

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) is dated as of March 23, 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 MP Land Holdings, LLC, a California limited liability company (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” attached hereto and incorporated herein by reference (the “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 or other wholly/commonly - owned and/or controlled entity of MidPen Housing Corporation (“Affiliate Entity”) to manage and operate the Project in the manner detailed in the Management 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 or Affiliate Entity will prepare and execute a Management Agreement by March 31, 2021, setting forth the responsibilities of the Parties regarding the operation and management of the Project. The Management Agreement will include a Project budget and shared expense account or other similar mechanism that allows the Operator to access the \$1,500,000 in start-up funding being provided by the County for expenses related to the operation and management of the Project.
- H. The Parties will negotiate in good faith as set forth herein to develop an agreement to transfer to the Operator or Affiliate Entity an ownership interest in the Property (i.e. land and/or improvements) at such time that the Project has achieved sustainable operations, or as the Parties may mutually agree, and in a form sufficient to allow the Operator or Affiliate Entity to demonstrate clear site control and apply for future project funding during the initial operating period covered under the Management Agreement.
- I. 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 Management Agreement shall be executed by March 31, 2021. The termination of this ENA shall not terminate the Management Agreement, and the Management Agreement shall remain in full force and effect, regardless of any termination of this ENA, until the Management Agreement is terminated in accordance with its terms.

2. The term of this ENA shall commence on the Effective Date and shall end on the earlier of: (i) the execution of an agreement to transfer to the Operator, or Affiliate Entity, an ownership interest in the Property (i.e. land and/or improvements) at such time that the Project has achieved sustainable operations or as the Parties may mutually agree, the date that is within 180 days after the Effective Date of this ENA, as may be extended by the Director of the County of San Mateo Department of Housing (the "Director") as set forth below in this Section 2, or (ii) the date on which the County or the Operator terminates this ENA as provided in Section 3 below (in either case, the "ENA Period"). Provided that neither Party has terminated this ENA pursuant to Section 3 below, the ENA Period may be extended by the Director, in writing, at the written request of the Operator, for up to an additional 180 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.

3. 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 (30) 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.

4. During the ENA Period (as extended under Section 2 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.

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

6. 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 designee. Either Party may designate a substitute representative by giving written notice to the other Party.

7. The Operator shall perform or have performed any necessary title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses as determined by the Operator. The costs for such investigations, reports and analyses will be paid or reimbursed, from funds provided by the County to cover start-up costs and operating expenses, subject to the timely submission of appropriate supporting documentation. 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. During the ENA Period, the County and the Operator shall negotiate in good faith for the development of an agreement to transfer to the Operator, or Affiliate Entity, an ownership interest in the Property (i.e. land and/or improvements) ,at such time as the Property has achieved sustainable operations or as the Parties may mutually agree. The form of this agreement is not limited to but may be a Disposition and Development Lease Agreement, a Master Lease, Partnership Agreement. Option Agreement or other form of agreement. The Parties desire to complete the negotiations and execute the above-referenced agreement within 180 days of the Effective Date of this ENA (the "Negotiation Period"). During the Negotiating Period, the Parties will agree upon the appropriate form of agreement that best meets the goals and intent of both Parties to ensure the long term sustainability and affordability of the Property.

9. 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 to the extent arising out of or relating to Operator's performance of or 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.

10. 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.

11. 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:

MP Land Holdings, LLC
c/o 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.

12. 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.

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

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

15. 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.

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

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

18. 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. Moreover, this ENA may be signed by electronic signature and copies of original signatures shall be treated the same as the originals.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

By: _____
Raymond Hodges, Director of
Department of Housing

OPERATOR:

MP Land Holdings, LLC
A California limited liability company

By: MidPen Housing Corporation,
A California Nonprofit public benefit
corporation

Its: Sole Member

By: _____
Print Name: Jan M. Lindenthal
Title: Chief Real Estate Development
Officer

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Real property in the City of Redwood City, County of San Mateo, State of California, described as follows:

PARCEL A:

PARCEL 1 AS SHOWN ON PARCEL MAP NO. 2000-1, FILED MARCH 17, 2000, BOOK 72 OF PARCEL MAPS, PAGES 56 THROUGH 58, INCLUSIVE, SAN MATEO COUNTY RECORDS.

PARCEL B:

NON-EXCLUSIVE EASEMENT FOR PUBLIC RIGHT OF WAY OVER AND ABOVE THE FOLLOWING

DESCRIBED LAND:

THAT PORTION OF THE REAL PROPERTY DESCRIBED IN THAT CERTAIN GRANT DEED DATED JUNE 06, 1979 AND RECORDED JANUARY 06, 1980 AS INSTRUMENT NO. 8954-AP IN BOOK 7931 OF DEEDS AT PAGE 273, THE OFFICIAL RECORDS OF SAN MATEO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

THE MOST NORTHERLY SIDELINE LIMITS OF SAID STRIP BEARS SOUTH 86° 00' 00" WEST FROM THE SOUTHERLY TERMINUS OF THE COURSE FIRST DESCRIBED IN SAID GRANT DEED AS SOUTH 0° 17' 52" WEST 571.91 FEET AND EXTENDING 157.83 FEET TO A POINT ON THE LINE OF CURVATURE FIRST DESCRIBED IN SAID GRANT DEED AS HAVING A RADIUS OF 155.00 FEET, A CENTRAL ANGLE OF 70°

17' 15". A RADIAL LINE AT SAID POINT BEARS NORTH 55° 07' 37" WEST.

THE MOST SOUTHERLY SIDELINE OF SAID STRIP BEGINS AT A POINT ON THE LINE OF CURVATURE FIRST DESCRIBED IN SAID GRANT DEED AS HAVING A RADIUS OF 1239.92 FEET, A CENTRAL ANGLE OF 25° 14' 24" SAID POINT BEING 161.02 FEET ALONG SAID CURVE FROM THE NORTHERLY TERMINUS OF SAID CURVE. A RADIAL LINE AT SAID SIDELINE POINT BEARS NORTH 26° 53' 33" WEST, THE SAID SOUTHERLY SIDELINE OF SAID STRIP BEARS NORTH 75° 30' 00" WEST FROM SAID POINT 199.43 FEET TO A POINT ON THE LINE OF CURVATURE FIRST HEREINABOVE DESCRIBED AS HAVING A RADIUS OF 1379.92 FEET, A CENTRAL ANGLE OF 25° 14' 24", A RADIAL LINE OF SAID POINT BEARS NORTH 33° 07' 00" WEST.

PARCEL C:

A NON-EXCLUSIVE EASEMENT FOR INSTALLATION, MAINTENANCE, REPAIR AND USE OF PUBLIC PATHWAYS AND LANDSCAPING OVER THE FOLLOWING DESCRIBED LAND:

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SAN CARLOS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS OF PENINSULA REAL ESTATE MANAGEMENT, ET AL, AS SAID LANDS ARE DESCRIBED IN DOCUMENT NUMBER 1999-030696, FILED FOR RECORD ON FEBRUARY 23, 1999 IN THE OFFICE OF THE RECORDER OF SAN MATEO COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF LOT 6, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "SHORES CENTER UNIT NO. 2", FILED FOR RECORD ON OCTOBER 15, 1984, IN BOOK 112 OF MAPS, PAGES 20 THROUGH 22, IN THE OFFICE OF THE RECORDER OF SAN MATEO COUNTY; THENCE ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN DOCUMENT NUMBER

1999-030696; SOUTH 1° 02' 48" WEST, A DISTANCE OF 120.48 FEET; THENCE LEAVING SAID LINE NORTH 88° 57' 12" WEST, A DISTANCE OF 12.20 FEET; THENCE NORTH 45° 39' 17" WEST, A DISTANCE OF 71.48 FEET TO THE WESTERLY LINE OF SAID LANDS; THENCE ALONG SAID WESTERLY LINE NORTH 9° 54' 32" EAST, A DISTANCE OF 71.65 FEET TO THE SOUTHERLY LINE OF SAID LOT 6; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89° 40' 12" EAST, A DISTANCE OF 53.19 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT IS FOR THE BENEFIT OF PARCEL 1 OF PARCEL A ABOVE AND WAS CREATED BY GRANT OF EASEMENT FROM PENINSULA REAL ESTATE MANAGEMENT, ET AL, TO MAX A. KEECH AND MARK E. KENDALL, RECORDED MARCH 17, 2000, DOCUMENT NO. 2000-031313, SAN MATEO COUNTY RECORDS.

