



Fore Property Company

Los Gatos

20 S. Santa Cruz Avenue, #300
Los Gatos, California 95030
(408) 203-1892 Telephone

August 11, 2017

Mr. Manuel Pineda, Director of Public Works
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Re: Letter of Intent to Purchase Approximately 4.76+/- Acres of Land located at 1484 Kifer Road, Sunnyvale, CA 94086 – OPTION #1.

Dear Mr. Pineda:

This Letter of Intent (“**LOI**”) is intended to be a commitment to negotiate in good faith and in a timely manner, in order to enter into a formal Purchase and Sale Agreement (“**Agreement**”) between Fore Green Development, LLC (“**Buyer**”) and City of Sunnyvale/TBD (**collectively, “Seller”**) that would incorporate the general terms and conditions set forth below:

This letter consists of two sections, one of which is non-binding on the parties, the other of which is binding on the parties.

A. **Non-Binding Understandings**: Some of the major deal points that the Buyer would like the Seller to consider in seeking to continue to an Agreement for the property are:

Subject Property: That certain real property, all rights, entitlements, privileges, architectural, and engineering plans and specifications, environmental tests and reports, studies, market and financial analysis, accounting for costs incurred and spent to date including city fees previously paid, credits, and covenants appurtenant thereto, and all improvements located thereon, located in the City of Sunnyvale, County of Santa Clara, State of California, commonly known as 1484 Kifer Road – APN Number: 216-27-023 consisting of 4.76+/- net acres (to be determined by building design / city approvals) of land (“**Property**”).

Purchase and Sale Agreement: Within fifteen (15) business days after mutual execution of this LOI, Buyer shall deliver to Seller a draft of the Agreement. Within twenty-five (25) business days after the date of execution of this LOI, Buyer and Seller shall enter into the Agreement consistent with the terms of this LOI.

Seller and Buyer acknowledge that this portion of this Letter of Intent is not a contract, but is intended to be the basis for the preparation of a contract. The Purchase and Sale Agreement shall be subject to the Seller’s and Buyer’s

approvals, and only a fully executed Purchase and Sale Agreement shall constitute a binding obligation regarding the Property in accordance with its terms.

Purchase Price: The purchase price for the Property shall be **Thirteen Million Dollars (\$13,000,000)** to be paid in cash at the close of escrow.

Please keep in mind, this allows for not only the ability for the City to receive funds for the land, but it also allows for the development of 100+/- senior affordable units *without* the need for additional subsidy required from the City, County, or Housing Authority. FORE's commitment to self-fund the affordable component results in approximately **Nine Million Dollars (\$9,000,000)** of subsidy from FORE to complete the construction of the affordable housing community. In total, the offer represents **Twenty-Two Million Dollars (\$22,000,000)**, thirteen million paid for the land and nine million contributed to the affordable housing community that is the full responsibility of FORE to entitle, finance, build, lease and manage long term.

Entitlements: Buyer will be financially responsible to the City of Sunnyvale for all costs associated with obtaining entitlement approvals to develop and construct the Buyer's proposed for rent apartment community of no less than 225-250 market rate residential units and a standalone affordable senior community of 100+/- units. Buyer and Seller to coordinate and collaborate on the planning and development approval process for the Property. Seller is delivering to Buyer a vacant property free and clear of any existing leases.

Initial Deposit: Within five (5) business days after the mutual execution of the Agreement, an earnest money deposit of **Two Hundred Fifty Thousand Dollars (\$250,000)** shall be deposited in an interest-bearing escrow account with a title company of Buyer's choice. The Initial Deposit will be applicable to the Purchase Price and will be refundable until the expiration of the Due Diligence Period ("**Due Diligence Period**").

Due Diligence Period: Buyer shall have **Ninety (90)** days from the mutual execution of the Agreement to conduct an investigation and evaluation of the Property's suitability for purchase. Such activities shall include, but not be limited to the following:

- Buyer may undertake at its own expense any and all inspections and investigations of the Property and may, from time to time, enter the Property for the purposes of such inspection, survey, tests, design of improvements and other actions reasonably related to its investigations. This shall include, but not be limited to soil, seismic, wetlands reports, and environmental inspections.

- Buyer may contact government officials including local, state and federal agencies as applicable to ascertain information about the site. Buyer may also initiate land use actions related to its desired Development during this period. The Seller shall reasonably cooperate to facilitate Buyer's Development.

