

**SECOND AMENDMENT TO
EXCLUSIVE NEGOTIATING AGREEMENT**

THIS SECOND AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this "**Second Amendment**") dated as of SEPTEMBER 28, 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 "**Original Agreement**"), regarding the Developer's potential acquisition and development of the Balboa Reservoir.

B. The Original Agreement describes a Due Diligence Period within which Developer is permitted to make various physical and environmental investigations of the Site. Developer and City agreed to extend the Due Diligence Period in order for Developer to undertake its due diligence investigations pursuant to that certain First Amendment to Exclusive Negotiating Agreement dated as of February 22, 2018 (the "**First Amendment**"). Due to delays in Developer's ability to access the Site, City and Developer wish to extend the Due Diligence Period further to allow additional time for Developer to complete its analysis of the Site.

AGREEMENT

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

1. Interpretation. All capitalized terms not defined herein shall have the same meaning as in the Original Agreement. References to the "**Agreement**" in the Original Agreement and in the First Amendment shall mean the Original Agreement as amended by the First Amendment and this Second 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 January 31, 2019.

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 Original Agreement and First Amendment is modified by this Second Amendment, the execution of this Second 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 Second Amendment, and this Second 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 Second 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 Second Amendment, the terms and conditions of this Second Amendment shall prevail.

6. Miscellaneous. Time is of the essence. Neither this Second Amendment nor the Agreement may be amended, nor any provision hereof waived, except in writing. This Second 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 Second Amendment and the Agreement shall be construed and enforced in accordance with the laws of the State of California.

7. Counterparts. This Second Amendment may be executed in any number of original counterparts. Any such counterpart, when executed, shall constitute an original of this Second Amendment, and all such counterparts together shall constitute one and the same Second 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 Second 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]

IN WITNESS WHEREOF, the City and Developer have executed this Second 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

IN WITNESS WHEREOF, the City and Developer have executed this Second 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

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0225

WHEREAS, The City and County of San Francisco (City) owns approximately 17 acres of real property under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) near Phelan Avenue and Ocean Avenue, commonly known as the Balboa Reservoir; and

WHEREAS, The SFPUC partially completed the Balboa Reservoir in 1957 but has never used the site for water storage purposes; and

WHEREAS, In 2012, after a series of land transfers between various public agencies, the original Balboa Reservoir was reconfigured from the SFPUC's original land holdings into its current configuration, and the SFPUC has jurisdiction over approximately 17 acres west of City College of San Francisco (City College)'s property; and

WHEREAS, In late 2014, the Mayor's Office of Economic and Workforce Development (OEWD), the San Francisco Planning Department (Planning) and the SFPUC initiated a study of the Balboa Reservoir site for potential residential development under the City's Public Land for Housing Program, which seeks to address the City's issues regarding affordable housing; and

WHEREAS, On March 31, 2015, via Board of Supervisor's Ordinance 45-15, the Board of Supervisors established the Balboa Reservoir Community Advisory Committee (BRCAC) to advise the Board of Supervisors, the Mayor, and City Departments regarding any proposed development under the Public Land for Housing Program at the Balboa Reservoir; and

WHEREAS, On November 10, 2016, following nearly two years of community outreach, the SFPUC initiated a developer selection process by issuing a request for qualifications (RFQ) to solicit developers interested in acquiring the Balboa Reservoir site to build mixed income housing and develop open space. A RFQ evaluation panel comprised of City staff and community and City College representatives evaluated the RFQ responses and recommended three top-scoring teams to the SFPUC General Manager. The three top-scoring teams were subsequently invited to respond to a request for proposals (RFP); and

WHEREAS, On March 9, 2017, the City announced the three finalist development teams for the RFP: (i) a collaboration between AvalonBay Communities (AvalonBay) and Bridge Housing Corporation (Bridge Housing) as master co-developers, with Mission Housing, Pacific Union Development Company, and Habitat for Humanity of Greater San Francisco, (ii) a collaboration between the Emerald Fund and Mercy Housing, and (iii) a collaboration between Related California, Sares-Regis Group of Northern California, Tenderloin Neighborhood Development Corporation, and Curtis Development. The three development teams were invited to submit their development proposals by June 2, 2017; and

