



County of Santa Cruz

Santa Cruz County Redevelopment Successor Agency

701 Ocean Street, Room 510, Santa Cruz, CA 95060-4073
 Phone:(831) 454-2280 Fax:(831) 454-3420 TDD: (831) 454-2123

Meeting Date: December 5, 2017
Date: November 17, 2017
To: The Board of Supervisors
From: Carlos J. Palacios, County Administrative Officer
Subject: Exclusive Negotiation Agreement with MidPen Housing

The Santa Cruz County Redevelopment Agency (RDA) through various actions acquired the Capitola Road Commercial Site (Site) in 1994 and 1997. The Site is located near the southwest corner of 17th Avenue and Capitola Road. Following the State's elimination of redevelopment agencies in 2011, the Redevelopment Successor Agency adopted the Long-Range Property Management Plan in September 2013 which directed the managed sale of the Site to maximize sale proceeds and long-term economic and community benefit.

On May 23, 2017, a request for qualifications (RFQ) was approved by the Board to seek qualified and experienced developers to enter into an exclusive negotiation agreement for the purchase and development of the Site for a mixed-use, neighborhood-serving commercial project. The RFQ included an appendix outlining the outcome of a community workshop held on April 20, 2017 to gather community input to guide the vision for the Site.

On August 4, 2017, three responses to the RFQ were received from MidPen Housing, City Ventures, and For the Future Housing. For the Future Housing was subsequently disqualified from the process due to a procedural violation. Upon review of the responses, MidPen Housing was selected as the preferred developer (Developer).

Attached for approval is an Exclusive Negotiation Agreement (ENA) with MidPen Housing. The ENA outlines the terms to negotiate an Affordable Housing and Property Disposition Agreement (ADPDA) or other form of agreements. The recommended ADPDA will be entered into between the Santa Cruz County Redevelopment Successor Agency (RSA) and the Developer outlining the terms of the Developer's purchase and development of the Site for a mixed-use development incorporating multifamily affordable housing, commercial space, and public open space. The term of the ENA is for 18 months with the option for a six (6) month extension. The ENA also requires the Developer to lead a community outreach program to solicit input from the community for the proposed project.

It is, therefore, RECOMMENDED that your Board, as the Board of Supervisors for the Santa Cruz County Redevelopment Successor Agency, approve the Exclusive Negotiation Agreement between the RSA and MidPen Housing for the Capitola Road Commercial Site and authorize the County Administrative Officer to execute the agreement on behalf of the Redevelopment Successor Agency.

Submitted by: Carlos J. Palacios, County Administrative Officer

Attachments:

- a Exclusive Negotiation Agreement

EXCLUSIVE NEGOTIATION AGREEMENT

(1412, 1438, 1500, and 1514 Capitola Road, County of Santa Cruz)
(APN Nos. 026-741-12, -13, -14, and -15)

THIS EXCLUSIVE NEGOTIATION AGREEMENT (“Agreement”) is entered into as of December 5, 2017, 2017 (“**Effective Date**”), by and between the **SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY**, a public body, corporate and politic (“**Successor Agency**”), and **MIDPEN HOUSING CORPORATION**, a California nonprofit public benefit corporation (“**Developer**”). Successor Agency and Developer are hereinafter sometimes referred to collectively as the “**Parties**” or individually as a “**Party**.”

I. NEGOTIATIONS

Successor Agency is the owner of that certain improved real property, addressed as 1412, 1438, 1500, and 1514 Capitola Road, in the County of Santa Cruz, State of California, as legally described in Exhibit “A” and as shown on the Site Map attached hereto as Exhibit “B”, both of which exhibits are incorporated herein by this reference (the “**Property**”).

Pursuant to the terms of this Agreement, Successor Agency and Developer shall negotiate in good faith, for the period stated in Section II below, and attempt to prepare mutually acceptable terms on which Developer would purchase and develop the Property with a mixed-use development containing a multifamily affordable housing component, a commercial component, and a public open space component. Successor Agency agrees, for the period stated in Section II below, not to negotiate with any other person or entity regarding the sale or development of the Property without the prior written consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise, or commitment by Successor Agency, the County of Santa Cruz (the “**County**”), or any agency or department of Successor Agency or the County, with respect to Developer’s acquisition of the Property or any portion thereof, or the approval of any development thereon. Successor Agency’s acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving full and final discretion and approval by Successor Agency as to any actions required of it. No project is defined by this Agreement.

II. NEGOTIATION PERIOD

Successor Agency and Developer agree to negotiate in good faith for a period that consists of eighteen (18) months from the Effective Date, on the terms of an affordable housing and property disposition agreement or other form of agreement or agreements (any such agreement, an “**AHPDA**”), with a six (6) month extension exercisable by Developer, in Developer’s discretion, so long as Developer is not in default of any of the terms hereunder. Further, the County Administrative Officer or designee (“**County Administrative Officer**”) may in his or her sole and absolute discretion extend the exclusive negotiation period for up to six (6) additional calendar months. The first exclusive negotiation period plus any extension(s) as provided herein, to the extent such extension(s) is(are) exercised and/or granted (as applicable), shall hereinafter be defined as the “**Negotiation Period**.” Developer and Successor Agency may, at any time, mutually agree to terminate this Agreement. Except as provided below, if, upon the expiration of

the Negotiation Period, Successor Agency and Developer have not each approved and executed an AHPDA, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and Successor Agency shall be free to negotiate with any other persons or entities with regard to the Property and each and every portion thereof.

