE, SOUTH 12°41'39" WEST 62.04 FEET;
THENCE, SOUTH 46°07'57" WEST 392.14 FEET;
THENCE, SOUTH 62°32'28" WEST 58.63 FEET;
THENCE, SOUTH 76°20'50" WEST 11.38 FEET;

Exhibit F: Development Agreement

THENCE, SOUTH 88°56'29" WEST 41.96 FEET;

THENCE, SOUTH 15°37'31" WEST 16.50 FEET;

THENCE, SOUTH 04°02'03" WEST 17.14 FEET;

THENCE, NORTH 85°12'45" WEST 647.50 FEET;

THENCE, SOUTH 47°55'03" WEST 24.58 FEET;

THENCE, SOUTH 05°02'19" WEST 16.06 FEET;

THENCE, SOUTH 35°46'57" EAST 23.78 FEET;

THENCE, SOUTH 85°06'58" EAST 636.30 FEET;

THENCE, NORTH 80°08'22" EAST 13.98 FEET;

THENCE, NORTH 07°08'34" EAST 5.54 FEET;

THENCE, SOUTH 85°12'42" EAST 53.51 FEET;

THENCE, SOUTH 46°07'57" WEST 609.77 FEET;

THENCE, ALONG THE ARC OF A TANGENT 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 49°04'59", AN ARC DISTANCE OF 119.93 FEET;

THENCE, NORTH 84°47'04" WEST 320.09 FEET;

THENCE, NORTH 85°14'57" WEST 836.65 FEET;

THENCE, ALONG THE ARC OF A TANGENT 7.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 89°47'36", AN ARC DISTANCE OF 10.97 FEET;

THENCE, SOUTH 04°57'27" WEST 66.05 FEET;

THENCE, ALONG THE ARC OF A TANGENT 6.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°06'05", AN ARC DISTANCE OF 9.44 FEET;

THENCE, SOUTH 85°08'38" EAST 1,268.14 FEET;

THENCE, SOUTH 40°35'42" EAST 191.57 FEET;

THENCE, SOUTH 04°47'18" WEST 370.98 FEET;

Exhibit F: Development Agreement

THENCE, SOUTH 48°55'58" WEST 84.67 FEET;

THENCE, SOUTH 88°51'24" WEST 44.30 FEET;

THENCE, NORTH 85°15'15" WEST 47.40 FEET;

THENCE, NORTH 85°09'42" WEST 1,043.32 FEET;

THENCE, ALONG THE ARC OF A TANGENT 7.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°06'04", AN ARC DISTANCE OF 11.01 FEET;

THENCE, SOUTH 04°44'13" WEST 137.82 FEET;

THENCE, ALONG THE ARC OF A TANGENT 5.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 89°52'23", AN ARC DISTANCE OF 7.84 FEET;

THENCE, NORTH 85°10'05" WEST 5.00 FEET;

THENCE, SOUTH 85°08'09" EAST 1,050.26 FEET;

THENCE, SOUTH 85°18'56" EAST 314.01 FEET;

THENCE, NORTH 04°50'17" EAST 79.30 FEET;

THENCE, SOUTH 85°12'42" EAST 222.60 FEET;

THENCE, SOUTH 59°21'25" EAST 34.55 FEET;

THENCE, SOUTH 69°13'01" EAST 1,472.75 FEET;

THENCE, SOUTH 81°09'02" EAST 72.54 FEET;

THENCE, SOUTH 69°13'01" EAST 621.74 FEET TO A POINT ON SAID BOUNDARY LINE OF PARCEL 1;

THENCE, ALONG SAID BOUNDARY LINE, SOUTH 63°45'01" EAST 485.87 FEET TO SAID POINT OF BEGINNING.

CONTAINING 917.88 ACRES OF LAND, MORE OR LESS.

Exhibit F: Development Agreement

Exhibit 2 Depiction of Property

See following page for a graphic depiction of the property, identified as "Exhibit 2: Depiction of Property."