WHEREAS, The City invited community members to attend, view and comment on the three developer proposals at (i) a public workshop on June 10, 2017 at the City College Phelan Avenue campus, (ii) a meeting of the BRCAC on June 15, 2017, and (iii) through the SFPUC website. Through this community participation process, the City received public comments from 127 parties and transmitted all such public comments to the three developer teams, who each were required to respond and explain how the team would consider and address the comments if it were the City-selected developer team; and

WHEREAS, A RFP Panel comprising of City staff, a BRCAC community representative and a representative were tasked with reviewing, discussing, interviewing and ultimately selecting a developer to recommend to the SFPUC General Manager; and

WHEREAS, The selected developer teams for the RFP were asked to submit their final proposals by June 2, 2017 and present their proposals to the community on June 10, 2017; and

WHEREAS, The City announced the conclusion of the Balboa Reservoir selection process with the selection of AvalonBay Communities and Bridge Housing with Mission Housing, Pacific Union Development Company, and Habitat for Humanity of Greater San Francisco as the developer on August 23, 2017; and

WHEREAS, The terms and conditions of the transaction documents for the transfer of the site and development of a project will be negotiated during the term of the ENA. All project approval actions, including approval of the transaction documents by the SFPUC, City's Board of Supervisors (Board) and Mayor, and other applicable City agencies are subject to environmental review through the California Environmental Quality Act, Cal. Pub. Res. Code Section 21000 *et seq.* (CEQA), the CEQA Guidelines, 15 Cal. Code Regs. Section 15000 *et seq.*, and San Francisco's Environmental Quality Regulations, codified at San Francisco Administrative Code Chapter 31. In approving the ENA, the SFPUC is not approving development of the Balboa Reservoir site. In order to comply with CEQA and give decision-makers and the public the opportunity to be aware of the environmental consequences of any contemplated actions with respect to the project and to fully participate in the CEQA process, the SFPUC retains the absolute and sole discretion to (i) structure and modify the project as the SFPUC determines may be necessary to comply with CEQA, (ii) select other feasible alternatives to the project to avoid significant environmental impacts, (iii) adopt feasible mitigation measures to reduce or avoid significant impacts of the project, (iv) balance the benefits of the project against any significant environmental impacts before final approval by the SFPUC or City if such significant impacts cannot otherwise be avoided, and/or (v) determine not to proceed with the project due to unavoidable significant impacts; and

WHEREAS, The City, through the SFPUC, now desires to enter into the Exclusive Negotiation Agreement (ENA), with Reservoir Community Partners, LLC, a Delaware limited liability company representing a joint venture comprised of AvalonBay Communities and Bridge Housing; now, therefore, be it

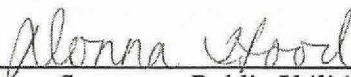
RESOLVED, That nothing in this resolution or the ENA commits, or shall be deemed to commit, the SFPUC or City to approve or implement a project as defined under CEQA. The SFPUC and City will not approve any transaction documents or take any other discretionary actions that will have the effect of committing the SFPUC or City to the development of a project until environmental review for the project as required by CEQA has been completed in

accordance with CEQA and SF Admin. Code Chapter 31. Accordingly, the references to "the project" (or the like) in this resolution mean a proposed project subject to future environmental review and consideration by City, the SFPUC and other public agencies. The SFPUC intends through exclusive negotiations to identify the actions and activities that would be necessary to develop the site to facilitate meaningful environmental review. No transaction documents or other discretionary actions will be approved and become binding on the SFPUC and City unless and until (1) City, acting as the lead agency under CEQA, has determined that the environmental documentation it has prepared for the project complies with CEQA; and (2) City has reviewed and considered the environmental documentation and adopted appropriate CEQA findings in compliance with CEQA. The SFPUC retains absolute and sole discretion to: (a) modify the project as the SFPUC determines may be necessary to comply with CEQA; (b) select feasible alternatives to the project to avoid significant environmental impacts of the proposed project; (c) require the implementation of specific mitigation measures to address environmental impacts of the project; (d) reject the project due to unavoidable significant environmental impacts of the project; and (e) balance the benefits of the project against any significant environmental impacts before final approval of the project upon a finding that the economic, legal, social, technological or other benefits of the project outweigh unavoidable significant environmental impacts of the project; and, be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the ENA and authorizes the General Manager to negotiate and execute the ENA in substantially the form on file with the SFPUC Commission Secretary; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to the ENA, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the ENA or this resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of November 14, 2017.



Secretary, Public Utilities Commission