III. OBLIGATIONS OF DEVELOPER

A. Schedule of Performance

Developer shall commence and complete all tasks required to be completed hereunder, and deliver all documents, studies, and analysis required to be delivered hereunder, within the times set forth in the schedule of performance attached hereto as Exhibit "C" and by this reference incorporated herein (the "**Schedule**").

B. Community Outreach

Within the times set forth in the Schedule, Developer, at its cost and in consultation with Successor Agency, shall conduct no fewer than two (2) community meetings designed to familiarize the community with the type of development typically developed by Developer and the type proposed by Developer in its August 2, 2017 submittal (the "**MidPen Proposal**") for the County's Request for Qualifications (RFQ# 16Q1-007), and to solicit input from the community. Developer shall consult with Successor Agency to identify persons and organizations to be contacted for participation in such community meetings. Successor Agency shall cooperate with and assist Developer with such community meetings, at no cost to Successor Agency or the County. Not less than ten (10) days prior to any such meeting, Developer shall mail notice of such meeting to all residents located within three hundred (300) feet of the exterior boundaries of the Property. Developer shall provide to the attendees of such meetings and any other interested members of the community the name and number of a Developer representative that may be contacted with additional questions any of such persons may have.

C. Evidence of Financing

Within the time set forth in the Schedule, Developer, at its cost, shall provide the County Administrative Officer with a list of sources and uses of funds and a financial pro forma for the development of the Property. In addition, during the term of this Agreement, Developer shall promptly provide to the County Administrative Officer copies of any applications for funding or other funding requests submitted by Developer to finance the development of the Property, and any response documentation received in connection with such submittals. Notwithstanding the foregoing, however, Developer shall not be required to obtain written commitments for any such financing during the term of this Agreement.

D. Development Plans, Entitlements, and CEQA Review

The Parties acknowledge that Developer has submitted to the County in connection with the MidPen Proposal a preliminary conceptual development plan for the Property (the "**Plan**"). Successor Agency and Developer acknowledge that during the Negotiation Period, the Plan will be refined, based on discussions and meetings with Successor Agency representatives

and the activities to be conducted by Developer pursuant to this Agreement, including, without limitation, the community meetings described in Subsection B above of Section III. Concurrently with such refinement, and in accordance with the timeframes set forth in the Schedule, Developer shall commence processing a Development Permit, and any other entitlements necessary for development of the Property (collectively, the “**Entitlements**”), and shall furnish such information to Successor Agency regarding the Plans as may be required by Successor Agency to perform an environmental review for an AHPDA, the Entitlements, and for any review or determinations relating to the development of the Property pursuant to the California Environmental Quality Act (“CEQA”). All fees and expenses for engineers, architects, financial consultants, legal, planning or other consultants retained by Developer to perform Developer’s obligations set forth in this Agreement shall be the sole responsibility of Developer. Successor Agency shall not be obligated to pay or reimburse any such fees and expenses incurred by Developer whether or not this Agreement is eventually terminated or extended, or whether or not an AHPDA is entered into between Successor Agency and Developer in the future, and Developer acknowledges that such expenditures are undertaken at its own sole risk. All costs associated with any formal submittals and all costs associated with the preparation of environmental documents under CEQA shall be borne by Developer. Nothing herein reduces or eliminates any requirements of the County or any other governmental entity with jurisdiction over the Property. Notwithstanding any of the foregoing, Developer and the County of Santa Cruz contemplate entering into a predevelopment loan agreement, in a form reasonably acceptable to special legal counsel to the County, pursuant to which the County would agree to provide a loan to Developer to fund certain plans and studies, and conduct certain other activities, for purposes of determining the feasibility of developing a mixed-use development on the Property (the “**Predevelopment Loan Agreement**”).

E. Developer’s Findings and Reports to County Administrative Officer

Developer, at its cost, shall, at the request of the County Administrative Officer, make periodic oral progress reports on all matters and all studies being made related to Developer’s acquisition and development of the Property and other matters under negotiation to the extent that they do not include confidential matters. Developer, at its cost, shall participate in workshops, meetings, or presentations concerning the Property as reasonably required by the County Administrative Officer.

F. Restrictions Against Change In Ownership Management And Control of Developer and Assignment of Agreement

The qualifications and identity of Developer and its principals are of particular concern to Successor Agency. It is because of these qualifications and identity that Successor Agency has entered into this Agreement with Developer. Except as provided below, during the Negotiation Period, no voluntary or involuntary successor-in-interest of Developer shall acquire any rights or powers under this Agreement, and Developer shall not undergo any change in ownership. Developer shall not assign all or any part of this Agreement or any rights in or under this Agreement, without the prior written approval of the County Administrative Officer, which approval may be given or withheld in the County Administrative Officer’s sole and absolute discretion. Any assignment or transfer in interest, whether voluntary or involuntary, by Developer that has not been approved in writing by the County Administrative Officer prior to the time of such assignment or transfer shall be deemed a material breach of this Agreement by Developer

which shall entitle Successor Agency to terminate this Agreement, without liability, by sending written notice of termination to Developer, referencing this Subsection F. Notwithstanding any of the foregoing, Developer shall be permitted to assign its rights under this Agreement to a limited partnership, the general partner of which is either (i) Developer, or (ii) an entity owned by Developer and over which Developer has managerial control, provided Developer and the proposed assignee execute an assignment and assumption agreement in a form approved by Successor Agency's legal counsel, pursuant to which the proposed assignee assumes all of Developer's obligations hereunder.