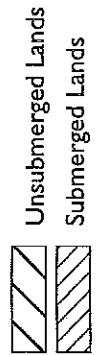
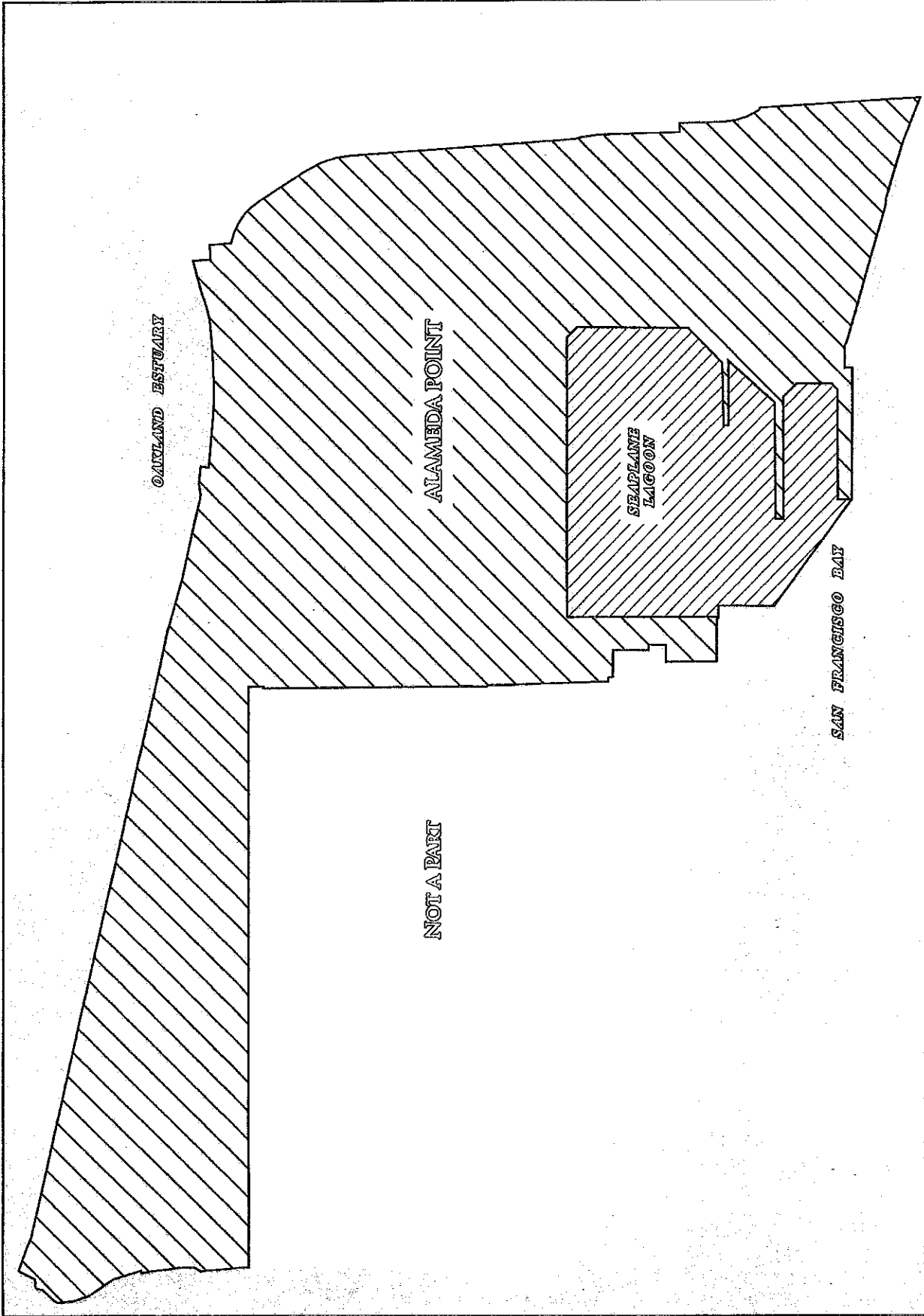


