

FIFTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT FOR ALAMEDA POINT – SITE A AND TO GROUND LEASES FOR BLOCK 8

This Fifth Amendment to Disposition and Development Agreement for Alameda Point – Site A and to Ground Leases for Block 8 ("Fifth Amendment") is entered into as of October 10, 2018 ("Effective Date") by and between the City of Alameda, a California charter city (the "City"), and Eden Housing, Inc., a California nonprofit public benefit corporation ("Eden").

RECITALS

- A. The City and Alameda Point Partners, LLC, a Delaware limited liability company (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 as further amended by that certain Second Amendment to Disposition and Development Agreement, dated as of July 19, 2017 ("Second Amendment"), and as further amended by that certain Third Amendment to Disposition and Development Agreement dated as of March 7, 2018, and as further amended by that certain Fourth Amendment to Disposition and Development Agreement dated as of October 10, 2018 and clarified by Operating Memoranda dated September 16, 2015, October 26, 2015, March 6, 2017, December 8, 2017 and March 7, 2018 (collectively, the "Operating Memoranda"). The Original DDA, as so amended and clarified, is referred to herein as the "DDA."
- B. In accordance with the Affordable Housing Implementation Plan, which is attached to and incorporated into the DDA, the Developer assigned to Eden certain rights and obligations under the DDA, including under the Affordable Housing Implementation Plan pursuant to that certain Partial Assignment and Assumption Agreement dated as of March 7, 2016 ("Partial Assignment"). The City consented to the Partial Assignment and determined that Eden is a Qualified Affordable Housing Developer pursuant to the provisions of the DDA and the Affordable Housing Implementation Plan.
- C. The City, the Developer and Eden entered into that certain Fourth Operating Memorandum dated as of December 8, 2017, which among other things, approved the conveyance of Block 8 of the Site also referred to as the Affordable Housing Site in the Affordable Housing Implementation Plan to Eden in one or more ground leases. The Fourth Operating Memorandum also amended the Affordable Housing Milestone Schedule.
- D. The City and Eden have entered into two Ground Leases, dated as of November 8, 2017 (for the Senior Project) and December 8, 2017 (for the Family Project) ("Ground Leases"), whereby the City leased to Eden Block 8 for the development of 130 units of housing affordable to very low- and low-income households. The terms of the Ground Leases do not commence and Eden is not entitled to possession of Block 8 until Eden has met all of the conditions for conveyance of the Affordable Housing Site in the DDA

and the Affordable Housing Implementation Agreement, which conditions are required to be met no later than December 31, 2018.

- E. Eden has requested that the City agree to amendments to the DDA and the Affordable Housing Implementation Plan in order to extend certain dates set forth in the Affordable Housing Milestone Schedule as a result of Eden, despite good faith efforts, being unable to secure the sources of financing necessary for the construction of either Phase I (herein referred to as the "Senior Project") or Phase II (herein referred to as the "Family Project") of the Affordable Housing Development.
- F. Eden has demonstrated feasible options for securing financing necessary for the Affordable Housing Development.
- G. The City and Eden now desire to amend the DDA, including the Affordable Housing Implementation Agreement as well as the Ground Leases in accordance with the terms and conditions of this Fifth Amendment to reflect changes in the financing and Schedule of the Affordable Housing Development. In accordance with the terms of the Partial Assignment, the Developer has consented to these amendments as evidenced by the Developer's acknowledgement of this Fifth Amendment.

AGREEMENT

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

1. **Definitions.** Capitalized terms not defined in the Fifth Amendment shall have the same meaning set forth in the DDA.
2. **Affordable Housing Development Financing.** Sections 3.5 and 3.6 of the Affordable Housing Implementation Plan are hereby deleted in their entirety and replaced with the following:

3.5 Affordable Housing Development Financing and Schedule. Qualified Affordable Housing Developer has proposed a financing option for the development of both the Senior Project and the Family Project of the Affordable Housing Development as set forth in Exhibit A attached hereto ("Financing Scenario"). The Qualified Affordable Housing Developer shall submit the necessary funding applications to obtain full funding of the Affordable Housing Development within the time frames set forth in the Affordable Housing Development Milestone Schedule attached hereto as Exhibit B and submit an Affordable Housing Development Financing Plan within the times set forth in the Affordable Housing Development Milestone Schedule. The Qualified Affordable Housing Developer may pursue alternative financing from that set forth in the Financing Scenario shown in Exhibit A in order to submit a feasible Affordable Housing Development Financing Plan, but shall provide the City with written notice of any such alternative financing and the application schedules for such financing as soon as Qualified Affordable Housing Developer determines to pursue such alternative financing. Receipt of financing commitments for all financing necessary for the development of each of the Senior Project and the Family Project of the Affordable Housing Development is a condition to Closing for each applicable Phase of the Affordable Housing Development Site.

If Qualified Affordable Housing Developer does not receive a commitment of Veterans Housing and Homelessness Prevention funds for the Senior Project of the Affordable Housing Development, Qualified Affordable Housing Developer shall commit either its own funds or funds from an alternative funding source in the amount necessary to ensure that the financing for the Senior Project can be obtained within the times set forth in the Affordable Housing Development Milestone Schedule, not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000).

If the Qualified Affordable Housing Developer fails to receive any of the necessary funding for either the Senior Project or the Family Project of the Affordable Housing Development by the outside date specified in the Affordable Housing Development Milestone Schedule for receipt of such funds, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed sixty (60) days to determine if feasible and mutually acceptable alternate arrangements can be made to finance development of the applicable phase of the Affordable Housing Development. If no agreement is reached by the parties within such sixty (60) day period regarding the alternative financing structure for the construction of the Affordable Housing Development or any phase which remains unfunded at such time, the Developer shall have sixty (60) days to provide the City with a feasible proposal for how it expects to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within sixty (60) days shall be considered a Developer Event of Default under the DDA and an event of default under the Ground Leases, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA and the Ground Leases, provided however, that if the Qualified Affordable Housing Developer has met the conditions to conveyance in the DDA as amended by this Fifth Amendment for the Senior Project of the Affordable Housing Development and conveyance of the portion of Block 8 for the Senior Project has occurred, then the failure of the Qualified Affordable Housing Developer or the Developer to meet the milestones for the Family Project shall not be deemed to be a Developer Event of Default under the DDA or an event of default under the Ground Lease with respect to the Senior Project of the Affordable Housing Development. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an operating memorandum to the DDA.

Notwithstanding anything to the contrary contained herein, the Qualified Affordable Housing Developer hereby agrees to use commercially reasonable efforts to obtain any and all necessary or required approvals to reallocate to the Senior Project of the Affordable Housing Development \$1,500,000 of the Alameda County Housing Bond A-1 Funds currently committed to the Family Project of the Affordable Housing Development (the "Family Project County Funds") in a manner that does not materially and adversely affect the financing for the Senior Project. If the Qualified Affordable Housing Developer obtains such approvals, the City, Qualified Affordable Housing Developer and Developer agree that \$1,500,000 of the committed Developer Affordable Housing (AH) Funds shall be reallocated from the Senior Project to the Family Project of the Affordable Housing Development. In the event that the Qualified Affordable Housing Developer is unable to obtain such approvals, the Qualified Affordable Housing Developer's obligations set forth in this paragraph shall terminate, and Qualified Affordable Housing Developer may use all \$3,000,000 of the Developer AH Funds for the Senior Project of the Affordable Housing Development.

3. Affordable Housing Development Milestone Schedule. The parties hereby agree to amend the Affordable Housing Development Milestone Schedule by deleting Attachment A to

Exhibit M of the Original DDA as amended by the Fourth Operating Memorandum and replacing it with Exhibit B attached to this Fifth Amendment.

4. Ground Lease. In accordance with the terms of the Ground Leases, extension of the date for Closing in the DDA automatically extends the date of Closing in the Ground Leases and the parties agree that the Ground Leases remain in full force and effect. The Milestone Schedule attached to the Ground Lease for the Block 8 Senior Housing as Exhibit C is deleted and replaced by Exhibit C attached to this Fifth Amendment. The Milestone Schedule attached to the Ground Lease for the Block 8 Family Housing as Exhibit C is deleted and replaced by Exhibit D attached to this Fifth Amendment.

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

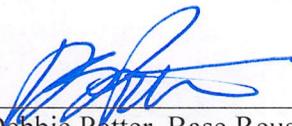
[Signatures on next page]

IN WITNESS WHEREOF, the parties have signed this Fifth Amendment on the dates indicated below.

