

Exhibit A: Site Plan



Exhibit B: Big Green and India Basin Open Space



Exhibit C1: India Basin Mixed-Use Project - Site Plan



Exhibit C2: India Basin Mixed-Use Project - Land Use Plan

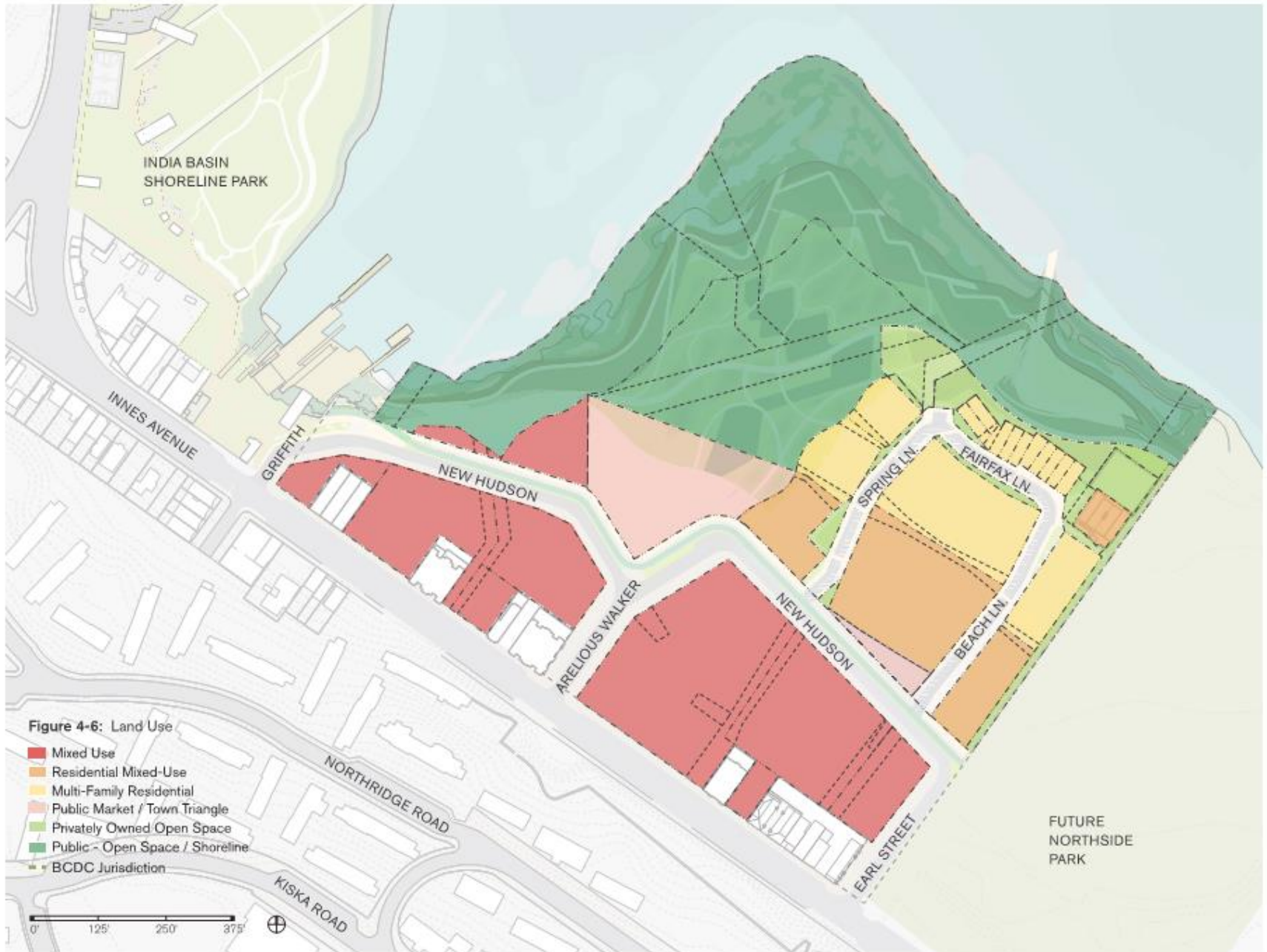


Exhibit C3: India Basin Mixed-Use Project - Public Realm and Open Space



Exhibit C4: India Basin Mixed-Use Project - Bay Trail and Bike Access Exhibit



Exhibit C5: India Basin Mixed-Use Project - Aerial View



BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

BUILD: | SOM | BIONIC | GEHL | SDE | BKF | A10

Exhibit C6: India Basin Mixed-Use Project



BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

Cove Terrace

BUILD: | SOM | BIONIC | GEHL | SDE | BKF | A10

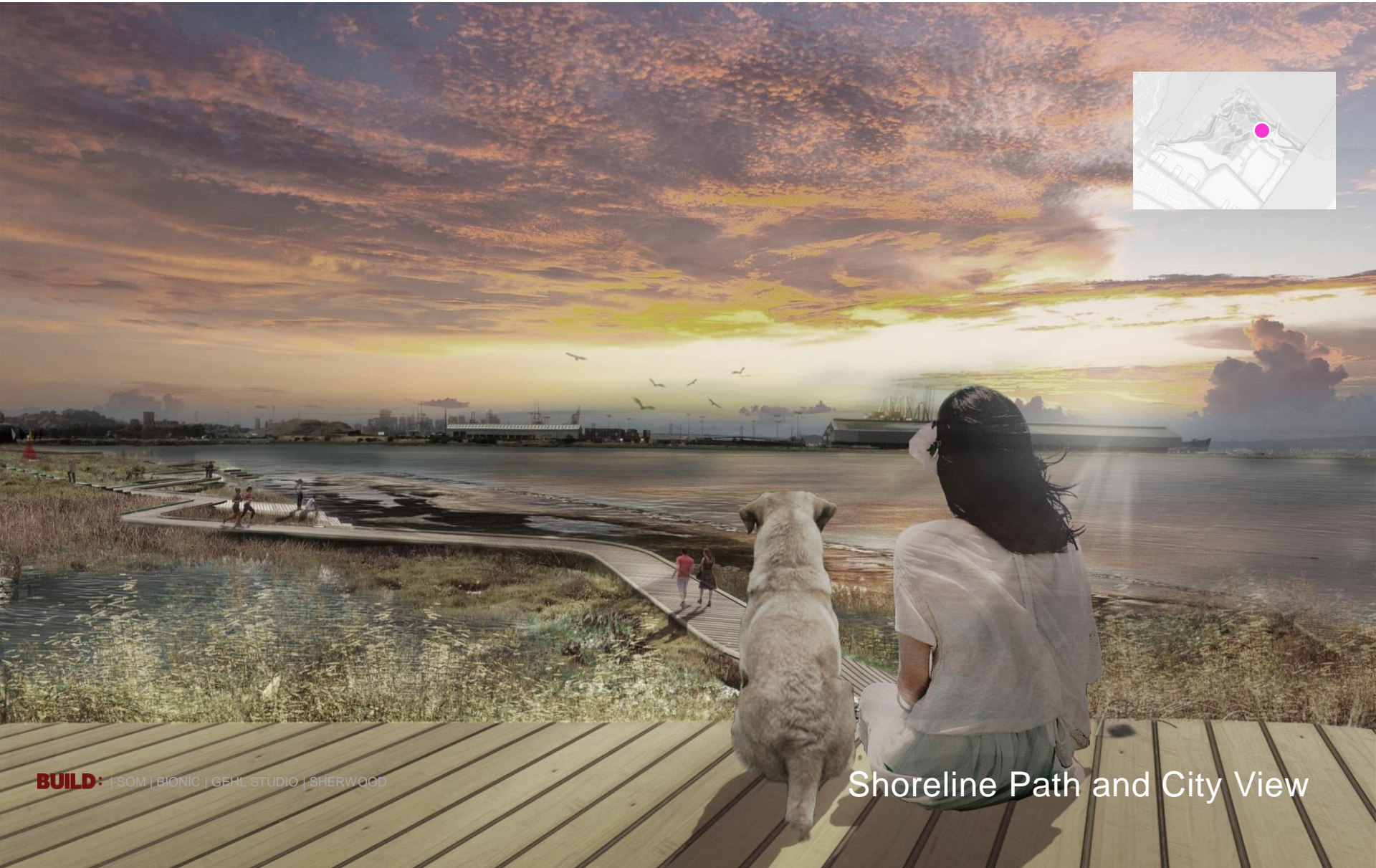
Exhibit C7: India Basin Mixed-Use Project



BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

Big Green Hiking Trail

Exhibit C8: India Basin Mixed-Use Project



BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

Shoreline Path and City View

BUILD: | SOM | BIONIC | GEHL | SDE | BKF | A10

Exhibit C9: India Basin Mixed-Use Project



BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

Shoreline Perched Beach

BUILD: | SOM | BIONIC | GEHL | SDE | BKF | A10

Exhibit C10: India Basin Mixed-Use Project



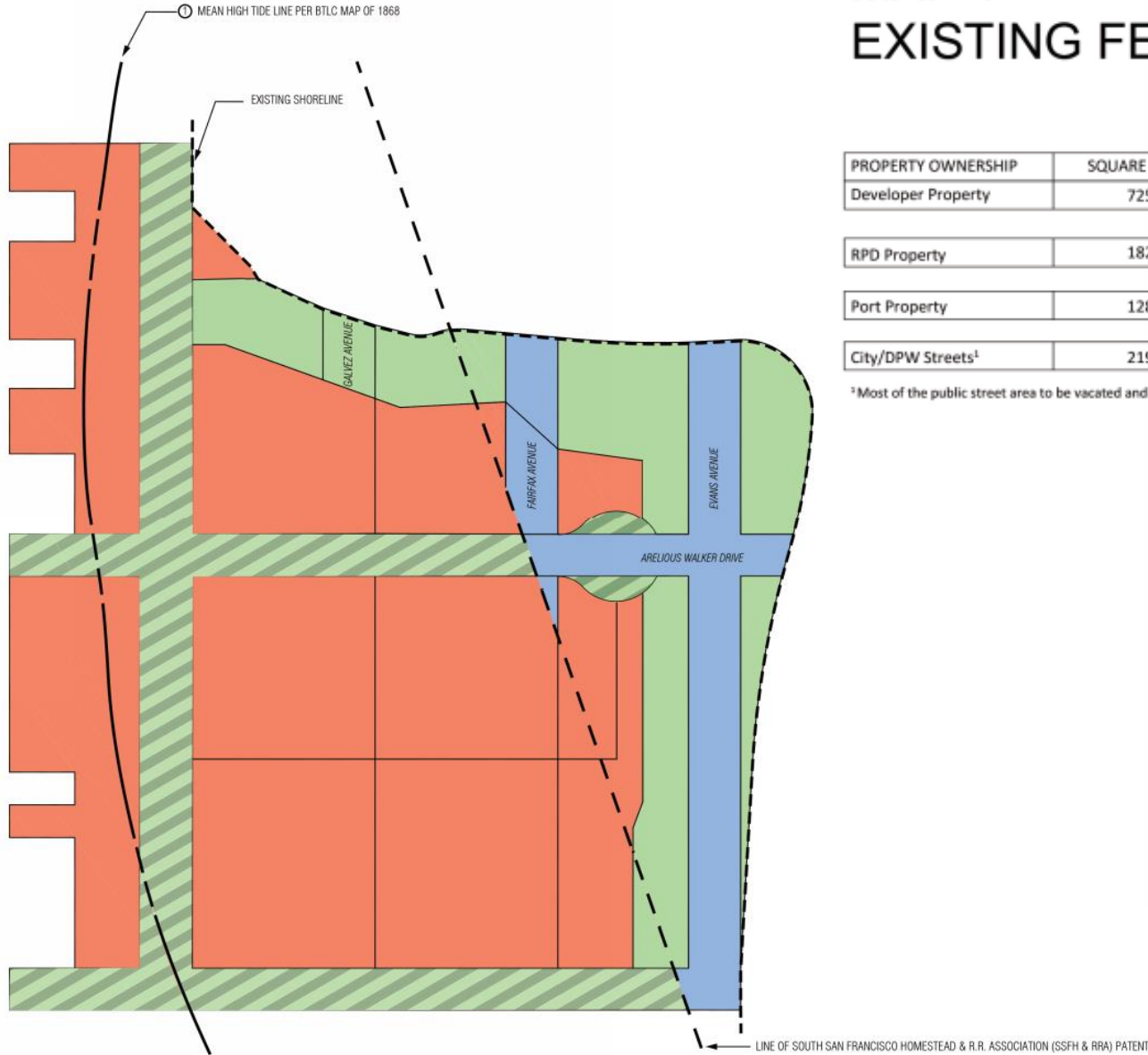
BUILD: | SOM | BIONIC | GEHL STUDIO | SHERWOOD

Beach & Kayak Launch

BUILD: | SOM | BIONIC | GEHL | SDE | BKF | A10

Exhibit D1: Pre-Trust Exchange Ownership

MAP 1 EXISTING FEE OWNERSHIP



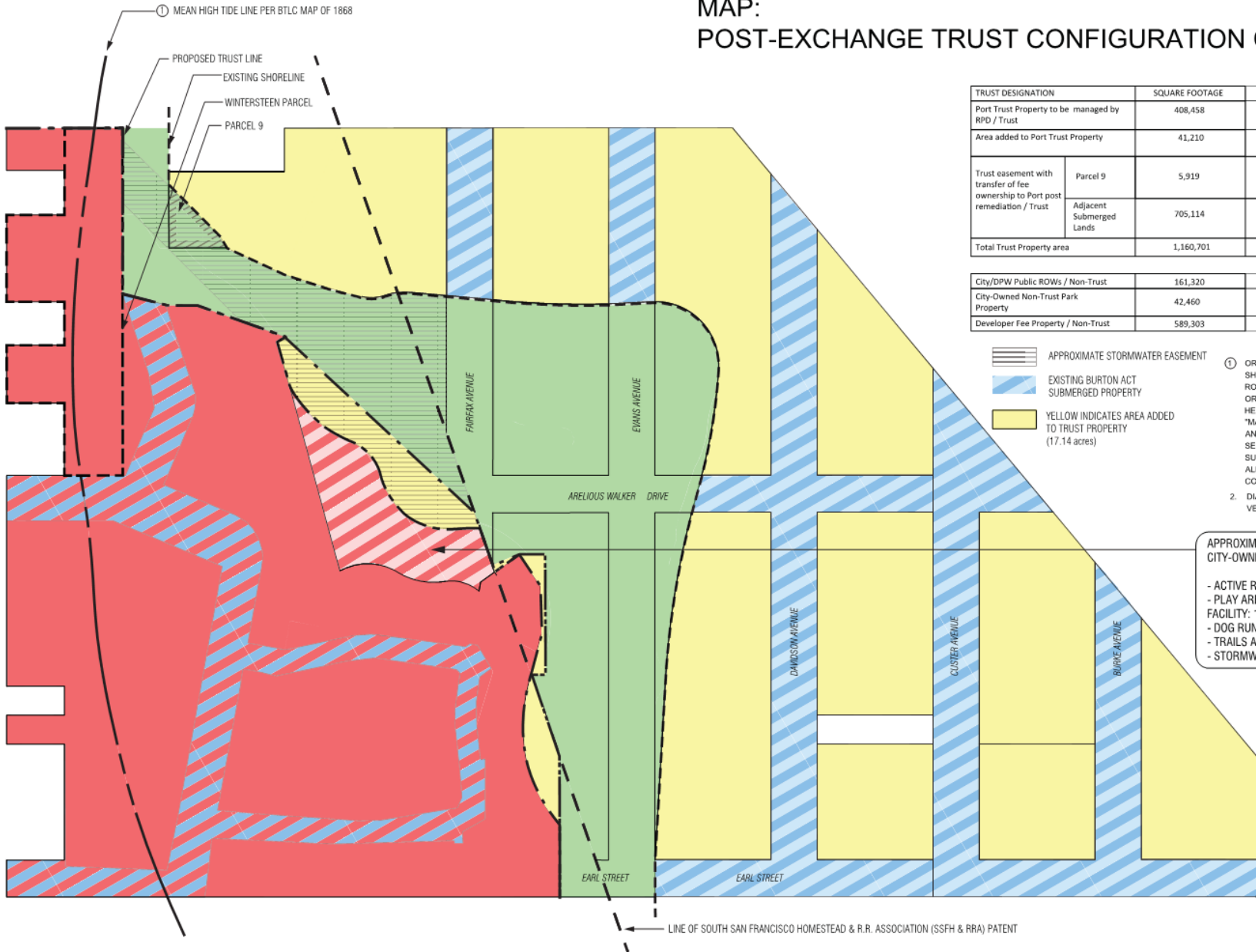
PROPERTY OWNERSHIP	SQUARE FOOTAGE	ACREAGE	MAP ID
Developer Property	725,479.95	16.65	
RPD Property	182,776.842	4.196	
Port Property	128,016.382	2.939	
City/DPW Streets ¹	219,765.442	5.046	

