

EXCLUSIVE NEGOTIATION AGREEMENT

This Exclusive Negotiation Agreement (“Agreement”) is entered into as of _____, by and between the California Tahoe Conservancy, a California State Agency (“CONSERVANCY”), and _____ (“Developer”).

RECITALS

- A. The Governing Board of the Conservancy authorized pre-sale activities on the land known as INSERT ADDRESS (APN’s INSERT) (“Property”) in MONTH, YEAR.
- B. The Conservancy has authority to sell, exchange, or otherwise transfer parcels to fulfill its statutory mission and to promote the State’s planning priorities, including infill development, more efficient land use patterns, and implementation of sustainable communities strategies.
- C. The Conservancy has program and project requirements (“Project Requirements”) for the development of a project at INSERT ADDRESS which include, among other things, public access, trails and/or plazas, workforce housing, and other public amenities.
- D. The Developer is the owner of approximately INSERT acres of land (“Developer Property”) immediately adjacent to the Property which makes Developer uniquely qualified to provide the project requirements.
- E. The Property has been designated for use consistent with the INSERT Plan, which includes residential units and commercial retail.
- F. The Conservancy and Developer have prepared concept plans for the Property and intend to continue to negotiate the possible sale of the Property to Developer, subject to approval by the Conservancy Governing Board.
- G. The exclusive negotiations shall be a one-hundred and eighty (180) day period from the date of this Agreement (“Exclusive Period”), during which time the parties will negotiate a Land Disposition Agreement (“LDA”), including a workforce housing agreement with a local employer(s) and the sources of development rights to implement the Project Requirements, among other things.

NOW THEREFORE, the parties hereto mutually agree as follows:

AGREEMENT

1. **Good Faith Negotiations.**

1.1 **Land Disposition Agreement – General.** The Conservancy and Developer shall negotiate diligently and in good faith, during the Exclusive Period described in Section 2, below, the terms and conditions of a LDA for the disposition and development of the Property. During the Exclusive Period, the parties shall use good faith efforts to facilitate the negotiation and approval of a mutually satisfactory LDA.

1.2 **Specific Issues to be Addressed.** Among the issues to be addressed in the negotiations are: the terms and conditions for acquisition of the Property; the parameters and requirements for the development to be undertaken on the Property; conditions of the Property, including without limitation any environmental conditions and title conditions including regulatory entitlements which may impact the feasibility of the acquisition of the Property; the acquisition and development schedule, including public agency approvals and permitting, compliance with the California Environmental Quality Act and other laws; financing of the acquisition of the Property and development of the proposed project; development commodities and coverage required to complete the development; a workforce housing agreement with local employers; and other similar matters.

2. **Exclusive Period.** Conservancy and Developer agree to negotiate exclusively with each other for a period of one hundred-eighty (180) days (the “Exclusive Period”) commencing with the date of execution of this Agreement by both parties, notwithstanding the Conservancy’s continued concurrent, independent due diligence on items related to the Project, including but not limited to implementation of the City OR County INSERT SPECIFIC PUBLIC FEATURES RELATED TO PROJECT, workforce housing agreements with local employers, including INSERT EMPLOYER and others, development commodities and other due diligence related the Project. Such Exclusive Period may be extended for one successive period of one-hundred and twenty (120) days at the sole discretion of the Executive Director of the Conservancy. Notwithstanding the Exclusive Period or any other provision of this Agreement, the Conservancy may continue to discharge any obligations that it may have by law, or under the Conservancy programs, guidelines, and Governing Board approvals, including the reasonable opportunity to participate in other transactions in the INSERT Plan and the Conservancy’s Asset Lands Program.

3. **Default by Developer.** If Developer is in default with respect to any other provision of this Agreement the Conservancy shall give written notice thereof to Developer, who shall then have ten (10) business days to commence negotiation in good faith or otherwise cure such default hereunder.

Following the failure of Developer to thereafter commence curing such default within such ten (10) business day period, this Agreement may be terminated by Conservancy by written notice thereof to Developer. If this Agreement is so terminated by Conservancy, Developer acknowledges and agrees that Conservancy will suffer damages, including lost opportunities to pursue other disposition alternatives for the Property, and that it is impracticable and infeasible to fix the actual amount of such damages. Therefore, the parties agree that if this agreement is so terminated by Conservancy, Conservancy shall retain the Deposit (or any unexpended portion thereof), as a fixed and liquidated damages and not as a penalty, and following any such termination neither party shall have any further rights against or liability to the other under this Agreement.

THE DEVELOPER AND THE CONSERVANCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

DEVELOPER:

BY: _____

AGENCY:

By: _____

4. **Expiration of Exclusive Period.** If the parties have not entered into a LDA on or before expiration of the Exclusive Period, or any extension thereof, the Conservancy retains the right to cancel any future negotiations at its sole discretion and to work with any other Developer of its choice.

