

CITY OF ALAMEDA RESOLUTION NO. _____

AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT AND ALL OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND ALAMEDA POINT PARTNERS, LLC FOR THE SITE A DEVELOPMENT AT ALAMEDA POINT

WHEREAS, the City of Alameda ("City") and the Alameda Point Partners, LLC, ("Developer") entered into a Disposition and Development Agreement for Alameda Point-Site A dated as of August 6, 2015 ("DDA"), authorized by City of Alameda Ordinance No. 3127, whereby the City agreed to convey to the Developer Property located at the former Naval Air Station Alameda under certain terms and conditions and Developer agreed to develop the Project on the Property all in accordance with a Milestone Schedule incorporated in the DDA; and

WHEREAS, the DDA contemplated development of a 68-acre area within Alameda Point that extends generally from the Main Street entrance of Alameda Point to the eastern edge of the Seaplane Lagoon and includes 800 housing units (200 affordable), 600,000 square feet of commercial development, and extensive parks and utility infrastructure (Site A Project); and

WHEREAS, as part of the Site A Project, 130 affordable units will be constructed by Eden Housing, a highly qualified nonprofit affordable housing developer, in two buildings on Block 8 in Phase 1 for low- and very low-income households consistent with the DDA: 1) a family building with 70 units (Family Project), and 2) a senior building with 60 units (Senior Project) (collectively, Affordable Housing Projects); and

WHEREAS, the DDA was amended on February 8, 2017, authorized by City of Alameda Ordinance No. 3174, to extend the closing on the Phase 1 property (Phase 1 Property) by four additional months from December 12, 2016 to April 11, 2017 (Phase 1 Closing Date) due to the rising cost and complexity of the project requiring more time to complete property due diligence items and to finalize financial commitments; and

WHEREAS, although significant efforts were made by Developer to finalize these commitments, Developer did not meet the requirements of the DDA necessary to accept conveyance of the Phase 1 Property by the Phase 1 Closing Date of April 11, 2017 and was in default under the DDA; and

WHEREAS, as part of Developer's effort to cure its default, Developer submitted proposed changes to the Site A Development Plan, which were approved by the Planning Board on May 22, 2017, and a second DDA amendment, which was authorized by City of Alameda Ordinance No. 3185, that enhanced the financial underwriting of the Site A Project and allowed the Developer to make a \$1.4 million option payment to the City and extend the Phase 1 Closing Date to April 9, 2018, therefore curing its default; and

WHEREAS, Developer is requesting a third DDA amendment (Third Amendment) in order to remove the requirement in Section 4.2 of Exhibit M (Affordable Housing Implementation Plan) of the DDA that allows the City to withhold building permits for any market rate units in excess of 395 units (Metering Requirement), if Eden Housing has not received and executed their tax credit reservations for the Affordable Housing Projects; and

WHEREAS, while Eden Housing has been very successful at obtaining much of its required financing for the Affordable Housing Projects, there are outstanding funding applications, whose results will be unknown prior to the April 9, 2018 Phase 1 Closing Date, which creates uncertainty for the Developer and their third-party vertical developers as to whether the City will have the right to halt their building permits pursuant to the Metering Requirement in the DDA; and

WHEREAS, the Developer asserts that the Metering Requirement inhibits their ability to sell the market rate development blocks at sufficient value to cover the costs of the Phase 1 project, as the proceeds from the sale of these blocks are paying for the backbone infrastructure and other amenities; and

WHEREAS, the Developer contends that if the Metering Requirement is removed, they will be able to close by April 9, 2018, deliver the \$10 million Seaplane Lagoon Ferry Terminal contribution, and start construction on backbone infrastructure within 30 days, and without this Third Amendment, the Developer will not be able to continue with the Site A Project; and

WHEREAS, the Developer has indicated that there is significant momentum from their development team and their third-party vertical developers who are poised to purchase the market rate development blocks and to close by the April 9, 2018 deadline and that any further delay from another paid extension or default (other potential options available to the Developer within the current DDA) would jeopardize that momentum and inhibit the Site A Project from moving forward; and

WHEREAS, there are significant catalytic transportation, housing, and economic development benefits to other areas within Alameda Point of implementing Phase 1 of the Site A Project; and

WHEREAS, Eden Housing has secured significant financing commitments to date; is optimistic about its ability to secure all of the financing for the affordable housing by the deadline in the DDA; and is supportive of the Developer moving forward with the Phase 1 closing and infrastructure construction as soon as possible so that Eden's ability to execute financing commitments, and build and occupy their building is not jeopardized by lack of backbone infrastructure; and

WHEREAS, the Developer and the City desire to amend the DDA in accordance with the terms and conditions of the Third Amendment.