¹Most of the public street area to be vacated and conveyed to Build in accordance with the Development Agreement.

- ① ORIGINAL HIGH TIDE LINE (O.H.T.L.) OF 1868 SHOWN HEREON IS AS TRACED BY MARTIN M. ROD ASSOCIATES AS OF 6/11/15 PER NOTE: ORDINARY HIGH TIDE LINE OF 1868 SHOWN HEREON IS SCALED FROM THE MAP ENTITLED "MAP OF THE SALT MARSH AND TIDELANDS AND LANDS LYING UNDER WATER, SOUTH OF SECOND STREET." SAID TIDE LINE WAS SURVEYED UNDER THE DIRECTION OF GEO. F. ALLARDT, COMMENCING IN 1868 AND COMPLETE IN JANUARY 1869. FIELD VERIFY.
2. SF PORT AUTHORITY JURISDICTION LINE, PROPERTY LINES, AND PARCEL NUMBERS
3. DIAGRAM FOR REFERENCE ONLY. FIELD VERIFY ALL ELEMENTS.

Exhibit D2: Post-Exchange Trust Configuration

MAP: POST-EXCHANGE TRUST CONFIGURATION COMPARISON



TRUST DESIGNATION	SQUARE FOOTAGE	ACREAGE	MAP ID
Port Trust Property to be managed by RPD / Trust	408,458	9.38	
Area added to Port Trust Property	41,210	0.95	
Trust easement with transfer of fee ownership to Port post remediation / Trust	Parcel 9	5,919	0.14
	Adjacent Submerged Lands	705,114	16.19
Total Trust Property area	1,160,701	26.65	

City/DPW Public ROWs / Non-Trust	161,320	3.70	
City-Owned Non-Trust Park Property	42,460	0.97	
Developer Fee Property / Non-Trust	589,303	13.53	

- APPROXIMATE STORMWATER EASEMENT
- EXISTING BURTON ACT SUBMERGED PROPERTY
- YELLOW INDICATES AREA ADDED TO TRUST PROPERTY (17.14 acres)

- ① ORIGINAL HIGH TIDE LINE (O.H.T.L.) OF 1868 SHOWN HEREON IS AS TRACED BY MARTIN M. RON ASSOCIATES AS OF 6/11/15 PER NOTE: ORDINARY HIGH TIDE LINE OF 1868 SHOWN HEREON IS SCALED FROM THE MAP ENTITLED "MAP OF THE SALT MARSH AND TIDELANDS AND LANDS LYING UNDER WATER, SOUTH OF SECOND STREET," SAID TIDE LINE WAS SURVEYED UNDER THE DIRECTION OF GEO. F. ALLARDT, COMMENCING IN 1868 AND COMPLETE IN JANUARY 1869. FIELD VERIFY.
2. DIAGRAM FOR REFERENCE ONLY. FIELD VERIFY ALL ELEMENTS.

- APPROXIMATE ACREAGE OF USES WITHIN CITY-OWNED NON-TRUST PARK PROPERTY:
- ACTIVE RECREATION LAWN: 13,000 SF
 - PLAY AREA FOR ADJACENT CHILDCARE FACILITY: 10,500 SF
 - DOG RUN: 9,000 SF
 - TRAILS AND ACCESS WALKWAYS: 1,760 SF
 - STORMWATER TREATMENT CELL: 8,200 SF



PROJECT ID | BE 1401
DATE | 10.15.2018

CLIENT | BUILD INC.



LINE OF SOUTH SAN FRANCISCO HOMESTEAD & R.R. ASSOCIATION (SSFH & RRA) PATENT

Exhibit E: Phasing Plan

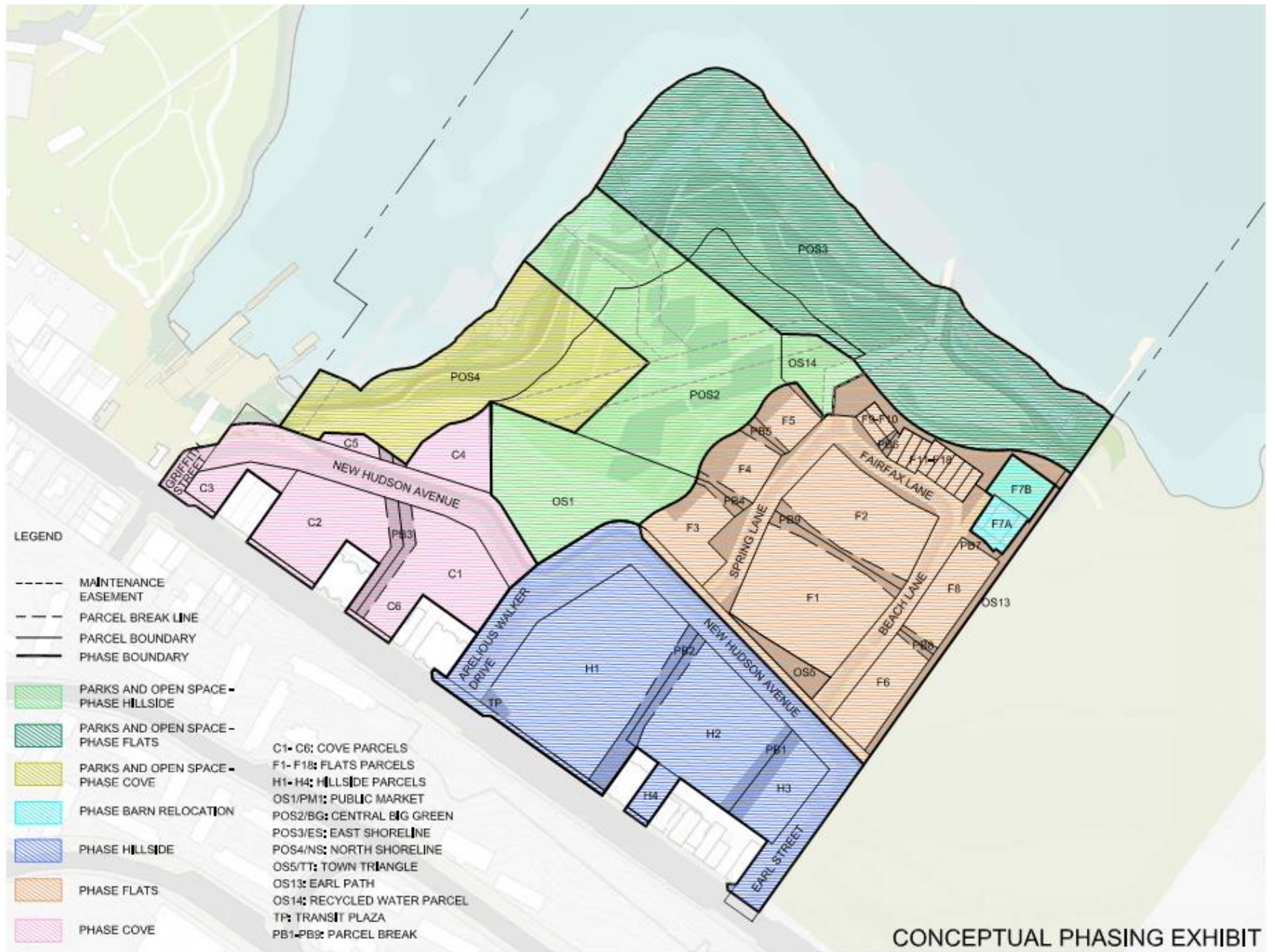


Exhibit F

Form Declaration of Open Space Covenant

Port/RPD Open Space Covenant

WHEN RECORDED MAIL TO:

City and County of San Francisco
Department of Real Estate
25 Van Ness Avenue, Suite 400
San Francisco, California 94112

Free recording requested pursuant to
Government Code Section 27383 by the
City and County of San Francisco

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DECLARATION OF OPEN SPACE COVENANT

This Declaration of Open Space Covenant (this “Declaration”) is made as of [date], 2018, by the City and County of San Francisco, a municipal corporation (the “City”), acting by and through the Department of Real Estate, the Recreation and Park Commission (“RPD”) and the Port Commission (“the Port”).

The City owns various open space parcels commonly known as 900 Innes Avenue, India Basin Shoreline Park and the India Basin Open Space. In connection with a mixed use development project including approximately [XXX] residences (the “Project”), India Basin Investment LLC, a California limited liability company (“Master Developer”), has conveyed or will convey approximately [__] acres of land to the City to facilitate the improvement and expansion of these open space parcels. The City intends to create an integrated waterfront park, including both land previously owned by the City as well as land dedicated to the City by Master Developer, as generally shown in Exhibit A (the “India Basin Park”).

In connection with the Project, the City entered into a Public Trust Exchange and Title Settlement Agreement [dated XXXX] with the State of California and recorded as Document No. [____] on [_____] (the “Exchange Agreement”) to place the public trust for purposes of commerce, navigation and fisheries (the “Public Trust”) on certain public property and to remove the Public Trust and any Public Trust claims from certain development parcels retained by Developer. Under the Exchange Agreement, the City is placing the Public Trust on that portion of the India Basin Park property described in Exhibit B (the “Land”).

The City makes this Declaration to ensure that the Land continues as park and open space subject to the Public Trust in perpetuity, and to confirm the role of RPD and the Port in the use, operation and maintenance of the Land.

The City declares that the Land will be subject to the following restrictions:

1. As part of the Project, the Land shall be improved and become a part of the India Basin Park. The City agrees to maintain the Land as park and open space, subject to the Public Trust. Port shall be trustee of the Public Trust, with the right to ensure that all uses and

operations are consistent with the Public Trust. Non-recreational uses of the Land shall not be allowed except to the extent consistent with the City's Charter and the Public Trust.

2. RPD shall operate and maintain the India Basin Park, including the Land. RPD shall have the right to enter into management, landscaping, programming and other contracts relating to the Land or to perform such work directly by RPD staff. Any City liability and all funding for India Basin Park maintenance and operations shall be held and managed by and through RPD.
3. If RPD proposes material alterations to the Land or to uses of the Land, RPD shall notify the Port of the proposed alterations or uses so as to give the Port an opportunity to ensure that the alterations or uses, as applicable, are consistent with the Public Trust. The Port may not object to any alteration or use except to the extent it is inconsistent with the Public Trust.
4. Upon the Port's request, RPD staff will provide such information as may be requested by the Port to verify that the uses and operations of the Land are not inconsistent with the Public Trust. RPD staff and Port staff shall meet and confer as needed to ensure the requirements of this Declaration are being satisfied at all times.
5. This Declaration shall remain in effect unless terminated by the City. This Declaration cannot be amended or terminated without the prior consent of the RPD Commission, the Port Commission, and the City's Board of Supervisors, each in their sole discretion following a duly noticed public hearing.
6. This Declaration constitutes a covenant that runs with the Land, binding all future owners and users of the Land, unless expressly terminated as set forth above.
7. Nothing in this Declaration shall be deemed to be a gift to the general public or to give any person or entity, other than the City, the right to enforce this Declaration. There are no third party beneficiaries to this Declaration. Any enforcement shall be by specific performance, without the right to monetary damages or compensation.
8. This Declaration shall be governed by, and construed in accordance with, the laws of the State of California and the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, operating by and through the
Department of Real Estate Real Estate

By: _____
Andrico Penick, Director of Property

Authorized by Board of Supervisors Resolution No. __
Adopted _____, 2018

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, operating by and through the San
Francisco Port Commission

By: _____
Elaine Forbes, Executive Director

Authorized by Port Resolution No. _____
Adopted _____, 2018

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
San Francisco Recreation and Park Commission

By: _____
Phil Ginsburg, Executive Director

Authorized by RPD Resolution No. _____
Adopted _____, 2018

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Deputy City Attorney

Exhibit G

Form of Trust Exchange Agreement

CITY/BUILD DRAFT 10-11-18

**Recorded at the Request of and
When Recorded Mail to:**

Andrew Kershen
Legal Department
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

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

[Space Above for Recorder’s Use]

SLC File No.: _____
APNs: _____

**PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR INDIA
BASIN**

This PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR INDIA BASIN (**Agreement**) is dated for reference as of _____, 2018. The parties to the Agreement are the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION (**Commission**), the CITY AND COUNTY OF SAN FRANCISCO, a charter City (**City**), the CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION (Port), as a trustee under Chapter 1333 of the Statutes of 1968 (as amended, **Burton Act**), and INDIA BASIN INVESTMENT LLC, a California limited liability company (**Developer**). The Commission, City, Port and Developer are each a “Party” and are referred to together as the “Parties.” This Agreement is entered into pursuant to Section 5 of Chapter 310 of the Statutes of 1987 (**Chapter 310**).

RECITALS

A. This Agreement concerns approximately 29 acres of land situated within and adjacent to the area commonly known as India Basin (**Project Area**), as more particularly shown on Exhibit A attached hereto, together with certain submerged lands adjacent to the Project Area (**Adjacent Submerged Lands**), as more particularly shown on Exhibit A. The Project Area consists in part of former tide and submerged lands (collectively “**tidelands**”) that have been filled and reclaimed that are subject to the common law public trust for commerce, navigation, and fisheries (**Public Trust**), filled and reclaimed tidelands in which the Public Trust status is uncertain, and filled and reclaimed tidelands and uplands that are not subject to the Public Trust. The existence of the Public Trust on the Adjacent Submerged Lands is also in dispute. The purpose of this Agreement is to settle certain boundary and title disputes related to the Public Trust within the Project Area and the Adjacent Submerged Lands and to establish and

CITY/BUILD DRAFT 10-11-18

reconfigure the location of lands subject to the Public Trust and lands free of the Public Trust within the Project Area, through the conveyances provided for in this Agreement, subject to the terms and conditions of this Agreement.

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

C. The extent to which the Project Area and the Adjacent Submerged Lands may be subject to the Public Trust is uncertain and subject to dispute, the resolution of which would require extensive land title and boundary litigation at great public expense. The circumstances giving rise to the Public Trust title uncertainty include the following:

1. Upon its admission to the Union on September 9, 1850, the State of California (**State**), by virtue of its sovereignty, received all right, title, and interest in the tidelands within its boundaries up to the ordinary high water mark, subject to the Public Trust. The Project Area includes lands that were tidelands at statehood, subject to the Public Trust. The Project Area also includes lands that were above the ordinary high water mark at statehood, and were, therefore, not subject to the Public Trust.

2. Most of the former and current tidelands within the Project Area were granted by the State into private ownership in the 1800s. Chapter 325 of the Statutes of 1863 authorized the Commissioners of Swamp and Overflowed Lands to sell certain State-owned lands waterward of Hunters Point, including a portion of the Project Area, to the South San Francisco Homestead and Railroad Association (**SSF Homestead**).

3. Chapter 543 of the Statutes of 1868 authorized the Board of Tide Land Commissioners (**BTLC**) to auction into private ownership additional State-owned tidelands in the southern portion of the City, including portions of the Project Area, but reserving to the State certain mapped streets (**paper streets**) and other areas reserved for public purposes.

4. Developer presently owns certain former tidelands within the Project Area and the Adjacent Submerged Lands. Developer’s title derives from grants of those lands by State into private ownership pursuant to these early statutes and from the conveyance by the City of portions of vacated streets as described in this Recital C(4) below. Developer also owns certain historic uplands within the Project Area. The lands owned by Developer (or to be acquired by Developer prior to closing) within the Project Area are described and depicted for illustrative purposes in Exhibit D (**Developer-Owned Exchange Lands**). As shown on Exhibit D, the Developer-Owned Exchange Lands include (1) lands currently owned by Developer, (2) any portions of Hudson Avenue, Arelious Walker Drive, and Earl Street that have been vacated by the City and conveyed to Developer as of the date of the initial closing of the trust exchange contemplated under this Agreement (**Street Vacation Parcels**) and (3) a parcel that Developer may acquire in the future under an existing Option to Purchase (**Wintersteen Option Parcel**). Because conveyances to Developer of the Wintersteen Option Parcel may occur after the initial

CITY/BUILD DRAFT 10-11-18

closing of the trust exchange contemplated under this Agreement, this Agreement allows for a subsequent closing that will terminate the trust on the Wintersteen Option Parcel when acquired by Developer. In addition, a small portion of the Exchange Lands to be exchanged into the Trust and currently owned by Developer (as shown on Exhibit D, Parcel 9), and the Adjacent Submerged Lands, may require further remediation. This Agreement allows for the recordation of a public trust easement over Parcel 9 and the Adjacent Submerged Lands in favor of the State at the initial closing, followed by one or more subsequent closings that will convey Parcel 9 to the City subject to the Trust following remediation, and that will convey portions of Adjacent Submerged Lands to the City subject to the Trust following certain findings by the Commission and the Port as to the physical condition and suitability of the property.

5. Pursuant to the Burton Act, the State granted to the City the State's sovereign right, title and interest in certain tidelands within the boundaries of the City, to be held in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in the Burton Act (**Burton Act Trust**). The Burton Act Trust and the Public Trust are collectively referred to herein as the "**Trust.**" As required by the Burton Act, the granted lands are under the administration and control of the City acting by and through the Port. The granted lands held by the Port include certain paper streets within the Project Area mapped by the BTLC.

6. In 1986, in exchange for the City's vacation and conveyance to Developer's predecessor of certain public rights-of-way within the Project Area, the City acquired approximately 10 acres of privately owned lands within the Project Area for streets and a shoreline park. The park lands acquired by the City consist of lands previously granted into private ownership under Chapter 543 of the Statutes of 1868 and comprise the India Basin Open Space. These park lands are under the jurisdiction of the City acting by and through the San Francisco Recreation and Park Commission (**RecPark**). The streets owned by the City (other than the Burton Act streets) are managed by San Francisco Public Works (**SFPW**).

D. The historic conveyances of the State's tidelands into private ownership and the partial reclamation of those lands has created substantial uncertainty as to the present configuration of Trust lands within the Project Area. The Trust status of the lands originally conveyed to SSF Homestead, and of the lands conveyed by the BTLC that were never filled and reclaimed, is in dispute. In addition, the lands conveyed by the BTLC that have been filled and reclaimed, including much of the present waterfront, are free of the Trust by application of the decision of the California Supreme Court in *City of Berkeley v. Superior Court* (1980) 26 Cal. 3d 515. As a result, within the Project Area, large portions of the shoreline are free of the Trust or have disputed Trust status, and the majority of the submerged lands are in private ownership with disputed Trust status. The Trust lands held by the Port consist primarily of paper street fragments within the India Basin Open Space and are separated by non-trust blocks. The SSF Homestead lands are mostly cut off from the water and are not useful for Trust purposes but cannot be developed without resolution of Trust title issues.

E. Developer has proposed a development plan for the Project Area (**Project**) that includes contributing private land to expand India Basin Open Space into a major waterfront park (**India Basin Park**), with connections to India Basin Shoreline Park and the historic Shipwright's Cottage to the north, and to the future Northside Park in the former Hunters Point

CITY/BUILD DRAFT 10-11-18

Shipyards to the south. The Project requires the Developer to construct a network of new and improved parks and open spaces within the Project Area that will draw visitors to the immediately adjacent waterfront. The Project would also extend the Blue Greenway portion of the San Francisco Bay Trail, which connects China Basin to Candlestick Point, to include pedestrian and bicycle connections to and along the shoreline. Outside of India Basin Park, the Project would include development of a mixed-use project that would allow for residential, commercial, institutional, and recreational and art uses, and include space for a new childcare facility, grocery store, and community center. The Project will provide protections against sea level rise and fund the ongoing maintenance of the India Basin Park, 900 Innes, and India Basin Shoreline Park in perpetuity through a Community Facilities District. The City has approved a development agreement for the Project (**Development Agreement**), authorizing development of the Project and related conveyances of land that will require implementation of the exchange authorized herein.

F. Chapter 310 authorizes the City, subject to Commission approval, to exchange City property subject to the Trust for property not subject to the Trust if the City and the Commission determine that the land to be exchanged out of the Trust: (1) has been filled and reclaimed; (2) is cut off from access to the waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be removed from the Trust without causing any substantial interference with Trust uses and purposes. In addition, the land to be exchanged into the Trust must have an economic value equal to or greater than the economic value of land to be exchanged out of the Trust. This Agreement sets forth the procedures for and the terms of an exchange pursuant to Chapter 310. The findings made in support of this Agreement are in accordance with Chapter 310.

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

H. The exchange will place or confirm in the Trust all of the shoreline lands comprising the Project Area (approximately __ acres) and will terminate the Trust in approximately __ acres of former tidelands within the Project Area that have been filled and reclaimed, are cut off from access to the waterfront, and are no longer needed for Trust purposes. None of the Trust Termination Lands are lands granted to the City by the State. All of the Trust Termination Lands are lands previously conveyed by the State to private parties, some of which were later acquired by the City. The Parties dispute the Trust status of the Trust Termination Lands and the Parties wish to settle their claims pursuant to the exchanges contemplated by this Agreement.

I. The Parties have conducted independent studies and evaluations of the title evidence, the principles of law, and the merits of their legal positions. The Commission has reviewed an appraisal and other information prepared to analyze monetary value of the Trust Termination Lands and the Trust Addition Lands and has reached an independent conclusion

CITY/BUILD DRAFT 10-11-18

regarding the economic value of these properties. The monetary value of land or interests in land to be received as Trust Addition Lands is equal to or greater than the monetary value of the land or interests in land to be given in the Trust Termination Lands.

