

DRAFT**EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC**

This EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement") is entered as of _____, 2017 (the "Effective Date"), by and between the City of Sunnyvale, a California municipal corporation ("City"), and The Related Companies of California, LLC, a California limited liability company ("Developer"), based on the terms and provisions set forth below. The City and Developer may sometimes be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. The City owns or controls certain real property located between Mathilda and Iowa Avenues and Charles Street within the city of Sunnyvale, California, commonly referred to as the Block 15 Affordable Housing site (the "Property"). The Property has an area of approximately 1.44 acres and is more particularly described in Exhibit "A", attached hereto; and

B. It is the intent of the City that the Property be developed in a manner consistent with the City's Downtown Specific Plan, General Plan and zoning codes in order to meet the City's goal to provide an apartment project of approximately 80-100 affordable rental units and ancillary commercial and amenity uses, with high quality architecture and site design, consistent with the context and character of the surrounding neighborhood that best serves the public good, meets local affordable housing needs, and makes the best public use of a valuable City asset, as further described in the City's Request for Proposals dated April 15, 2016 (the "Project"); and

C. The City has selected Developer to develop the Property through completion of a competitive procurement process (Request for Proposals or RFP) conducted in May through September of 2016. Selection of Developer was made in part on the basis of its proposal submitted pursuant to the RFP ("Proposal") to complete and manage the Project with several collaborating partners (Housing Choices Coalition, a California nonprofit public benefit corporation, and Affordable Housing Access, a California nonprofit public benefit corporation, collectively the "Collaborating Partners"); and

D. The Developer desires to obtain an exclusive right to negotiate the long term lease of the property from the City for the development of the Project; and

E. The City believes that by facilitating the creation of housing affordable to lower-income households, as defined by State law, in a transit-oriented development with ancillary commercial and amenity uses, and by redeveloping a significant portion of Block 15 within the Downtown Specific Plan, the Project will benefit the City; and

F. The City currently leases two of several existing dwelling units located on the Property, at addresses 406 Charles Street and 377 Mathilda Avenue, to two tenant households ("Current Tenants") on a month-to-month basis. It shall be the Developer's responsibility to provide adequate noticing and relocation assistance, at Developer's expense, to the Current

DRAFT**EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC**

Tenants consistent with California relocation law (and federal law, if federal funding of the Project is contemplated), and current best practices in a residential relocation; and

G. The Downtown Specific Plan calls for aggregation or merger of smaller lots in order to create one or more adequate sites for development meeting the standards and densities allowed in the Plan area. For this reason, the Project site includes six existing contiguous parcels (APNs 165-130-74, 165-130-46, 165-130-68, 165-130-45, 165-130-73, and 165-130-69 as shown in Exhibit "A"); and

H. The Developer's Proposal, which is on file with the City Housing Division, the entirety of which is incorporated herein by reference, includes the development of approximately 92 units of affordable rental housing and related interior and exterior amenities on the Property, with approximately 5,000 square feet of commercial space on the corner of Mathilda and Iowa Avenues; and

I. The Proposal includes a proposed budget for financing the Project using various local, regional, state, federal, and/or private sources of affordable housing funding, as well as a certain amount of Developer's own resources to fund certain pre-development expenses, and all development costs associated with the development of the Project, at no cost or liability to the City; and

J. The Developer's planning efforts and pre-development activities, such as conducting due diligence, community outreach, site demolition, clearance, and relocation planning, will be the sole responsibility of Developer, and will inform and be informed by the City of Sunnyvale, local residents and stakeholders, the Downtown Specific Plan, and related City codes, plans, and policies; and

K. Based on the above facts and circumstances and based on the qualifications of Developer and its Collaborative Partners, the contents of Developer's Proposal and information obtained through follow-up interviews with Developer, the City is willing to enter into an agreement to negotiate exclusively the terms of the long term ground lease of the Property to the Developer for development of the Project.

NOW, THEREFORE, in consideration of the foregoing and the promises, covenants, and provisions set forth below, the receipt and adequacy of which consideration is acknowledged, the Developer and the City agree as follows.

