

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) is dated as of _____, 2021 (the “Effective Date”), and is entered into by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California (the “County”), and MIDPEN HOUSING CORPORATION, a California non-profit corporation (the “Operator”). The County and the Operator are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties.”

R E C I T A L S

- A. The Homekey Program (“Homekey”), administered by the California Housing and Community Development Department (“State HCD”), provided funding to rapidly sustain and expand the inventory of housing for people experiencing homelessness or at risk of homelessness and impacted by COVID-19.
- B. Homekey presented an opportunity for local public agencies to purchase motels and a broad range of other housing types in order to increase community capacity to respond to homelessness and the ongoing COVID-19 pandemic.
- C. Last year, State HCD was authorized to provide approximately \$550 million in Homekey funding derived from the State’s direct allocation of federal Coronavirus Relief Fund (CRF) and \$50 million in State General Fund to assist local public agencies in the acquisition of, and provide initial operating subsidies for, Homekey sites to promote project feasibility.
- D. With authorization from its Board of Supervisors, the County applied for and received a funding award from the Homekey Program to help finance the acquisition of a 95-unit hotel called TownePlace Suites, located at 1000 Twin Dolphin Drive in Redwood City (APN:095-222-230 and as described in Exhibit “A” to the ENA) (“Property”).
- E. With authorization from its Board of Supervisors, on December 3, 2020, the County acquired the Property, using Homekey Program funds and local CARES Act funds, for the purpose of providing permanent affordable housing to some of the County’s most vulnerable residents, including those who have experienced homelessness, those at-risk of experiencing homelessness, and extremely low-income seniors (the “Project”).
- F. The County and the Operator desire that the Operator manage and operate the Project in the manner detailed in the Operator Agreement the Parties will be preparing as further described in Exhibit “B” attached hereto and incorporated herein by reference.
- G. The County and the Operator will prepare an Operator Agreement, Lease Agreement, and all documents evidencing and securing a start-up loan from the

County to the Operator in a total amount not to exceed \$1,500,000 to fund startup costs and lease-up reserves in exchange for the Operator's agreement to rent the units exclusively to persons aged sixty-two (62) years or older and to record an affordability covenant restricting tenancy to individuals earning at or less than 30% of area median income ("Loan Documents") (collectively, the "Project Documents") within ninety (90) days from the execution of this ENA.

- H. The Parties acknowledge the truth of the Recitals set forth above which are hereby incorporated into this ENA.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the date that is 90 days after the Effective Date of this ENA, as may be extended by the Director as set forth below in this Section 1, or (ii) the date on which the County or the Operator terminates this ENA as provided in Section 2 below (in either case, the "ENA Period"). Provided that neither Party has terminated this ENA pursuant to Section 2 below, the ENA Period may be extended by the Director of the County of San Mateo Department of Housing (the "Director"), in writing, at the written request of the Operator, for up to 60 days; provided, however, that: (i) the Operator is not then in material default under this ENA (following notice to the Operator and expiration of cure periods in accordance with Section 3 below), and (ii) there are no material issues remaining to be resolved with respect to the ENA.

2. The County may terminate this ENA if the Operator should fail to comply with or perform any provisions of this ENA and such failure is not cured within ten (10) days after written notice from the Director to the Operator, or if reasonable progress is not being made in negotiations hereunder as determined by the Director in good faith. The Operator may terminate this ENA by thirty-days advance written notice to the County if the Operator determines, in its sole discretion that it does not wish to pursue the Project further.

3. During the ENA Period (as extended under Section 1 above, if applicable), the County shall not negotiate with any person or entity other than the Operator for the sale, lease, or development of the Property.

4. During the ENA Period, the County shall use good faith efforts to complete (or cause to be completed) the tasks set forth in Exhibit "B" attached hereto and incorporated herein by reference.

5. The Operator's representative to negotiate the Project Documents with the County is Felix AuYeung. The County's representative to negotiate the Project Documents is the Director or his designee. Either Party may designate a substitute representative by giving written notice to the other Party.

6. The Parties agree that the rent (i.e., lease payment or payments) for the Property, as applicable, will be nominal, but the Operator shall expressly agree to pay prevailing wages for all construction work.

7. The Operator shall bear all costs and expenses of any and all title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities performed by or for the Operator. During the ENA Period, the County shall deliver to the Operator complete copies of any and all material non-privileged reports and other material non-privileged documents pertaining to the Property, which are in the County's possession, at no cost to the Operator other than the actual cost (if any) of duplicating such documents.

8. The Operator shall indemnify, defend, and hold the County and the County's respective officers, directors, members, employees, agents, contractors and affiliated entities harmless from any and all claims, liabilities, damages, costs and expenses relating to or arising out of this ENA or the Operator's failure to perform any obligation of the Operator under this ENA. The Operator's obligations under the preceding sentence shall survive the expiration or earlier termination of this ENA.

9. The Operator represents and warrants that its undertakings pursuant to this ENA are for the purpose of operating and managing the Property and the Operator recognizes that, in view of the importance of the operation and management of the Property to the general welfare of the community, the qualifications and identity of the Operator and its principals are of particular concern to the County; therefore, this ENA may not be assigned by the Operator without the prior written consent of the Director in his sole and absolute discretion.

10. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the Operator:

MidPen Housing Corporation
303 Vintage Park Dr., Suite 250
Foster City, CA 94404
Attn: Felix AuYeung

If to the County:

County of San Mateo Department of Housing
264 Harbor Blvd, Bldg A
Belmont, CA 94002
Attn: Director

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; or (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

11. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and

no representations by either Party to the other as an inducement to enter into this ENA, except as may be expressly set forth herein, and any and all prior discussions and negotiations between the Parties are superseded by this ENA.

12. This ENA may not be altered, amended or modified except by a writing duly authorized and executed by all Parties.

13. No provision of this ENA may be waived except by an express written waiver duly authorized and executed by the waiving Party.

14. If any Party should bring any legal action or proceeding relating to this agreement or to enforce any provision hereof, or if the Parties agree to arbitration or mediation relating to this ENA, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action or proceeding shall be filed in the County of San Mateo. The Parties further agree that any agreed-upon arbitration or mediation shall occur in the County of San Mateo.

15. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California.

16. Time is of the essence of each and every provision hereof in which time is a factor.

17. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

18. If any provision of this ENA shall be held to be invalid, void or unenforceable, the validity, legality or enforceability of the remaining portions of this ENA shall not in any way be affected or impaired thereby.

19. This ENA has been drafted through a cooperative effort of both the Parties, and both the Parties have had an opportunity to have the ENA reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this ENA.

20. Each person signing this ENA represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this ENA. Each Party represents and warrants to the other that the execution and delivery of the ENA and the performance of such Party's obligations hereunder have been duly authorized and that the ENA is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

21. Each of the Parties shall avoid all conflicts of interest in the performance of this ENA and shall immediately notify the other Parties should a conflict of interest arise that would prohibit or impair its ability to perform under this ENA.

22. The Parties will not discriminate, in any way, against any person based on sex, pregnancy, childbirth or related medical conditions, race, veteran status, religion, color,

national origin or ancestry, physical or mental disability, medical condition, marital status, age, gender (including gender identity and gender perception), sexual orientation, use of family medical leave, genetic testing, or any other basis protected by federal or state law. This policy shall apply to all employment practices.

IN WITNESS WHEREOF, the Parties hereto have executed this ENA as of the Effective Date.

COUNTY:

COUNTY OF SAN MATEO,
a political subdivision of the State of
California

OPERATOR:

MIDPEN HOUSING CORPORATION
A California non-profit corporation

By: _____
Raymond Hodges, Director of
Department of Housing

By: _____
Print Name: _____
Title: _____

EXHIBIT "A"

DESCRIPTION OF PROPERTY

(Attached.)

EXHIBIT “B”

OPERATOR TASKS

1. The Operator will work with the County during the ENA Period to prepare and execute an Operator Agreement, setting forth the responsibilities of the parties, including maintenance of the Project budget, responsibility for property management activities, including lease up, implementation of a preference for San Mateo County residents, coordination with County referral agencies, collection of rent and enforcement of house rules, and the provision robust resident and supportive services appropriate for Project residents.
2. The Operator will work with the County during the ENA Period to prepare and execute the Loan Documents, pursuant to which the County will provide the Operator with a start-up loan in a total amount not to exceed \$1,500,000, to fund startup costs, such as for the investigation of the Property, planning for operations and services, marketing and lease-up services, minor repairs or upgrades to the Property, Operator fee and lease up reserves, in exchange for the Operator’s agreement to rent the units exclusively to persons aged sixty-two (62) years or older and to record an affordability covenant restricting tenancy to individuals earning at or less than 30% of area median income.
3. The Operator will work with the County during the ENA Period to prepare and execute a Lease Agreement, pursuant to which the County will lease the Property to MidPen at a nominal rate for a term of ten (10) years during which MidPen will be operating and managing the Property.
4. During the ENA Period, the Operator will work closely with County staff to draft an Operator Plan that includes yearly budget, yearly scheduled maintenance, communication with and outreach to the surrounding community, supportive services plans for the Project, and other items deemed necessary by the County but not yet identified.
5. The Operator will work diligently to meet the Homekey Program requirements, including achieving 50% occupancy for the Project by March 30, 2021 and achieving 100% occupancy for the Project by May 3, 2021. State HCD has authorized the County to go beyond the March 3, 2021 deadline for achieving 50% occupancy for the Project provided that the Operator shows diligence in its efforts to have the Property leased up to capacity as quickly as possible. .
6. The Operator will work closely with the County to identify potential funding sources that may be used to finance the operations of the Property for the first ten (10) years. The Operator will prepare a 10-year finance plan that includes the potential funding sources it has identified.
7. The Operator will provide plans of any renovations to the Property, including office suite renovations, for County review and approval.

EXHIBIT “C”

COUNTY TASKS

1. The County shall provide any lists of potentially eligible persons the County may be aware of to help ensure the Operator is able to meet the Homekey Program occupancy requirements.
2. The County will prepare a 55-year affordability covenant for the Operator’s execution and record said affordability covenant against title to the Property.
3. The County will capitalize an operating and services reserve funded by the California Emergency Solutions and Housing award to the County’s Department of Housing.