

SITE 21

DRAFT EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement ("Agreement") is entered into as of _____, by and between the Capitol Area Development Authority, a California joint powers agency ("CADA"), and _____ ("Developer").

RECITALS

- A. CADA has entered into a Purchase and Sale Agreement with the California Department of General Services for acquisition and development of certain real property commonly known as Site 21, located on the southwest corner of 14th and N Streets in the City of Sacramento, County of Sacramento, State of California, legally described on Exhibit 1 attached hereto and made a part hereof ("Site 21" and/or "Property").
- B. In response to a Request for Proposals issued by CADA ("RFP"), Developer submitted to CADA a proposal submittal ("Submittal") for the development of a mixed-use project on Site 21
- C. On October 28, 2016, the CADA board found that the development of a project consistent with the one described in the RFP is categorically exempt under the California Environmental Quality Act (PRC §21083.5 and CEQA Guidelines §15183), because it is consistent with the City of Sacramento General Plan 2035 and because all applicable General Plan mitigation measures will be incorporated into the project.
- D. The Development team for the development includes _____ (collectively the "Development Team").
- E. CADA and Developer intend to enter into a Disposition and Development Agreement ("DDA") for the development of for-sale residential units and parking on the Property by Developer ("Improvements") (collectively, Property and Improvements shall be referred to as the "Project").
- F. The DDA shall set forth the terms and conditions for the development of the Project, construction of improvements on the Property, and shall provide for the transfer of title to the Property from CADA to Developer.
- G. The parties intend to enter into this Agreement to provide for a period of exclusive negotiations relating to the development of the Project, pursuant to the terms and conditions set forth below.

AGREEMENT

1. Negotiations.

1.1 Good Faith Negotiations. CADA and the Developer agree to negotiate diligently and in good faith regarding the preparation and terms of a DDA to be considered for execution between the CADA and Developer, in the manner set forth herein. A DDA Term Sheet is attached to this ENA as Exhibit 3 and its terms and conditions shall be considered the essential points of a negotiated DDA agreement.

1.2 Negotiation Period. This Agreement shall be effective upon the full execution by

the parties ("Effective Date") and shall terminate on _____ ("Exclusive Negotiating Period") (Twelve months from the date of this Agreement). During the Exclusive Negotiating Period, CADA agrees not to negotiate with any other person or entity regarding development of the Property or any portion thereof. If upon expiration of the Exclusive Negotiating Period, the Developer has not signed and submitted a DDA to CADA, this Agreement shall automatically terminate.

If a DDA is signed and submitted by the Developer to CADA on or before expiration of the Exclusive Negotiating Period, this Agreement and the Exclusive Negotiating Period shall be automatically extended without further action by CADA or the Developer for thirty (30) days from the date of such submittal to enable CADA to (i) consider the terms and conditions of the proposed DDA, (ii) if appropriate, take the actions necessary to authorize CADA to enter into the DDA, and (iii) execute the DDA.

If CADA has not executed the DDA submitted above by the thirtieth (30th) day, then this Agreement shall automatically terminate.

1.3 Negotiation Fee. Upon submission of its response to the Request for Proposals, Developer submitted a Negotiation Fee in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) ("Negotiation Fee"). CADA shall retain the Negotiation Fee in consideration of this Agreement and to ensure that the Developer will proceed diligently and in good faith to negotiate and perform all of the Developer's obligations under this Agreement. The Negotiation Fee shall be nonrefundable except as provided in Section 1.45.2 and become the exclusive property of CADA upon receipt thereof.

1.4 Lack of Diligent Good Faith Negotiations.

1.4.1 Developer Lack of Diligent Good Faith Negotiations. In the event the Developer has not continued to negotiate diligently and in good faith the terms of a DDA, CADA shall give written notice thereof to the Developer who shall then have ten (10) working days to commence negotiating in good faith during the Exclusive Negotiating Period. Following the receipt of such notice and the failure of the Developer to thereafter commence negotiating in good faith within such ten (10) working days, CADA may, at its option, terminate this Agreement and neither party shall have any further rights against or liability to the other under this Agreement.

1.4.2 CADA Lack of Diligent Good Faith Negotiations. In the event CADA has not continued to negotiate diligently and in good faith the terms of a DDA, Developer shall give written notice thereof to CADA, which shall then have ten (10) working days to commence negotiating in good faith during the Exclusive Negotiating Period. Following the receipt of such notice and the failure of CADA to thereafter commence negotiating in good faith within such ten (10) working days, Developer may, at its option, terminate this Agreement and CADA shall reimburse the Developer the amount of the Negotiation Fee, without interest. Neither the failure of CADA to approve or execute a DDA signed and submitted by Developer, nor the failure of the Developer and CADA to reach agreement on a DDA by the end of the Negotiation Period, shall be considered a failure by CADA to negotiate diligently and in good faith.

1.5 Developer Studies. During the Exclusive Negotiating Period, the Developer shall, at its own expense, conduct any market, site, planning, or other studies it deems necessary, and provide the documentation required herein as a prerequisite to a DDA.

1.6 Right of Early Entry on Property. During the Exclusive Negotiating Period, the Developer may enter the Property for the purposes of conducting any surveys and appraisals, collecting soil samples and performing other studies which Developer feels are necessary for determining the suitability of the Property for development of the Project. The Developer shall

provide CADA with information regarding the purpose of the entry, the location of any sampling to be performed, the time such entry will occur, and written copies of any reports and results. The Developer agrees to indemnify, defend and hold CADA harmless against claims for damages to persons or property which arise from on-site activities or omissions of the Developer, its employees, officers, agents, representatives, contractors, subcontractors or consultants which are necessary to carry out the purposes of conducting surveys and appraisals, collecting soil samples and performing other studies necessary as set forth in the first sentence of this paragraph.

2. Development Concepts.

The negotiations hereunder shall be based on the development concepts outlined in the RFP, Developer's submittals, and of the project shall consist primarily of residential for-sale housing units. Development of the Project will also include appropriate parking and other amenities to provide for successful development, marketing, and ongoing operation.

3. Developer Team and Obligations.

3.1 Developer. The Developer is _____. The principal who is the primary chief negotiator is _____, and shall be the party responsible for the negotiation of the terms and conditions of the DDA on behalf of the Developer. During the term of this Agreement, no change may be made to the principals of the Developer without the prior written consent of CADA, in its sole discretion. Any modifications of the Developer prior to the expiration of this Agreement without the prior written consent of CADA shall constitute a material breach by Developer under this Agreement and CADA may, at its option, terminate this Agreement by written notice to the Developer and neither party shall have any further rights against or liability to the other under this Agreement.

3.2 Full Disclosure. The Developer has made full disclosure to CADA of its principals, officers, major stockholders, major partners, joint ventures, key managerial employees and other associates, and all other material information concerning the Developer and its associates. Any significant change in principals, associates, partners, joint ventures, negotiators, development manager, consultants, professional, and directly involved managerial employees of the Developer shall be subject to the written approval of CADA. Any modifications of principals, officers, major stockholders, major partners, joint ventures, key managerial employees and other associates, and all other material information concerning the Developer and its associates prior to the expiration of this Agreement without the prior written consent of CADA shall constitute a material breach by Developer under this Agreement and CADA may, at its option, terminate this Agreement by written notice to the Developer and neither party shall have any further rights against or liability to the other under this Agreement.

3.3 Development Team. Consistent with DDA Term Sheet section 14.8, the Developer shall submit to CADA for review and comment executed agreements for any of the identified service entities of the proposed development team, i.e., architect, engineer, etc. by _____. CADA shall have the right to review and approve the identity of the proposed consultants and the related agreements.

In the event the Developer fails to submit or resubmit the required agreements to CADA within the time set forth in this Section, CADA may, at its option, terminate this Agreement by written notice to the Developer and neither party shall have any further rights against or liability to the other under this Agreement.

3.4 Development Proposal. The Developer shall prepare, at its sole cost and expense, and submit to CADA for review and approval, the required copies of a draft development proposal for the Project (the "Development Proposal") by _____.

The Development Proposal shall be consistent with Development concepts and requirements set forth in Section 2 and shall include the following:

- Design Program
- Estimated Project Sources and Uses
- Development and Operating Pro Forma
- Preliminary Development Schedule
- Market Study

The primary objective of the Design Program is to present to CADA a clearly defined, feasible development project and to present it in a form that result in CADA's understanding and approval. The Design Program shall define the most appropriate Project. The Design Program shall establish the general scope and conceptual design of the Project illustrating the scale and relationship of the Project components. The Design Program shall include, but not be limited to, the planned number of residential units, number of parking spaces, and square footage of retail space.