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC**ARTICLE 1.****RIGHT OF EXCLUSIVE NEGOTIATIONS**

Section 1.1 Negotiating Period. The negotiating period (the "Negotiating Period") under this Agreement shall be three hundred sixty five (365) days, commencing on the Effective Date of this Agreement, subject to extension by mutual agreement of the Parties in writing. The Negotiating Period may be extended on the City's behalf for up to an additional one hundred eighty (180) days by the City Manager if, in the City Manager's sole judgment, sufficient progress toward mutually acceptable agreements and covenants related to the construction of the project ("Project Agreements") regarding the Property and the Project has been made during the initial three hundred sixty five (365)-day negotiating period to merit an extension. The Negotiating Period may be extended or modified beyond the extension described in the preceding sentence only by formal action of the City Council.

If the Project Agreements have not been executed by the City and the Developer by the expiration of the Negotiating Period (including any extension pursuant to the preceding paragraph), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, excepting (a) any provision of this Agreement that is specified to survive termination shall remain in effect, and (b) any amount of the Deposit (as defined below) remaining at the expiration of the Negotiating Period shall be returned to Developer unless the failure to execute the Project Documents is a direct result of a breach by the Developer, in which case the City shall retain the Deposit. If the Project Agreements are executed by the City and the Developer, then, upon execution of the Project Agreements, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed Project Agreements.

Section 1.2 Good Faith Negotiations. The City and the Developer agree, for the Negotiating Period described in Section 1.1, to work cooperatively and in good faith to make a preliminary feasibility determination and, if the Project is determined to be feasible and desirable by both Parties, to negotiate diligently and in good faith the terms of the Project Agreements for the construction of the Project on the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2.

Among the primary issues to be addressed in the negotiations are the following:

- (i) The size, scale, and design of the Project and its components (residential units, number of special needs units, commercial space, common amenities, open space, parking), on- and off-site improvements, on-site services and programs, site and/or neighborhood transit, bike, and/or pedestrian linkages and/or related community benefits ("Project Description");
- (ii) The land use approvals necessary for the Project, including environmental review;
- (iii) The number of dwelling units, the levels of housing affordability and/or special needs units required, marketing and tenant selection plans, and the nature of

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

affordability controls required by the City, as further set forth in a regulatory agreement to be recorded against title to the Property prior to issuance of building permits;

- (iv) The physical and land title conditions of the Property, remediation of any adverse environmental conditions, site clearance and tenant relocation;
- (v) The timeline for development of the Project;
- (vi) Financing plan and feasibility of the Project, including negotiation of Developer's requested financing from one or more of the City's Housing special revenue funds ("City Funding") in addition to other proposed sources;
- (vii) Ground lease price, payment terms, and conditions of lease, and
- (viii) Any other related matters that may be identified by either Party.

The City shall provide Developer with copies of all reports (including, without limitation, Phase I environmental site assessments and soils reports), studies, analyses, surveys, current leases and similar documents relating to the Property in the City's possession or reasonably available to the City within twenty (20) days from the Effective Date to facilitate the negotiations (the "City Deliverables").

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as the Negotiating Period may be extended pursuant to Section 1.1), the City shall not negotiate with any entity other than the Developer regarding development of the Property, or solicit or entertain bids or proposals to do so.

Section 1.4 Good Faith Deposit for Project Predevelopment Costs. In consideration for this Agreement, Developer agrees to make concurrently with the execution of this Agreement by the Parties, a one-time good faith deposit of One Hundred Thousand Dollars (\$100,000) in an escrow account established with Fidelity National Title Insurance Company (the "Escrow Account") to provide for Project predevelopment costs to be incurred by Developer following execution of this Agreement. The Escrow Account will be subject to instructions prepared by Fidelity National Title Insurance Company that will be reviewed and approved by the Parties. The Developer shall prepare a budget listing the predevelopment expenses it intends to incur (including but not limited to costs for initial due diligence studies, design, entitlements, hazmat investigations, appraisals, relocation plans, demolition and/or site security measures, and any related predevelopment costs but not including Developer's internal staff costs), which will be attached to this Agreement as Exhibit "D" (the "Predevelopment Budget"). It is understood by the Parties that the total predevelopment costs may exceed the \$100,000 good faith deposit. Provided the Developer incurs a predevelopment expense that conforms to the Predevelopment Budget, the Developer may withdraw funds directly from the Escrow Account without advance authorization by the City but with written notice to the City within 5 days of withdrawal. City is entitled to review all documents during the predevelopment period including, but not limited to, hazmat investigations and property appraisals.