NOW, THEREFORE, BE IT RESOLVED, that the City Council:

Approves amendments to the Site A DDA to remove conditionally the requirement in Section 4.2 of Exhibit M (Affordable Housing Implementation Plan) of the DDA that allows the City to withhold building permits for any market rate units in excess of 395 units, if Eden Housing has not received and executed their Tax Credit Reservations for the Affordable Housing Projects within the timelines set forth in the DDA (Attachment A).

**THIRD AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT FOR
ALAMEDA POINT – SITE A**

This Third Amendment to Disposition and Development Agreement ("Third Amendment") is entered into as of March 7, 2018 ("Effective Date"), by and between the City of Alameda, a California charter city (the "City"), and Alameda Point Partners, LLC, a Delaware limited liability company (the "Developer").

RECITALS

- A. The City and the Developer have entered into that certain Disposition and Development Agreement for Alameda Point-Site A, dated as of August 6, 2015 (the "Original DDA"), as amended by that certain First Amendment to Disposition and Development Agreement, dated as of February 8, 2017, and effective as of March 9, 2017 (the "First Amendment"), and that Second Amendment to Disposition and Development Agreement, dated as of July 19, 2017 ("Second Amendment"), and clarified by Operating Memoranda dated September 16, 2015, October 26, 2015, March 6, 2017 and December 8, 2017 (collectively, the "Operating Memoranda"). The Original DDA, as so amended and clarified, is referred to herein as the "DDA."
- B. The DDA contemplated development of a 68-acre area within Alameda Point that extends generally from the Main Street entrance of Alameda Point to the eastern edge of the Seaplane Lagoon and includes 800 housing units (200 affordable), 600,000 square feet of commercial development, and extensive parks and utility infrastructure (Site A Project).
- C. As part of the Site A Project, 130 affordable units will be constructed by Eden Housing, a highly qualified nonprofit affordable housing developer, in two buildings on Block 8 in Phase 1 for low- and very low-income households consistent with the DDA: 1) a family building with 70 units (Family Project), and 2) a senior building with 60 units (Senior Project) (collectively, Affordable Housing Projects).
- D. Pursuant to Section 4.2(b) of the Affordable Housing Implementation Plan, which plan is attached to and incorporated into the DDA, as Exhibit M, the City is entitled to withhold issuance of residential building permits for the market rate residences after the three hundred ninety fifth (395th) building permit until and unless a Tax Credit Reservation has been received and executed for the Affordable Housing Projects ("Affordable Housing Metering Provision").
- E. The Developer has requested that the City waive the Affordable Housing Metering Provision with respect to Phase 1 of the Project and the City has agreed to conditionally waive the Affordable Housing Metering Provision in accordance with the provisions of this Third Amendment.
- F. While Eden Housing has been very successful at obtaining much of its required financing for the Affordable Housing Projects, there are outstanding funding applications, whose results will be unknown prior to the April 9, 2018 Phase 1 Outside Closing Date, which creates uncertainty for the Developer, the third-party vertical

developers and their respective lenders as to whether the City will have the right to halt their building permits pursuant to the Affordable Housing Metering Provision.

- G. The Developer asserts that the Affordable Housing Metering Provision inhibits its ability to sell the market rate development blocks at sufficient value to cover the costs of the Phase 1 project, as the proceeds from the sale of these blocks are paying for the backbone infrastructure and other amenities.
- H. The Developer contends that if the Affordable Housing Metering Provision is removed, they will be able to close on or before the April 9, 2018 Phase 1 Outside Closing Date and proceed with the development of Phase 1, which includes start construction on backbone infrastructure within 30 days and timely payment of the \$10 million Seaplane Lagoon Ferry Terminal contribution, and without this Third Amendment, the Developer will not be able to continue with the Site A Project.
- I. The Developer has indicated that there is significant momentum from their development team and their third-party vertical developers who are poised to purchase the market rate development blocks and to close by the April 9, 2018 Phase 1 Outside Closing Date and that any further delay from another paid extension or default (other potential options available to the Developer within the current DDA) would jeopardize that momentum and inhibit the Site A Project from moving forward.
- J. In return for the conditional waiver of the Affordable Housing Metering Provision set forth herein, Developer is willing to convert the date set forth in the Milestone Schedule for the commencement of construction of the Phase 1 Backbone Infrastructure from a Progress Milestone Date to a Major Milestone Date.
- K. There are significant catalytic transportation, housing, and economic development benefits to other areas within Alameda Point of implementing Phase 1 of the Site A Project.
- L. Eden Housing has secured significant financing commitments to date; is optimistic about its ability to secure all of the financing for the affordable housing by the deadline in the DDA; and is supportive of the Developer moving forward with the Phase 1 closing and infrastructure construction as soon as possible so that Eden Housing's ability to execute financing commitments, and build and occupy their building is not jeopardized by lack of backbone infrastructure.