Exhibit 2 : Depiction of Property

Exhibit F: Development Agreement

Exhibit 3

Exactions

Only the following Exactions shall apply to the Alameda Point Project, except as otherwise expressly permitted by Section 2.11.3 or 2.12:

- i. Sewer Connection Fee: Minimum of \$921.00 per structure for residential, office/R&D, and retail development, as calculated in accordance with the standard worksheet for sewer connections applicable to the City as a whole.
- ii. Police and Fire: All uses: \$0.155 per square foot of gross building area.
- iii. Strong Motion Instrumentation Program Fee ("SMIP"): Residential: .0001 of valuation; commercial: .00021 of valuation.
- iv. Public Art Fee: If Developer elects payment of in-lieu fee rather than provision of public art, developer shall pay an amount equivalent to one percent (1%) of building development costs as defined in Section 30-65.2 of the Alameda Municipal Code, up to a maximum of \$150,000.
- v. Building Standards Fee: \$20.00 per dwelling unit.

The following fee inflators shall apply to items (i) and (ii):

- a. Commencing on January 1st of the year after the Effective Date of the Development Agreement, if the City of Alameda Master Fee resolution ("Master Fee Resolution") has been revised since the Effective Date to implement an annual fee escalation, then the fees listed in Section 1 of this Exhibit 3, except the SMIP Fee, Public Art Fee and Building Standards Fee (the "Excepted Fees"), shall increase by the lesser of the percentage increase reflected in the Bay Area Consumer Price Index for the period between the Effective Date and that January 1st or the escalation for such fees provided in the most recently adopted Master Fee Resolution for the period between the Effective Date and that January 1st, if applicable. Each January 1st thereafter, if the Master Fee Resolution has been revised during the prior year to implement an annual fee escalator, then the fees listed in Section 1 of this Exhibit 3, except the Excepted Fees, shall increase by the lesser of the percentage increase reflected in the Bay Area Consumer Price Index for that year or the escalation provided in the Master Fee Resolution for such fees adopted during the prior year. If the escalator in the Master Fee Resolution is adopted or amended less frequently than annually, then the fees listed in Section 1 of this Exhibit 3, except the Excepted Fees, shall increase only on the January 1st of the years immediately after the Master Fee Resolution is so revised and by an amount equal to the lesser of the escalator provided in the Master Fee Resolution for such fees or the cumulative percentage increase in the Bay Area Consumer Price Index since the last increase in the fees listed in Section 1 of this Exhibit 3, except the Excepted Fees.

Exhibit F: Development Agreement

Exhibit 4 Public Benefits

The Public Benefits of the Alameda Point Project are as follows:

A. Developer shall fund, or advance the funding for, in an amount not to exceed \$200 million, construction of the following public improvements, each in accordance with the Specific Plan:

- Regional Alameda Point Sports Complex. **(Phase 1, 2, 3)**
- Parks, publicly-accessible open space and public art within the Alameda Point Project to serve the residents of Alameda Point and surrounding neighborhoods. **(All Phases)**
- Improvements to Seaplane Lagoon frontage. **(All Phases)**
- Bay Trail extension within the Plan Area. **(Phase 3)**
- On-site and off-site traffic and transit improvements. **(All Phases)**
- Ferry terminal and transit hub. **(Phases 2 & 3)**
- Improvements to the existing Fire Station. **(Phase 3)**
- Branch library. **(Phase 3)**

The foregoing funding commitments will correspond with the phasing schedule described in the Specific Plan. The parenthetical after each category of public improvements listed above identifies the applicable phase (as defined in the Specific Plan) when the funding commitment is expected.