Section 1.5 Identification of Developer's Representative. The Developer's representative for negotiations with the City is William A. Witte, Chairman and CEO. The

DRAFT**EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC**

Developer shall make full disclosure to the City of all information pertinent to the ownership, control, and financial capacity of the development entity that is proposed to serve as Developer under the Project Agreements, including, but not limited to, any members of any partnership entity proposed to own and/or operate the project, as well as the Collaborating Partners. The Developer's representative may be modified only upon written notice to the City in accordance with Section 3.2.

Section 1.6 Actions by the City. The City Manager or his/her designee is the City's representative for all purposes under this Agreement. The City Manager or his/her designee is authorized to confer any consents or approvals required by City under this Agreement, except where this Agreement specifies that approval by the City Council is required.

**ARTICLE 2.
NEGOTIATION TASKS**

Section 2.1 Overview. To facilitate negotiation of the Project Agreements, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable Project Agreements prior to the expiration of the Negotiating Period. Within thirty (30) days after the Effective Date, the Parties shall meet and mutually agree upon the responsibilities of the Parties and schedule needed to complete the negotiation tasks listed in this Article 2 within the Negotiating Period (the "Timeline ").

Section 2.2 Community Engagement Plan. Developer will provide a proposed Community Engagement Plan (CEP) for obtaining community input on the design and plans for the proposed Project within thirty (30) days from the Effective Date. A summary of the terms of the draft CEP is provided in Exhibit B. Developer shall update, expand upon, and/or refine as necessary the Community Engagement Plan and submit a final Plan to City for approval prior to execution of the Project Agreements.

Section 2.3 Due Diligence. The Developer shall conduct due diligence activities it deems necessary to provide Developer with sufficient information to determine the feasibility of the Project, including but not limited to permitting and environmental requirements, soils, hazardous materials, infrastructure, tenant relocation matters, demolition and site clearance, appraised value, and title adequacy.

(a) Physical Adequacy Determination. The Developer shall have one hundred and eighty (180) days from the Effective Date of this Agreement (the "Due Diligence Period") to determine whether the Property is suitable for the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed Project improvements, infrastructure, the planning requirements imposed on developments of this type, and the other environmental and regulatory factors that the Developer deems relevant. The executed Project Agreements shall not provide for an additional opportunity for the Developer to determine the physical suitability of the Property or for the Developer to

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

terminate any of the Project Agreements as a result of the purported physical unsuitability of the Property (unless that unsuitability arises solely from an event occurring subsequent to the execution of the Project Agreements and not caused by Developer).

(b) Right of Entry. The City shall afford authorized representatives of the Developer access to the Property for the physical adequacy determination as provided in the Right of Entry Agreement attached to this Agreement as Exhibit C. In connection with entry onto the Property, Developer shall agree to indemnify, defend and hold harmless the City, its agents, officers, employees as more fully in Exhibit C.

(c) Title Adequacy Determination. Developer shall request, with City's permission, a reputable title company located within Santa Clara County to issue a Preliminary Title Report (the "Report") for the Property. The Timeline shall include dates by which the Developer must object to any exception appearing on the Report and for resolution of those objections.

Section 2.4 Preliminary Plan. Consistent with the Community Engagement Plan and in accordance with the Timeline, the Developer shall submit to the City a proposed conceptual development program (the "Preliminary Plan") for the Project, similar to that contained in the Proposal but with any necessary updates and/or additional detail that includes: (a) a detailed description of the proposed project, including the number and size of dwelling units, square footage of any non-residential spaces by type of use (commercial or amenity) and common area open spaces; (b) a proposed development schedule; (c) proposed housing affordability levels, number and type of any special needs units, and the nature of affordability controls, consistent with City standards and policies; (d) a preliminary financing plan with estimated development budget and operating pro forma; and (e) a preliminary site plan. The preliminary site plan shall show the general location of the proposed buildings, landscaping, and site improvements; the massing of any proposed buildings; driveways, sidewalks, public rights of way, parking, and points of ingress and egress; and any other proposed improvements to be constructed as part of the Project.

Section 2.5 Financing and Costs of Development. In accordance with the Timeline, the Developer shall prepare a detailed financial analysis for the Project concurrently with submittal of an application for the Planning Approvals containing, among other matters, a development budget, including all costs; an operating pro forma; and housing affordability levels supported by the Project (the "Financing Plan"). The Financing Plan shall identify the sources of funding for each phase, or component, of the Project, including but not limited to all proposed sources of debt and equity to be utilized for the Project. The Financing Plan may be refined by the Parties during the Negotiating Period, as appropriate, and will be used to evaluate the financial feasibility of the Project and to assist the Parties in negotiating the terms of the Ground Lease of the Property and/or the terms of the City Financing for the Project.

Section 2.6 Submittal of Application for Planning Approvals. The Developer acknowledges that the Project will require discretionary approvals and entitlements from the City

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

(the "Planning Approvals"). Developer and the City shall determine the necessary entitlements for the Project, and in accordance with the Timeline, the Developer shall submit complete applications to the City for the necessary approvals. The Developer shall be responsible for the payment of all application fees associated with the Planning Approvals.

Section 2.7 Environmental Review. It is the intent of the City and the Developer that any required environmental review for the Planning Approvals and the Project Agreements shall be prepared in a coordinated manner so that the Planning Approvals and the Project Agreements may be reviewed concurrently. The City shall prepare or cause to be prepared any and all environmental documentation related to the Planning Approvals and the Project Agreements that may be required under the California Environmental Quality Act ("CEQA"); provided that nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to any applicable CEQA documentation. In accordance with the Timeline, the Developer shall provide all information about the Project that may be required to enable the City to prepare or cause preparation and consideration of any CEQA required document and shall otherwise generally cooperate with the City to complete this task. The Developer shall be responsible for the payment of all usual City fees, special studies and costs associated with the environmental review of the Planning Approvals and the Project Agreements.

Section 2.8 City Discretion.

(a) Nothing in this Agreement shall obligate the City to exercise its discretion regarding the Project in any particular manner. Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any Planning Approvals or the Project Agreements or any required permits, applications, maps, or any City financing commitment to the Project, and in no way limits the discretion of the City in the permit and approval process. Developer acknowledges that approval, conditional approval, or disapproval of the Planning Approvals and the Project Agreements following completion of the environmental review process is within the sole and exclusive discretion of the City without limitation by or consideration of the terms of this Agreement; that the City may not make any commitment to any particular development before it completes environmental review; that the City may not commit to planning and zoning approvals by contract; and that the City makes no representation regarding the ability or willingness of the City to approve the Planning Approvals or the Project, nor any representation regarding the imposition of any mitigation measures or other conditions of approval. In addition, the Developer acknowledges that other local, state or federal agencies may require additional entitlements, including environmental review, and that any approval by the City does not bind any other local, state or federal agency.

(b) The Parties recognize that the City has the sole discretion and right to terminate this Agreement without fault or default if City, in good faith, determines not to approve the Planning Approvals or the Project Agreements for the Project; provided, however, if the City elects to terminate this Agreement pursuant to this Section (b), the

DRAFT**EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC**

Developer shall be entitled to the release of the unexpended portion of the Good Faith Deposit from the Escrow Account. The City shall reasonably cooperate with Developer to obtain such release if necessary. Upon termination for this reason, neither Party shall have any further rights or obligations under this Agreement, except that any provisions of this Agreement that are specified to survive termination shall remain in effect and binding upon the Parties.

Section 2.9 Reports. Provided the Developer has obtained the release of the unexpended Good Faith Deposit from the Escrow Account if the City fails to approve the Planning Approvals or the Project Agreements through no fault of the Developer, the Developer shall provide the City with copies of the final versions of all reports, studies, analyses, and similar documents prepared on behalf of the Developer with respect to the due diligence review completed pursuant to Section 2.3 of this Agreement, without representation or warranty as to their accuracy or completeness. The City shall provide the Developer with copies of the City Deliverables, exclusive of detailed property appraisals, prepared or commissioned by the City with respect to the Property, within twenty (20) days following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

Section 2.10 Organizational Documents. Concurrent with the execution of this Agreement, the Developer shall provide the City with copies of all organizational documents evidencing that the Developer exists as a legal entity in good standing to perform its obligations under this Agreement.

Section 2.11 Progress Reports. From time to time as reasonably agreed upon by the Parties, each Party shall make oral or written progress reports advising the other Party on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Project.

**ARTICLE 3.
GENERAL PROVISIONS**

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate the City or the Developer to enter into the Project Agreements regarding the Property or Project. By execution of this Agreement, the City is not committing itself to or agreeing to undertake disposition of the Property. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City Council action the final discretion and approval regarding the execution of the Project Agreements and all proceedings and decisions in connection therewith. The Project Agreements resulting from negotiations pursuant to this Agreement shall become effective only if and after such Project Agreements has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the Developer. Until and unless the Project Agreements are

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

signed by the Developer, approved by the City Council, and executed by the City, 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 Project Agreements or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

Notices to the City:

City of Sunnyvale
Community Development Department
Housing Division
Attn: Housing Officer
PO Box 3707
Sunnyvale, CA 94088
Telephone: 408-730-7250

With copy to:

City of Sunnyvale
Office of the City Attorney
Attn: City Attorney
PO Box 3707
Sunnyvale, CA 94088
Telephone: 408-730-2700

Notices to Developer:

Related California
Attn: William A. Witte
44 Montgomery Street, Suite 1300
San Francisco, CA 94104
Phone: 415-677-9000

With copy to:

Related California
Attn: Frank Cardone
18201 Von Karman Avenue, Suite 900
Irvine, CA 92612

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of *Lis Pendens*. It is expressly understood and agreed by the Parties that no *lis pendens* shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement and the performance of each Party's obligations under this Agreement, except as otherwise agreed in writing by the Parties.

Section 3.5 No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or the Project Agreements resulting from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent, or finder retained by the Developer.

Section 3.6 Indemnification. Developer hereby covenants, on behalf of itself and any permitted successors and assigns, to indemnify, hold harmless and defend the City and its respective elected and appointed officials, officers, agents, representatives and employees (all of the foregoing, "Indemnitees") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) arising solely out of or in connection with Developer's negligent activities on the Property undertaken pursuant to this Agreement, and only to the extent of Developer's negligence; provided however, Developer shall have no indemnification obligation with respect to the active negligence or willful misconduct of any Indemnitee. Developer's indemnification obligations set forth in this paragraph shall survive the expiration or termination of this Agreement.

Section 3.6 Non-liability of Agency Officials and Employees. No member, official, employee, or contractor of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of the Agreement.

Section 3.7 Defaults and Remedies

- (a) Default. Failure by either Party to negotiate in good faith as provided in this Agreement or to perform a material obligation under this Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b); provided, however, if a default is not capable of curing within the fifteen (15) day period, then the defaulting Party will not be in default if it commences a cure within the fifteen (15) day period and diligently prosecutes the cure to completion.

(b) Remedies.

(1) In the event of an uncured default by a Party, the non-defaulting Party's sole remedy shall be to terminate this Agreement. Following such termination, neither Party shall have any further right, remedy or obligation under this Agreement, except that the Developer's indemnification obligations pursuant to Section 3.6 and pursuant to the Right of Entry, and City's obligation to cooperate with the release to Developer of any remaining portion of the Good Faith Deposit described in Section 1.4 from the Escrow Account.

