

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this “Agreement”) is made and is effective upon the last signature date set forth below (the “Effective Date”), by and between Friends of Crab Cove and Liza Morse (collectively, “FOCC”); Alameda Point Collaborative, Inc., Kathryn S. Duke, and Kathleen Koster (collectively, “APC”); and Malia Vella, James Oddie, John Knox White, Marilyn Ezzy Ashcraft, City Council and City of Alameda (collectively, the “City”, and collectively with FOCC and APC, the “Parties”).

RECITALS

- A. The Parties are involved in the following separate but related appellate proceedings: (1) *Friends of Crab Cove, et al. v. Malia Vella, et al.*, currently pending in the California Court of Appeal, First Appellate District, Division 3 (the “Appellate Court”), Case No. A159140, which appeal is from a petition for writ of mandate proceeding in the California Superior Court for Alameda County, Case No. RG18933140 (the “Superior Court”) in which FOCC as petitioner asserted that respondent City violated the provisions of the California Environmental Quality Act (“CEQA”) in approving a Mitigated Negative Declaration, general plan land use diagram and text amendment, and zoning map amendment to facilitate real party in interest APC’s Alameda Senior Housing and Wellness Center project located in Alameda, California (the “Project”), and (2) *Friends of Crab Cove, et al. v. Malia Vella, et al.*, currently pending in the Appellate Court, Case No. A159608, which appeal is from the Superior Court’s order on the City’s and APC’s motions to tax costs, entered by the Superior Court on January 16, 2020 (the proceedings in the Appellate Court and Superior Court are, collectively, the “Writ Action”);
- B. APC and the City deny that the City violated the provisions of CEQA in its adoption of Resolution No. 15461 (Mitigated Negative Declaration adoption, General Plan land use diagram and text amendment) and Ordinance No. 3234 (zoning map amendment) for the Project;
- C. On September 26, 2019, the Superior Court issued its Order Denying Petition for Writ of Mandate and on October 3, 2019, the Superior Court issued its related Judgment (the “Order and Judgment”), which Order and Judgment denied FOCC’s petition, granted judgment in favor of the City and APC, and ordered that the City and APC shall recover their court costs from FOCC;
- D. On October 15, 2019, the City filed a Notice of Entry of Judgment;
- E. On October 17, 2019, APC filed its Memorandum of Costs in the amount of \$1616.17.
- F. On October 23, 2019, the City filed its Memorandum of Costs in the amount of \$305.85;

- G. On November 12, 2019, FOCC filed an Amended Motion to Strike and Tax Costs;
- H. On December 2, 2019, FOCC filed a Notice of Appeal of the Court's Order and Judgment;
- I. On January 16, 2020, the Superior Court issued an Order on Motion to Tax Costs ("Costs Order");
- J. On February 10, 2020, FOCC filed a Notice of Appeal of the Costs Order; and
- K. All Parties agree and recognize that in California all agreements imply a covenant of good faith and fair dealing.
- L. Without any admission of liability or lack of liability by any Party, the Parties desire to resolve the Writ Action without the further appeal, expense and uncertainty of continued litigation.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Acknowledgement of Recitals.** The Parties acknowledge that the Recitals herein contained are true and correct statements of fact.
2. **Waiver of Attorney's Fees and Costs.** APC and the City hereby waive any and all right to recover their unpaid court costs (as detailed in their respective Memorandum of Costs and as granted by the Costs Order) from FOCC. Each Party waives its right to recover any other unpaid court costs, attorney's fees, or other fees or expenses related to the Writ Action.
3. **Board Seats.** Friends of Crab Cove shall be entitled to select up to one individual and Liza Morse shall be entitled to select up to one individual to serve on APC's Oversight Committee for the Project.
4. **Security Measures for the Project.** APC hereby covenants and agrees that upon completion and operation of the Project, it shall implement the security measures set forth in the Safety and Security Plan attached hereto as Exhibit A in and around the property located at 1245 McKay Avenue, Alameda, CA 94501 for the duration of the time the Project is operated, administered, or overseen by APC. Furthermore, the Oversight Committee shall be empowered to require, by simple majority vote, additional security measures after the first six (6) months of Project operations if there is evidence of an increase in criminal activity in surrounding areas and such increase is directly attributable to the Project.

5. **Dismissal of Appeal.**

(a) Within four (4) business days following the Effective Date, FOCC shall execute and file with the Appellate Court a “Notice of Settlement of Appeal” in the form of attached Exhibit B (the “Notice”) in each of the two appeals comprising the Writ Action.

(b) Within three (3) business days following FOCC’s filing of the Notice, FOCC shall execute and file a “Request for Dismissal of Appeal” in the form of attached Exhibit C (the “Dismissal”).