B. The public benefits of the Alameda Point Project to the City of Alameda also include:

- Redeveloping an underutilized part of the City with new jobs, homes, services, open space and recreation.
- Providing a long-term revenue stream to the City's general fund that will support future City services, while avoiding future losses to the City from the need to maintain and operate the former NAS Alameda in its current, dilapidated fashion.
- Avoiding negative impacts to City funds by requiring fiscal neutrality.
- Enhancing the clean up effort provided by the Navy through remediation of contaminants not addressed in the Navy plan, such as lead, asbestos and contaminants in soil below relocated roadways and demolished buildings—thereby providing additional environmental protection than would otherwise be provided.

Exhibit F: Development Agreement

- Facilitating the clean up of toxic contaminants consistent with federal and State Laws that are protective of human health and the environment
- Eliminating blight, including abandoned buildings, incompatible land uses, depreciated or stagnant property values, and inadequate or deteriorated public improvements, facilities, and utilities.
- Reducing the impact of the automobile and energy consumption by: (1) facilitating public transit opportunities to and within the Property to the extent feasible; (2) providing a system of bikeways, parks, and pedestrian paths to facilitate access to parks, recreational areas and the waterfront from all parts of western Alameda; and (3) implementing a Transportation Demand Management ("TDM") program that will reduce Alameda Point Project-related traffic and associated noise and air quality impacts.
- Advancing the application of State laws and policies designed to encourage infill development in order to minimize vehicle miles traveled and to promote accessibility to transit, both significant in the reduction of greenhouse gas emissions.
- Providing multiple transit options and facilitating transit usage through resident and business education and incentives.
- Creating a highly walkable neighborhood with nodes of compact development and connections between them, incorporating the tree-lined character and grid street pattern that is characteristic of the existing City.
- Pursuing a transit-oriented development strategy that supports transit with residential density and workplaces near a new ferry terminal and transit hub.
- Distributing parks and open spaces throughout Alameda Point that better link the Property with the rest of Alameda, the Bay and Estuary.
- Maintaining and enhancing public waterfront access, with parks, trails and plazas to help connect the island with the Bay, while being respectful of wildlife.
- Protecting and improving the waterfront by enhancing views of water and public access to the waterfront in all development and creatively encouraging use of the waterfront by providing a waterfront promenade, public art, open space, and other public amenities.
- Stimulating job creation and economic growth through installation of needed site improvements to stimulate new commercial expansion.
- Strengthening and diversifying the local economy and the community by adding business park uses and retail uses.
- Providing new amenities for City residents, including new shops, restaurants and services.

Exhibit F: Development Agreement

- Offsetting the City's cost of providing municipal services with revenues generated from the Property so that the Alameda Point Project achieves the City's established policy of "Fiscal Neutrality," as defined in Section 4.2 above.
- Promoting reduction in energy consumption, water usage, greenhouse gases and solid waste generation through compact community planning, water recycling, energy-efficient building design, use of recycled materials and applying low water demand techniques in all new development, including landscaping development.
- Encouraging reuse of buildings and landscapes with historic significance.
- Providing new marina slips and modern support facilities to help satisfy the demand for marina slips in the City and the Bay Area.
- Increasing the supply of land available for residential development and providing a wide range of housing types and an array of household types.
- Maintaining and improving Alameda Point's natural qualities with new public open spaces, active and passive recreational uses, and marine-related recreational uses.
- Fostering supportive housing and economic development opportunities for providers of services to the homeless and victims of domestic violence.
- Generating sufficient revenues to fund required infrastructure replacement and improvements.
- Facilitating necessary flood control and seismic reinforcement of lands.
- Exchanging Public Trust properties from portions of the interior of the Property to other portions of the Property to encourage public access to the waterfront and to facilitate appropriate redevelopment of the former NAS Alameda, consistent with Public Trust policies and goals.
- Seeking a balance between goals and policies that encourage private investment and at the same time supporting fiscally responsible planning by the City.