Notwithstanding the foregoing restrictions and prohibitions, Successor Agency acknowledges and agrees that Developer's proposal for the Property contemplates that a portion of the commercial component would be developed and owned by the Santa Cruz Community Health Center, and that the other portion would be developed and owned by Dientes Community Dental. Developer and Successor Agency acknowledge and agree that both such entities may participate in the community meetings required to be held by Developer pursuant to Subsection B of this Section III.

G. Acknowledgments and Reservations

1. If this Agreement expires or is terminated for any reason, or a future AHPDA is not executed by both Successor Agency and Developer for any reason, neither Successor Agency nor Developer shall be under any further obligation to each other regarding the disposition of the Property or the development thereof.

2. Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer or proposal by Successor Agency to Developer, nor an acceptance by Successor Agency of any offer or proposal from Developer, for Successor Agency's conveyance of any interest in the Property, or any portion or parcel thereof, to Developer or for Successor Agency to provide any financial or other assistance to Developer for development of the Property.

3. Developer acknowledges and agrees that neither Developer nor any affiliate of Developer has acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from Successor Agency.

H. Developer Financial Disclosures

Successor Agency reserves the right to obtain further information, data, and commitments to ascertain the ability and capacity of Developer to develop the Property. Developer acknowledges that it may be requested to make certain confidential financial disclosures to Successor Agency, its staff or legal counsel, as part of the financial due diligence investigations of Successor Agency relating to the potential disposition of the Property and its development. Successor Agency and Developer recognize that such financial disclosures may contain sensitive information relating to other business transactions of Developer, that the disclosure of such information to third parties could impose commercially unreasonable and/or anti-competitive burdens on Developer and, correspondingly, diminish the value or fiscal benefit that may accrue to Successor Agency upon the disposition of the Property and development thereof by Developer,

if a future AHPDA is entered into between Successor Agency and Developer. Accordingly, Successor Agency agrees to maintain the confidentiality of any business records of Developer disclosed to Successor Agency, except as Successor Agency legal counsel reasonably determines must be disclosed pursuant to the California Public Records Act or other applicable law. The defense of any action seeking disclosure of protected business records withheld pursuant to this Subsection H shall be at Developer's expense and handled, at Successor Agency's option, either by Successor Agency legal counsel or legal counsel selected by Developer and reasonably acceptable to Successor Agency legal counsel, and Developer shall indemnify the "Indemnified Parties" (as defined in Subsection A of Section VI below) against any and all damages and liability arising therefrom, except to the extent caused by the active negligence or willful misconduct of Successor Agency or the County or any of their respective officers, officials, members, employees, agents, representatives, or volunteers acting in an official capacity.

I. Nondiscrimination

In undertaking its obligations under this Agreement, Developer covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, 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, nor shall Developer or any person claiming under or through Developer, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees.

J. Press Releases

Developer agrees to obtain the approval of the County Administrative Officer prior to publication of any press releases Developer may propose relating to the disposition or development of the Property.

K. Relocation

The Parties acknowledge and agree that (i) as of the Effective Date, there are two (2) existing tenants residing on the Property, and (ii) Developer's acquisition of the Property pursuant to a future AHPDA could trigger compliance with local, state and/or federal relocation laws (the "**Relocation Laws**"). In order to meet any applicable requirements of the Relocation Laws, from and after the Effective Date, and with at least twenty-four (24) hours prior notice to Successor Agency, Developer or its designee may (with the participation of Successor Agency if Successor Agency desires) communicate with the existing tenants to provide any notices required or permitted under applicable Relocation Laws, and/or to make investigations to determine their eligibility for relocation benefits, if any. Successor Agency shall reasonably cooperate with Developer as necessary to permit Developer to comply with any applicable requirements under

the Relocation Laws. Any relocation benefits and/or assistance required and/or elected to be provided to the existing tenants shall be provided at the sole cost of Developer.

IV. COUNTY OBLIGATIONS

County shall timely review all submittals made by Developer pursuant to the terms hereof, and shall assist Developer with community outreach by posting notice of all community meetings required to be held by Developer hereunder, including by use of social media. County agrees to obtain the approval of Developer prior to publication of any press releases County may propose relating to the disposition or development of the Property.

V. REMEDIES

A. Default and Breach

1. Failure or delay by either Party to perform any material term or provision of this Agreement or of the Predevelopment Loan Agreement shall constitute a “default” under this Agreement. If the Party who is claimed to be in default by the other Party commences to cure, correct or remedy the default within fifteen (15) calendar days after receipt of written notice specifying such default and diligently completes such cure, correction or remedy within thirty (30) calendar days after the expiration of the fifteen (15) day period (for a total of forty-five (45) calendar days to cure the default), such Party shall not be in default under this Agreement. In no event shall any time to cure, correct or remedy a default extend the Negotiation Period.

2. The Party claiming that a default has occurred shall give written notice of default to the Party claimed to be in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. However, the injured Party shall have no right to exercise any remedy permitted for a “breach” (as defined below) under this Agreement, without first delivering written notice of the default.

3. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

4. If a Party in default fails either (i) to commence to cure, correct or remedy the default within fifteen (15) calendar days following written notice of such default, or (ii) to complete such cure, correction or remedy within thirty (30) calendar days after the expiration of the fifteen (15) day period (for a total of forty-five (45) calendar days to cure the default), a “breach” of this Agreement by the defaulting Party shall be deemed to have occurred. In no event shall Successor Agency’s or the County’s disapproval or conditional approval of the Plan, the Predevelopment Loan Agreement, the AHPDA, any CEQA review, or any other matters that require Successor Agency’s or the County’s approval pursuant to this Agreement or applicable law constitute a default or breach under this Agreement by Successor Agency.