If, on or before expiration of the Due Diligence Period, Buyer decides, for any reason or for no reason that it does not want to undertake its purchase of the Property, Buyer shall have the right to terminate the Agreement upon notice to Seller and receive a return of its Initial Deposit (less \$100 as independent consideration for Seller's granting of the option)

Second Deposit: If, prior to the end of the Due Diligence Period, Buyer does not provide written notice to Seller to terminate the Agreement, Buyer will deposit into escrow an additional **Two Hundred Fifty Thousand Dollars (\$250,000)**. The Additional Deposit will be applicable to the Purchase Price and becomes non-refundable upon expiration of the Due Diligence Period; except in the event of Seller Default, unsuccessful Zoning change, or as otherwise expressed within the Agreement.

Third Deposit: Within five (5) business days of the written receipt of all discretionary approvals from the Planning Commission and City Council (including any and all appeal periods), the Buyer will deposit into escrow a Third Deposit of **One Hundred Thousand Dollars (\$100,000)**. The Third Deposit will be applicable to the Purchase Price and is immediately non-refundable; except in the event of Seller Default or as otherwise expressed within the Agreement.

Entitlement Period: Buyer shall have until the completion of the **Twenty-Fourth Month (24th) from the Expiration of the Due Diligence Period** to complete any and all entitlement approvals for the development and construction of Buyers proposed development of no less than 225-250 market rate residential units and a standalone affordable community of 100+/- units. If the Buyer is unsuccessful in obtaining all discretionary entitlements for Buyer's proposed development within the Entitlement Period, all deposits outlined above are immediately refunded to Buyer and the Contract will be terminated; unless Buyer and Seller mutually agree to revise the terms of the contract. Such entitlement/approvals shall include, but not be limited to the following:

- Conditional Use Permits, Special Use Permits, Special Exceptions and/or Variances, Zoning, PD, etc.;
- Preliminary and final site plan approval, satisfaction of bonding requirements, and any other required permits by the City/County/etc. for Buyer's proposed development.

- Building and site/grading permits to start construction of Buyer's proposed development for the standalone affordable community (given the closing requirements and timelines required from CDLAC/TCAC after a successful allocation of Low Income Housing Tax Credits)

Closing: Closing shall occur within ninety (90) days of receipt of CDLAC and TCAC successful allocation of Low Income Housing Tax Credits for Buyer's proposed development.

*Buyer shall have the right to extend the Closing Date for two (2) separate periods of 30 days upon depositing with the Title Company **Fifty Thousand Dollars (\$50,000)**; all such amounts shall be applicable to the purchase price and non-refundable to Buyer, except for Seller Default.*

Closing Costs Buyer and Seller shall each pay their own closing costs as is customary in Santa Clara County, California for a commercial unimproved property transaction. Seller shall pay the real property transfer taxes.

Brokerage: Both Buyer and Seller acknowledge that the Buyer's broker is James Viso, with Kidder Mathews. Buyer shall be responsible for any and all real estate commissions due in coordination with this transaction, per separate agreement. Seller is not responsible for any brokerage commissions regarding this transaction. Buyer and Seller shall indemnify and hold each other harmless against any claims arising from outside parties related to this transaction.

Expiration: This LOI expires on October 27th, 2017.

We look forward to discussing this transaction with you and hope that we can find mutually acceptable terms allowing us to move forward with a definitive agreement. Fore Green Development, LLC (Fore Property Company) is committed to closing on transactions. Most importantly, our development team ensures that you will have a credible and reliable buyer that has the financial wherewithal, expertise and commitment to get this transaction closed within the prescribed time frames. Please feel free to contact me via phone at (408) 203-1892 or email at mpilarczyk@foreproperty.com to discuss our offer.

Sincerely,



Mark Pilarczyk, Vice President of Development and Regional Partner
Fore Property Company
Fore Green Development, LLC

AGREED & ACCEPTED THIS _____ DAY OF _____, 2017:

Seller: _____

Date: _____



Fore Property Company

Los Gatos

20 S. Santa Cruz Avenue, #300
Los Gatos, California 95030
(408) 203-1892 Telephone

August 11, 2017

Mr. Manuel Pineda, Director of Public Works
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Re: Letter of Intent to Purchase Approximately 4.76+/- Acres of Land located at 1484 Kifer Road, Sunnyvale, CA 94086 – OPTION #2.

Dear Mr. Pineda:

This Letter of Intent (“**LOI**”) is intended to be a commitment to negotiate in good faith and in a timely manner, in order to enter into a formal Purchase and Sale Agreement (“**Agreement**”) between Fore Green Development, LLC (“**Buyer**”) and City of Sunnyvale/TBD (**collectively, “Seller”**) that would incorporate the general terms and conditions set forth below:

This letter consists of two sections, one of which is non-binding on the parties, the other of which is binding on the parties.

A. **Non-Binding Understandings**: Some of the major deal points that the Buyer would like the Seller to consider in seeking to continue to an Agreement for the property are:

Subject Property: That certain real property, all rights, entitlements, privileges, architectural, and engineering plans and specifications, environmental tests and reports, studies, market and financial analysis, accounting for costs incurred and spent to date including city fees previously paid, credits, and covenants appurtenant thereto, and all improvements located thereon, located in the City of Sunnyvale, County of Santa Clara, State of California, commonly known as 1484 Kifer Road – APN Number: 216-27-023 consisting of 4.76+/- net acres (to be determined by building design / city approvals) of land (“**Property**”).

Purchase and Sale Agreement: Within fifteen (15) business days after mutual execution of this LOI, Buyer shall deliver to Seller a draft of the Agreement. Within twenty-five (25) business days after the date of execution of this LOI, Buyer and Seller shall enter into the Agreement consistent with the terms of this LOI.

Seller and Buyer acknowledge that this portion of this Letter of Intent is not a contract, but is intended to be the basis for the preparation of a contract. The Purchase and Sale Agreement shall be subject to the Seller’s and Buyer’s

approvals, and only a fully executed Purchase and Sale Agreement shall constitute a binding obligation regarding the Property in accordance with its terms.

Purchase Price: The purchase price for the Property shall be **Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000)** to be paid in cash at the close of escrow.

Entitlements: Buyer will be financially responsible to the City of Sunnyvale for all costs associated with obtaining entitlement approvals to develop and construct the Buyer's proposed for rent apartment community of no less than 415 residential units; which include 353 market rate units and 62 Below Market Rate ("BMR") units restricted to 50% AMI rent levels. Buyer and Seller to coordinate and collaborate on the planning and development approval process for the Property. Seller is delivering to Buyer a vacant property free and clear of any existing leases.

Initial Deposit: Within five (5) business days after the mutual execution of the Agreement, an earnest money deposit of **Two Hundred Fifty Thousand Dollars (\$250,000)** shall be deposited in an interest-bearing escrow account with a title company of Buyer's choice. The Initial Deposit will be applicable to the Purchase Price and will be refundable until the expiration of the Due Diligence Period ("**Due Diligence Period**").

Due Diligence Period: Buyer shall have **Ninety (90)** days from the mutual execution of the Agreement to conduct an investigation and evaluation of the Property's suitability for purchase. Such activities shall include, but not be limited to the following:

- Buyer may undertake at its own expense any and all inspections and investigations of the Property and may, from time to time, enter the Property for the purposes of such inspection, survey, tests, design of improvements and other actions reasonably related to its investigations. This shall include, but not be limited to soil, seismic, wetlands reports, and environmental inspections.
- Buyer may contact government officials including local, state and federal agencies as applicable to ascertain information about the site. Buyer may also initiate land use actions related to its desired Development during this period. The Seller shall reasonably cooperate to facilitate Buyer's Development.

If, on or before expiration of the Due Diligence Period, Buyer decides, for any reason or for no reason that it does not want to undertake its purchase of the Property, Buyer shall have the right to terminate the Agreement upon notice to

Seller and receive a return of its Initial Deposit (less \$100 as independent consideration for Seller's granting of the option)

Second Deposit: If, prior to the end of the Due Diligence Period, Buyer does not provide written notice to Seller to terminate the Agreement, Buyer will deposit into escrow an additional **Two Hundred Fifty Thousand Dollars (\$250,000)**. The Additional Deposit will be applicable to the Purchase Price and becomes non-refundable upon expiration of the Due Diligence Period; except in the event of Seller Default, unsuccessful zoning change, or as otherwise expressed within the Agreement.

Entitlement Period: Buyer shall have until the completion of the **Twenty-Fourth Month (24th) from the Expiration of the Due Diligence Period** to complete any and all entitlement approvals for the development and construction of Buyers proposed development of no less than 415 residential units consisting of 353 market rate units and 62 Below Market Rate ("BMR") units restricted to 50% AMI rent levels. If the Buyer is unsuccessful in obtaining all discretionary entitlements for Buyer's proposed development within the Entitlement Period, all deposits outlined above are immediately refunded to Buyer and the Contract will be terminated; unless Buyer and Seller mutually agree to revise the terms of the contract. Such entitlement/approvals shall include, but not be limited to the following:

- Conditional Use Permits, Special Use Permits, Special Exceptions and/or Variances, Zoning, PD, etc.;
- Preliminary and final site plan approval, satisfaction of bonding requirements, and any other required permits by the City/County/etc. for Buyer's proposed development.

