

CITY OF ALAMEDA ORDINANCE NO. 3291

New Series

APPROVING A THIRD AMENDMENT TO DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF ALAMEDA, TL PARTNERS I, LP, AND ALTA BUENA VISTA OWNER, LLC GOVERNING THE DEL MONTE WAREHOUSE PROJECT LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SHERMAN STREET AND BUENA VISTA AVENUE TO EXTEND THE COMPLETION DEADLINE FOR THE CLEMENT EXTENSION IMPROVEMENTS BY ONE YEAR AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO GRANT AN ADDITIONAL ONE YEAR EXTENSION WITHOUT FURTHER ACTION BY THE CITY COUNCIL OR PLANNING BOARD

WHEREAS, on December 16, 2014, the City Council adopted Ordinance No. 3116 approving a Development Agreement by and between the City of Alameda (City) and TL Partners I, LP (TLP) for the Del Monte Warehouse project located at the northeast corner of the intersection of Sherman Street and Buena Vista Avenue; and

WHEREAS, the City and TLP entered into that certain Development Agreement dated as of January 15, 2015, as amended by that certain First Amendment to Development Agreement dated as of June 8, 2017, and as further amended by that certain Second Amendment to Development Agreement dated as of July 18, 2018, and as further amended by that certain ministerial amendment dated October 25, 2018, and as further amended by that certain second ministerial amendment dated September 25, 2019 (Development Agreement); and

WHEREAS, in 2019, Alta Buena Vista Owner, LLC (ABV) acquired from TLP the land, entitlements, and building permits for the Del Monte Warehouse Project located at 1501 Buena Vista Avenue. In connection with the transaction, TLP assigned certain rights and obligations under the Development Agreement, pursuant to that certain Partial Assignment and Assumption of Development Agreement dated as of December 5, 2019 (Partial Assignment). The City granted its written consent to the Partial Assignment in a letter to TLP and ABV (together, Developer) dated October 9, 2019; and

WHEREAS, in 2020, ABV pulled building permits for the Del Monte Building and Clement Extension improvements and began construction. Since pulling building permits, work has moved as expeditiously as possible given financial constraints, delayed approval of the Water Main Line by East Bay Municipal Utility District, and constraints brought upon by the COVID-19 pandemic. Developer has informed the City that the delays will result in Developer's inability to meet the January 15, 2021 deadline for completing the Clement Extension improvements as required by Section 6.b of the Development Agreement; and

WHEREAS, in order to ensure that the Clement Extension improvements are completed to provide substantial benefits and contribute to the provision of needed infrastructure for area growth and make other conforming amendments to further

effectuate the program of development contemplated by the Development Agreement, the City and Developer seek to enter into a Third Amendment to Development Agreement (Third Amendment) to extend the Clement Extension improvement completion date by one year to January 15, 2022, and to make other conforming amendments; and

WHEREAS, on October 26, 2020, the Alameda Planning Board conducted a duly noticed public hearing on the Third Amendment in accordance with Government Code Section 65867 and Alameda Municipal Code (AMC) Sections 30-92.5 and 30-94.3, and found the provisions of the Third Amendment to be consistent with the objectives, policies, general land uses and programs specified in the City General Plan, and compatible with the uses authorized in, and the other regulations prescribed for, the use of land; and

WHEREAS, on November 17, 2020, the City Council conducted a duly noticed public hearing on the Third Amendment in accordance with Government Code section 65867 and AMC Sections 30-94.1 et seq., and finds the provisions of the Third Amendment to be consistent with the General Plan and other regulations prescribed for the use of land, and that the economic interests of the City's residents and the public health, safety and welfare will be best served by entering into this Third Amendment; and

WHEREAS, the City Council finds that the Third Amendment to extend the deadline for the completion of the Clement Extension improvements by one year would not result in any changes to the physical environment that were not already anticipated in the environmental review documents for the project, and no further review is required pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15162.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. In accordance with Government Code Section 65864 et seq. and AMC Section 30-91 et seq., the City Council hereby finds the Third Amendment to Development Agreement (Del Monte Warehouse Project) to be consistent with the General Plan and other regulations prescribed for the use of land, and approves the Third Amendment to Development Agreement for the property located at the northeast corner of the intersection of Sherman Street and Buena Vista Avenue, the form of which shall be substantially as attached hereto as Exhibit A, and the City Manager or designee is authorized to sign it on or after the effective date of this Ordinance.

Section 2. Any provision of the Alameda Municipal Code or any other Ordinance inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby modified to the extent necessary to effectuate this Ordinance.

Section 3. If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Ordinance is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Ordinance.