B. Remedies for Breach and Release of Claims

1. In the event of an uncured default under this Agreement, the sole remedies of the non-defaulting Party shall be (a) to terminate this Agreement, and (b) to institute an action for specific performance of this Agreement. Following the termination of this Agreement, neither Party shall have any further rights, remedies or obligations under this Agreement, except as specifically set forth herein. Neither Party shall have any liability to the other for monetary damages for the breach of this Agreement, or failure to reach agreement on an AHPDA, and each Party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, Developer knowingly agrees that it shall have no right to specific performance for conveyance of any right, title or interest in the Property, and shall not file a lis pendens with respect to the Property.

2. Each Party acknowledges that it is aware of the meaning and legal effect of California Civil Code section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor.”

California Civil Code section 1542 notwithstanding, it is the intention of both Successor Agency and Developer to be bound by the limitation on damages and remedies set forth in this Subsection B, and Successor Agency and Developer hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known or unknown to either Successor Agency or Developer as of the Effective Date. Successor Agency and Developer each waive the benefits of California Civil Code section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect with regard to the limitations on damages and remedies and waivers of any such damages and remedies contained in this Subsection B.

Developer’s Initials: 

Successor Agency’s Initials: _____

C. Surviving Clause

This Section V and the Parties rights and obligations under this Section V shall survive the expiration of the Negotiation Period and any termination of this Agreement for whatever reason.

VI. INDEMNIFICATION, RIGHT OF ENTRY, INSURANCE, AND OTHER ISSUES

A. Indemnification

Developer shall defend, indemnify and hold harmless Successor Agency and the County and their respective officers, officials, members, employees, agents, representatives, and volunteers (collectively, the “**Indemnified Parties**”), from and against all damages and liability, including but not limited to any and all claims, demands, expenses, fees, costs, liabilities, suits, causes of action, litigation, reasonable attorney’s fees, and expert witness fees (all of the foregoing,

collectively, “**Claims**”) caused by the acts or omissions of Developer or its principals, directors, managers, shareholders, joint venturers, partners, employees, agents, or representatives in connection with this Agreement, including but not limited to Developer’s Due Diligence Investigations and the Right of Entry described in Subsections B, C, D, and E below in this Section VI. Specifically, but without limiting the scope of the foregoing sentence, if Developer, during the Negotiation Period, seeks to acquire any parcels owned by third parties, Successor Agency expressly disclaims any responsibility or liability for such Developer negotiations or acquisitions and Developer shall defend, indemnify and hold harmless the Indemnified Parties from and against all damages and liabilities, including but not limited to Claims (as defined above), caused by or resulting from the acts or omissions of Developer or its principals, directors, managers, shareholders, joint venturers, partners, employees, agents, or representatives in connection with the negotiation or acquisition of any parcel owned by third parties. Developer shall not be responsible for any Claims to the extent caused by the active negligence or willful misconduct of Successor Agency or the County or any of their respective officers, officials, members, employees, agents, representatives, or volunteers acting in an official capacity.

B. Right of Entry

1. In connection with Developer’s due diligence investigations of the Property, Successor Agency hereby grants to Developer, and its affiliates, agents, engineers, contractors, consultants, and employees (collectively, the “**Developer and the Developer Entities**”), a license (the “**License**”) to enter upon the Property in order to conduct any and all inspections, investigations, tests and studies (including, without limitation, architectural inspections, engineering tests, soils, seismic and geologic reports and environmental testing) with respect to the Property (“**Due Diligence Investigations**”) as Developer may reasonably elect to make, all at Developer’s sole cost and expense; provided, however, that Developer shall obtain the written consent of the County Administrative Officer prior to conducting any invasive tests on the Property, which written consent shall not be unreasonably withheld, conditioned, or delayed. Developer shall notify the County Administrative Officer, which may be by written or telephonic notice, prior to a planned entry on the Property and provide information to the County Administrative Officer as to the purpose of the planned entry and the estimated time for completing the particular Due Diligence Investigation. All Due Diligence Investigations performed on the Property shall be undertaken in conformance with all County requirements, including obtaining any and all permits, and the Santa Cruz County Code, including but not limited to the County’s Noise Ordinance. Developer acknowledges that the Property is adjacent to a residential area and so no Due Diligence Investigations shall be performed other than between the hours of 8 a.m. and 5 p.m. Monday through Saturday except as otherwise permitted or limited by the County Administrative Officer.

2. Successor Agency may revoke this License (i) upon written notice to Developer if, in the reasonable judgment of the County Administrative Officer, such revocation is necessary to protect the public health, safety, or welfare pursuant to the exercise of Successor Agency’s or the County’s police powers; or (ii) upon two (2) business days’ written notice to Developer that Developer is in violation of the terms of this Agreement or of any applicable law, statute, ordinance, rule, or regulation pertaining to the Due Diligence Investigations or any of the Developer and Developer Entities’ entry upon the Property pursuant to this Agreement, if

Developer has failed to cure such violation within that period of two (2) business days following Developer's receipt of notice from Successor Agency.

3. The License shall terminate and be void as of the expiration or earlier termination of this Agreement.

4. Developer shall cause to have all Due Diligence Investigations conducted in accordance with all laws applicable thereto, and in a good and workmanlike manner.