Closing: Closing shall occur within forty (40) days of written receipt of all discretionary approvals for the Buyer's proposed development (including any and all appeal periods and approval by Buyer of the Conditions of Approval outlined by the Planning Commission and/or City Council for the proposed development).

*Buyer shall have the right to extend the Closing Date for two (2) separate periods of 30 days upon depositing with the Title Company **Fifty Thousand Dollars (\$50,000)**; all such amounts shall be applicable to the purchase price and non-refundable to Buyer, except for Seller Default.*

Closing Costs Buyer and Seller shall each pay their own closing costs as is customary in Santa Clara County, California for a commercial unimproved property transaction. Seller shall pay the real property transfer taxes.

Brokerage: Both Buyer and Seller acknowledge that the Buyer's broker is James Viso, with Kidder Mathews. Buyer shall be responsible for any and all real estate commissions due in coordination with this transaction, per separate agreement. Seller is not responsible for any brokerage commissions regarding this transaction. Buyer and Seller shall indemnify and hold each other harmless against any claims arising from outside parties related to this transaction.

Expiration: This LOI expires on October 27th, 2017.

We look forward to discussing this transaction with you and hope that we can find mutually acceptable terms allowing us to move forward with a definitive agreement. Fore Green Development, LLC (Fore Property Company) is committed to closing on transactions. Most importantly, our development team ensures that you will have a credible and reliable buyer that has the financial wherewithal, expertise and commitment to get this transaction closed within the prescribed time frames. Please feel free to contact me via phone at (408) 203-1892 or email at mpilarczyk@foreproperty.com to discuss our offer.

Sincerely,



Mark Pilarczyk, Vice President of Development and Regional Partner
Fore Property Company
Fore Green Development, LLC

AGREED & ACCEPTED THIS _____ DAY OF _____, 2017:

Seller: _____

Date: _____

August 10, 2017

Manuel Pineda
City of Sunnyvale – Department of Public Works
c/o Shaun Enferadi
Kidder Mathews
10 Almaden Boulevard, Suite 550
San Jose, CA 95113

RE: Letter of Intent for the Purchase of approximately 4.74 acres located at 1484 Kifer Road in Sunnyvale, CA

Mr. Pineda,

This Letter of Intent (“**LOI**”) is intended to be a commitment to negotiate in good faith and in a timely manner, in order to enter into a formal purchase and sale agreement (“**Agreement**”) with ROEM Development Corporation (“**Buyer**”) and the City of Sunnyvale (“**Seller**”) that would incorporate the general terms and conditions set forth below:

1. **Property:** That certain real property, all rights, all buildings and improvements located thereon located at 1484 Kifer Road in the City of Sunnyvale, State of California, commonly known as APN No. 216-27-023 (“**Property**”).

2. **Project Description and Purchase Price Options:** ROEM is proposing to build two communities on the Property totaling +/- 320 units. The first community would be a +/- 100-unit senior affordable project structured using 4% non-competitive tax credits. The affordable project will target 90% of the units to be rent restricted at 60% AMI, with the remaining 10% at 50% AMI.

The second community would be a +/- 220-unit market-rate project consisting of one- and two-bedroom units.

The projects will be separate projects on separate lots and will be phased, with phase 1 being the market-rate project, and phase 2 being the affordable project. Depending on the City’s preference of a higher purchase price and available subsidy, ROEM is proposing the following two options to purchase the Property:

- **Option 1:** The purchase price for this option shall be **Twenty-Seven Million Dollars (\$27,000,000)**, to be paid in cash at the close of escrow. Under this scenario, ROEM would request subsidy from the City, which would require the use of prevailing wages. Due to the prevailing wage requirement, the amount of subsidy requested would be over \$10 million dollars. **The offer for this option is being made assuming the use of prevailing wages will only be required for the affordable community, as it will be the project receiving the subsidy.**
- **Option 2:** The purchase price for the second option shall be **Fifteen Million Dollars (\$15,000,000)** to be paid in cash at the close of escrow. Under this scenario, the market rate community will-self fund the affordable community, and ROEM would not request subsidy

from the City. The offer for this option is being made assuming the use of prevailing wages will not be required.