CITY OF ALAMEDA
a California charter city

By: 
David L. Rudat
Interim City Manager

Recommended for Approval:


Debbie Potter, Base Reuse and Economic Development Director

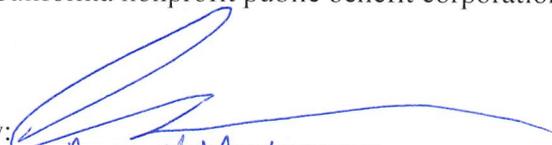
Approved as to Form:


Celena H. Chen
Assistant City Attorney

Authorized by City Council Resolution No. 15438

Signatures continue on next page

EDEN HOUSING, INC.,
a California nonprofit public benefit corporation

By: 
Name: Andre H. Maderia
Title: Senior Vice President

ACKNOWLEDGED AND ACCEPTED

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: _____

Title: _____

EDEN HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

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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: BRUCE N. DORFMAN

Title: VP

EXHIBIT A
FINANCING SCENARIO

Phase I Senior Project

Donated Land and Fees from APP	Committed	\$6.3 million
Contributions from APP (Developer AH Funds)	Committed	\$3.0 million
Alameda County Housing Bond A-1 Funds	Committed	\$3.0 million
Permanent Mortgage Debt	Committed	\$4.5 million
Permanent VASH funded Mortgage Debt	Committed	\$3.2 million
Veterans Housing and Homelessness Prevention	Committed	\$1.4 million
Federal Home Loan Bank	Committed	\$0.6 million
Deferred and R-contributed Developer Fees	Committed	\$3.3 million
Veterans Housing and Homelessness Prevention Funds (additional award) or funds from Qualified Affordable Housing Developer*	Committed	\$1.7 million
Tax Credits (4%)**	Application submitted	\$14.4 million
Total		\$41.4 million

*Eden Housing anticipates receiving an award of Veterans Housing and Homelessness Prevention funds in November 2018. If the award is not received Eden has committed to providing an additional \$1.7 million to the project.

** A non-competitive "over the counter" application was submitted on September 14, 2018 with funds expected to be awarded on November 14, 2018.

Phase II – Family Project

Donated Land and Fees from APP	Committed	\$6.3 million
Permanent Mortgage Debt	Committed	\$4.1 million
Permanent Section 811-funded Mortgage Debt	Committed	\$3.3 million
Federal Home Loan Bank	Committed	\$0.7 million
Deferred and Re-contributed Developer Fee	Committed	\$4.5 million
Affordable Housing and Sustainable Communities	Pending Application	\$8.4 million
Alameda County Housing Bond A-1 Funds	Committed	\$2.0 million
Alameda County Housing Bond A-1 Funds	Pending Application	\$1.4 million
Tax Credits (4% Competitive)	Pending Application	\$23.2 million
Total		\$53.9 million

EXHIBIT B
AFFORDABLE HOUSING DEVELOPMENT MILESTONE SCHEDULE

Affordable Housing Development Milestone Schedule

Phase I: Senior Project

ACTION	DATE
Tax Credit Application – Senior Project. The Qualified Affordable Housing Developer shall submit timely and complete applications for a Tax Credit Reservation to TCAC for the Senior Project.	September 30, 2018
Tax Credit Reservation Allocation – Senior Project. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the Senior Project.	No later than November 17, 2018
Phase I Financing Plan- Senior Project. The Qualified Affordable Housing Developer shall submit to the City Manager for approval the Affordable Housing Development Financing Plan for the Senior Project	December 31, 2018
Funding Award – Senior Project The Qualified Affordable Housing Developer shall have obtained necessary funding awards from governmental funders to provide feasible funding plans for the Senior Project	No later than January 31, 2019
Senior Affordable Housing Site Closing. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of the Senior Portion of the Affordable Housing Site and City transfers the Senior Portion of the Affordable Housing Site. [§3.3]	No later than March 17, 2019
Commencement of Construction Senior Project. The Qualified Affordable Housing Developer shall have commenced construction of the Senior Project. [§4.1]	No later than March 17, 2019
Senior Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of Senior Project of the Affordable Housing Development [§4.1]	July 17, 2020

Phase II: Family Project

ACTION	DATE
Tax Credit Application – Family Project. The Qualified Affordable Housing Developer shall submit a timely and complete application for Tax Credit Reservation to TCAC.	No later than March 30, 2020
Tax Credit Reservation Allocation – Family Project. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the Family Project.	No later than June 30, 2020
Phase II Financing Plan- Family Project. The Qualified Affordable Housing Developer shall submit to the City Manager for approval the Affordable Housing Development Financing Plan for the Family Project	July 31, 2020
Funding Award – Family Project The Qualified Affordable Housing Developer shall have obtained necessary funding awards from governmental funders to provide feasible funding plans for the Family Project	October 31, 2020
Family Affordable Housing Site Closing. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of Family portion of the Affordable Housing Site and City transfers the Family portion of the Affordable Housing Site. [§3.3]	No later than December 31, 2020
Commencement of Construction Family Project. The Qualified Affordable Housing Developer shall have commenced construction of the Family Project. [§4.1]	No later than January 31, 2021
Family Project Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the Family Project of the Affordable Housing Development [§4.1]	July 31, 2022

Phase I and II: Senior and Family Projects

ACTION	DATE
<p>Evidence of Financing. Qualified Affordable Housing Developer shall submit evidence that any conditions to release or expenditure of funds described in the approved Phase Financing Plans have been met or will be met prior to the applicable Closing [§4.3(a)(6) of the DDA]</p>	<p>At least 30 days prior to the applicable Closing</p>
<p>Supplemental Approvals. Qualified Affordable Housing Developer shall have obtained all Supplemental Approvals required for the development of the Family Project and the Senior Project [§4.3(a)(10) of the DDA]</p>	<p>At least 30 days prior to the applicable Closing</p>
<p>Evidence of Insurance. Qualified Affordable Housing Developer shall provide evidence of compliance with the insurance requirements for the Family Project and the Senior Project [§4.3(a)(9) of the DDA]</p>	<p>At least 30 days prior to the applicable Closing</p>

EXHIBIT C
MILESTONE SCHEDULE
BLOCK 8 SENIOR HOUSING GROUND LEASE

Milestone Schedule
Affordable Housing Development Milestone Schedule

ACTION	OUTSIDE DATE
Tax Credit Application. The Tenant shall submit a timely and complete application for a Tax Credit Reservation to TCAC for the Project. [§3.6(b)]	No later than September 30, 2018
Tax Credit Reservation Allocation. Tenant shall have secured an allocation of tax credits for the Project. [§3.6]	No later than November 17, 2018
Funding Award. Tenant shall have obtained necessary funding awards from governmental funders to provide feasible funding plan for the Project	No later than January 31, 2019
Phase I Financing Plan. Tenant shall submit to the City Manager for approval the Affordable Housing Development Financing Plan [§3.4]	No later than December 31, 2018
City Review of Phase I Financing Plan. City shall review and approve or disapprove the Phase I Financing Plan	Within 30 days of receipt
Evidence of Financing. Tenant shall submit evidence that any conditions to release or expenditure of funds described in the Phase I Financing Plan have been met or will be met prior to Closing [§4.3(a)(6) of the DDA]	At least 30 days prior to Closing
Supplemental Approvals. Tenant shall have obtained all Supplemental Approvals required for development of the Affordable Housing Development [§4.3(a)(10) of the DDA]	At least 30 days prior to Closing
Evidence of Insurance. Tenant shall provide evidence of compliance with the insurance requirements [§4.3(a)(9) of the DDA]	At least 30 days prior to Closing

ACTION	OUTSIDE DATE
Affordable Housing Site Closing. Tenant shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers possession of Affordable Housing Site. [§3.3]	No later than March 17, 2019
Commencement of Construction. Tenant shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	No later than March 17, 2019
Completion of Construction. Tenant shall have completed construction of the Affordable Housing Development [§4.1]	No later than July 17, 2020

EXHIBIT D
MILESTONE SCHEDULE
BLOCK 8 FAMILY HOUSING GROUND LEASE

Milestone Schedule
Affordable Housing Development Milestone Schedule

ACTION	DATE
Tax Credit Application. The Tenant shall submit a timely and complete application for a Tax Credit Reservation to TCAC.	No later than March 30, 2020
Tax Credit Reservation Allocation. Tenant shall have secured an allocation of tax credits for the Project. [§3.6]	No later than June 30, 2020
Phase II Financing Plan. Tenant shall submit to the City Manager for approval the Affordable Housing Development Financing Plan [§3.4]	No later than July 31, 2020
Funding Award. Tenant shall have obtained necessary funding awards from governmental funders to provide feasible funding plan for the Project	No later than October 31, 2020
City Review of Phase II Financing Plan. City shall review and approve or disapprove the Phase II Financing Plan	Within 30 days of receipt
Evidence of Financing. Tenant shall submit evidence that any conditions to release or expenditure of funds described in the Phase II Financing Plan have been met or will be met prior to Closing [§4.3(a)(6) of the DDA]	At least 30 days prior to Closing
Supplemental Approvals. Tenant shall have obtained all Supplemental Approvals required for development of the Affordable Housing Development [§4.3(a)(10) of the DDA]	At least 30 days prior to Closing
Evidence of Insurance. Tenant shall provide evidence of compliance with the insurance requirements [§4.3(a)(9) of the DDA]	At least 30 days prior to Closing

ACTION	DATE
Affordable Housing Site Closing. Tenant shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers possession of Affordable Housing Site. [§3.3]	No later than December 31, 2020
Commencement of Construction. Tenant shall have commenced construction of the second phase of the Affordable Housing Development. [§4.1]	No later than January 31, 2021
Completion of Construction. Tenant shall have completed construction of the Affordable Housing Development [§4.1]	No later than July 31, 2022