City and County of San Francisco
Public Utilities Commission

San Francisco Water Department
City Distribution Division

APPLICATION FOR LAND OR RIGHT-OF-WAY ACCESS PERMIT

The San Francisco Public Utilities Commission's Land or Right-of-Way Access Program provides for short-term access through its lands and rights-of-way to the owners of adjoining property. The purpose for this access is quite diverse, but some examples include: the removal of private property, vegetation, vehicles, etc.; access for construction, tree removal/maintenance, fence construction or repair; or other reasons where access through private property is difficult or not feasible.

The procedures for securing access involve the completion of an Access Permit Application, along with the submittal of the appropriate insurance indemnification and the associated fees. The fees associated with issuance of an Access Permit have been approved by the San Francisco Public Utilities Commission ("**SFPUC**") and are intended to recover the SFPUC's costs as related to processing, handling and inspecting the permit area.

ACCESS PERMIT COSTS

Short-Term Access (1 to 14 days) .....$292.00 plus $115.00/day

PROCEDURES

To apply for an ACCESS PERMIT, complete the attached application and submit your application to the SFPUC along with your permit fees. Your application will be reviewed and processed and may require a field inspection prior to issuance. Make sure to fill out the attached Permit and sign it on page 13.

Once we approve your application, we will mail you a permit. If your access will require obtaining keys to locked gates, you will need to pick up a security key from our office, located at 1990 Newcomb Avenue. You must also return any borrowed keys on or before the end date specified in your permit. A refundable key deposit of $150 will be required at time of pick up.

INSURANCE

For liability reasons, a Certificate of Insurance will be required for issuance of an Access Permit. Evidence of insurance coverage for the types of policies and in the amounts stated in Section 6 of the Access Permit must be provided. The Certificate of Insurance shall list the City and County of San Francisco and its Public Utilities Commission as the certificate holder and must also state that the City and County of San Francisco and its Public Utilities Commission are Additional Insureds. Please request that your insurance broker mail the Certificate of Insurance directly to this office.

RELEASE AND INDEMNITY

Any entry onto and use of the Land or Right-of-Way without prior written permission from the SFPUC is STRICTLY PROHIBITED, and any and every entry onto the Land or Right-of-Way shall be at the entering person(s)' sole risk and expense. By entering onto the Land or Right-of-Way, the entering person(s) agree (i) to INDEMNIFY, DEFEND, REIMBURSE AND HOLD HARMLESS the City and County of San Francisco and each of its divisions, employees and agents from and against any and all demands, claims, losses, costs, damages and liabilities of any kind, arising in any manner out of or relating to such entry, and (ii) to fully RELEASE, WAIVE AND DISCHARGE forever any and all claims, known and unknown, direct and indirect, and to COVENANT NOT TO SUE the City and County of San Francisco, its divisions, employees and agents, for any matters related to such entry, including but not limited to any claim relating to condition of the Land or Right-of-Way.

INSPECTION OR CONSULTATION

If the nature of your request involves access for construction, access by heavy equipment, removal of large trees or in any way may involve the removal of City property such as temporarily removing a fence for access, the SFPUC may require inspection or consultation, and may charge an additional fee. Approval of any access requiring removal of an SFPUC fence is contingent upon the SFPUC's determination that security of its facilities will not be unduly compromised.

If the nature of your request involves any construction or access by heavy equipment on or near a pipeline, or if it may require the installation, construction or storage of any material on City property, it may be determined that engineering review is necessary. In this case, your application will be returned and you will be required to complete the In-City Project Review Application.

CONTACTS

For general information regarding the permit process, please call the City Distribution Division Main Number at (415) 550-4901.

APPLICATION FOR LAND OR RIGHT-OF-WAY ACCESS PERMIT

PERMITTEE INFORMATION		**File No.**
Name & Company Name: AvalonBay Communities, Inc.		
Number and Street: 455 Market Street, Suite 1650		**Apt. No.**
City: San Francisco	**State:** CA	**ZIP:** 94105
Business/Home Phone: (415) 284-9080	**Cell:**	**Fax:**

DESCRIPTION OF ACCESS	**No. of people in group:** 100+	
Date(s): September 14, 2018 - September 15, 2018 November 23, 2018	**Time Entering: 9/14/18** 5 pm	**Time Leaving: 9/15/18** 6:00pm

Access Point: Vehicular and pedestrian access via the SFPUC's Public Access Easements bordering City College of San Francisco entering from Phelan Avenue.