(2) In no event shall either Party be entitled to damages of any kind in the event of termination of this Agreement. Except as expressly provided in subparagraph (b)(1) of this Section 3.7, neither Party shall have any liability to the other Party for damages arising out of or related to performance under this Agreement or otherwise for any default, nor shall either Party have any other claims with respect to performance or default under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

(3) Developer acknowledges that there is a risk that, subsequent to the execution of this Agreement, it will discover, incur or suffer loss, damages or injuries in connection with this Agreement which are unknown or unanticipated at the time that this Agreement is executed. Developer hereby assumes this risk and understands that the limitations on remedies set forth in this Agreement shall apply to all unknown or unanticipated losses, damages or injuries related or arising from this Agreement, as well as those known and anticipated.

Section 3.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law rules.

Section 3.9 Entire Agreement. This Agreement, including all exhibits, constitutes the entire agreement of the Parties regarding the subject matters of this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, or written, are merged in this Agreement and shall be of no further force or effect.

Section 3.10 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

Section 3.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.12 Assignment. City is entering into this Agreement based on the experience, skill, and ability to perform of Developer. This Agreement, and any portion thereof, shall not be assigned or transferred without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

Section 3.13 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.14 Developer Not an Agent. Nothing in this Agreement shall be deemed to appoint Developer as an agent for or representative of the City, and Developer is not authorized to act on behalf of the City with respect to any matters except those specifically set forth in this Agreement. The City shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Developer, whether arising from actions under this Agreement or otherwise.

Section 3.15 Severability. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

Section 3.16 Time Is of the Essence. Time is of the essence for each of the Parties' obligations under this Agreement.

Section 3.17 Venue. Venue for any dispute arising out of this Agreement shall be the Superior Court of Santa Clara County, California and the parties consent to the jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

Section 3.18 Confidentiality. Developer acknowledges and agrees that the City is a public entity and subject to the California Public Records Act (Government Code Section 6250 et seq.) and any information provided by the Developer to the City with respect to the Property, the Project or Developer are "public records" under the Act and may be subject to disclosure to the public. With respect to any information provided that the Developer reasonably deems and clearly marks as a trade secret or proprietary and confidential in nature, the City agrees to exercise their best efforts to keep such information confidential to the extent allowed by law. City

DRAFTEXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

will endeavor to notify Developer of any request made for records related to the Project when the request for the records allows adequate time to provide such notice. If Developer disagrees with City's determination to release records pursuant to a public records request, Developer shall have the right to file a reverse Public Records Act lawsuit to prevent City from releasing the requested document(s).

In the event City is required to defend an action under the California Public Records Act with regard to a request for disclosure of any of the documents or reports marked "Confidential," "Trade Secrets" or "Proprietary" by Developer, and only if Developer directs City to pursue such a defense, Developer agrees to defend and indemnify City from all costs and expenses of such defense, including reasonable attorney's fees of City or attorney's fees awarded by a court arising out of such action.

City's failure to correctly determine the applicability or inapplicability of an exemption to the Act shall not constitute a breach of this Agreement.

The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 3.19 Conflict of Interest. Developer shall avoid all conflicts of interest, or appearance of conflict, in performing the obligations under this Agreement and shall notify City of any facts that may give rise to a conflict of interest. Developer is aware of the prohibition that no officer or employee of City shall have any interest, direct or indirect, in the Agreement or in the proceeds thereof.

Section 3.20 News and Information Release. Developer agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

Section 3.21 Authority. The person signing this Agreement for Developer hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Developer.