5. **Limitations on Effect of Agreement.** This Agreement shall not obligate the State of California, the Conservancy, or its Governing Board to enter into the LDA or approve any entitlements for the disposition or development of the Property or any portion thereof. By execution of this Agreement, the Conservancy is not committing itself to or agreeing to undertake any disposition of the Property or any other action relating to the permitting or approval of any development of the Property. Execution of this Agreement by the Conservancy is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Conservancy Governing Board action the final discretion and approval regarding the execution of any LDA and all proceedings and decisions in connection therewith. Any LDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such LDA has been considered and approved by the Conservancy Governing Board, and if required by law, the City Council of the City of South Lake Tahoe, following the conduct of all legally required procedures, and executed by a duly authorized representative of the Conservancy and Developer. Until and unless a LDA is signed by the Developer, approved by the Conservancy Governing Board, and executed by the Conservancy, no agreement drafts, actions, deliverables, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into the LDA, or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. The Conservancy's determination on whether to enter into the LDA with the Developer shall be final and conclusive and shall not be subject to review. Nothing contained in this Agreement shall be construed to grant Developer any vested rights and by entering into this Agreement Developer expressly waives any and all such rights or entitlements.

6. **Development Concept.** The negotiations hereunder shall be based on a development concept which shall include the development of the Property in accordance with a development concept

containing specific development features, including reserved public rights, public improvements, and the design and architecture of a development project.

6.1 The Developer shall prepare, at its sole cost and expense, and submit to Conservancy for review and approval, a draft development proposal (the “Development Concept”) by _____, for Conservancy staff review. In the event the Developer fails to submit or resubmit the required documents to Conservancy within the time agreed upon, Conservancy 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.

Development Concept shall include the following:

- Design Program
- Estimated Project Sources and Uses
- Development and Operating Pro Forma
- Preliminary Development Schedule
- Market Study(ies), as needed

The primary objective of the Development Concept is to present a clearly defined, feasible development project and to present it in a form that result in the Conservancy’s understanding and approval. The Design Concept shall define the most appropriate use of the Property. The Design Concept shall establish the general scope and conceptual design of the development of the Property, illustrating the scale and relationship of the Property to the Area Plan and adjacent components. The Design Concept shall include, but not be limited to, the public plaza, City’s Greenbelt, stream environment zone protections and restoration, deed restricted public open space areas, transit stop and related amenities, planned number of residential units, a workforce housing agreement with a local employer(s), number of parking spaces, and square footage of retail space.

The Design Concept documents, consistent with the standards in the Request for Proposals, 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 Concept. The Design Concept shall also note code references (seismic, UBC, City, etc.) and any significant variance thereto. The Design Concept documents shall include light and shadow renderings, and color presentation poster boards depicting relationships and heights to adjacent properties and neighborhood. The Design Concept 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 the City and/or Conservancy, to obtain neighborhood input into the Design Concept.

Market study(ies) shall be commissioned by the Developer and shall be completed by an independent, third-party real estate expert.

7. **Development Commodities and Coverage.** The Conservancy is under no obligation to seek or provide commodities or other regulatory entitlements or other necessary approvals to complete the development. If Developer is not successful in obtaining necessary approvals for commodities and coverage required to complete the development, Conservancy may cancel this agreement.

8. **Assignment.** The qualifications and identity of the Developer are of particular concern to the Conservancy. It is because of those unique qualifications and identity that the Conservancy has entered into this Agreement with Developer. Accordingly, Developer's rights and obligations under this Agreement are not assignable or transferable, and any purported voluntary or involuntary assignment or transfer of Developer's rights or obligations hereunder shall be null and void. Notwithstanding the foregoing to the contrary, Developer may assign this agreement, with the prior written consent of the Conservancy which consent shall not be unreasonably withheld, to an entity which controls, is controlled by, or is under common control with Developer.

9. **Compliance with Regulations.** The developer understands and agrees that it must comply with the requirements and provisions of the Conservancy, as well as approvals by various State, bi-state and local regulatory agencies with respect to the disposition and development of the Property.

10. **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 LDA.

11. **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 Conservancy 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 Conservancy 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.

12. **Developer Team.** The Developer Team is _____. The principal who is the primary chief negotiator is _____, and shall be the individual responsible for the negotiation of the terms and conditions of the LDA 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 Conservancy, in its sole discretion. Any modifications of the Developer prior to the expiration of this Agreement without the prior written consent of Conservancy shall constitute a material breach by Developer under this Agreement and Conservancy 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.

13. **Full Disclosure.** The Developer has made full disclosure to Conservancy 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 managers, consultants, professionals, and directly involved managerial employees of the Developer shall be subject to the written approval of Conservancy. 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 Conservancy shall constitute a material breach by Developer under this Agreement and Conservancy 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

14. **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 Conservancy advising Conservancy on all matters and all studies being made by the Developer. In the event Conservancy and Developer do not enter into a LDA, the Developer shall submit to Conservancy copies of all studies and reports and all third party service provider contracts, and Conservancy shall have the right to the use and benefit of all such studies and reports without limitation.

15. **Evidence of Project Financing.** Consistent with the Request for Proposals, 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.

16. **Real Estate Commissions and Finders Fees.** Conservancy 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.

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

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 Conservancy.

DEVELOPER:

_____,

By:

Date: _____

Name:

Title: _____

By:

Date: _____

Name:

Title: _____

CONSERVANCY:

CALIFORNIA TAHOE CONSERVANCY,

A California State Agency

By:

Date: _____

Patrick Wright, Executive Director

APPROVED AS TO FORM BY:

By:

Conservancy Counsel

EXHIBIT 1

LEGAL DESCRIPTION

APN INSERT

EXHIBIT 2

See attached Project Requirements.