The Design Program documents shall include a site plan, building plans with elevations and sections, a perspective sketch of the elevation and a statistical summary of the design area including, but not limited to, floor areas, unit floor plans, common areas, parking areas and unit mixes and types. Preliminary selections of major building systems and construction materials shall be set forth in the Design Program. The Design Program shall also note code references (seismic, UBC, City, etc.) and any significant variance thereto. The Design Program documents shall include light and shadow renderings, and color presentation poster boards depicting relationships and heights to adjacent properties and neighborhood.

The Project Sources and Uses submitted with the Design Program shall include projected soft and hard costs and sources of funding. The Development and Operating Pro Forma shall include estimated cost of sales and revenue projections. The Developer and its architect will participate in community workshops, organized by CADA, to obtain neighborhood input into the Design Program.

In the event the Developer fails to submit or resubmit the complete Development Proposal to CADA within the time set forth in this Section, CADA may, at its option, terminate this Agreement by written notice to the Developer. Neither party shall have any further rights against or liability to the other under this Agreement.

The Market Study shall be commissioned by the Developer and shall be completed by an independent, third-party real estate broker expert in downtown, infill projects.

3.5 Development Entity. The Developer shall submit to CADA for review and approval executed development formation documents for the specific development team or entity that is to enter into the DDA by _____.

In the event the Developer fails to submit or resubmit the required development entity formation documents to CADA within the time set forth in this Section, CADA may, at its option, terminate this Agreement by written notice to the Developer. Neither party shall have any further rights against or liability to the other under this Agreement.

3.6 General Business Terms and Conditions. The Developer and CADA shall commence negotiations and preparation of an outline of the general business terms and conditions for a final DDA Term Sheet based upon the draft DDA Term Sheet attached hereto as Exhibit 3, for the acquisition and development of the Property. Such negotiations shall result in completion of

a final DDA Term Sheet by _____. The final DDA Term Sheet will be used to prepare and enter into a DDA.

In the event that the Developer and CADA do not complete a final DDA Term Sheet within the time set forth in this Section, either the Developer or CADA may, at their option, terminate this Agreement by written notice to the other party. Neither party shall have any further rights against or liability to the other under this Agreement.

3.7 Other Completion Items. The Developer and CADA shall complete the following items prior to the expiration date of this Agreement:

- Draft Disposition and Development Agreement (DDA). CADA will provide the first draft of the DDA.

3.8 Developer's Findings, Determinations, Studies and Reports. Notwithstanding any other time provisions in this Agreement, the Developer agrees to make oral and written progress reports from time-to-time as requested by CADA advising CADA on all matters and all studies being made by the Developer. In the event CADA and Developer do not enter into a DDA, the Developer shall submit to CADA copies of all studies and reports prepared for the proposed development of the Project by or for the Developer and all third party service provider contracts, and CADA shall have the right to the use and benefit of all such studies and reports without limitation.

3.9 Evidence of Project Financing. No later than _____, Developer shall submit an updated construction financing letter of interest and evidence of equity financing sufficient to develop the Project. Such evidence shall consist of commitment letters or equivalent commercially reasonable documentation evidencing Developer's financial ability to complete the Project. If financing is not available and a commitment letter cannot therefore be secured, then construction financing and equity financing letters of interest may instead be submitted. A verbal or written representation by the Developer that equity and construction financing are available will not constitute sufficient evidence.

4. CADA Obligations.

4.1 Development Team.

CADA shall review and tentatively approve or disapprove the identified service entities and related agreements submitted by the Developer in accordance with Section 3.3 of this Agreement within seven (7) days of the date such information is received by CADA.

In the event CADA disapproves any Development Team agreements, CADA shall give the Developer written notice of such disapproval. The Developer shall then have ten (10) working days from the date of the notice to resubmit one or more new agreements.

4.2 Development Proposal.

CADA shall review and either approve or disapprove the Development Proposal submitted by the Developer in accordance with Section 3.4 of this Agreement by _____. CADA's review shall include, (i) presentation to, for review, comment, and recommendations, the State Capitol Area Committee and its Technical Advisory Committee, the City of Sacramento Design and Planning Commission, and the California Department of General Services represented by the State Architect's office.

In the event CADA disapproves the Development Proposal, CADA shall give the Developer written notice of such disapproval. The Developer shall then have twenty (20)

working days from the date of the notice to resubmit a new Development Proposal in accordance with Section 3.4.