AGREEMENT

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Developer agree as follows:

1. **Definitions.** Capitalized terms not defined in this Third Amendment shall have the same meaning set forth in the DDA.

2. **Affordable Housing Metering Provision**

2.1 Conditional Waiver. The City hereby agrees that the provisions of Section 4.2(b)

of the Affordable Housing Implementation Plan attached to and incorporated in the DDA will not be applicable to Phase 1 of the Project if all of the following conditions are timely met by the Developer:

(a) The Developer satisfies all of the conditions for Close of Escrow for Phase 1 without requiring or requesting any further Developer initiated amendments or operating memoranda to the DDA and Close of Escrow occurs for Phase 1 on or before April 11, 2018.

(b) On or before the Close of Escrow for Phase 1, the Developer and the Qualified Affordable Housing Developer, Eden Housing, demonstrate to the satisfaction of the City that Eden Housing has secured sufficient public funds for the development of the Senior Project to achieve a competitive "tiebreaker" score in the March 2018 round of 9% Low Income Housing Tax Credit allocations as determined pursuant to the California Tax Credit Allocation Committee Regulations. At the City's discretion, the public funds used for the purposes of the tiebreaker shall include (\$500,000) in East Bay Municipal Utility District fee credits that the City allocated to the Site A Project, if needed to achieve a competitive tiebreaker score. The City will provide the Developer and Eden Housing with its written determination under this Section 2.1(b) within five (5) business days after such parties' submittal of the required information.

(c) The Developer, as a condition of closing on Phase 1, shall have deposited into escrow the Developer Contribution for the Affordable Housing Projects required pursuant to Section 3.8 of the Affordable Housing Implementation Plan in the amount of Three Million Dollars (\$3,000,000). Withdrawals from the escrow account shall be subject to the provisions of Section 3.10 of the Second Amendment.

2.2 Failure to Meet Conditions. Failure of the Developer to satisfy any of the above conditions will result in the Affordable Housing Metering Provision set forth in Section 4.2 being applicable to Phase 1 of the Project.

2.3 Developer Cooperation and Assurances. Developer agrees that notwithstanding the City's waiver of the Affordable Housing Metering Provision, the Developer shall continue to cooperate with the Qualified Affordable Housing Developer with respect to the development of the Phase 1 Infrastructure Phase and the Affordable Housing Site as set forth in Section 1.1 of the Fourth Operating Memorandum to the DDA dated for references pursuant as of December 8, 2017 and to provide assurances necessary to the Qualified Affordable Housing Developer's lenders and investors regarding the completion of the Phase 1 Infrastructure Phase to allow the Qualified Affordable Housing Developer to commence construction of the Affordable Housing Projects in accordance with the Milestone Schedule applicable to the Affordable Housing Projects.

2.4 Future Phases. Notwithstanding anything set forth herein or in the DDA, the City shall have no obligation to convey Phases 2 and 3 of the Property until and unless a Tax Credit Reservation has been received and executed for the Affordable Housing Projects.

3. Commencement of Construction – Phase 1 Infrastructure. The parties hereby agree that the date in the Milestone Schedule for the commencement of construction of the Phase 1 Infrastructure (30 days after the Phase 1 Close of Escrow) shall be a Major Milestone Date rather

than a Progress Milestone Date.

4. Effect of Amendment. Except to the extent amended in this Third Amendment, the DDA shall remain in full force and effect. In the event of a conflict between this Third Amendment and the DDA, this Third Amendment shall control.

[Signatures on next page]

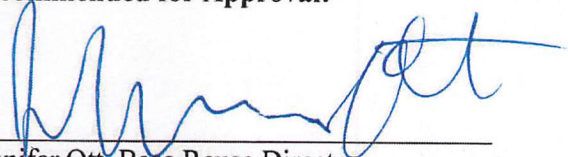
In WITNESS WHEREOF, the Patties have signed this Third Amendment to Disposition and Development Agreement on the dates indicated below.

CITY OF ALAMEDA

By: _____
Jill Keimach
City Manager

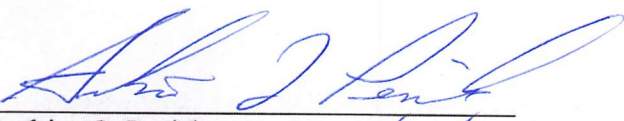
Date: _____

Recommended for Approval:



Jennifer Ott, Base Reuse Director

Approved as to Form:



Andrico Q. Penick 2/22/18
Chief Real Estate Counsel

Authorized by City Council Resolution No. _____


Signatures continue on next page

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Investments, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company,
its General Partner

By: 
Name: Sued Bannon
Title: vicepresident

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 6th day of March, 2018, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 7th day of March, 2018.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda