**EXCLUSIVE NEGOTIATING AGREEMENT**

This Exclusive Negotiating Agreement (the “**Agreemen**t”) is made and entered into as of June \_, \_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_, a Delaware limited partnership (“**Seller**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California nonprofit public benefit corporation (“**Buyer**”). Buyer and Seller are also each referred herein from time to time as a “Party” or collectively as the “Parties”.

RECITALS

1. Seller owns the real property shown on **Exhibit A** attached hereto as Lot 1, Lot 2 and Lot 3, located in \_\_\_\_\_\_\_\_\_, California. Buyer desires to acquire from Seller Lot 3 (approximately \_\_\_\_ acres) and a portion of Lot 2 contiguous to Lot 3 comprising approximately \_\_\_\_ acres (the “**Property**”).
2. Buyer intends to acquire the Property in connection with its development of a two-phase, affordable housing project comprising at least \_\_\_\_\_ residential units, and related infrastructure improvements. Such housing units, infrastructure improvements and replacement parking lot are collectively referred to in this Agreement as the “Project”. Buyer has obtained grant awards for the Project from the California Department of Housing and Community Development under its \_\_\_\_\_\_\_\_\_\_\_, as well as funding commitments from \_\_\_\_\_\_\_\_\_\_\_\_\_.
3. Seller’s affiliate, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, has assigned to Buyer all of Seller’s interest in its Exclusive Negotiating Agreement with \_\_\_\_\_\_\_\_\_\_\_\_ in connection with the acquisition of property owned by\_\_\_\_\_\_\_\_\_\_\_\_. Buyer intends to acquire the property and develop it as part of the Project.

AGREEMENT

Now therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. NEGOTIATIONS
	1. Good Faith Negotiations. During the Negotiation Period (defined below), the Parties shall negotiate diligently and in good faith the terms and conditions for the proposed sale of the Property, based on the basic terms set forth in Section 2 below. The Parties contemplate that a separate Purchase and Sale Agreement will be entered into by the Parties setting forth the precise terms and conditions of the sale of the Property agreed to by the Parties during the Negotiation Period. The negotiations described herein will commence after the execution of this Agreement and shall continue throughout the Negotiation Period. Except as otherwise set forth herein, including Section 1.3, if a mutually satisfactory Purchase and Sale Agreement has not been agreed upon and executed by the Parties prior to expiration of the Negotiation Period, then, without further action, this Agreement shall automatically terminate upon the expiration of the Negotiation Period and Buyer and Seller shall have no further obligations to each other and Buyer shall have no further rights with respect to the Property.
	2. Exclusive Negotiations. Seller shall not negotiate sale of the Property with any other person or entity prior to the termination of this Agreement. The Parties acknowledge that Seller is negotiating with \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the sale and development of a portion of Lot 2 other than the portion to be conveyed to Buyer.
	3. Length of Negotiation Period. Unless extended by mutual agreement, or as otherwise provided herein, the period for negotiation of sale of the Property shall be the period beginning on the date of this Agreement and ending on the earliest to occur of: (i) \_\_\_\_\_\_\_\_\_\_\_; (ii) execution by the Parties of a Purchase and Sale Agreement for the Property, or (iii) written notice given by Buyer to Seller that Buyer has elected to withdraw from the negotiations (the “**Negotiation Period**”). Notwithstanding the foregoing, this Agreement shall terminate on \_\_\_\_\_\_\_\_\_, if by that date the Infill Infrastructure Grant Standard Agreement and Disbursement Agreement (the “IIG Documents”) have not been fully executed by the California Department of Housing and Community Development (“HCD”), or (B) the Transit-Oriented Development Grant Standard Agreement has not been fully executed by \_\_\_\_\_\_\_ and HCD, or (C) the Transit-Oriented Development Grant Disbursement Agreement has not been fully executed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_ and, if required by HCD, by \_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Outline of Basic Terms.

2.1 Purchase Price: $\_\_\_\_\_ per square foot for each square foot of the Property transferred to Buyer by Seller at Closing, to be paid at Closing. The precise layout and acreage of the Property to be acquired by Buyer shall be mutually agreed by Buyer and Seller. In addition to the cash payment at Closing, Buyer shall transfer to Seller by a date to be agreed by the parties pursuant to the Purchase and Sale Agreement 60 Inclusionary Housing Credits (the “**IH Credits”**) pursuant to an Inclusionary Housing Credits Agreement (the “**IHCA**”) entered into at Closing among Buyer, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**City**”) and Seller, which IHCA shall be in form and substance approved by Buyer and Seller at their sole discretion. Transfer of the IH Credits pursuant to the IHCA shall be additional, delayed consideration for the sale, and Buyer’s failure to perform under the IHCA by the specified time period shall be a material breach of the Agreement.

2.2 Guaranty. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall guaranty performance by Buyer under the IHCA, or, at Seller’s election, guaranty payment to Seller of the value of the IH credits as agreed by the parties if Buyer does not perform under the IHCA.

2.3 Liquidated Damages. If Buyer defaults on its obligation to purchase the Property, Seller shall be entitled to liquidated damages in the amount of $50,000 as its sole and exclusive remedy.

2.4. Escrow and Title Review. Upon execution of the Purchase and Sale Agreement, escrow shall be established with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Title Company**”). Seller shall deliver to Buyer a preliminary title report on the Property issued by Title Company with copies of all items shown as exceptions on the title report (collectively, “**Report**”) within ten (10) business days of mutual execution of the Purchase and Sale Agreement. Buyer shall have thirty (30) days from its receipt of the Report to approve or disapprove the condition of title of the Property. Title will be delivered to Buyer by grant deed on Closing, subject to matters approved by Buyer. Title shall be conveyed with no monetary liens, except payment of non-delinquent real property taxes.

2.5 Property. Seller shall transfer and assign to Buyer (to the extent assignable) all development rights and entitlements of Seller in connection with the property, and all reports, studies, plans, architectural, engineering and consulting contracts generated by or for Seller in connection with Seller’s proposed development of the Property.

2.6 Buyer’s Inspection and Due Diligence. Buyer shall have the right to inspect the Property and otherwise conduct due diligence as set forth below:

A. Physical Inspection: Buyer shall have the right to conduct such engineering, feasibility, seismic, surveys and other studies regarding the condition of the Property as it considers prudent. Seller agrees to allow Buyer and or Buyer’s agents onto the Property during regular business hours to conduct studies and inspections of the Property, subject to Seller’s prior reasonable approval and adequate notice. Buyer shall not perform any invasive testing without the prior written consent of Seller, which consent shall not unreasonably be withheld or delayed.

B. Environmental Audit: Buyer shall have the right to conduct an environmental audit and such environmental studies regarding the environmental condition of the Property as the Buyer determines are prudent.

C. Documents: Within five (5) business days of mutual execution of the Purchase and Sale Agreement (and in addition to the documents provided previously by Seller), Seller shall deliver to Buyer for Buyer’s review the following information relating to the Property and the Cornerstone Lot: (1) all service or maintenance contracts; (2) any other contracts and warranties; (3) current property tax bills and any notices of tax assessments (4) any previously completed environmental reports, seismic reports, soils reports or other geotechnical studies, and any building inspection reports; (5) surveys; and (6) other studies and relevant reports, budgets, financial statements, and any notices from governmental entities.

 Seller shall allow Buyer access to the Property during the Contingency Period and the term of the Purchase and Sale Agreement to conduct any inspections or investigations Buyer deems prudent.

2.7 Initial Contingency Period. The Initial Contingency Period shall commence upon execution of the Purchase and Sale Agreement and end on \_\_\_\_\_\_\_\_\_\_\_\_. Either Buyer or Seller may terminate the Agreement if the following conditions have not been satisfied by the expiration of the Initial Contingency Period:

A. Buyer has approved the physical condition of the Property, including without limitation, the environmental condition.

B. Buyer and Seller shall have reached agreement regarding appropriate cost sharing with respect to terminating and modifying the existing unrecorded Final Map, improvement agreements, etc., and the other documents that were executed in connection with the prior development plan.

1. Buyer shall have entered into an Agreement with \_\_\_\_\_ to acquire the Property from \_\_\_\_\_ in exchange for (i) the Property, or, if elected by Buyer, (ii) a portion of the Property together with the \_\_\_\_\_\_\_\_\_\_\_ and/or \_\_\_\_\_\_\_\_, and Buyer shall have satisfactorily completed its due diligence with respect to title and the physical and environmental condition of the \_\_\_\_\_\_\_\_\_\_\_. Seller shall cooperate with Buyer in obtaining any necessary consent from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to permit Buyer to inspect the property.
2. Buyer and Seller, shall have agreed on an infrastructure improvement program, responsibility for construction of the phases of infrastructure, schedule for completion, and responsibility for the cost of improvements affecting \_\_\_\_\_\_\_\_\_Street, \_\_\_\_\_\_\_\_\_ Street and \_\_\_\_\_\_\_\_\_ Street, and Buyer and Seller shall have received such documents as Buyer and Seller determine are necessary to effect said agreement.
3. Buyer, Seller and the City shall have agreed upon a plan for the vacation of \_\_\_\_\_\_\_\_\_\_ Street and \_\_\_\_\_\_\_\_\_Street, and Buyer and Seller shall have received documentation satisfactory to Buyer and Seller to effect said vacation.
4. Buyer, Seller and the City shall have agreed upon the form of the IHCA and the Purchase Agreement shall be amended to attach the form of the IHCA as an exhibit and provide that the IHCA shall be executed at Closing.

