



REPORT TO HOUSING AUTHORITY
City of Sacramento
915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

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Consent
October 5, 2010

Chair and Members of the Housing Authority Board

Title: Kelsey Village Exclusive Right to Negotiate (ERN)

Location/Council District: 2830 Stockton Boulevard; Oak Park Redevelopment Area, Council District 5

Recommendation: Adopt a **Housing Authority Resolution:** 1) approving the Exclusive Right to Negotiate (ERN) Agreement between with Domus Development LLC and Satellite Housing, Inc. for the potential development of Housing Authority of the City of Sacramento (Housing Authority) owned property at 2830 Stockton Boulevard, and 2) authorizing the Executive Director or her designee to execute the Exclusive Right to Negotiate (ERN) Agreement.

Contact: Christine Weichert, Assistant Director, Housing and Community Development, 440-1353; Jeree Glasser-Hedrick, Program Manager, Housing and Community Development, 440-1302

Presenters: not applicable

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: The 22-unit Kelsey Village property was originally known as the San Carlos Motel and was purchased by the Housing Authority of the City of Sacramento in 1979. The former motor motel was constructed in the early 1960's before the Highway 99 expressway was built. With the construction of the expressway, the San Carlos Motel became obsolete.

The property was purchased by the Housing Authority at the request of Sacramento County to provide an "independent living" facility for mentally disabled adults. Minor rehabilitation was required to convert the property to single residential occupancy use. The property was leased to the Sacramento County Division of Mental Health (DMH), and sub-let to various non-profit organizations such as the Volunteers of America (VOA) and Transitional Living and Community Support (TLCS).

The use of Tax Increment funds to rehabilitate the complex in 1994 required that a thirty-year regulatory agreement be placed on the property. The Agreement, which expires in 2025, requires that units be rented at an "Affordable Rent to Low- or Moderate-Income persons." Sale of the property by the Housing Authority is permissible so long as the transferee agrees to be bound by the terms of the Regulatory Agreement.

In 2009, Kelsey Village was running an operating deficit of nearly \$32,000 per month. Rental income was inadequate for the high cost of maintaining a small, older property. Estimates for the cost of rehabilitation ran up to \$2.75 million depending on unit configurations. Major rehabilitation issues include the roof, HVAC units, sewer line repair, dry rot, termite repair, and lack of kitchens in the living units.

In November 2009, due to the lack of funds available for continued operations of the property and need for rehabilitation, staff received approval to relocate the remaining tenants and pursue a new affordable housing project for the property.

After the successful relocation of the tenants in June 2010, the Housing Authority was approached by Domus Development, LLC (Domus) and Satellite Housing, Inc. (Satellite), affordable housing developers, with a proposal to demolish the existing structure and build a new affordable housing complex on the site.

This report recommends approval of an ERN between the Housing Authority and Satellite and Domus. The ERN will have a nine month term with a Disposition and Development Agreement (DDA) being brought before the Housing Authority governing board prior to its expiration. A copy of the ERN is included as Exhibit A. During the ERN period, the Developer and Agency staff will continue to work collaboratively on a variety of issues and seek extensive community input to develop a comprehensive plan for the development of the site.

Policy Considerations: Public housing authorities are required to comply with applicable federal laws and regulations, including the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Additionally, this action furthers the commitment of the City through the 2008-2013 Housing Element to preserve and rehabilitate existing affordable housing and to provide housing for extremely low income households. Supporting Policies H-3.1.1 on extremely low income needs and H-4.4 on preservation of affordable housing, Program 74 confirms the City's commitment to the Housing Authority Asset Repositioning Strategy.

In addition, the recommended action supports the 2009-2013 Oak Park Redevelopment Area Five-Year Implementation Plan, specifically the strategies and programs that promote high-quality infill development on Oak Park corridors, including Stockton Boulevard. The Strategy is consistent with the goals of the Broadway/Stockton Urban Design Plan.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed action to approve the exclusive negotiation agreement, which is the first step in determining project feasibility and planning, is exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Section 15262 as a planning activity for the purpose of defining the project. Environmental review of the proposed project will be conducted once the scope of development of the property has been defined.