4.3 Development Entity.

CADA shall review and either approve or disapprove the executed development entity formation documents submitted by the Developer in accordance with Section 3.5 of this Agreement within fourteen (14) days of the date such information is received by CADA.

In the event CADA disapproves the development entity formation documents, CADA shall give the Developer written notice of such disapproval. The Developer shall then have ten (10) working days from the date of the notice to resubmit new documentation in accordance with Section 3.5.

5. CEQA

5.1 As noted in Recital C, the CADA Board previously found that development of a project consistent with the project described in the RFP is categorically exempt under CEQA. CADA retains sole discretion in determining whether the Development Proposal presented by the Developer requires additional environmental review. In the event CADA determines that additional environmental review is required, CADA will undertake that review and prepare (or cause to be prepared) any environmental documentation required. The cost of such additional environmental review and documentation will be a project cost to be borne in full by Developer.

5.2 In the event of a CEQA challenge, CADA shall, in its sole discretion, determine the appropriate defense, if any, to such challenge.

6. Third Parties.

6.1 Third Party Costs. Each party shall be solely responsible for its own third party expenses and costs.

6.2 Developer Third Party Contracts. Developer shall make a good faith effort to insure that all third party service provider contracts entered into by Developer for plans, specifications, studies, reports, surveys, and other documents relating to the development of the Project ("Development Documents") provide for the assignment to CADA of the contract and any copyrights associated with the materials prepared pursuant to the contract and shall indicate that CADA is a third party beneficiary of the contract. Developer's assignment of the contracts and copyrights to CADA shall be without any representations or warranties on the part of the Developer or third parties as to the accuracy, completeness, or contents of such studies and reports.

7. Acquisition of the Property. The purchase price to be paid by the Developer for the Property shall be \$2,000,000.00 dollars.

8. DDA

8.1 DDA Entered Into. This Agreement shall automatically terminate upon execution of a DDA by both parties. Neither party shall have any further rights against or liability to the other under this Agreement.

8.2 DDA Not Entered Into - No-Fault of Either Party. If, despite diligent efforts, CADA and the Developer are unable to agree upon the final terms and conditions of the DDA, then either party may terminate this Agreement and neither party shall have any further rights against or liability to the other under this Agreement.

9. Real Estate Commissions. CADA and Developer each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

10. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Limitations of this Agreement.

11.1 The sole purpose of this Agreement is to facilitate the timely preparation of a DDA for the development of the Property. This Agreement is not an Owner Participation Agreement, a Disposition and Development Agreement, or a Development Agreement (as that term is defined and used in Government Code Sections 65864 et seq.).

11.2 This Agreement does not commit CADA to entering into any further agreement with the Developer, nor does it commit CADA in any way to expending any additional funds in connection with the development of the Property, approving any request by Developer in connection with the development of the Property, or approving any proposed project, in whole or in part, on the Property. Except for the rights expressly granted herein, nothing contained in this Agreement shall be construed to grant Developer any vested rights.

11.3 This Agreement does not constitute a disposition of property or exercise of control over property by CADA and does not require a public hearing. Execution of this Agreement by CADA is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval, which is not guaranteed, by CADA as to any Disposition and Development Agreement and all proceedings in connection therewith.

12. Non-Assignability. This Agreement shall not be transferred or assigned by the Developer.

13. Authorization. CADA and Developer represent and warrant that this Agreement has been duly executed by CADA and Developer and that this Agreement is a legal, valid, and binding obligation of CADA and Developer and is enforceable in accordance with its respective terms. Concurrent with the Developer's execution of this Agreement, Developer shall deliver to CADA conclusive evidence that the person executing this Agreement on behalf of the Developer is fully authorized to bind the Developer.

14. Extension of Deadlines. Notwithstanding anything contrary in this Agreement, if extensions of the deadlines for performance as set forth in this Agreement are mutually agreed to by the parties, CADA's Executive Director shall have the authority, on behalf of CADA, to extend the deadlines for performance, excepting extensions of the Exclusive Negotiating Period expiration date of _____, set forth in Section 1.2 of this Agreement. The CADA Board of Directors shall retain sole authority to extend the expiration date of this ENA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by CADA.

DEVELOPER:

a _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

CADA:

CAPITOL AREA DEVELOPMENT AUTHORITY,
a California Joint Powers Agency

By: _____
Wendy Saunders, Executive Director

Date: _____

APPROVED AS TO FORM BY:

By: _____
CADA Counsel