C. Lien Free

Developer shall keep the Property free and clear of any mechanic's or materialmen's liens arising out of any of the Developer and Developer Entities' Due Diligence Investigations. The provisions of this Subsection C shall survive the expiration or early termination of this Agreement for any reason whatsoever.

D. Obligations Upon Expiration/Termination

Upon the earlier of (i) the termination of the License, or (ii) the expiration or early termination of this Agreement, Developer shall promptly (a) repair any damage to the Property caused by any of the Developer and Developer Entities' entry thereon, and (b) remove any personal property of any of the Developer and Developer Entities from the Property. The provisions of this Subsection D shall survive the expiration or early termination of this Agreement for any reason whatsoever.

E. Insurance

Without limiting Developer's indemnification obligations under this Agreement, Developer shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by any of the Developer and Developer Entities, including without limitation Developer's conducting of the Due Diligence Investigations. In the event that Developer subcontracts any portion of the work, the contract between Developer and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Developer is required to maintain pursuant to this Subsection E.

1. **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Developer's performance of this Agreement, including without limitation Developer's conducting of the Due Diligence Investigations. Such insurance shall be endorsed to:

a. Name the Indemnified Parties as additional insureds for claims arising out of Developer's performance of this Agreement, including without limitation Developer's conducting of the Due Diligence Investigations.

b. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Indemnified Parties.

2. **Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. Such insurance shall include coverage for all “owned,” “hired” and “non-owned” vehicles, or coverage for “any auto.” Such insurance shall be endorsed to:

a. Name the Indemnified Parties as additional insureds for claims arising out of Developer’s performance of this Agreement, including without limitation Developer’s conducting of the Due Diligence Investigations.

b. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Indemnified Parties.

3. **Workers’ Compensation Insurance** in accordance with the Labor Code of California and covering all employees of Developer providing any service in the performance of this Agreement. Such insurance shall be endorsed to waive the insurer’s right of subrogation against the Indemnified Parties.

4. **Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

5. **Evidence of Insurance:** Developer shall provide to Successor Agency a Certificate(s) of Insurance evidencing such coverage, together with copies of the required policy endorsements, no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. *Statements on an insurance certificate will not be accepted in lieu of the actual endorsements required.* Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to Successor Agency by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

6. **Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best’s rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by Successor Agency.

7. **Insurance of Subcontractors.** Developer shall be responsible for causing subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the Indemnified Parties as additional insureds to the subcontractor’s policies.

VII. MISCELLANEOUS

A. Compliance With Law

Developer acknowledges that any future AHPDA, if approved by Successor Agency, will require Developer (among other things) to carry out the development of the Property in conformity with all applicable laws, including all applicable building, planning and zoning laws, environmental laws, safety laws, and, if applicable, federal, state, and County labor and wage laws including, but not limited to, any applicable prevailing wage requirements pursuant to California Labor Code section 1720 *et seq.*

B. Successor Agency Reservation Of Discretion And Required Approvals

No AHPDA proposed to be entered into between Successor Agency and Developer shall have any force or effect nor shall Successor Agency be deemed to be a party to any agreement for the acquisition of or disposition of real or personal property, the provision of financial assistance to Developer (except to the extent the County approves financial assistance pursuant to a Predevelopment Loan Agreement) or development of any project on the Property until the terms and conditions of a future AHPDA are considered and approved by (i) the Santa Cruz County Redevelopment Successor Agency Oversight Board (“**Oversight Board**”), (ii) the governing body of Successor Agency, in the Successor Agency governing body’s sole and absolute discretion, following the conclusion of a duly noticed public hearing, if and to the extent required by law, and (iii) the County Board of Supervisors, if and to the extent required by law, following the conclusion of a duly noticed public hearing, if and to the extent required by law. Developer expressly acknowledges and agrees that Successor Agency shall not be bound by any statement, promise, or representation made by Successor Agency and/or County staff during the course of negotiations of an AHPDA and that Successor Agency shall only be legally bound upon the approval of an AHPDA by (a) the Oversight Board, (b) the governing body of Successor Agency, in the Successor Agency governing body’s sole and absolute discretion, following the conclusion of a duly noticed public hearing, if and to the extent required by law, and (c) the County Board of Supervisors, if and to the extent required by law, following the conclusion of a duly noticed public hearing, if and to the extent required by law.

C. Third-Party Beneficiaries

None of the terms or provisions of this Agreement are intended to benefit any person or entity other than Successor Agency or Developer; except that the County is an intended express third-party beneficiary of this Agreement but with no obligations hereunder. No affiliate or joint venturer or partner of Developer has any rights pursuant to this Agreement.

D. No Broker or Finder

Developer shall indemnify, defend, and hold harmless Successor Agency from and against any claim or liability (including attorneys’ fees and costs and all costs of suit, expert witness fees, costs on appeal, and for discovery) for the payment of any real estate commissions or finder’s or broker’s fees arising out of this Agreement.

E. Governing Law; Venue; Attorneys' Fees

Successor Agency and Developer agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the internal laws of the State of California without application of principles of conflicts of law. Successor Agency and Developer acknowledge and agree that this Agreement was negotiated and entered into in the County of Santa Cruz, California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Santa Cruz, or in the Federal District Court of the applicable federal district of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorneys' fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

F. Partial Invalidity

If any term or provision or portion thereof of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

G. Waivers

No waiver of any breach of any covenant or provision contained in this Agreement shall be deemed a waiver of any preceding or succeeding breach of such provision, or of any other covenant or provision contained in this Agreement. No extension of the time for performance of any obligation or act or any waiver of any provision of this Agreement shall be enforceable against Successor Agency or Developer, unless made in writing and executed by both Successor Agency and Developer.