6. **Covenant Not to Appeal.** FOCC hereby covenants and agrees never to file any further administrative appeal, judicial appeal or litigation of any kind against the City or APC arising from or relating to any existing or future governmental approvals for the Project as planned as of the effective date of this Agreement, including a potential redesign of the senior affordable housing component of the Project substituting a two-story new construction building in place of the currently contemplated rehabilitation of four existing two-story buildings, to contain approximately 120, and no more than 140 units, of senior affordable supportive housing rooms, with no material modifications to the medical respite and clinical elements of the Project, or the matters alleged in the Writ Action.

7. **Representations and Warranties.** Each person signing this Agreement represents and warrants that he, she or it has the right and authority to execute this Agreement, and each of the Parties hereby represent and warrant to one another as follows:

(a) The Parties have all requisite power and authority to execute this Agreement and to perform all of their obligations hereunder, including that all necessary corporate, shareholder, judicial, regulatory or other approvals have been obtained, and this Agreement has been duly executed and delivered by the Parties and does not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to the Parties or either of them.

(b) Each of the Parties has full ownership of the claims released hereby, and has not sold, assigned, transferred, conveyed, hypothecated, encumbered, or otherwise disposed of any of the claims relating to any subject matter covered by this Agreement.

8. **Mutual Release.** Except for any obligations created by this Agreement, as part of the consideration for this Agreement, the Parties, for themselves and any past, present and future officers, directors, members, shareholders, partners, agents, employees, administrators, parents, subsidiaries, affiliates, related parties, representatives, insurers, reinsurers, attorneys, predecessors, successors and assigns, hereby absolutely and unconditionally release and forever discharge each other, and any and all past, present and future parents, subsidiaries, affiliates, related parties, administrators, members, shareholders, partners, attorneys, insurers, reinsurers, predecessors, successors and assigns thereof, together with all of their respective officers, representatives, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon

contract or tort or under any state or federal law or otherwise, whether known or unknown, whether accrued or unaccrued, whether fixed or contingent, which the Parties or either of them have had, now have or may have or have made claim against any such person for or by reason of any act omission, matter, cause or thing whatsoever that was pleaded or could have been pleaded in the Writ Action or in any way related to the Project. In connection with the foregoing releases, the Parties expressly waive the benefit of California Civil Code section 1542, or any similar statute or law in any other State, reserving unknown claims from the scope of their release. Section 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

9. **Attorney's Fees and Costs in.** In any action or proceeding to enforce the terms arising out of the breach or enforcement of this Agreement, the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs of suit in addition to whatever other relief such prevailing party may be awarded in connection with such dispute.

10. **Governing Law; Venue; Jury Trial Waiver.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California. The Parties agree that any legal action filed in regard to this matter shall be filed in the Superior Court of Alameda in the State of California.

11. **Modifications or Amendments.** No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties.

12. **Counterparts** and Effective Date. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile or pdf signatures, which shall be as effective as original signatures. This Agreement shall be deemed effective as of the last date signed by the Parties to this Agreement as set forth below.

IN WITNESS WHEREOF, the Parties hereby have executed this Settlement Agreement and Mutual Release and agree to be bound by the terms contained in it.

Liza
Morse

Digitally signed by Liza Morse
DN: cn=Liza Morse, o, ou,
email=lizapwhoa@gmail.com,
c=US
Date: 2021.01.29 09:12:37
-08'00'

1/29/21

LIZA MORSE, an individual

FRIENDS OF CRAB COVE,
an unincorporated association

By:

Title:

J. Eduardo Vargas 2/1/21
Member.

ALAMEDA POINT COLLABORATIVE, INC.
a California corporation

By: Doug Biggs
Title: Executive Director

1/27/21

Kathryn Sauer Duke

KATHRYN S. DUKE, in her capacity
as Chief Executive Officer of
Alameda Point Collaborative, Inc.

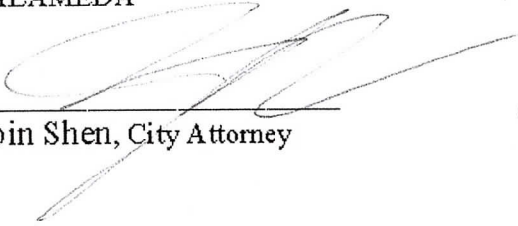
1/27/21

Kathleen Koster

KATHLEEN KOSTER in her capacity
as Chief Financial Officer of
Alameda Point Collaborative, Inc.

1/27/21

MALIA VELLA, aka MARY VELLA, in her capacity of Councilmember, JAMES ODDIE in
his capacity of Councilmember, JOHN KNOX WHITE, in his capacity of Councilmember,
MARILYN EZZY ASHCRAFT in her capacity as Councilmember, Mayor, CITY COUNCIL,
CITY OF ALAMEDA

By: 
Yibin Shen, City Attorney

1/27/21

Exhibit A
Safety and Security Plan

Safety and Security Alameda Wellness and Medical Respite Center

1. The Wellness Center will not tolerate disruptive or inappropriate behavior and will transfer patients out of medical respite to higher levels of care or other appropriate resources.
2. The Wellness Center will have 24/7 Security guards trained in harm reduction and de-escalation. Two security staff will be on site at all times. Security cameras and door alarms will also be monitored 24/7.
3. The oversight of admission to Medical Respite will be a qualified physician who will serve as the Medical Director of the Respite Center. The Medical Director will have experience and training in working with extremely vulnerable patients.
4. The Medical Respite will be a closed program which means that, like a hospital stay, patients will stay at the Center. Patients will be transported by staff to and from the site to specialty medical appointments and other resources. Doors and gates will be keyed in order to control ingress and egress to and from the Center.
5. Case Management and Housing Support staff will coordinate with the County housing for the homeless program to place discharged patients into safe and suitable housing resources in Alameda County. The program will transport patients who leave against medical advice back to their community of origin. Only Alameda residents will be transported back to an Alameda location.
6. Patients will be transported by our program, not the hospital, by van or Lyft. If the hospital refers someone who is not appropriate they will be transported back to the hospital.
7. If a Senior Housing resident or Medical Respite patient has behavioral or medical issues that cannot be stabilized on the site, they will be transferred to a different level of care.
8. Security and staff will monitor the Wellness Center property and surrounding neighborhood to assure that the Center and neighborhood are being properly maintained, including addressing and eliminating any inappropriate loitering by Center clients or guests.
9. On a daily basis, the property will be inspected and maintained for the highest quality condition.
10. Loitering, lines and tents will not be allowed on the Center property.

11. There will be a Neighborhood Advisory Group, Good Neighbor Agreements and a Hotline to meet neighborhood safety needs and goals, monitored by the City

Exhibit B

Form of Notice of Settlement of Appeal

A-159608

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

FIRST APPELLATE DISTRICT, DIVISION THREE

**FRIENDS OF CRAB COVE, ET AL.,
Appellants, Petitioners**

v.

**MALIA VELLA, ET AL.,
Respondents.**

**ALAMEDA POINT COLLABORATIVE, INC., ET AL.,
Real Parties in Interest.**

**Appeal From the Superior Court
of California, County of Alameda**

Case No.: RG18933140

Judge: The Honorable Frank Roesch

NOTICE OF SETTLEMENT

Attorneys for Appellants
Friends of Crab Cove

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NOTICE OF SETTLEMENT

Please be advised that on February 1, 2021, the parties to this appeal reached a settlement. Under the terms of the settlement, Petitioner and Appellant will file and serve a Request for Dismissal of Appeal within three (3) days from the date hereof.

Respectfully submitted.

Dated: February 2, 2021

SEIBERT BAUTISTA MONTOYA

Joe Bautista
Attorney for Appellants

A-159140

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

FIRST APPELLATE DISTRICT, DIVISION THREE

**FRIENDS OF CRAB COVE, ET AL.,
Appellants, Petitioners**

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NOTICE OF SETTLEMENT

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Friends of Crab Cove

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Please be advised that on February 1, 2021, the parties to this appeal reached a settlement. Under the terms of the settlement, Petitioner and Appellant will file and serve a Request for Dismissal of Appeal within three (3) days from the date hereof.

Respectfully submitted.

Dated: February 2, 2021

SEIBERT BAUTISTA MONTOYA

Joe Bautista
Attorney for Appellants

Exhibit C

Form of Request for Dismissal

<p>COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION THREE</p>		<p>COURT OF APPEAL CASE NUMBER: 159608</p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 255,708 NAME: Joe Bautista FIRM NAME: Seibert Bautista Montoya STREET ADDRESS: 2100 Embarcadero, Suite 203 CITY: Oakland STATE: CA ZIP CODE: 94606 TELEPHONE NO.: 510-679-1981 FAX NO.: 510-679-1982 E-MAIL ADDRESS: bautista@sbm.law ATTORNEY FOR (name): Appellants</p>		<p>SUPERIOR COURT CASE NUMBER: RG18933140</p>
<p>APPELLANT: FRIENDS OF CRAB COVE, ET AL. RESPONDENT: MALIA VELLA, ET AL.</p>		
<p>REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)</p>		

The undersigned appellant hereby requests that the appeal filed on (date): _____ in the above entitled action be dismissed.

Date:

 (TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION THREE	COURT OF APPEAL CASE NUMBER: 159140
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 255,708 NAME: Joe Bautista FIRM NAME: Seibert Bautista Montoya STREET ADDRESS: 2100 Embarcadero, Suite 203 CITY: Oakland STATE: CA ZIP CODE: 94606 TELEPHONE NO.: 510-679-1981 FAX NO.: 510-679-1982 E-MAIL ADDRESS: bautista@sbm.law ATTORNEY FOR (<i>name</i>): Appellants	SUPERIOR COURT CASE NUMBER: RG18933140
APPELLANT: FRIENDS OF CRAB COVE, ET AL. RESPONDENT: MALIA VELLA, ET AL.	
REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)	

The undersigned appellant hereby requests that the appeal filed on (*date*):

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Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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