Section 4. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

EXHIBIT A

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

**City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attention: City Attorney**

This document is exempt from payment of a
recording fee pursuant to California
Government Code Section 27383.

Recorder's Stamp

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

(Del Monte Warehouse Project)

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (DEL MONTE WAREHOUSE PROJECT) (this “**Third Amendment**”) dated as of this ____ day of _____, 2020 (the “**Third Amendment Effective Date**”), is entered into by and among the CITY OF ALAMEDA, a municipal corporation (“**City**”) and TL PARTNERS I, LP, a California limited partnership (“**TLP**”) and ALTA BUENA VISTA OWNER, LLC, a Delaware limited liability company (“**ABV**”, and together with TLP, “**Developer**”), with reference to the following facts and circumstances:

RECITALS

A. The City and TLP entered into that certain Development Agreement dated as of January 15, 2015 and recorded in the Official Records of the County of Alameda (the “**Official Records**”) on May 17, 2016 as Document No. 2016124746 (the “**Original DA**”), as amended by that certain First Amendment to Development Agreement dated as of June 8, 2017 and recorded in the Official Records on June 15, 2017 as Document No. 2017130965 (the “**First Amendment**”), and as further amended by that certain Second Amendment to Development Agreement dated as of July 18, 2018 and recorded in the Official Records on August 28, 2018 as Document No. 2018169332 (the “**Second Amendment**”), and as further amended by that certain ministerial amendment dated October 25, 2018 (the “**Ministerial Amendment**”), and as further amended by that certain second ministerial amendment dated September 25, 2019 (the “**Second Ministerial Amendment**”, and together with the Original DA, the First Amendment, the Second Amendment, the Ministerial Amendment, and the Second Ministerial Amendment, the “**Development Agreement**”).

B. In 2019, ABV acquired from TLP the land, entitlements, and building permits for the Del Monte Warehouse Project located at 1501 Buena Vista Avenue. In connection with the transaction, TLP assigned certain rights and obligations under the Development Agreement, pursuant to that certain Partial Assignment and Assumption of Development Agreement dated as of December 5, 2019 (“**Partial Assignment**”) and recorded in the Official Records on December 5, 2019 as Document No. 2019249888. The City granted its written consent to the Partial Assignment in a letter to TLP and ABV dated October 9, 2019.

C. In 2020, ABV pulled building permits for the Del Monte Building and Clement Extension improvements and began construction. Since pulling building permits, work has moved as expeditiously as possible given financial constraints, delayed approval of the Water Main Line by East Bay Municipal Utility District, and constraints brought upon by the COVID-19 pandemic. Developer has informed the City that the delays will result in Developer’s inability to meet the January 15, 2021 deadline for completing the Clement Extension improvements as required by Section 6.b of the Development Agreement.

D. In order to ensure that the Clement Extension improvements are completed to provide substantial benefits and contribute to the provision of needed infrastructure for area growth and make other conforming amendments to further effectuate the program of development contemplated by the Development Agreement, the City and Developer wish to enter into this Third Amendment.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein.
2. **Defined Terms.** All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement.
3. **Amendments to Development Agreement.** The following sections of the Development Agreement shall be amended as set forth below:
 - a. The entirety of Section 6.b shall be deleted and of no further force and effect. Section 6.b of the Development Agreement shall be replaced with the following:

“b. Clement Extension. Construct, at no cost to the City of Alameda, the extension of Clement Avenue from Atlantic ~~Street~~Avenue to Entrance Road including a new intersection and signal at Sherman, Clement, and Atlantic, and installation of stop signs at the following intersections: Buena Vista/Entrance Road and Clement/Entrance Road (the “Clement Extension”). The Clement Extension improvements are more specifically described in Exhibit C and Exhibit C-1, attached. Developer shall obtain, or shall cause its general contractor to obtain, as applicable, payment and performance bonds in a sum being not less

than one hundred percent (100%) of the total amount of the construction contract for the Clement Extension work with the City as a loss payee or named insured. The improvements shall be completed on the earlier of: (x) the issuance of the 250th certificate of occupancy for the Project Del Monte Building in subarea A as shown on page 24 of the Master Plan; or; (y) the issuance of the first building permit for any new housing unit in subarea C shown on page 24 of the Master Plan; or (z) January 15, 2022. Notwithstanding Section 11.a.i., without further action by the City Council or Planning Board, the City Manager or designee shall have the authority, but not the obligation, to extend the January 15, 2022 deadline to complete the Clement Extension improvements for up to one (1) year upon any terms or conditions he/she deems appropriate using his/her reasonable discretion. ~~four (4) years from the Effective Date, provided however that the completion deadline shall be extended if necessary so that under no circumstances shall the period between the commencement date and the completion date for the Clement Extension improvements be less than one (1) year.~~ Upon completion of the improvements, by quitclaim deed, Developer shall transfer fee title to the Clement Extension right of way, including the travel lanes, bike lanes, landscaping strips and sidewalks to the City of Alameda at no cost.