H. Notices.

All notices under this Agreement shall be delivered by personal delivery, by a reputable same-day or overnight courier service, or by mailing in the U.S. mail by prepaid certified mail. Notices shall be directed to the respective Parties as follows:

<u>If to Successor Agency:</u>	Santa Cruz County Redevelopment Successor Agency Attn: Santa Cruz County Administrative Officer 701 Ocean Street, Room 520 Santa Cruz, CA 95060 Telephone No.: (831)
<u>If to Developer:</u>	MidPen Housing Corporation Attn: _____ 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Telephone No.: (650) 356-2900

A Party may change the address for delivery of notices to it as such Party may from time to time designate in writing to the other Party by a written notice conforming to the requirements of this section. Notices delivered by personal delivery, or same-day or overnight courier service, shall be effective upon receipt (provided that any notices received after 5:00 p.m. on a business day shall not be deemed received until 9:00 a.m. the next business day). Notices delivered by mail shall be effective as of Noon on the third business day following deposit with the United States Postal Service.

I. Calendar Days and Business Days

As used herein, the term “days” shall mean calendar days unless the term “business days” is used. As used herein, a “business day” shall mean a day that the County of Santa Cruz offices are open for business to the general public. Developer acknowledges that the County of Santa Cruz is closed for holidays designated by the State of California or by ordinance or resolution of the County Board of Supervisors. If the date on which Successor Agency or Developer are required to take any action pursuant to the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

J. Construction

Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of reference of Successor Agency and Developer and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one or the other of Successor Agency or Developer but rather as if both Successor Agency and Developer prepared this Agreement. Unless otherwise indicated, all references to sections are to this Agreement. If any exhibits are referred to in this Agreement, such exhibits are either attached to this Agreement or incorporated into this Agreement by reference.

K. Nonliability of Successor Agency Officials, Officers, and Employees

No officer, official, member, employee, agent, representative, or volunteer of Successor Agency or of the County shall be personally liable to Developer, or any successors in interest, in the event of any default or breach by Successor Agency of this Agreement, or for any amount which may become due to Developer or to any successors under this Agreement, or for breach by Successor Agency of any obligation of the terms of this Agreement.

L. Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party (who is not then otherwise in material default) shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes, acts of the public enemy, terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of Successor Agency or the County or any other public or governmental agency or entity, including, without limitation,

unreasonable delays in the processing and issuance of required permits for a development project required by Developer (except that any act or failure to act of Successor Agency shall not excuse performance by Successor Agency) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform, for up to a maximum cumulative period of one hundred fifty (150) days. Notwithstanding the foregoing, inability to secure satisfactory financing, tenant or manufacturer commitments, or market and economic conditions shall not entitle Developer to an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of knowledge of the commencement of the cause. In addition, times of performance under this Agreement may be extended by mutual written agreement by the County Administrative Officer, on behalf of the Successor Agency, and an authorized representative of Developer.

M. Time of the Essence

Time is of the essence in this Agreement and of each and every term and provision hereof, it being understood that the Parties hereto have specifically negotiated the dates or time limits for the completion of each obligation herein.

N. Entire Agreement; Amendment.

This Agreement sets forth the entire agreement between the Parties with respect to the subject matter set forth herein and supersedes all prior discussions and negotiations between the Parties with respect thereto. No amendment to this Agreement shall be effective unless set forth in a writing signed by an authorized signatory of each Party.

O. Counterparts.

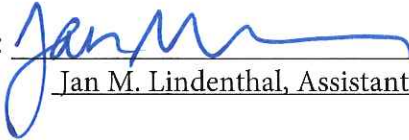
This Agreement may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect upon all of the Parties hereto signing this Agreement.

[end—signature page follows]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the Effective Date.

“Developer”

MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation

By: 
Jan M. Lindenthal, Assistant Secretary

“Successor Agency”

SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic

By: _____

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Allison LeMoine-Bui, Esq.
Attorneys for the Santa Cruz County
Redevelopment Successor Agency

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the Effective Date.

“Developer”

MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation

By: _____

“Successor Agency”

SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic

By: _____

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Allison LeMoine-Bui
Allison LeMoine-Bui, Esq.
Attorneys for the Santa Cruz County
Redevelopment Successor Agency

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[SEE FOLLOWING PAGE]

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

VOL. 5538 PAGE 870

ESCROW NO. 805753 SW

EXHIBIT "A"

The land referred to herein is described as follows:

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEING A PART OF LOT 3, AS THE SAME IS SHOWN UPON THAT CERTAIN MAP ENTITLED "WILSON BROTHERS SUBDIVISION NO. 1", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY ON JUNE 6, 1916 IN MAP BOOK 18 AT PAGE 22, SANTA CRUZ COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY SIDE OF LOWER SOQUEL ROAD AS THE SAME IS SHOWN UPON THE ABOVE MENTIONED MAP, FROM WHICH THE NORTHWESTERLY CORNER OF LOT 1 AS SHOWN ON THE ABOVE MENTIONED MAP, BEARS SOUTH 69° 43' EAST 247.80 FEET DISTANT; THENCE LEAVING THE SOUTHERLY SIDE OF SAID COUNTY ROAD SOUTH 13° 50' WEST 406.79 FEET TO A STATION ON THE NORTHERLY BOUNDARY OF LOT 11 IN SAID TRACT; THENCE ALONG THE LAST MENTIONED BOUNDARY NORTH 75° 43' WEST 113.28 FEET TO A STATION; THENCE NORTH 13° 50' EAST 418.71 FEET TO THE SOUTHERLY SIDE OF SAID FIRST MENTIONED COUNTY ROAD; THENCE ALONG THE SOUTHERLY SIDE OF SAID ROAD SOUTH 69° 43' EAST 114.00 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF AS WAS CONVEYED IN THE DEED FROM FRANK DUARTE, ET UX., TO THE COUNTY OF SANTA CRUZ, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, RECORDED NOVEMBER 10, 1960 IN VOLUME 1354, PAGE 213, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

PARCEL TWO:

BEING A PART OF LOTS 2 AND 3 AS THE SAME ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "WILSON BROTHERS SUBDIVISION NO. 1" FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY ON JUNE 6, 1916 IN MAP BOOK 18 AT PAGE 22, SANTA CRUZ COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY SIDE OF THE LOWER SOQUEL ROAD, AS THE SAME IS SHOWN UPON THE ABOVE MENTIONED MAP, FROM WHICH THE NORTHWESTERLY CORNER OF LOT 1 AS SHOWN UPON THE ABOVE MENTIONED MAP BEARS SOUTH 69° 43' EAST 172.80 FEET DISTANT; THENCE LEAVING THE SOUTHERLY SIDE OF SAID COUNTY ROAD SOUTH 13° 50' EAST 398.33 FEET TO A STATION ON THE NORTHERLY BOUNDARY OF LOT 12 IN SAID TRACT; THENCE ALONG SAID LAST MENTIONED BOUNDARY AND THE NORTHERLY BOUNDARY OF LOT 11 IN SAID TRACT NORTH 75° 43' WEST 74.255 FEET TO A STATION; THENCE NORTH 13° 50' EAST 406.79 FEET TO THE SOUTHERLY SIDE OF SAID FIRST MENTIONED COUNTY ROAD; THENCE SOUTH 69° 43' WEST 75 FEET TO THE PLACE OF BEGINNING.

EXHIBIT "A"

-2-

VOL. 5538 PAGE 871

ESCROW NO. 805753 SW

EXHIBIT "A"

PARCEL TWO - CONTINUED:

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO COUNTY OF SANTA CRUZ FOR THE WIDENING OF CAPITOLA ROAD BY DEED FROM CABRILLO DEVELOPMENT COMPANY, DATED AUGUST 30, 1960, RECORDED NOVEMBER 2, 1960 IN VOLUME 1352, PAGE 535, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 026-193-42 (PARCEL ONE)
026-193-43 (PARCEL TWO)

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "A"

-3-

BOOK 3801 PAGE 464



FOUNDERS TITLE COMPANY
 ORDER NO. 104649
 (Continued)

EXHIBIT "A"

BEING a part of Lots 3 and 4, as the same are shown upon that certain map entitled "Wilson Brothers Subdivision No. 1", filed for record in the Office of the County Recorder of Santa Cruz County on June 6, 1916 in Map Book 18 at Page 22, Santa Cruz County Records and being more particularly bounded and described as follows:

BEGINNING at a station on the Southerly side of Lower Soquel or Capitola Road, from which the Southwest corner of said Lower Soquel or Capitola Road and Seventeenth Avenue, as the same are shown on the above mentioned Map bears South 69° 43' East 563.06 feet distant; said point of beginning being also the most Northerly corner of that certain parcel of land conveyed by J. S. Harwood, et al, to F. G. Wilson, et al, by Deed of Trust recorded in Volume 9 of Trust Deeds, Page 229, Santa Cruz County Records; thence along the Westerly boundary of said last mentioned tract of land South 18° 50' West 418.87 feet to the Northerly boundary of Lot 11 as shown on said Map; thence along the Northerly boundary of said Lot 11 and Lot 10 North 75° 43' West 103.90 feet; thence in a straight line 429.49 feet to a point on the said Lower Soquel Road, distant 102.09 feet Westerly from the said point of beginning; South 69° 43' East and along said line of the said Lower Soquel Road 102.09 feet to the point of beginning.

EXCEPTING THEREFROM so much of the above described land as was conveyed by Walter Goulard, to County of Santa Cruz, a political subdivision of the State of California, recorded July 13, 1960 in Volume 1330, Page 162, Official Records of Santa Cruz County.

Assessor's Parcel Number 026-193-41

Page 4 of 4 Pages

OFC-1040

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "A"

-4-

EXHIBIT “B”

SITE MAP

[SEE FOLLOWING PAGE]