Destination: The Balboa Reservoir parcel.

Purpose of Access:

- ☒ **Simple Access**
- ☐ **Vegetation Removal**
- ☐ **Tree Work**
- ☐ **Construction Access**
- ☐ **Debris Removal**
- ☐ **Utility Maintenance**
- ☐ **Vehicle Removal**
- ☐ **Landscaping**

Please state the name of your project and describe the purpose of this access as thoroughly as possible.

Community Open House for the Balboa Reservoir Development Project:

On September 15, 2018, Reservoir Community Partners LLC ("Permittee"), a development partnership entity with Bridge Housing and AvalonBay Communities as joint partners, will host a free community open house event at the Balboa Reservoir (lower lot) to discuss current proposals regarding development of the reservoir site with interested community members. Permittee will have access to prepare the Permit Area for the open house on September 14, 2018 after 5:00 pm, and may mark the proposed development's open space in paint. On November 23, 2018, Permittee shall remove the remaining paint previously applied by Permittee from the Permit Area.

VEHICLE INFORMATION – N/A						
PLEASE *LIST INFORMATION FOR ALL VEHICLES, WHICH WILL ACCESS THE Land or Right-of-Way.*						
YEAR	**MAKE**	**MODEL**	**COLOR**	**VEHICLE WEIGHT**	**LICENSE No.**	**STATE**

EQUIPMENT INFORMATION – N/A		
PLEASE *LIST INFORMATION FOR ALL EQUIPMENT, WHICH WILL ACCESS THE Land or Right-of-Way.*		
TYPE EQUIPMENT	**EQUIPMENT WEIGHT**	

INSURANCE INFORMATION – SEE EXHIBIT B			
Please indicate the type of insurance coverage you have.	**Policy Number**	**Carrier/Agent**	**Expiration Date**
☒ **Certificate of Insurance**			
☒ **Workers Compensation Insurance**			
☒ **Vehicle Insurance**			

REQUIRED SIGNATURE	
I certify that, to the best of my knowledge, all statements herein are correct and complete. I understand that willful omission or falsification of information or failure to observe the conditions of this Access Permit may result in denial or revocation of my Access Permit.	
Applicant Signature:	Date:

BELOW FOR SFPUC USE ONLY

INSPECTION/REVIEW						
Application			Processing		Permit Information	
PI	II	MAP	Fees	CAO Review	File No.:	Assign Inspector
DA	RS		Insurance	GM	Date Issued:	Permit Ended
VI	EA		Comp Permit	PUC	Site Review	Filed

THIS REVOCABLE ACCESS PERMIT (this "**Permit**"), dated for reference purposes only as of the date adjacent to the applicant's signature on the attached Application for Land Use or Right-of-Way Access Permit (the "Application"), is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission ("**SFPUC**") and the San Francisco Water Department ("**SFWD**"), and **Permittee** (shown on the Application).

City and Permittee agree as follows:

1. **License**. City confers to Permittee a revocable, personal, and non-exclusive license to enter upon the real property owned by City and described in Exhibit A attached hereto (the "**Permit Area**"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of its use of the Permit Area. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary. Without limiting the foregoing, this Permit is being issued subject and subordinate to all of the terms and conditions of all existing and future documents and instruments of record affecting the Permit Area (collectively, the "**Recorded Documents**"). Permittee's use of the Permit Area is subject and subordinate to the rights of any permittee, tenant, licensee or occupant ("**Current Occupants**"), and Permittee has the sole responsibility to (i) notify any Current Occupants of the activities undertaken by Permittee under this Permit, (ii) make any arrangements necessary to accommodate any Current Occupants, and (iii) obtain any approval of any Current Occupants if necessary to use the Permit Area prior to undertaking any Permittee's Activities hereunder. PERMITTEE ACCEPTS THE PERMIT AREA IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PERMIT AREA.

2. **Use of Permit Area; "AS-IS" Condition**. Permittee may enter upon and traverse the Permit Area for the sole purpose indicated in the Application, and for no other purpose whatsoever. Permittee is aware that the Permit Area constitutes a portion of City's water pipeline delivery system and will cause its boards, officers, agents, employees, contractors or subcontractors (collectively, "**Agents**") to use, due care at all times to avoid any damage or harm to City's property. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's existing and future use of the Permit Area. If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of Permittee's or its agents activities, Permittee shall immediately notify City and, at its sole cost, shall immediately repair any and all such damage and restore the Permit Area or property to its previous condition. Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for Permittee's use.

3. **Additional Restrictions on Use**. Permittee agrees that, by way of example only and without limitation, the following uses of the Permit are strictly prohibited: the use of heavy equipment and vehicles (Permittee's use of vehicles shall be limited to the vehicle(s) and equipment, if any, stated on the Application); the transport, use or disposal of any hazardous material; and any act that constitutes waste, nuisance or unreasonable annoyance. Notwithstanding the above, Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred on or about the Permit Area. "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq., or under California Health &

Safety Code section 25316; a "hazardous waste" listed under California Health & Safety Code section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Permit Area.

4. **Permit Fee**. Permittee shall pay to City a one-time non-refundable permit fee in the amount of the Permit Fee shown in the Inspection/Review section of the Application. If this Permit is for thirty (30) days or longer (and without limiting its right to revoke this Permit), City may at any time, upon not less than thirty (30) days' written notice to Permittee, charge a use fee for the privilege given hereunder, and City may increase such fee from time to time.

5. **Term of Permit**. The privilege conferred to Permittee pursuant to this Permit shall commence on the date of access stated on the Application, provided that this Permit is executed and delivered by City (the "**Commencement Date**") (subject to the provisions of Section 26(m) below), and shall immediately expire upon the earlier of (i) oral or written notice from City revoking this Permit, and (ii) the final date of access stated on the Application. City may, at its sole option, freely revoke this Permit at any time without cause or liability, and without any obligation to pay any consideration or return any permit fee to Permittee. Upon the revocation or termination of this Permit, Permittee shall immediately surrender the Permit Area in the same condition as received, free from hazards and debris, and shall repair, at its cost, any damage to the Permit Area; provided that Permittee shall not be required to remove the paint applied by Permittee from the Permit Area until November 23, 2018.

6. **Insurance**.

(a) Permittee shall procure at its expense and keep in effect at all times during the term of this Permit insurance, in form and from an insurer reasonably acceptable to City, as follows: (i) General Liability Insurance with limits not less than **$2,000,000** each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for contractual liability, food product/service liability, independent contractors, personal injury, broadform property damage, and products and completed operations; (ii) Automobile Liability Insurance with limits not less than **$1,000,000** each occurrence Combined Single Limit for Bodily Injury and Property Damage; and (iii) Workers' Compensation Insurance, in statutory amounts, with Employers' Liability limits not less than **$1,000,000**.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insured the City and County of San Francisco and its Public Utilities Commission; (ii) specify that such policies are primary insurance and that insurance applies separately to each insured against whom a claim is made, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

(c) Prior to commencement of this Permit and immediately at City's request at any time, Permittee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder. Permittee's compliance with the provisions of this Section 6 shall in no way relieve or decrease Permittee's indemnification obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage.

(d) Further details on the insurance requirements for this Permit are provided in Exhibit B.

7. **Compliance with Laws**. Permittee, at its expense, shall conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, and orders of any governmental entity (collectively, "**Laws**"). Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers.

8. **Indemnity**. Permittee shall indemnify, defend, and hold harmless City, its commissions, departments, boards, officers, agents, employees, contractors or subcontractors (collectively, "**Agents**"), and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Losses**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part of it, whether the person or property of Permittee, its Agents, its invitees, guests, or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this Permit; **(b)** any failure by Permittee to faithfully observe or perform any of the terms of this Permit; **(c)**) the use of the Permit Area or any activities conducted by Permittee, its Agents, or Invitees; or **(d)** any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees; except solely to the extent of Losses resulting directly and solely from the negligence or willful misconduct of City. In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City. The foregoing indemnity shall include, without limitation, all costs and expenses incurred by the City, including, without limitation, reasonable attorneys' and consultants' fees, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property.

(a) **Waiver of Claims and Release**. **(a)** Neither City nor any of its commissions, boards, officers, agents or employees shall be liable for any damage to, or for any bodily injury or death, resulting or arising from the condition of the Permit Area or its use by Permittee. **(b)** Permittee acknowledges that this Permit is freely revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. **(c)** Without limiting any indemnifications or other waivers contained herein, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims relating to the Permit Area or this Permit, and covenants not to sue, City, its departments, commissions, officers, and employees, and all persons acting through them, under any present or future laws. **(d)** In connection with the foregoing releases, Permittee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Permittee acknowledges that the releases contained in this Permit includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee acknowledges that it has agreed to this Permit with full knowledge of this waiver and the effect of this waiver, and, being fully aware of the consequences, Permittee intends to waive the benefit of Civil Code section 1542, or any statute or other similar law now or later in effect. The releases contained in this Permit will survive any termination of this Permit.

9. **MacBride Principles - Northern Ireland**. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the

MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

10. No Tobacco Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property that is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

11. No Alcoholic Beverage Advertising; Sugar Sweetened Beverage Prohibition. Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the property that is the subject of this Permit. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. Permittee will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Permit.

12. No Pesticides. Permittee will not use or apply or allow the use or application of any pesticides on the Permit Area or contract with any party to provide pest abatement or control services to the Permit Area.

13. Taxes. Permittee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by law, all of which shall be paid when the same become due and payable and before delinquency.

14. Conflict of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

15. Notification of Limitations on Contributions. Whenever a lease of land from the City requires the approval by a City elective officer or the board on which that City elective officer serves, Section 1.126 of the San Francisco Campaign and Governmental Conduct Code prohibits the person leasing such land from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months following the date the contract is approved by the City elective officer or the board on which that City elective officer serves. Although this Permit is not a lease and creates only a non-possessory interest in the Permit Area, the provisions of Section 1.126 of the San Francisco Campaign and Governmental Conduct Code may nevertheless apply to this Permit.

16. Tropical Hardwoods and Virgin Redwoods. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of its activities under this Permit.

17. Non-Discrimination

a Covenant Not to Discriminate. In the performance of this Permit, Permittee will not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

b Subcontracts. Permittee will include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to the subcontractor in substantially the form of Subsection a above. In addition, Permittee will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all subcontractors to comply with those provisions. Permittee's failure to comply with the obligations in this Subsection will constitute a material breach of this Permit.

c Non-Discrimination in Benefits. Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration, subject to the conditions set forth in section 12B.2(b) of the San Francisco Administrative Code.

d Condition to Permit. As a condition to this Permit, Permittee will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco San Francisco Contract Monitoring Division (the "CMD"). Permittee represents that prior to execution of this Permit, (i) Permittee executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the form.

e Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Permit as though fully set forth. Permittee will comply fully with and be bound by all of the provisions that apply to this Permit under those Chapters of the Administrative Code, including but not limited to, the remedies provided in those Chapters. Without limiting the foregoing, Permittee understands that under section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars ($50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

18. Prevailing Wages and Working Conditions

a Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code section 23.61. Permittee will require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Permit Area to (1) pay workers performing such work not less than the highest prevailing rate of wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ apprentices in accordance with San Francisco Administrative Code section 23.61 (collectively, "Prevailing Wage Requirements"). Permittee will cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements. For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the City's Office of Labor Standard Enforcement at 415-554-6235.

b Permittee will include and will require its contractors and subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code section 23.61. Each such Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code section 23.61. Permittee's failure to comply with its obligations under this Section will constitute a material breach of this Permit. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code section 23.61 against the breaching party.

19. Permittee will also pay, and will require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Permit Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in section 21C.3), a Show (as defined in section 21C.4), a Special Event (as defined in section 21C.8), Broadcast Services (as defined in section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in section 21C.10), and Security Guard Services for Events (as defined in section 21C.11).

20. **Food Service and Packaging Waste Reduction**. Permittee shall comply fully with and be bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Permit by this reference and made a part of this Permit as though fully set forth. Accordingly, Permittee acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Permit.

21. **San Francisco Packaged Water Ordinance**. Permittee agrees to comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Permittee shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Permit or on City property unless Permittee obtains a waiver from City's Department of the Environment. If

Permittee violates this requirement, City may exercise all remedies in this Permit and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

22. **Drug-Free Workplace**. Permittee acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal law is prohibited on City premises. Permittee agrees that any violation of this prohibition by Permittee, its Agents, or Invitees will be a material breach of this Permit.

23. **Disability Access**. Under California Civil Code Section 1938, to the extent applicable, if any, to this License, Licensee is advised that the License Area has not undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether it meets all applicable construction-related accessibility requirements..

24. **Notices**. Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed to Permittee at the address shown on the Application or addressed to City as follows (or such alternative address as may be provided in writing):

City or SFWD: San Francisco Public Utilities Commission
City Distribution Division
1990 Newcomb Avenue
San Francisco, CA 94124
Attention: Division Manager

With a copy to:

San Francisco Public Utilities Commission
Real Estate Services Division
1990 Newcomb Avenue
San Francisco, CA 94102
Attention: Real Estate Director

Notices herein shall be deemed given two (2) days after the date when they shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

25. **Key Issuance.** Access keys will be issued from City Distribution Division headquarters. Permittee shall pay a refundable key deposit of $150 at the time of key pick up. The key deposit will be refunded at the time of key return. The office location for key pick up and return is as follows:

SFPUC
City Distribution Division
1990 Newcomb Avenue
San Francisco, CA 94124

26. **General Provisions**. **(a)** This Permit may be amended or modified only by a writing signed by City and Permittee. **(b)** No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No wavier shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. **(c)** Except as expressly provided to the contrary, all approvals, consents and determinations to be made by City hereunder may be made in the sole and

absolute discretion of City. **(d)** This instrument contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. **(e)** The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. **(f)** Time is of the essence in all matters relating to this Permit. **(g)** This Permit shall be governed by California law and City's Charter and Administrative Code. **(h)** If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. **(i)** If Permittee consists of more than one person then the obligations of each person shall be joint and several. **(j)** This Permit is personal to Permittee and shall not be assigned or otherwise transferred by Permittee under any circumstances. Subject to this prohibition against transfers, this Permit shall be binding upon and inure to the benefit and burden of the parties and their respective heirs, successors and assigns. **(k)** All of Permittee's obligations, including all releases and indemnities hereunder, shall survive the termination or expiration of this Permit. **(l)** The Application is incorporated herein by reference. In the event of a conflict between the Application and the terms of this Permit, the terms of this Permit shall apply. **(m)** Permittee acknowledges that if Permittee obtains access to the Permit Area prior to the date City executes this Permit, such access shall be governed by the terms of this Permit and Permittee shall be bound by the terms hereof, including, without limitation, the provisions of Section 6, 7, 8 and 9 hereof. **(n)** The exhibits referenced in and attached to this instrument are incorporated into this Permit.

[SIGNATURES ON FOLLOWING PAGE]

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

PERMITTEE:

AVALONBAY COMMUNITIES, INC,
a Maryland corporation

By: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Public Utilities Commission and the
San Francisco Water Department

By: _____
HARLAN L. KELLY, JR.,
General Manager
San Francisco Public Utilities Commission

Date: _____

EXHIBIT A

Description of Permit Area

All that certain real property located in the City and County of San Francisco, California, described as follows:

A portion of SFPUC Parcel No. 22, according to SFWD records and also shown on the Drawing attached hereto as Exhibit A-1 and incorporated herein by this reference.

EXHIBIT A-1

Drawing – Balboa Reservoir Map
[Attached]

EXHIBIT B

INSURANCE REQUIREMENTS

a. Permittee will maintain in force, during the full term of the Permit, insurance in the following amounts and coverage:

   (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than $1,000,000 each accident, required only if Permittee has employees, as defined by the California Labor Code.

   (2) Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Food Product/Service Liability, Independent Contractors, Personal Injury, Broadform Property Damage, Products and Completed Operations.

   (3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-owned and Hired auto coverage, as applicable.

b. General Liability and Automobile Liability insurance policies shall provide the following:

   (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

   (2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide:

   Thirty (30) days' advance written notice to City cancellation, non-renewal or reduction in coverage, mailed to the following certificate holder at the following address:

   City and County of San Francisco
   SFPUC Real Estate Services
   Attention: Rosanna Russell
   525 Golden Gate Avenue
   San Francisco, CA 94102

d. Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term of this Permit, and, without lapse, for a period of three years beyond the Permit expiration, to the effect that, should occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specific above.

f. Certificates of Insurance and Additional Insured Policy Endorsements, in form and with insurers satisfactory to City, evidencing all coverage above shall be furnished to City before commencing any operations under this Permit, and Permittee shall provide to the City complete copies of policies promptly upon request.

g. Approval of the insurance by City shall not relieve or decrease the liability of Permittee hereunder.

h. This Permit shall terminate immediately, without notice to Permittee, upon any lapse of required insurance coverage