

## RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (“**Agreement**”) is made as of the date of the final signature below, by and between the City of Alameda, a municipal corporation, having a mailing address of Alameda City Hall, 2263 Santa Clara Avenue, Room 320, Alameda, CA 94501 (“**Grantor**”) and XG Communities, LLC, a Delaware limited liability company, dba 5 Bars Communities with an address at 19200 Von Karman Ave, Suite 100, Irvine, CA 92612 (“**Grantee**”). Grantor and Grantee are sometimes collectively referred to as “Parties” or individually as “Party.”

### RECITALS

- A. Grantor has property rights to that certain real property (the “**Property**”).
- B. Grantor and Grantee have entered into that certain “Professional Services Agreement Between the City of Alameda and 5 Bars Communities” dated September \_\_, 2017 (“Professional Services Agreement”) pursuant to which Grantee has agreed to provide certain consulting, marketing, and management services relating to the placement of Wireless Telecommunications Facilities on some or all of the Property.
- C. Pursuant to the Professional Services Agreement, Grantor and Grantee have agreed to enter into this Agreement to that Grantee may enter upon the Property, upon 24 hour written notice to Grantor, to inspect, conduct, perform and examine soil borings, drainage testing, material sampling, surveys and other geological or engineering tests or studies of the Property, to apply for and obtain all licenses and permits required for Grantee's use of the designated Property from all applicable governmental or regulatory entities, and to do those things on or off the designated Property that, in the sole opinion of Grantee, are necessary to determine the physical condition of the designated Property, the environmental history of the designated Property, and the feasibility or suitability of the designated Property for Grantee's use (“**Due Diligence Investigation**”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties agree as follows:

### AGREEMENT

1. **Right of Entry.** Grantor hereby grants to Grantee and its agents, employees, contractors, subcontractors, and volunteers non-exclusive permission to enter over and across, as well as to use the Property as is reasonable and necessary, for the express purpose of conducting, at Grantee's sole expense, the Due Diligence Investigation. (The above-described activities are collectively referred to hereafter as the “Work”).
2. **Term.** The Right of Entry granted pursuant to Section 1, above, shall be for a limited term, commencing as of the date of this Agreement and expiring upon the expiration or earlier termination of the Professional Services Agreement.

3. **Entry at Own Risk; No Duty to Warn.** Grantee and its agents, employees, contractors, subcontractors, and volunteers shall access, enter and use the Property at their own risk and peril. Grantor shall have no duty to inspect the Property (or any portion thereof) and no duty to warn of any latent or patent defect, condition or risk which may exist on the Property.

4. **Liens.** Grantee shall not permit to be placed against the Property, or any part thereof, any mechanics', materialmen' s, contractors' or other liens (collectively, the "Liens") arising out of the acts or omissions of the Grantee or its agents, employees, contractors, subcontractors, or volunteers hereunder. Grantee hereby indemnifies and agrees to hold the Grantor and the Property free and harmless from all liability for any and all such Liens, together with all costs and expenses, including, but not limited to, attorneys' fees and court costs reasonably incurred by Grantor in connection therewith.

5. **Hazardous Substances.** Grantee and its agents, employees, contractors, subcontractors, and volunteers shall not use, store or transport or allow the use, storage or transportation of any hazardous substances on or onto the Property.

6. **Restoration of the Property.** Except to the extent otherwise contemplated by this Agreement, Grantee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Grantee's entry.

7. **Indemnification by Grantee.** Except to the extent otherwise provided below, Grantee agrees to defend, hold harmless and indemnify Grantor from and against any and all, claims, demands, actions, and causes of action for injury or death of any person, or damages to property, arising out of or resulting from the use or access of the Property by the Grantee or its agents, employees, contractors, subcontractors, and volunteers pursuant to this Agreement. Notwithstanding the foregoing, the Grantee shall have no obligation to indemnify Grantor from a pre-existing condition at the Property where Grantee timely notified Grantor of the pre-existing condition after Grantee learns of the condition, or from the gross negligence or willful misconduct of Grantor.

8. **Authority to Execute.** Grantor warrants and represents to Grantee that it has legal rights to use the Property and may execute and approve this Agreement and no permission or consent of any other person is required to approve this Agreement.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

10. **Entire Agreement.** Grantor and Grantee agree that this Agreement, together with the Professional Services Agreement and the License Agreement dated August 15, 2017, contain all of the agreements, promises and understandings between Licensors and Licensee with regard to the Licensed Properties. No oral agreements, promises or understandings shall be binding upon either Licensors or Licensee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

11. **Severability.** If any provision of this instrument, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this instrument, or the

application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

12. **Permits.** Prior to beginning any work, Licensee, at its sole expense, shall obtain all necessary permits (e.g. encroachment, traffic control, excavation) to use the Licensed Properties as permitted under this Agreement.

13. **All Expenses To Be Borne by Licensee.** Licensee shall bear any and all costs and expenses associated with the rights granted to Licensee to use the Licensed Properties, or any unforeseen costs or expenses incurred by the City relating to Licensee's use of the Licensed Properties in the performance of this Agreement.

14. **Hours of Operation.** The hours of operation that Licensee shall be permitted to conduct its project shall comply with the Municipal Code.

15. **Governing Law.** This Agreement shall be governed in accordance with the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

**[Remainder of Page Intentionally Left Blank]**

In WITNESS WHEREOF, the Parties have signed this Right of Entry Agreement on the dates indicated below.

**CITY OF ALAMEDA**

By: \_\_\_\_\_  
Jill Keimach  
City Manager

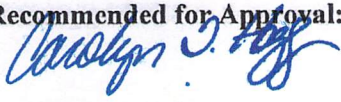
Date: \_\_\_\_\_

**XG COMMUNITIES, LLC dba 5 BARS  
COMMUNITIES**

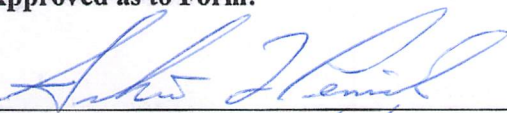
By: \_\_\_\_\_  
Kevin Muldoon  
Vice President / General Counsel

Date: 8/23/17

**Recommended for Approval:**

  
\_\_\_\_\_  
Carolyn Hogg  
Information Technology Director

**Approved as to Form:**

  
\_\_\_\_\_  
Andrico Q. Penick  
Assistant City Attorney