2.8 Final Contingency Period. Buyer shall have until \_\_\_\_\_\_\_\_, to approve the feasibility of Buyer’s proposed use of the Property, including, without limitation, Buyer’s ability to obtain any necessary governmental approvals and permits for Buyer’s intended development or improvement of the Property and Buyer’s ability to obtain financing on terms acceptable to Buyer.

2.9 Closing Date. The Closing shall occur by \_\_\_\_\_\_\_\_\_\_.

2.10 Additional Buyer Conditions. In addition to satisfaction of Buyer’s Due Diligence Contingency, Buyer’s conditions to close will include but are not limited to receipt of a recorded Final Map.

2.11 Closing Costs. Buyer to pay all title and escrow fees and Seller shall pay any transfer taxes on the transaction. All other Closing costs shall be prorated in accordance with local custom.

2.12 Mutual Cooperation. Buyer agrees not to challenge, and to support Seller’s proposed plan for the development of Lot 1 and the portion of Lot 2 not acquired by Buyer with an office campus, including, without limitation, the plan to vacate streets. Seller shall support and not challenge Buyer’s proposed Project. Seller acknowledges that, during the course of the escrow, Buyer may seek certain governmental permits and approvals for the Project. Seller agrees to cooperate with Buyer and take all actions and join in all applications and execute all documents reasonably necessary to allow Buyer to pursue and obtain such permits and approvals with respect to the Property, provided that such cooperation shall be at no cost or liability to Seller. Buyer shall have no liability to Seller by reason of undertaking these activities in connection with government permits, or approvals.

2.13 Representations and Warranties. The Purchase and Sale Agreement shall include representations and warranties typically made by buyers and sellers in purchase and sale transactions.

2.14 Termination of Consulting Services Agreement. As soon as possible after execution of this Agreement, but in any event prior to or concurrently with the execution of the Purchase and Sale Agreement, the Consulting Services Agreement between Seller’s affiliate, \_\_\_\_\_\_\_\_\_, and Buyer’s affiliate, \_\_\_\_\_\_\_\_\_ will be terminated, all outstanding fees thereunder will be waived, and Seller shall receive such documents as Seller determines are necessary to effect said termination as of the date of the Purchase and Sale Agreement.

1. No Brokers. Neither the Seller nor the Buyer has involved a broker in this transaction. Each party shall defend and indemnify the other from any claims for commissions or fees arising from such parties dealing with any other broker or agent not specifically listed herein.
2. Confidentiality. All parties shall keep the existence of this Agreement in strict confidence, except as required by law or on a need to know basis with the parties’ consultants, financing sources and other reasonably desirable parties necessary to evaluate or consummate the proposed transaction contemplated hereby, to the extent that such third parties also agree to keep such information confidential except to the extent require by law.
3. Indemnification. \_\_\_\_\_\_\_\_\_\_\_\_\_ shall indemnify Seller’s affiliate, \_\_\_\_\_\_\_\_\_\_\_\_\_ and hold \_\_\_\_\_\_\_\_\_\_\_\_\_harmless from and against any and all claims, liens, damages, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including without limitation attorneys’ fees and expenses) asserted against or incurred by \_\_\_\_\_\_\_\_\_\_\_\_\_in connection with \_\_\_\_\_\_\_\_\_\_\_\_\_application to HCD for \_\_\_\_\_\_\_\_\_\_\_\_\_Funds in connection with the Property, and the \_\_\_\_\_\_\_\_\_\_\_\_\_Documents, except to the extent arising from \_\_\_\_\_\_\_\_\_\_\_\_\_negligence or willful misconduct.
4. Assignment. Buyer shall have the right to assign this Agreement to a limited partnership whose general partner is a wholly controlled affiliate of \_\_\_\_\_\_\_\_\_\_\_\_\_, provided that such assignment shall not operate to release \_\_\_\_\_\_\_\_\_\_\_\_\_from any obligation it may have to Seller. Except as expressly set forth herein, Buyer shall not assign this Agreement without the prior written consent of Seller at Seller’s sole and absolute discretion.
5. Notices. Any notice which a Party is required or may desire to give to the other Party shall be in writing and may be delivered personally, by United States registered or certified mail, postage prepaid, or by FedEx or other reputable courier service regularly providing evidence of delivery. Any such notice shall be addressed as follows (subject to the right of a Party to designate a different address for itself by notice given in accordance with this Agreement):

Buyer:

Seller:

1. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

9. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a single Agreement.

In Witness Whereof, the Parties have executed this Exclusive Negotiating Agreement as of the date first written above.

BUYER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_, Vice President

SELLER:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_, President