- i. Intentionally Omitted. ~~The Parties acknowledge that Wind River Systems currently owns a portion of the land that will be needed to complete the extension of Clement Avenue from Entrance Road to Atlantic Street, “Wind River Property”. City further acknowledges that Developer has made and continues to make all commercially reasonable efforts to acquire the Wind River Property. In addition, City has used and shall continue to use commercially reasonable efforts to assist Developer in acquiring the Wind River Property.~~
- ii. Intentionally Omitted. ~~Developer shall pay when due the Acquisition Expenses (as described in Section 7.b. below) reasonably incurred by City in assisting Developer in acquiring the Wind River Property.~~
- iii. Intentionally Omitted. ~~Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension improvements. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. However, the City will collect the Signal Contribution from the adjacent Marina Cove II developer pursuant to Section 7.a. below.~~
- iv. Developer acknowledges and agrees that the construction of the Clement Extension is subject to the requirements of California Labor Code Section 1770 et seq. and Section 2-67 of the Alameda Municipal Code requiring

the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements.

- v. The Parties acknowledge and agree that Developer shall establish a funding mechanism reasonably acceptable to the City's Public Works Director, in both form and revenue generating capacity (such as a Community Facilities District), to provide funding to the City for the maintenance of the Clement Extension. Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension maintenance. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. It is understood and agreed that Developer will be responsible for the entire maintenance cost of the Clement Extension until such time as Developer enters into a binding agreement with the Encinal Terminal developer for its fair share contribution.
 - vi. Commencing on January 1, 2021, Developer shall submit monthly construction status reports to the City describing work completed, anticipated completion date, and any delays that might be expected as the result of actions by any of the parties or outside agencies that may cause completion of the Clement Extension improvements to be delayed beyond January 15, 2022. In the event that any monthly report indicates that the completion of the Clement Extension improvements will be delayed beyond January 15, 2022, the City shall immediately schedule public hearings to consider the causes of the delays and any appropriate actions necessary to complete the extension.
- b. Exhibit C of the Development Agreement is hereby amended to add Exhibit C-1, attached hereto.
- 4. **Effect of this Third Amendment.** Except as expressly modified by this Third Amendment, the Development Agreement shall continue in full force and effect according to its terms, and Developer and City hereby ratify and affirm all their respective rights and obligations under the Development Agreement. In the event of any conflict between this Third Amendment and the Development Agreement, the provisions of this Third Amendment shall govern.
 - 5. **Binding Agreement.** This Third Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this Third Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with the terms of this Third Amendment or under law.
 - 6. **Recordation:** The Developer shall record a copy of this Third Amendment within ten (10) days following execution by the parties.

7. **Counterparts.** This Third Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
8. **California Law.** This Third Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
9. **Invalidity.** Any provision of this Third Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this Third Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.
10. **Headings.** The headings used in this Third Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Third Amendment.

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EXHIBIT C-1



IN WITNESS WHEREOF, the City and Developer have each caused this Third Amendment to be duly executed on their behalf as of the Third Amendment Effective Date.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____

Eric J. Levitt
City Manager

RECOMMENDED FOR APPROVAL:

By: _____

Andrew Thomas
Planning, Building and Transportation Director

APPROVED AS TO FORM:

By: _____

Celena H. Chen
Chief Planning Counsel

ATTEST:

By: _____

Lara Weisiger
City Clerk

DEVELOPER:

TLP:

TL PARTNERS I LP,
a California limited partnership

By: TL Management, Inc.,
a California corporation
its General Partner

By: _____
Name: _____
Title: _____

ABV:

ALTA BUENA VISTA OWNER, LLC,
a Delaware limited liability company

By: ALTA BUENA VISTA, LLC,
a Delaware limited liability company, its managing member

By: WS BUENA VISTA, LLC,
a Delaware limited liability company, its managing member

By: WP CALIFORNIA, LLC,
a Delaware limited liability company, its manager

By: _____
Name: _____
Title: _____

By: PSOF III ALTA BUENA VISTA MEMBER, LLC,
a Delaware limited liability company, its member

By: Principal Real Estate Investors, LLC,
a Delaware limited liability company, its authorized signatory

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a continued regular meeting assembled on the 1st day of December 2020 by the following vote to wit:

AYES: Councilmembers Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 4.

NOES: Councilmember Daysog – 1.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 2nd day of December 2020.

Lara Weisiger, City
Clerk City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda