

**FIRST AMENDMENT TO
EXCLUSIVE NEGOTIATING AGREEMENT**

THIS FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this “**Amendment**”) dated as of February 22, 2018, is made and entered into by and between the CITY AND COUNTY OF SAN FRANCISCO (“**City**”), a municipal corporation acting by and through the SAN FRANCISCO PUBLIC UTILITIES COMMISSION, (the “**SFPUC**”), and RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company (“**Developer**”).

RECITALS

A. City and Developer are parties to that certain Exclusive Negotiating Agreement dated as of December 8, 2017 (the “**Agreement**”), regarding the Developer’s potential acquisition and development of the Balboa Reservoir.

B. The Agreement describes a Due Diligence Period within which Developer is permitted to make various physical and environmental investigations of the Site. Due to unanticipated processing time, Developer has been unable to access the Site to complete its due diligence investigations. Therefore, City and Developer wish to extend the Due Diligence Period to allow additional time for Developer to undertake these investigations.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Interpretation.** All capitalized terms not defined herein shall have the same meaning as in the Agreement. References to the “Agreement” in the Agreement shall mean the Agreement as amended by this Amendment.

2. **Due Diligence Period.** Notwithstanding any time period set forth in the Agreement to the contrary, the Due Diligence Period shall expire at 8:00 pm Pacific time on the earlier to occur of (i) September 30, 2018, or (ii) sixty (60) days from the date that SFPUC gives Developer approval to conduct its Phase II geotechnical borings on the Site.

3. **Effectiveness.** Except as expressly modified herein, the terms, covenants and conditions of the Agreement shall remain in full force and effect. Except as the Agreement is modified by this Amendment, the execution of this Amendment shall not constitute a waiver of or relinquishment of any rights that either party may have relating to the Agreement.

4. **Entire Agreement.** There are no oral agreements among the parties hereto affecting this Amendment, and this Amendment, together with the Agreement, contains all of the terms, covenants, conditions, representations, warranties and agreements of the parties relating in any manner to the subject matter hereof, and this Amendment supersedes and cancels any and all previous negotiations, arrangements, representations, warranties, agreements and understandings, if any, among the parties hereto relating in any manner to the subject matter hereof.

5. Conflict of Terms. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall prevail.

6. Miscellaneous. Time is of the essence hereof. Neither this Amendment nor the Agreement may be amended, nor any provision hereof waived, except in writing. This Amendment shall inure to the benefit of and shall be binding upon each of the parties hereto, and their respective permitted successors in interest and assigns. This Amendment and the Agreement shall be construed and enforced in accordance with the laws of the State of California.

7. Counterparts. This Amendment may be executed in any number of original counterparts. Any such counterpart, when executed, shall constitute an original of this Amendment, and all such counterparts together shall constitute one and the same Amendment. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (*pdf*).

8. Authority. Each of the individuals executing this Amendment on behalf of Developer individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom they are signing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

A handwritten mark, possibly a signature or initials, consisting of a long, sweeping curve that starts near the top left and ends with a small loop at the bottom right.

IN WITNESS WHEREOF, the City and Developer have executed this Amendment as of the date first appearing above.

DEVELOPER:

**RESERVOIR COMMUNITY PARTNERS,
LLC, a Delaware limited liability company**


By its Members:

BHC BALBOA BUILDERS, LLC,
a California limited liability company

By: 
Name: Brad Wiblin
Title: Vice President

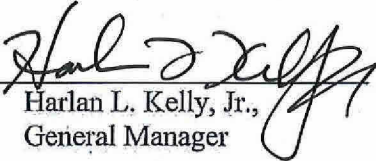
AVB BALBOA LLC,
a Delaware limited liability company

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

By: 
Name: Nathan Hong
Title: Senior Vice President

CITY:

**SAN FRANCISCO PUBLIC UTILITIES
COMMISSION**


By: 
Harlan L. Kelly, Jr.,
General Manager

**APPROVED BY
PUBLIC UTILITIES
COMMISSION**

Pursuant to Resolution No. 17-0225
Adopted November 14, 2017


Secretary

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

By: 
Elizabeth A. Dietrich
Deputy City Attorney