Section 3.22 Exhibits. The following exhibits are attached to this Agreement and incorporated herein as though set forth in full for all purposes:

Exhibit A: General Description and APNs of the Property

Exhibit B: Community Engagement Plan

Exhibit C: Right of Entry Agreement

Exhibit D: Predevelopment Budget

DRAFT

EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN
THE CITY OF SUNNYVALE AND RELATED CALIFORNIA LLC

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

CITY:

City of Sunnyvale,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
John A. Nagel, City Attorney

DEVELOPER:

The Related Companies of California, LLC,
a California limited liability company

By: _____
William A. Witte, Chairman and CEO

Exhibit A**General Description and APNs of the Property**

The Property includes the following parcels in the City of Sunnyvale, within Santa Clara County, California:

Situs Address(es)	Assessor's Parcel Number (APN)
388 Charles St., Sunnyvale CA 94086	165-130-74
396 Charles St., Sunnyvale CA 94086	165-130-46
397 S. Mathilda Ave., Sunnyvale CA 94086	165-130-68
402 Charles St., Sunnyvale CA 94086	165-130-45
406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

Exhibit B

Community Engagement Plan

Provided below is a summary of the terms of the Community Engagement Plan (CEP). The Developer will submit the CEP to the City within thirty (30) days from the Effective Date of this agreement. This summary will serve as a starting point for the development of the CEP that will include a specific outreach milestones, timeline, outreach methods, and stakeholders/target audience.

Throughout the project timeline the Developer will invest time and resources in creating long term community relationships and involving community members in planning and designing a project that meets the needs of the community and the future residents. It is important to incorporate the local community into the development process because:

- It is a respectful way of working in the community;
- The development will be better conceived, designed and executed;
- Formal public approval processes are facilitated;
- The neighborhood is better served; and
- It lays the foundation for the development to be accountably managed and for future work in the community.

Developer and team will be careful to avoid defining the project's surrounding community too narrowly or targeting only selected groups. An "open door" policy will be implemented, allowing participation of any interested individual or group. Targeted community participants will include but be limited to:

- Local residents
- Local Business
- Neighborhood Associations (Charles Street 100, Cherry Orchard Neighbors, Cumberland South, Cumberland West, Heritage District, SunnyArts, and Washington Park)
- Service Organizations (West Valley Community Services, Sunnyvale Community Services)
- Sunnyvale School District, and other civic, and non-governmental organizations (Charles Street Gardens, Kiwanis Aktion Club, Silicon Valley at Home)
- Local officials from Sunnyvale and Santa Clara County
- Employees living in the area
- Neighborhood Organizations

Community involvement will be facilitated through:

- Early meetings with neighborhood associations and residents;
- Conversations with City leaders and staff;
- Established participation in a collaborative and plan making structure with design team

DRAFT ENA

- Project design meetings that are based on respect for the community's input and includes clear communication of expectations and constraints;
- Provided tours of other affordable properties in the county or owned/developed by Developer;
- Informational meetings/outreach materials to update stakeholders informing of anticipated milestones in the development process where the community will provide input;
- Community meetings and written communication throughout the development process to allow for structured opportunities for accountability to the community.
- Regular Developer attendance to neighborhood, community, and association Meetings
- A continued open dialogue with community stakeholders.

Through the design process, the Developer will establish meaningful dialogue with participants by providing background, information and updates regarding the proposed project. This outreach and engagement will help participants identify issues that are relevant and important to them and inform our project design as it evolves. This component of the CEP will include the following activities/discussions:

- Provide background information regarding the existing site, including previous use, size, and footprint of new project.
- Background on the Team which includes company background and experience.
- In addition to project concept, height, unit size, target income levels, rent levels, property management, development schedule, job creation, effect on property values etc.
- How the project relates to the surrounding community from a design standpoint and density, etc.

Exhibit C

Right of Entry Agreement

This Right of Entry Agreement (“Right of Entry”) is entered as of _____, 2017 (the “Effective Date”), by and between the City of Sunnyvale, a California municipal corporation (“City”), and The Related Companies of California, LLC, a California limited liability company (“Developer”), based on the terms and provisions set forth below. The City and Developer may sometimes be referred to individually as “Party” and collectively as “Parties.”