Sustainability Considerations: The Kelsey Village Project has been reviewed for consistency with the goals, policies and targets of the Sustainability Master Plan and the 2030 General Plan. If approved, the contents of this report will advance the following goals, policies and targets: (1) Goal Number One – Energy Independence, by significantly reducing the use of fossil fuels and by replacing or renovating obsolete energy or resource inefficient infrastructure; and (2) Goal Number Five - Public Health and Nutrition, by creating “Healthy Urban Environments” through restorative redevelopment.

Other: The National Environmental Policy Act (NEPA) does not apply to the Exclusive Right to Negotiate. If the project is determined feasible, and potential HUD funding identified for the future project will be used, environmental review pursuant to NEPA will be completed prior to any choice limiting action being taken.

Committee/Commission Action: *Sacramento Housing and Redevelopment Commission Action:* At its public hearing on September 15, 2010, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Gore, Fowler, Morgan, Morton, Otto, Rosa, Shah Stivers

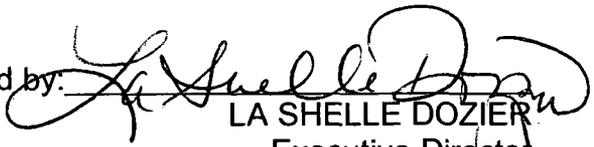
NOES: None

ABSENT: None

Rationale for Recommendation: Approval will allow the Housing Authority to negotiate mutually agreeable project terms with an experienced developer for development of this important housing site. The approved project would be designed to achieve the goals of the Oak Park Redevelopment Area Five-Year Implementation Plan.

Financial Considerations: None at this time.

M/WBE Considerations: The items discussed in the report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully Submitted by: 
LA SHELLE DOZIER
Executive Director

Recommendation Approved:



GUS VINA

Interim City Manager

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Kelsey Village Background Information

Description of Development: The 22-unit Kelsey Village property, originally known as the San Carlos Motel, was purchased by the Housing Authority of the City of Sacramento in 1979 with Downtown Tax Increment Replacement Housing funds. The property is located at 2830 Stockton Boulevard and surrounding land uses include commercial buildings, a surface parking lot, and single family residential homes. The Housing Authority is proposing to work with Domus Development, LLC and Satellite Housing, Inc., to explore the possibility of redeveloping the site as a low-income residential project.

Developers: Domus Development, LLC is a developer of affordable rental housing focusing on the acquisition and rehabilitation of rental housing communities using tax-exempt bonds and low-income housing tax credits. The principals of Domus have completed the rehabilitation and construction of several affordable housing projects in northern California, including Northland Village and Southcrest Apartments in Sacramento. Domus will act as the Developer for Satellite Housing Inc.

Satellite Housing Inc. is a non-profit affordable housing developer that focuses on service enriched housing, currently they serve approximately 1,650 people in 1,550 units. Their geographic focus is the Bay Area and the Central Valley. Satellite will remain as the managing general partner in the final ownership structure.

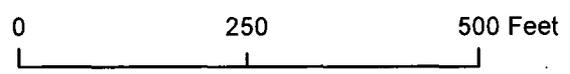
In 2007, Satellite Housing was awarded \$1,343,000 in HUD 811 grant funds and project rental assistance for a ten-unit supportive housing project in the City of Manteca. The original project did not proceed due to the economic downturn. HUD subsequently agreed to allow Satellite, working with Domus as their development partner, to utilize the 811 funds for the Kelsey Village project. In addition to the 811 funds, financing options that will be explored include programs such as Low Income Housing Tax Credits.



Kelsey Village



 2830 Stockton Blvd



SHRA GIS
September 8, 2010

RESOLUTION NO. 2010 -

Adopted by the Housing Authority of the City of Sacramento

on date of



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APPROVAL OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH SATELLITE HOUSING, INC., AND DOMUS DEVELOPMENT LLC, FOR HOUSING AUTHORITY OWNED PROPERTY LOCATED AT 2830 STOCKTON BOULEVARD

BACKGROUND.

- A. Housing Authority owns certain real property located at 2830 Stockton Boulevard. APN's: 014-0123-032 ("Property"). The Property was originally named the San Carlos Motel and was purchased by the Housing Authority of the City of Sacramento in 1979. The Property was leased to the Sacramento County Division of Mental Health (DMH) shortly thereafter.
- B. In 1993 the Housing Authority received a \$10 million Shelter plus Care (S+C) award including a \$1,045,440 Project Based Section 8 contract authority from HUD. The ten-year term of the HUD contract began about October 1996 when lease-up occurred. In 2006 the HUD contract was extended for another ten years.
- C. In addition to the operating assistance from HUD, SHRA provided \$470,000 in funding for rehabilitation in 1994 as indicated in HACS Resolution 94-012 and RACS Resolution 94-057. The Agency recorded a 30-year regulatory agreement on the property on October 12, 1995. Sale of the property by the Housing Authority is permissible so long as the transferee agrees to be bound by the terms of the regulatory agreement.
- D. In 2009, service funds were reduced by Sacramento County due to revenue shortfalls, and management of the property was temporarily taken over again by Transitional Living and Community Support (TLCS). The property was renamed Kelsey Village. Kelsey Village was running an operating deficit of nearly \$32,000 per month.
- E. The Housing Authority has determined that the future disposition of the development to an appropriate government agency and/or a nonprofit corporation would contribute to the stabilization of operations at the development and put the development in a more favorable position to be redeveloped using project-based vouchers, HUD Section 811 funds and low-income housing tax credits, after further conveyance to an entity that can take advantage of the tax credits.
- F. The Housing Authority, Satellite Housing, Inc., and Domus Development, LLC desire to enter into an Exclusive Right to Negotiate (ERN) agreement in order to investigate the feasibility of developing the property and to negotiate a

Disposition and Development Agreement for transfer, financing and development of the Property.

- G. The proposed action to approve an exclusive right to negotiate agreement with the development team, which is the first step in determining project feasibility and planning, is exempt from environmental review under CEQA Guidelines Section 15262.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

Section 1. The above statements, including but not limited to the environmental statement, are found to be true and correct.

Section 2. The Exclusive Right to Negotiate (ERN) agreement between the Housing Authority and Developer (Exhibit A) is hereby approved and the Executive Director, or her designee, is authorized to execute the ERN.

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Exhibit A: Exclusive Right to Negotiate



**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
KELSEY VILLAGE**

THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO (“Authority”) and Satellite Housing, Inc., and Domus Development, LLC, (collectively, "Developer"), collectively “Parties” or singular “party,” have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of _____, 2010 (“Effective Date”) upon the follow terms:

RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:

a. Developer desires to negotiate with Authority to define the parameters for development of certain real property located 2830 Stockton Boulevard, in the City of Sacramento, County of Sacramento, State of California ("Property"), as described in the Legal Description attached and incorporated in this Agreement, as Exhibit A, by this reference.

b. Developer and Authority desire to further define the development concept, investigate the feasibility of redevelopment of the Property in a manner that would eliminate blight focusing on affordable housing for very low-income households (“the Project”) by negotiating the terms of a Disposition and Development Agreement (“DDA”) for the transfer, financing and development of the Property.

c. It is the intent of both the Authority and Developer in entering into this Agreement is to establish a specific, limited period of time to negotiate the terms of the DDA between the Parties regarding: (1) the potential conveyance of the Property from the Authority to Developer; and (2) the potential development of the Project, all subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented in the future DDA.

e. The development of the Property, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.

NOW, THEREFORE, IN VIEW OF THE GOALS AND OBJECTIVES OF THE AUTHORITY RELATING TO THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN, AND THE PROMISES OF THE AUTHORITY AND DEVELOPER SET FORTH IN THIS AGREEMENT, THE AUTHORITY AND DEVELOPER AGREE AS FOLLOWS:

1. IDENTITY OF PARTIES. The legal identities of the parties to this Agreement and their addresses are as follows:

(a) Developer is Satellite Housing, Inc., a California non-profit corporation and Domus Development, LLC, a California limited liability company. Developer shall make full disclosure to Authority of the identity of all principals, officers, stockholders, partners, joint venture partners/participants, and entities comprising the Developer.

(b) Authority is the Housing Authority of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of the Authority for purposes of this agreement is 801 12th Street, Sacramento, California 95814.

(c) Notices to any party shall be personally delivered or sent by first class mail to its principal office address.

(i) Notices to Authority shall be clearly marked “Attention: Kelsey Village Project, c/o Steve Lierly, Project Manager.

(ii) Notices to Developer shall be to Developer’s principal office at 1521 University Avenue, Berkeley, California 94703, Attention: Ryan Chao

2. RESTRICTIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER AND ASSIGNMENT OF AGREEMENT.

(a) The qualifications and identity of Developer and its principals are of particular concern to the Authority. The Developer’s and Principal’s qualifications, reputed financial capacity, experience and proposed Project concept are the reasons that the Authority has entered into this Agreement with Developer. During the Negotiation Period, Developer covenants that there will be no voluntary or involuntary change in the ownership, management or control of the Developer, and no other person or entity shall be permitted to acquire any rights or powers in the Developer or in the Project under this Agreement, except as expressly provided for herein.

(b) Developer and Principal may not assign its rights under this Agreement without the prior written consent of the Authority, which the Authority may withhold at its sole discretion.

(c) Notwithstanding subsections (a) and (b), above, the Authority will permit a non-material change in ownership of the Developer which is defined as less than 10% as long as Developer shall within 10 days thereafter notify the Authority in writing of the ownership change and the identity of the business entities or individuals comprising such new ownership interest. Any material change in the ownership interest or the management or control of the Developer (collectively "Material Change" as defined in (d) below) without the Authority's prior written consent shall be a default under this Agreement. The Authority's approval or denial of a Material Change shall be at the Authority's sole discretion. Upon the occurrence of a Material Change, whether voluntary or involuntary, of Developer the Authority, in its sole discretion, may terminate this Agreement, without liability to Developer or any other person, by sending written notice of termination to Developer, referencing this Section.

(d) For the purposes of this Agreement, the term "Material Change" means either (i) a change in ownership of the Developer, after notification to the Authority of Developer's disclosures required in Section 1(a) and thereafter, of 10% or more ownership interest in Developer, or (ii) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity that is part of the Developer, whether by ownership of equity interests, by contract, or otherwise, or (iii) if the Principal is no longer the person with the managing control of the Developer.

3. TERM OF AGREEMENT

(a) **NEGOTIATION PERIOD.** This Agreement shall be in effect for the period of nine (9) months immediately following the Effective Date ("Negotiation Period").

(b) **NO EXTENSION.** The Authority shall not be obligated or expected to grant or permit any extension to the term of this Agreement as specified in (a), above.

(c) **AUTOMATIC TERMINATION.** This Agreement shall automatically expire and be of no further force or effect on the earlier of: (1) the expiration or earlier termination of the Negotiation Period; or (2) the execution of a separate DDA by both the Authority and Developer, in their respective sole and absolute discretion.

4. OBLIGATIONS OF PARTIES AND SCHEDULE. During the Negotiation Period, Authority and Developer shall proceed diligently and in good faith to do all of the following:

(a) **DEPOSIT FEE.** Within ten (10) days following the Effective Date, Developer, shall deliver to Authority a deposit of Five Thousand Dollars (\$5,000)("Deposit"), which shall be used exclusively for third party costs pertaining to the planning and evaluation of the Project, ("Third Party Costs"). Authority agrees to pay for the preparation of CEQA documentation as may be required. If the Authority fails to approve a proposed DDA that has been negotiated under this Agreement, which is duly before it for consideration and which has been executed by Developer, Authority will refund to Developer the Deposit minus the actual Third Party Costs or Staff Costs to the extent of costs paid or incurred, as evidenced by invoices.

(i) If Developer and Authority agree in writing to terminate the negotiations, the Deposit remaining after such Third Party Costs or Staff Costs will be refunded to Developer.

(ii) Provided that the Authority is not in default of this Agreement as contemplated in Section 8, below, and if the terms of the DDA are otherwise not finalized during the Negotiation Period, the Deposit is the property of the Authority, without restriction as to its use, unless the Authority in its sole discretion agrees in writing to extend the Negotiation Period or to refund the remaining Deposit.

(b) Within thirty (30) days following the Effective Date, Developer shall present to the Authority staff, for review, all of the following:

(i) Define CEQA process and identify entity to prepare environmental documents.

(c) Within one hundred twenty (120) days following the Effective Date, Developer shall present to the Authority staff for review, all of the following:

(i) A conceptual design for the Project that describes and depicts both: (1) the location and orientation of proposed buildings; and (2) the conceptual plans and elevations of the proposed buildings;

(ii) Proposed land use categories on a parcel-by-parcel basis, including any proposed changes to the City's General Plan and/or any applicable Specific Plan, if any, necessary to accommodate the development of the Project; and

(iii) Evidence of current financial capacity of Developer and the amount of equity of Developer and Principal that would be made available to fund all or a portion of the Project development.

(iv) Complete CEQA Initial Study information and prepare initial draft project description

(d) Within two hundred ten (210) days following the Effective Date, Developer shall present to the Authority staff for review, all of the following:

(i) Solicit comments from Community Development, the Preservation Commission, and Planning Commission regarding design and necessary entitlement processes for use and consideration in the environmental document.

(ii) Refine construction costs including all applicable fees and contingencies.

(iii) A proposed time schedule for commencement and completion of the Project;

(iv) A written financial pro-forma in reasonable form and substance regarding the anticipated costs and returns to the Developer and to the Principal related to development, operation, and lease (as applicable) of the Project. Assumptions utilized for the pro-forma must be included in the submittal;

(v) A proposed financing plan identifying financing sources for all private and public improvements proposed for the Project, by phase, if applicable; and

(vi) A preliminary financial analysis demonstrating the costs and benefits to the City and the Authority

(e) Within two hundred forty (240) days following the Effective Date, the following shall be accomplished:

(i) Authority shall finalize third party financial analysis

(ii) Authority and Developer shall prepare a Schedule of Performances for the construction period.

(iii) Authority and Developer shall negotiate terms of appropriate Authority agreements.

(f) The required CEQA documentation shall be presented to the Authority Board within two hundred seventy (270) days following the Effective Date.

(g) Developer's Principal shall, at least once each month throughout the Negotiation Period, submit progress reports to the Authority and meet and confer with the Authority concerning the ongoing progress of the required actions.

(h) Developer shall cooperate with the Authority in connection with the preparation of environmental review of the Project and within ten (10) days of any request provide requested information to the Authority.

(i) **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer and its Principal under this Agreement. All fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer or Principal on behalf of Developer, for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or negotiation of a DDA that may be undertaken by Developer during the Negotiation Period, pursuant to or in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to a DDA, the Property or the Project, shall be the sole responsibility of and undertaken at the sole cost and expense of Developer and no such activity or matter shall be deemed to be undertaken for the benefit of, at the expense of or in reliance upon the Authority. Developer shall also pay all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City and/or the Authority of any and all applications and other documents and information to be submitted to the City and/or the Authority by Developer pursuant to this Agreement or otherwise associated with the Project. The Authority shall not be obligated to pay or reimburse any expenses, fees, charges or costs incurred by Developer in pursuit of any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or negotiation of a DDA that may be undertaken by Developer during the Negotiation Period, whether or not this Agreement is, eventually, terminated or extended or a DDA is entered into between the Authority and Developer, in the future.

5. OBLIGATIONS OF THE AUTHORITY. During the Negotiation Period, the Authority shall proceed diligently and in good faith to do all of the following:

(a) **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Authority as lead Authority shall prepare the environmental documentation and consider the environmental effects of the Project prior to considering action to approve the proposed DDA. The scope and schedule for such review shall be at the discretion of the Authority and such review shall not be a condition precedent to Developer's obligations under this Agreement.

(i) Nothing in this Agreement shall be construed to limit the application of CEQA to the Project or to changes in the Project or to control the actions of Authority in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Authority shall act independently and without regard to its respective obligations under this Agreement. Authority shall not be liable, in any respect, to Developer or any third party beneficiary of this Agreement for their action or inaction in fulfilling their respective CEQA obligations.

(ii) Authority will not consider the approval of the Project unless and until it has fully reviewed and considered the environmental impacts of the proposed Project in accordance with CEQA. After CEQA review, Authority is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve a DDA or any other agreement. After CEQA review, Authority is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations, if required, for the approval of the Project or take any other action in support of the proposed Project. After CEQA review, Authority is not precluded, by this Agreement or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project.

(iii) Upon Authority request, Developer shall supply data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project.

(b) **PROHIBITION AGAINST NEGOTIATION WITH OTHERS.** During the Negotiation Period, the Authority governing body and Authority staff shall not negotiate with any other person regarding the sale or redevelopment of the Property. The term "negotiate," as used in this Agreement, means engaging in any discussions with a person other than Developer with respect to that person's redevelopment of the Property to the total or partial exclusion of Developer from redeveloping the Property, without Developer's written consent. The Authority may receive and retain unsolicited offers regarding redevelopment of the Property, but shall not negotiate with the proponent of any such offer during the Negotiation Period. Notwithstanding any other provision of this Agreement, implementation of the Redevelopment Plan shall be and remain in the sole and exclusive purview and discretion of the Authority. Nothing in this Agreement shall limit, prevent, restrict or inhibit the Authority from providing any information in its possession or control that would customarily be furnished to persons requesting information from the Authority concerning the Authority's activities, goals, matters of a similar nature relating to implementation of its goals and policies or as required by law to be disclosed, upon request or otherwise. Nothing in this Agreement shall prevent or prohibit the Authority from discussing or disclosing the fact that the Authority is a Party to this Agreement.

6. **NEGOTIATION OF DDA.** During the Negotiation Period, the Authority and Developer shall diligently and in good faith negotiate the potential terms, conditions, covenants, restrictions and agreements of a DDA between them. The Authority and Developer shall generally cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. Both the Authority and Developer shall exercise reasonable efforts to complete discussions relating to the terms and conditions of a DDA and such other matters, all as may be mutually acceptable to both the Authority and Developer. The exact terms and conditions of a DDA, if any, shall be determined during the course of these negotiations. Nothing in this Agreement shall be interpreted or construed to be a representation or agreement by either the Authority or Developer that a mutually acceptable DDA will be produced from negotiations under this Agreement. Nothing in this Agreement shall impose any obligation on either Party to agree to a definitive DDA in the future. Nothing in this Agreement shall be interpreted or construed to be a guaranty, warranty or representation that any proposed DDA that may be negotiated by Authority staff and Developer will be approved by the Authority governing body. Developer acknowledges and agrees that the Authority's consideration of any DDA is subject to the sole and absolute discretion of the Authority governing body and all legally required public hearings, public meetings, notices, factual findings and other determinations required by law.

7. **LEGISLATIVE ACTION.** Authority and Developer acknowledge that the Authority must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This Agreement does not restrict the legislative authority of the Authority in any manner, whatsoever, and does not obligate the Authority to enter into the DDA or to take any course of action with respect to the Project. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.

8. **DEFAULTS.** Either the Authority or Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party, or otherwise violates any covenant, restriction or obligation contained in this Agreement, (b) does not negotiate the DDA in good faith and upon the terms stated in this Agreement, (c) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) refuses to execute the DDA when negotiations are completed and deposit any funds then required of it for the DDA (except if the Authority has disapproved the Project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have ten (10) days to cure the default. Should the defaulting party fail to cure the default within the ten (10) days, the non-defaulting party may terminate this Agreement by written notice to the defaulting party. Should the Authority be in default, Developer is entitled to the return of the Deposit. In the event of such a default by Developer, Authority may retain the Deposit and may terminate the Agreement. This 10 day period in no way, manner or form extends, continues, tolls or modifies the Term of this Agreement.

(a) After termination of this Agreement for default of Developer, subject to cure rights, Developer shall have no rights under this Agreement to participate in the development of the Project, and the Authority shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

(b) The remedies contained in this Section 9 are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

9. DISPOSITION AND DEVELOPMENT AGREEMENT. In addition to other provisions stated in this Agreement, the DDA will address, without limitation, the following provisions (a) use covenants to run with the land; (b) payment and performance bonding and other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) performance assurances such as the deposit; (f) limitation on assignments and transfers of the DDA and its obligations and benefits prior to Project completion; (g) compliance with CEQA mitigation; (h) disposition of the Property by sale from Authority to Developer ; (i) Authority's rights to revest the Property upon Developer default; (j) a Project completion date of four years from the execution of the DDA; (k) extension fees for delay in construction, and liquidated damages; (l) Authority's rights to cure defaults, assume loans and complete construction; (l) delayed transfer of title to the Property; and (m) loan guarantees and additional securities.

10. AUTHORITY RELIANCE ON DEVELOPER. Developer understands and acknowledges that the Authority is entering into this Agreement with Developer because Developer and Principal have reputed financial capacity, specific expertise, experience, contacts and connections.