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

1. City will convey to the Commission all of its right, title and interest in the Exchange Lands by quitclaim deed;
2. Developer will convey to the Commission all of its right title and interest in the Developer-Owned Exchange Lands by quitclaim deed;
3. After accepting the above conveyances, the Commission will convey to City all of its right title and interest in the Trust Addition Lands, subject to the Trust; and
4. After accepting the above conveyances, the Commission will convey by patent the Trust Termination Lands to Developer in part, and to the City in part, free of the Trust.

K. The San Francisco Board of Supervisors, by Ordinance _____, adopted on _____, approved this Agreement and authorized the Port, RecPark and the Director of Real Estate to enter into this Agreement on behalf of the City. The San Francisco Port Commission approved this agreement by Resolution _____ adopted on _____. The San Francisco Recreation and Park Commission approved this agreement by Resolution _____ adopted on _____. The Commission approved this Agreement at its meeting of _____.

AGREEMENT

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

1. Conveyances to Effectuate Exchange. Subject to the conditions of closing and other terms and conditions of this Agreement, the Parties shall make the following conveyances of property:
 - a. City and Port Conveyance to State. City and Port shall convey, remise, release, and forever quitclaim to the Commission all of City's and Port's right, title, and interest, including any right, title and interest held in trust pursuant to the Burton Act, in the Exchange Lands. The conveyance shall be by Quitclaim Deed in the form of Exhibit E (Form of City and Port Quitclaim Deed).
 - b. Developer Conveyance to State. Developer shall convey, remise, release, and forever quitclaim to the Commission all of Developer's right, title, and interest in the Developer-Owned Exchange Lands, which conveyance shall be by quitclaim deed in the form of Exhibit F (Form of Developer Quitclaim Deed). If the Street Vacation Parcels have not been conveyed to Developer as of the date of the Initial Closing Phase described in Section 2 below, then the Street Vacation Parcels will not be excluded from the Developer-Owned Exchange

CITY/BUILD DRAFT 10-11-18

Lands, but will be included in the Exchange Lands conveyed by the City under Section 1.a above.

c. State Conveyance of Trust Addition Lands to City. Upon accepting the Trust Addition Lands, the Commission shall convey, remise, release, and forever quitclaim, in trust, to the Port all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in the Trust Addition Lands, which conveyance shall be by Patent in the form of Exhibit G (Form of Public Trust Patent), and the lands conveyed shall be held by Port as sovereign lands subject to the Trust.

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

e. State Conveyance of City Trust Termination Lands to City. Upon accepting the Trust Termination Lands, the Commission shall convey, remise, release, and forever quitclaim to City all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in that portion of the Trust Termination Lands to be owned by City (**City Trust Termination Lands**), which conveyance shall be by Patent in the form of Exhibit I, and shall specifically release and terminate any Trust interest in the lands conveyed, and these lands shall be held by the City's Real Estate Division free of the Trust.

2. Conveyance Order and Phasing.

a. The conveyances listed in Section 1 shall be effected as a single closing phase, or multiple closing phases, as described in this Section 2. At a minimum, the first closing phase (**Initial Closing Phase**) will include all Exchange Lands other than the Wintersteen Option Parcel, Parcel 9 and the Adjacent Submerged Lands.

b. If the Wintersteen Option Parcel has not yet been conveyed to Developer at the time of the Initial Closing Phase, then a subsequent closing phase will occur on or after the date that Developer acquires title to the Wintersteen Option Parcel, in which the Wintersteen Option Parcel shall be conveyed in accordance with the procedures under Section 1.a (City Conveyance to State); 1.b (Developer Conveyance to State); and 1.d (State Conveyance of Developer Trust Termination Lands to Developer).

c. As to any portion of Parcel 9 or the Adjacent Submerged Lands for which the Commission has made the findings set forth in Section 8.b prior to the Initial Closing Phase, those lands shall be exchanged into the Trust as part of the Initial Closing Phase. As to any other portion of Parcel 9 or the Adjacent Submerged Lands, Developer will record a public trust easement in accordance with Section 8.a in favor of the State, followed by one or more subsequent closings that will occur on or after the date on which the Commission makes the findings set forth in Section 8.b, in which the lands for which the findings have been made shall be conveyed in accordance with the procedures under Section 1.a (City Conveyance to State);

CITY/BUILD DRAFT 10-11-18

1.b (Developer Conveyance to State); and 1.c (State Conveyance of Trust Addition Lands to City).

d. Each conveyance above shall be recorded in the public records of the City and County of San Francisco (**Public Records**) sequentially and on the same day.

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

4. Commission Findings. The Commission, effective upon recordation of this Agreement, makes the following findings as required by Chapter 310 and to comply with Article X section 3 of the California Constitution:

a. The Trust Termination Lands have been filled and reclaimed and are cut off from access to the waters of San Francisco Bay

b. The lands or interests in lands in which the Trust will be terminated constitute a relatively small portion of the lands granted to the City and County of San Francisco and are no longer is needed or required for the promotion of the Trust.

c. No substantial interference with Trust uses and purposes will ensue by virtue of the exchange.

d. The lands or interests in lands to be impressed with the Trust have an economic value equal to or greater than that of the lands or interests in lands removed from the Trust.

5. Additional Findings. The Commission, effective upon execution and recordation of this Agreement, has made findings that there are title and boundary disputes over the Project Area and the Adjacent Submerged Lands. This Agreement is in settlement of a title and boundary problem and is therefore exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.11. The City has also completed a Final Environmental Impact Report for the Project, which was certified by the San Francisco Planning Commission on July 26, 2018 (Planning Department Case No. 2014-002541ENV; State Clearinghouse No. 2016062003) (**India Basin EIR**).

CITY/BUILD DRAFT 10-11-18

6. Closing. “**Closing**” or “**Closing Date**” shall mean the date that this Agreement (if not previously recorded) and the conveyances described in Section 1 above are recorded in the Public Records. If the Closing occurs in two or more phases, then each date of closing will be considered a “Closing” or Closing Date.” The Closing shall be consummated through the offices of [**Chicago Title; address**] (**Title Company**), Escrow No. [_____], attention [_____] (the “**Escrow**”). Upon satisfaction of all pre-conditions to Closing required pursuant to the Development Agreement, Developer and City shall establish an escrow with the Title Company and City shall provide written notice to the Executive Officer of the Commission and designated representative of Developer (**Closing Notice**). The Closing Notice shall include a list of all documents required to close escrow with required signatories indicated, and drafts of all deeds, instruments, certificates of acceptance, title commitments, and other documents that are required for the closing and are within City’s and/or Developer’s responsibility and control. The Parties shall use commercially reasonable efforts to close within 90 days of receipt of the notice.

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

a. The City and Port (with the consent of Developer if the adjustment would affect the boundary line of property to be conveyed to Developer), may request from the Executive Officer approval of a Parcel Boundary Adjustment. The City, Port, or Developer shall provide the Executive Officer with any maps, legal descriptions, surveys, or other information necessary to review the proposed Parcel Boundary Adjustment. The Executive Officer shall approve the Parcel Boundary Adjustment if he or she finds in his or her sole discretion that the Parcel Boundary Adjustment would not constitute a material change in parcel boundaries. If the Executive Officer determines that the proposed Parcel Boundary Adjustment would constitute a material change in parcel boundaries, he or she shall refer the Parcel Boundary Adjustment to the Commission, whose consideration of the referral shall proceed pursuant to Section 7.b.

b. The Commission may approve a Parcel Boundary Adjustment if it determines that the Parcel Boundary Adjustment, based on final legal descriptions, would not constitute a material change in parcel boundaries, or would constitute a material change in parcel boundaries but the Commission makes the findings set out in Section 4 of this Agreement as to the revised Trust configuration. The Commission shall not unreasonably delay or withhold its approval, subject to the required findings.

c. Following Executive Officer or Commission approval, City, Port, Developer, and Commission staff shall cooperate in the actions necessary to effectuate the Parcel

CITY/BUILD DRAFT 10-11-18

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

8. Public Trust Easement; Reserved Easements.

a. Public Trust Easement. Upon the initial Closing, Developer shall convey a public trust easement over any portion of Parcel 9 or the Adjacent Submerged Lands for which the Commission has not made the findings set forth in Section 8.b prior to the Initial Closing Phase (collectively, the **Public Trust Easement Parcels**). The form of the Public Trust Easement will be substantially in the form of the Grant Deed attached hereto as Exhibit K.

b. Conveyance of Fee in Public Trust Easement Parcels. From and after the Initial Closing Phase, upon receipt of the Executive Officer's written request following a finding by the Commission that (i) Parcel 9 has been fully remediated as evidenced by a no further action letter from the Director of the San Francisco Department of Public Health determining that the mitigation measures in a site mitigation plan (**SMP**) have been completed in compliance with Article 22A of the San Francisco Health Code, or (ii) a portion of Parcel 9 or the Adjacent Submerged Lands is suitable to be conveyed in fee, and subject to the Executive Officer's and the Port's approval of the physical and legal condition and condition of title of the lands to be conveyed and the other conditions of closing set forth in this Agreement, the applicable portion of Parcel 9 or the Adjacent Submerged Lands will be conveyed as Trust Addition Lands in accordance with the procedures under Section 1.a (City Conveyance to State); 1.b (Developer Conveyance to State); and 1.c (State Conveyance of Trust Addition Lands to City), and upon such conveyance the Public Trust Easement shall terminate as to the lands conveyed. impressed with the Trust. The Trust shall be impressed or confirmed on the applicable portion of Parcel 9 or the Adjacent Submerged Lands in one or more closings in accordance with Section 2(c), the applicable reasonably cooperate with the Commission to take all necessary actions to impress Trust on, City and Parcel 9 and Adjacent Submerged Lands.

c. Reserved Easements. The Parties acknowledge that prior to conveyance to the Commission, certain portions of the Trust Addition Lands may be conveyed subject to an easement benefitting Developer's retained lands that will allow the use of such portions to be used for stormwater collection, treatment and outfall, and wetlands mitigation, provided that such use will not interfere with the public park and open space purposes for which the easement area is intended. The proposed easement area is generally shown on the Map attached hereto entitled "Post-Exchange Trust Configuration Overlay," but will not include areas already under Port jurisdiction, and will be in such form as is reasonably approved by the Parties.

9. Conditions Precedent to Closing.

a. Legal Descriptions. It is a condition precedent to a Party's obligation to close escrow for the conveyance or acceptance of real property that the Party has approved the

CITY/BUILD DRAFT 10-11-18

legal description for the real property, which approval shall not be unreasonably withheld. For the Commission, the Executive Officer may grant such approval; for City, the Director of Real Estate may grant such approval; for the Port, the Executive Director may grant such approval.

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

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

ii. The physical condition of the Trust Addition Lands to be conveyed in the Closing, which may include, without limitation, a determination that work on the Trust Addition Lands is subject to the enforceable mitigation measures and project components prescribed in the India Basin EIR regarding Hazardous Substances, including measures that require Developer to: (1) prepare and implement an SMP for areas above the mean high-water line where development activities involving subsurface disturbance will occur; (2) prepare and implement a Nearshore Sediment and Materials Management Plan for areas below the mean high-water line for any work bayward of the mean high-water line; and (3) take all required remedial action identified in the foregoing plans to protect human health and the environment with respect to Hazardous Substances in compliance with applicable Environmental Law. For purposes of this Agreement: (1) "**Hazardous Substances**" shall mean any substance which is defined or regulated under any Environmental Law; and (2) "**Environmental Law**" shall mean all present and future federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals, authorizations and similar requirements pertaining to the protection of human health and safety or the environment.

iii. The Record of Survey described in Section 12 of this Agreement.

c. City's and Port's Closing Conditions. As a condition precedent to City's and Port's obligation to close escrow, all of the following shall have occurred:

i. The Executive Director of the Port and the General Manager of RecPark each shall have approved the matters described in Sections 9(b)(i) through (iii) above.

ii. Developer shall have satisfied all conditions precedent to the City's obligation to close on the exchange as set forth in the Development Agreement, and Developer shall not be in default under the Development Agreement.

d. Developer's Closing Conditions. As a condition precedent to the Developer's obligation to close escrow, City shall have satisfied all conditions precedent to Developer's obligation to close on the exchange as set forth in the Development Agreement, and City shall not be in default under the Development Agreement.

10. Deposits into Escrow.

a. Commission Deposits. At least two (2) business days prior to the Closing, the Commission shall deposit the following documents into escrow:

CITY/BUILD DRAFT 10-11-18

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

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

iii. A duly signed and attested patent in the form of Exhibit H, transferring to the Developer the Developer Trust Termination Lands, free of the Trust;

iv. A duly signed and attested patent in the form of Exhibit I, transferring to the City the City Trust Termination Lands, free of the Trust; and

v. A duly signed and attested patent in the form of Exhibit G transferring to Port the Trust Addition Lands, subject to the Trust.

b. City and Port Deposits. At least two (2) business days prior to the Closing, City and Port shall deposit the following documents into escrow:

i. Certified copies of Board of Supervisors [**Ordinance/Reso**] _____ adopted on _____, 2018, Port Commission Resolution _____ adopted on _____, 2018, and Recreation and Parks Commission Resolution _____, adopted on _____, 2018, each authorizing entry into this Agreement; and

ii. A duly signed and acknowledged quitclaim deed from City in the form of Exhibit E, transferring to the Commission all of City's right, title and interest in the Exchange Lands, including any interest held by the City as trustee under the Burton Act.

iii. An open space covenant in the form of Exhibit J governing Rec Park operation and management of the Public Trust Lands for park and open space use.

c. Developer Deposits. At least two (2) business days prior to the Closing, Developer shall deposit the following documents into escrow:

i. A duly signed and acknowledged quitclaim deed from Developer in the form of Exhibit F, transferring to the Commission all of Developer's right, title and interest in the Developer-Owned Exchange Lands;

ii. A duly signed and acknowledged Public Trust Easement Grant Deed substantially in the form of Exhibit K, conveying to the State a public trust easement in the Public Trust Easement Parcels; and

iii. Pro forma CLTA title insurance commitments for the Trust Addition Lands, in a form and with coverage amounts approved by the Commission.

d. All patents, quitclaim deeds, and grant deeds deposited into escrow which name either City, Port, or the Commission as grantee shall include a certificate of acceptance

CITY/BUILD DRAFT 10-11-18

duly executed by the grantee (which certificate may be deposited into escrow separately by the grantee), the appropriate attestations or acknowledgments, and any ancillary documents required by state law or the City's Assessor-Recorder, such as an executed Transfer Tax Affidavits and executed Preliminary Changes of Ownership Record.

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

11. Close of Escrow and Recordation. The joint escrow instructions shall direct the escrow agent to notify the Parties, upon the agent's receipt of all documents listed and described in the escrow instructions, of its intention to close escrow and to record this Agreement, if not already recorded, and all deeds and patents pertaining to the Closing, in the manner specified in, and subject to the requirements of, the escrow instructions.

12. Records of Survey. Within 30 days following the Closing, City or Port shall record (or cause to be recorded) in the Public Records a record of survey, reviewed and approved by the Parties and based on field surveys, showing the boundaries of the Trust Addition Lands and Trust Termination Lands. Each record of survey shall establish the physical location of boundaries and shall define same with sufficient controlling monuments appropriately placed. If any boundaries shown on a record of survey are later the subject of a Parcel Boundary Adjustment pursuant to Section 7 of this Agreement, City or Port shall place or cause to be placed monuments sufficient to establish the adjusted boundary and shall file or cause to be filed in Public Records a record of survey, reviewed and approved by the Commission, reflecting the Parcel Boundary Adjustment. Developer shall be responsible for the costs of preparing and recording any survey required by this section. The Commission's approval of the survey may be given by its Executive Officer.

13. Impacts of Sea Level Rise.

a. The exchange authorized by this Agreement is intended to establish with certainty the boundary between lands free of the Trust and lands subject to the Trust within the Project Area, which boundary is intended to be fixed and not subject to change by erosion, accretion, reliction, or submergence, whether due to natural or artificial causes. However, if lands established as free of the Trust should later become submerged or subject to the ebb and flow of the tide below the elevation of mean high water, whether due to erosion or sea level rise (**Inundation**), those lands, for so long as the condition of Inundation exists, shall be subject to an easement in favor of the Public Trust (**Public Trust Easement**); provided, however, that the Public Trust Easement shall not attach until Inundation has existed continuously for five years. Prior to the attachment of the Public Trust Easement, neither the Easement nor the Commission shall prevent the right of any owner of the inundated lands to reclaim or otherwise restore the lands to their pre-Inundation condition so long as the owner has begun activities to exercise this right within one year after Inundation. An owner's submittal of an application for any permit required for reclamation or restoration and reasonable efforts to complete the permitting process is sufficient, but not necessary, evidence that the owner has begun to exercise the right to reclamation or restoration provided herein. The Commission may delay the attachment of the

CITY/BUILD DRAFT 10-11-18

Public Trust Easement for a specified period by resolution based upon its finding that reclamation or restoration could not be completed within the five-year period of Inundation specified herein.

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

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

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

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

16. Indemnification and Defense of Claims.

a. Developer shall indemnify, defend and hold harmless the Commission, Port and the City, and each of their respective officers, agencies, commissions, and employees from and against any and all claims, liabilities, losses, costs and expenses (collectively "**Claims**"), including, without limitation, third party Claims and Claims by any governmental agency, in any such case, relating to any Hazardous Substances that (1) as of the date of the Closing, are located at, on, over, under, or flowing through any portion of the Developer Trust Addition Lands conveyed in fee at the Closing, (2) as of the date of the Closing, are located at,

CITY/BUILD DRAFT 10-11-18

on, over, under, or flowing through any portion of the City Trust Termination Lands that is owned by Developer immediately prior to the Closing, (3) at any time, whether before or after Closing, result from any remediation activities or improvements to Trust Addition Lands or City Trust Termination Lands performed by or on behalf of Developer, and (4) at any time, whether before or after Closing, are located at, on, over, under, or flowing through any portion of (i) the Developer Trust Termination Lands or (ii) any portion of the Public Trust Easement Parcels not conveyed at the Closing, for so long as the Public Trust Easement is in effect.

b. City shall indemnify, defend and hold harmless the Commission and its respective officers, agencies, commissions, and employees from and against any and all Claims, including third party Claims and Claims by any governmental agency, relating to any Hazardous Substances that as of the date of Closing are located at, on, over, under, or flowing through any portion of the Trust Addition Lands that is owned by the City immediately prior to the Closing and conveyed to the State at the Closing, except to the extent the Claim relates to remediation activities or improvements to Trust Addition Lands performed by or on behalf of Developer.

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

17. Execution Before a Notary Public. All signatures of the Parties to this Agreement and all deeds and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Public Records. The Governor's signature shall be attested to by the Secretary of State.

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

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

20. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests in or to those Trust Addition Lands or Trust Termination Lands to be transferred at Closing prior to the consummation of the transfers of

CITY/BUILD DRAFT 10-11-18

those parcels as provided for herein, without the prior written consent of the Party to receive fee title following consummation of the transfer.

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

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

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

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

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

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

Commission:
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attn: Mark Meier, Chief Counsel
Email: Mark.Meier@slc.ca.gov

With copies to:

CITY/BUILD DRAFT 10-11-18

Office of the Attorney General
[Address]
Attn: _____
Email: _____

City:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Elaine Forbes, Executive Director
Email: elaine.forbes@sfport.com

San Francisco Recreation and Parks Department
McLaren Lodge
501 Stanyon Street
San Francisco, California 94117
Attn: Phil Ginsburg, General Manager
Email: phil.ginsburg@sfgov.org

With copies to:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
Attn: Andrico Penick, Acting Real Property Director
andrico.penick@sfgov.org

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Eileen Malley, Port General Counsel
eileen.malley@sfgov.org

San Francisco City Attorney's Office
City Hall, Rm. 234
1 Dr. Goodlett Place
San Francisco, CA 94102
Attn: Charles Sullivan, Deputy City Attorney
charles.sullivan@sfcityatty.org

and

Shute, Mihaly & Weinberger, LLP
396 Hayes St.
San Francisco, CA 94102
Attn: Bill White

CITY/BUILD DRAFT 10-11-18

Email: white@smwlaw.com

Developer:

[Build Inc/Address]

Attn:

Email:

With copies to:

[Address]

Attn:

Email:

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

28. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent or satisfaction shall be given on behalf of the Party by the representative(s) listed below.

a. If the Party is the Commission: by the Commission, as may be evidenced by appropriate document executed by the Executive Officer of the Commission.

b. If the Party is City: by the Port Director.

c. If the Party is Developer: by Developer's authorized representative.

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

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

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

CITY/BUILD DRAFT 10-11-18

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

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

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

35. Termination. If the Closing of the Initial Closing Phase has not Closed by the date that is five (5) years from the Effective Date hereof, this Agreement shall terminate and be of no further force and effect unless extended in writing by both the City and the Commission, each in their sole and absolute discretion. In the event the Development Agreement terminates prior to the Closing of the Initial Closing Phase, then the City and State, by mutual written agreement, may terminate this Agreement without the consent of Developer.

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

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

[SIGNATURES BEGIN ON FOLLOWING PAGE]

CITY/BUILD DRAFT 10-11-18

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED: _____

By: _____
Jennifer Lucchesi
Executive Officer

Approved as to form:

Xavier Becerra
Attorney General of the
State of California

DATED: _____

By: _____
Deputy Attorney General

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY/BUILD DRAFT 10-11-18

DATED: _____

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Naomi Kelly,
San Francisco City Administrator

DATED: _____

CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION as a trustee under Chapter 1333 of the Statutes of 1968

By: _____
Elaine Forbes, Executive Director

DATED: _____

SAN FRANCISCO RECREATION AND PARKS DEPARTMENT

By: _____
Phil Ginsburg, General Manager

DATED: _____

SAN FRANCISCO REAL ESTATE DEPARTMENT

By: _____
Andrico Penick, Real Estate Director

Approved as to form:
Dennis Herrera
San Francisco City Attorney

DATED: _____

By: _____
Eileen Malley
Port General Counsel

CITY/BUILD DRAFT 10-11-18

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY/BUILD DRAFT 10-11-18

DATED: _____

“DEVELOPER”
INDIA BASIN INVESTMENT LLC, a
California limited liability company

By: _____

Its: _____

CITY/BUILD DRAFT 10-11-18

IN APPROVAL WHEREOF, I, Edmund G. Brown Jr., Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this _____, 2019.

Edmund G. Brown Jr.
Governor, State of California

Attest:
SECRETARY OF STATE

By: _____
Alex Padilla
Secretary of State

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Name/Description</u>
A.	Legal Description and Illustrative Plat of Project Area
B.	Legal Description and Illustrative Plat of Trust Addition Lands
C.	Legal Description and Illustrative Plat of Trust Termination Lands
D.	Legal Description and Illustrative Plat of Developer-Owned Exchange Lands
E.	Form of City Quitclaim Deed
F.	Form of Developer Quitclaim Deed
G.	Form of Public Trust Patent
H.	Form of Developer Trust Termination Patent for Developer Trust Termination Lands
I.	Form of City Trust Termination Patent for City Trust Termination Lands
J.	Form of Open Space Covenant
K.	Form of Public Trust Easement