PARCEL D:

EASEMENTS SET FORTH IN "THE SHORES BUSINESS CENTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS & CHARGES FOR COMMERCIAL DEVELOPMENT" RECORDED FEBRUARY 6, 1981, AS INSTRUMENT NO. 12350-AS, AND AS AMENDED BY THE FOLLOWING:

DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED JULY 23, 1981 AS INSTRUMENT NO. 69666-AS OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED AUGUST 19, 1982 AS INSTRUMENT NO. 82070768 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED FEBRUARY 04, 1983 AS INSTRUMENT NO. 83011056 OF

OFFICIAL RECORDS. A DECLARATION OF ANNEXATION RECORDED MARCH 05, 1984 AS INSTRUMENT NO. 84023389 OF OFFICIAL RECORDS. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "ASSIGNMENT AND

ASSUMPTION AGREEMENT" RECORDED NOVEMBER 29, 1989 AS INSTRUMENT NO. 89161004 OF OFFICIAL RECORDS. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "ASSIGNMENT AND ASSUMPTION AGREEMENT" RECORDED MAY 22, 1990 AS INSTRUMENT NO. 90069335 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED FEBRUARY 06, 1992 AS INSTRUMENT NO. 92017128 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED DECEMBER 07, 1993 AS

INSTRUMENT NO. 93212191 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED DECEMBER 04, 1992 AS INSTRUMENT NO. 92199684 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED JANUARY 10, 1994 AS INSTRUMENT NO. 94003692 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF

RECORDED DECEMBER 05, 1994 AS INSTRUMENT NO. 94183593 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED OCTOBER 04, 1999 AS INSTRUMENT NO. 1999-168218 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED NOVEMBER 09, 1999 AS INSTRUMENT NO. 1999-186111 OF OFFICIAL RECORDS. DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED OCTOBER 10, 2000 AS INSTRUMENT NO. 2000-126698 OF OFFICIAL RECORDS.

For reference purposes only:

APN: 095-222-330

JPN: 112-020-000-06T

112-020-000-07T (Portion)

EXHIBIT “B”

OPERATOR TASKS

1. The Operator will work with the County during the ENA Period to prepare and execute a Management Agreement, setting forth the responsibilities of the Parties, including but not limited to maintenance of the Project budget, responsibility for property management activities, including lease up, coordination with County referral agencies, collection of rent and enforcement of house rules, and the provision of 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 Management Agreement, pursuant to which a shared expense account or other similar mechanism will be created that allows the Operator to access the \$1,500,000 in start-up funding being provided by the County for expenses related to the operation and management of the Project, such as for planning for operations and services, marketing and lease-up services, minor repairs or upgrades to the Property, Operator fee and lease up reserves. The Management Agreement shall have a term of up to ten (10) years, during which MidPen will be operating and managing the Property.
3. The Operator will work with the County during the ENA Period to prepare and execute an agreement, pursuant to which the County will transfer to the Operator, or Affiliate Entity, an ownership interest in the Property (i.e. land and/or improvements), at such time as the Property has achieved sustainable operations or as the Parties may mutually agree.
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, as agreed to by the County, including achieving 50% occupancy for the Project by April 23, 2021 and achieving 100% occupancy for the Project by June 3, 2021.
6. The Operator will work closely with the County to identify potential funding sources that may be used to finance the operations of the Project during the first ten (10) years. The County, as owner of the Property, will cooperate in the applications and awards of identified funding sources. The Operator will prepare a 10-year finance plan for the Project that includes the potential funding sources it has identified.
7. The Operator will provide plans of any renovations to the Project, 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 and record an affordability covenant against the Property, with a fifty-five (55) year term, restricting tenancy to persons ages 62 years and older who are earning at or less than 30% of area median income.
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.
4. The County shall engage in reasonable, good faith efforts to provide timely approvals of improvement plans and operating budgets to facilitate occupancy of the Project in accordance with Homekey Program requirements.
5. During the ENA Period, the County shall work with the Operator to negotiate and execute (a) the Management Agreement by March 31, 2021, and (b) within the timeline set forth in Section 2 of this ENA, an agreement to transfer to the Operator, or Affiliate Entity, an ownership interest in the Property (i.e. land and/or improvements), at such time as the Property has achieved sustainable operations or as the Parties may mutually agree.