11. ACKNOWLEDGEMENTS AND RESERVATIONS.

(a) The Authority and Developer agree that, if this Agreement expires or is terminated for any reason, or a future DDA is not signed by both the Authority and Developer, for any reason, neither the Authority nor Developer shall be under any obligation, nor have any liability to each other or any other person regarding the sale or other disposition of the Property or the redevelopment of the Project or the Property.

(b) Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the Authority, nor an acceptance by the Authority of any offer or proposal from Developer for the Authority to convey any estate or interest in the Property to Developer or for the Authority to provide any financial or other assistance to Developer for redevelopment of the Project or the Property.

(c) Developer acknowledges and agrees that Developer has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from the Authority.

(d) Developer acknowledges that Authority and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Development Services, Planning Commission and either the Design Commission or Preservation Commission to the extent of its authority, if any. If the Proposal is disapproved by final action of the governing bodies of the Authority or City, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. Certain development standards and design controls for the Project may be established between Developer and the Authority, but it is understood and agreed between the Authority and Developer that the Project and the redevelopment of the Property must conform to all Authority, City and other applicable governmental developments, land use and architectural regulations and standards. Drawings, plans and specifications for the Project shall be subject to the approval of the Authority and the City, through the standard development application process for redevelopment projects within the Project Area. Nothing in this Agreement shall be considered approval of any plans or specifications for the Project or of the Project itself by either the Authority or the City.

(e) The Authority reserves the right to reasonably obtain further information, data and commitments to ascertain the ability and capacity of Developer to lease, develop and operate the Property and/or the Project. Developer acknowledges that it

may be requested to make certain financial disclosures to the Authority, its staff, legal counsel or other consultants, as part of the financial due diligence investigations of the Authority relating to the potential acquisition or sale of the Property and redevelopment of the Project on the Property by Developer and that any such disclosures may become public records. The Authority shall maintain the confidentiality of financial information of Developer to the extent allowed by law, as determined by Authority Counsel.

(f) The Authority shall not be deemed to be a party to any agreement for the acquisition of, lease of or disposition of real or personal property, the provision of financial assistance to Developer or development of the Project or elsewhere, until the terms and conditions of a complete future DDA are considered and approved by both the City Council and the Authority governing body, in their respective sole and absolute discretion, following the conclusion of any public hearing(s) required by law. Developer expressly acknowledges and agrees that the Authority will not be bound by any statement, promise or representation made by Authority staff or representatives during the course of negotiations of a future DDA and that the Authority shall only be legally bound upon the approval of a complete DDA by both the City Council and the Authority governing body, in their respective sole and absolute discretion, following one or more duly noticed public hearings, as required by law.

(g) Developer acknowledges that the Authority is currently in discussion with other developers in the surrounding area to develop similar projects with similar or identical uses. Should the Authority enter into agreements for financial or other assistance with these or other developers, such action shall not constitute a breach of good faith.

12. NONDISCRIMINATION. Developer covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

(a) **Standards.** That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property nor shall Developer, itself, himself or herself, or any person claiming under or through it, him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees in the Property.

(b) **Interpretation.** Notwithstanding Section 11(a), with respect to familial status, Section 11(a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 11(a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 11(a).

13. WAIVER OF LIS PENDENS. The Parties to this Agreement hereby expressly understand, acknowledge and agree that no lis pendens shall be filed against the subject property herein or any portion of such property for any claim, action or dispute arising from this Agreement.

14. APPLICABLE LAW; VENUE. This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

15. ATTORNEYS' FEES. In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

16. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, neither Authority nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance

of such obligations of Authority and Developer shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

17. **NO THIRD PARTIES BENEFITED.** This Agreement is made and entered into for the sole protection and benefit of the Authority and Developer, and no other person or entity does now or will have any right of action or any rights under or pursuant to this Agreement.

EXECUTED as of the date first written above, in Sacramento, California.

AUTHORITY: HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

Approved as to form:

By: _____
LaShelle Dozier

Authority Counsel

DEVELOPER:

Domus Development LLC,
a California limited liability company

By: _____
Meea Kang, Member

By: MNJ Development, LLC
a California limited liability company,
Its member/manager

By: Newport Partners, LLC,
a California limited liability company,
its sole member

By: _____
Jong C. Limb, an individual
its member/manager

By: _____
Monique Hastings, an individual
its member/manager

SATELLITE HOUSING, INC., a California
nonprofit public benefit corporation

By: _____
Ryan Chao
Its: Executive Director