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

17th Ave & Capitola Rd

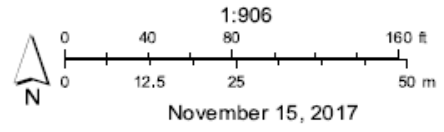
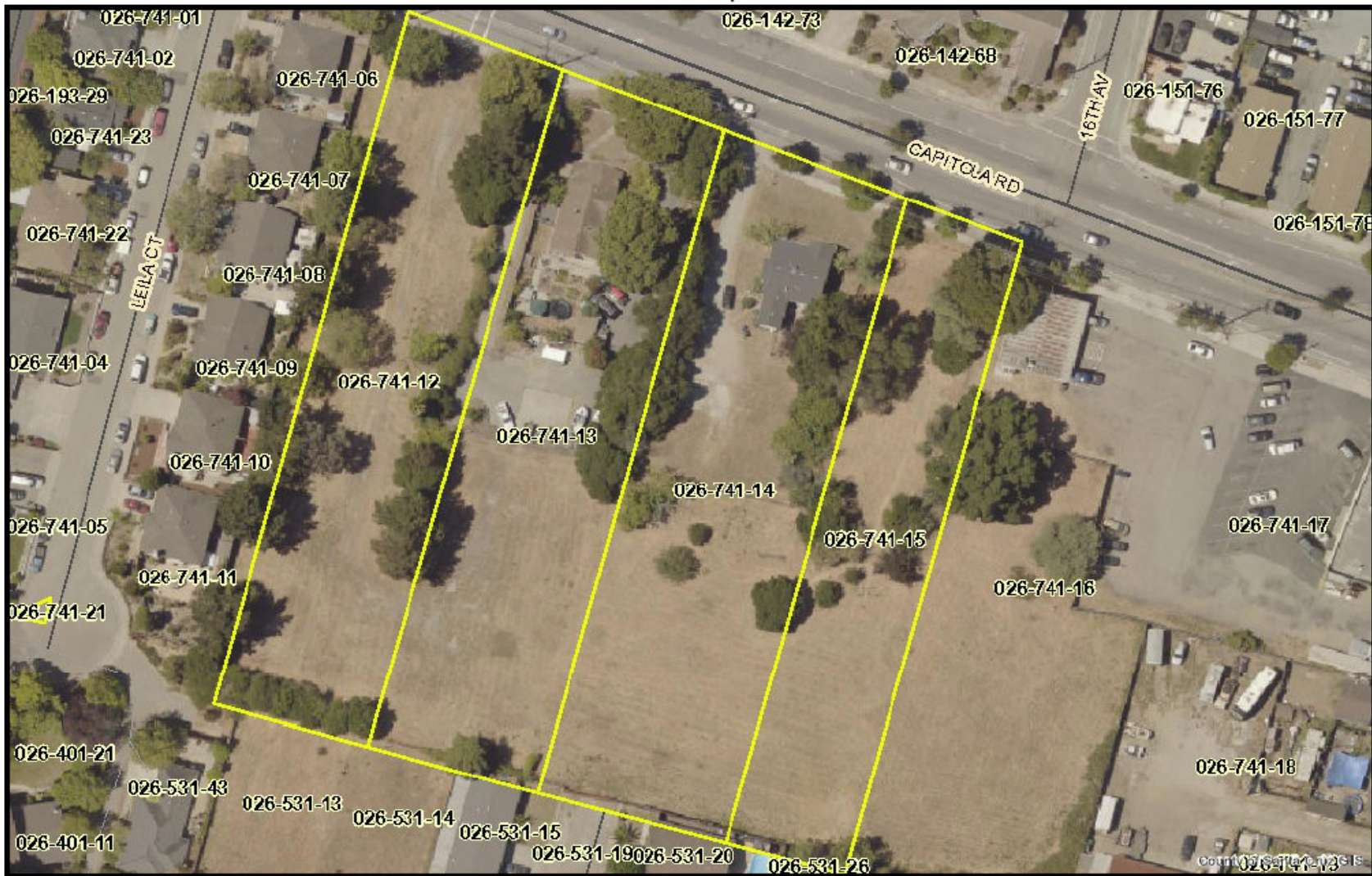


EXHIBIT "B"

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "C"**SCHEDULE OF PERFORMANCE**

ITEM OF PERFORMANCE		TIME FOR PERFORMANCE
COMMUNITY OUTREACH ACTIVITIES		
1.	Developer submits community outreach plan to Successor Agency for review/input	Within 2 weeks after Effective Date
2.	Developer conducts first community meeting. Staff from Successor Agency attend meeting.	Within 45 days after Effective Date
3.	Developer submits revised site plan and updated community outreach plan based on first community meeting.	Within 45 days after first community meeting
4.	Successor Agency provides comments to revised site plan and updated community outreach plan.	Within 2 weeks after Developer's submittal
5.	Developer conducts any additional community meetings as outlined in the community outreach plan.	Within 45 days after receipt of Successor Agency comments to revised site plan and updated community outreach plan.
ALL OTHER SCHEDULED ACTIVITIES		
6.	Developer submits to Successor Agency a sources and uses of funds and financial pro forma for the development of the Property.	First draft by December 1, 2017 and thereafter within 1 week of any material updates to assumptions of sources or uses of funds.
7.	Developer submits design review/entitlement package to Successor Agency and County Planning Department for preliminary review prior to formal entitlement submission.	Within 60 days after completion of all activities and meetings set forth in the community outreach plan
8.	Developer prepares and delivers to Successor Agency market study	Within 60 days after completion of all activities and meetings set forth in the community outreach plan

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "C"

ITEM OF PERFORMANCE		TIME FOR PERFORMANCE
9.	Developer commences processing entitlements necessary for development of Property and furnishes to Successor Agency information regarding the Plans in order to conduct CEQA analysis.	Within 90 days after completion of all activities and meetings set forth in the community outreach plan.
10.	Successor Agency endeavors to prepare initial draft of AHPDA	Within 6 months after Effective Date.
11.	County prepares CEQA environmental review documents for development proposed by Developer	

Attachment: Exclusive Negotiation Agreement (Exclusive Negotiation Agreement with MidPen Housing)

EXHIBIT "C"