RECITALS

- A. The City owns certain real property located between Mathilda and Iowa Avenues and Charles Street within the city of Sunnyvale, California, commonly referred to as the Block 15 Affordable Housing site (the “Property”). The Property has an area of approximately 1.44 acres and is more particularly described in Exhibit “A”, attached hereto; and
- B. The Parties have entered into an Exclusive Negotiating Agreement (“ENA”) dated _____, 2017, which obligates the Parties to negotiate for a period of one year the long-term lease of the Property for the development of an affordable housing project; and
- C. The Developer desires the City’s permission to enter on to the Property during the term of the ENA in order to conduct predevelopment activities as part of Developer’s due diligence; and
- D. The Parties acknowledges that the grant of this Right of Entry onto the Property does not in any way obligate the Parties to enter into a long-term lease and construct an affordable housing project.

NOW, THEREFORE, in consideration of the foregoing and the promises, covenants, and provisions set forth below, the receipt and adequacy of which consideration is acknowledged, the Developer and the City agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

Section 1. Right of Entry. The City hereby grants to the Developer and its agents, employees and contractors the temporary right to enter onto the Property for the sole purpose of performing investigations, studies, demolition, site security measures and environmental testing related to the development of an affordable housing project on the Property.

Section 2. Term. The term of this Right of Entry shall commence on the Effective Date for a period of one (1) year or upon termination of the ENA, whichever date is earlier. The term may be extended by mutual written agreement between the Parties.

DRAFT ENA

Section 3. Liens. Developer shall not permit to be placed against the Property, or any part thereof, any design professional, mechanic, contractor or subcontractor lien with regard to Developer's actions upon the Property.

Section 4. Current Tenants. The City currently leases two of several existing dwelling units located on the Property, at addresses 406 Charles Street and 377 Mathilda Avenue, to two tenant households ("Current Tenants") on a month-to-month basis. It shall be the Developer's responsibility to provide adequate notice to the Current Tenants if any Developer activities may disturb or infringe upon the rights of the Current Tenants.

Section 5. Indemnification. Developer hereby agrees to indemnify, defend, assume all liability for and hold harmless the City and its officers, employees, agents and representatives ("Indemnitees") from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, which may be caused by Developer's activities on the Property pursuant to this Right of Entry or arising out of or in connection with such activities, whether such activities or performance thereof is by Developer or anyone directly or indirectly employed or under contract with Developer, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry; provided, however, Developer's indemnity shall not apply with respect to (a) the active negligence or willful misconduct of any Indemnitee, or (b) any preexisting conditions (unless aggravated by the negligence of Developer or its contractors or consultants). The Developer's indemnification obligations set forth in this paragraph shall survive the expiration or termination of this Right of Entry.

Section 6. Compliance with Laws/Permits. Developer shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Developer, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities Developer desires to conduct or have conducted pursuant to this Right of Entry.

Section 7. Inspection. The City may enter and inspect the Property or any portion thereof at any time to verify Developer's compliance with the terms and conditions of this Right of Entry.

Section 8. No Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Developer.

Section 9. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Right of Entry, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

Section 10. Revocable License and Termination. Notwithstanding any sums expended by Developer in furtherance of this Right of Entry, the rights granted herein are revocable and may

DRAFT ENA

be terminated by the City in conjunction with the City’s termination of the ENA pursuant to the terms thereof.

Section 11. Restoration of the Property. Upon the termination of this Right of Entry, Developer shall, at its own cost and expense, restore the Property to the same condition in which it was prior to entry. In case Developer shall fail to restore the Property to its prior condition within ten (10) business days after the effective date of the termination, the City may proceed with such work at the expense of Developer.

Section 12. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

CITY:

City of Sunnyvale,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER:

The Related Companies of California, LLC,
a California limited liability company

By: _____
William A. Witte, Chairman and CEO

Exhibit D
Predevelopment Budget

Architect (Including consultants)	\$30,000
Environmental Engineering	\$10,000
Geotechnical Engineering / Civil Engineering / Survey	\$25,000
Application Fees (CEQA, Planning, etc.)	\$8,000
Appraisal	\$4,000
Community Outreach	\$5,000
Relocation Consultant	\$3,000
Other Consultants	\$5,000
Miscellaneous Costs / Contingency	\$10,000
TOTAL	\$100,000