3. **Purchase & Sale Agreement:** Within ten (10) business days after mutual execution of this LOI, Buyer shall deliver to Seller a draft of the Agreement, and within twenty (20) business days after the delivery the parties shall enter into the Agreement for purchase and sale of the Property consistent with the terms of this LOI.
4. **Initial Deposit:** Upon execution of the Agreement, Buyer will open escrow at Chicago Title Company, San Jose ("Escrow"). The initial deposit shall be **Two Hundred and Fifty Thousand Dollars (\$250,000.00)** ("**Initial Deposit**"), which will be applicable to the purchase price and non-refundable to Buyer unless Due Diligence is not approved and/or if Buyer is unsuccessful in rezoning property to Very High-Density Residential. If Due Diligence is not approved and/or Buyer is unsuccessful in rezoning property to Very High-Density Residential, deposit shall be returned to Buyer.
5. **Due Diligence Period:** Buyer shall have ninety (90) days ("**Due Diligence Period**"), commencing on the date the Agreement is fully executed ("**Effective Date**"), to conduct such feasibility studies, planning studies, approval studies, environmental and geotechnical tests and inspections, meet and discuss the Property with the City, meet and discuss the Property with investors and lenders, as Buyer may require. Within the Due Diligence Period, Buyer shall determine, to its sole satisfaction, the feasibility of the Property for Buyer's Intended Use.

Additionally, Buyer shall, prior to the expiration of the Due Diligence Period, approve the conditions of title as evidenced in a preliminary title report to be issued by the title company and the current leases that are on the property. If, during the Due Diligence Period, Buyer determines, in its sole and absolute discretion, the Property is infeasible for Buyer's Intended Use, then Buyer shall notify the Seller of its intent to terminate the contract, in which event the Deposit, together with the accrued interest thereon, shall be returned to Buyer.
6. **First Additional Deposit(s):** If prior to the end of the Due Diligence Period, Buyer gives written notice to Seller of its waiver of the Due Diligence Period, Buyer will deposit an additional **Two Hundred and Fifty Thousand Dollars (\$250,000.00)** ("**First Additional Deposit**") into escrow. The First Additional Deposit will be applicable to the purchase price and non-refundable to Buyer unless Buyer is unsuccessful in rezoning Property to Very High-Density Residential. If Buyer is unsuccessful in rezoning property to Very High-Density Residential, all deposits shall be returned to Buyer.
7. **Second Additional Deposit:** Six (6) months from the expiration of the Due Diligence Period, Buyer shall deposit an additional **Two Hundred and Fifty Thousand Dollars (\$250,000)** ("**Second Additional Deposit**") into escrow. The Second Additional Deposit will be applicable to the purchase price and non-refundable to Buyer unless Buyer is unsuccessful in rezoning Property to Very High-Density Residential. If Buyer is unsuccessful in rezoning property to Very High-Density Residential, all deposits shall be returned to Buyer.
8. **Entitlements:** Buyer will direct and be financially responsible to the City of Sunnyvale for the entitlement approvals to develop and construct a multifamily community on the Property. Buyer and Seller to work closely together in the planning and development approval process of this site.
9. **Rezone:** ROEM understands the current zoning in place for the Property and recognizes a rezone would have to occur to allow for very high-density residential housing. Seller shall initiate and lead rezoning process. If Seller does not wish to lead the rezoning process, Buyer (with full support from Seller) shall initiate and lead rezoning process. Buyer shall be responsible for all costs associated with rezone under either of the above scenarios.

10. **Demolition of Existing Structure:** ROEM will be responsible for all demolition work and site improvements for the Property.
11. **Closing Date:** Close of escrow shall take place on the earlier of a) thirty (30) days following the completion of entitlements (including all appeal periods, if applicable) or b) twenty-four (24) months from the Effective Date. Purchaser shall have the right to extend the Closing Date for up to two (2) separate periods of six (6) months each upon depositing with the Title Company One Hundred Thousand Dollars (\$100,000) for each extension; all such amounts shall be applicable to the purchase price and non-refundable to Buyer unless Buyer is unsuccessful in rezoning property to Very High-Density Residential.
12. **City Fees:** Buyer acknowledges it has reviewed City fees and understands applicable fees are determined at the time of project application.
13. **Publicity:** Neither party will disclose any information concerning the proposed transaction without the prior written approval of the other party.
14. **Other Transactions; Authorization; Inconsistent Obligations:** Seller will not (and will not permit any person or entity which it controls to) seek or entertain, or negotiate any terms of, a transaction involving the Property with any party other than ROEM and its affiliates, or give any information concerning its business to any such party, or enter into any agreement inconsistent with this letter of intent or the proposed transaction with ROEM.
15. **Brokerage:** Buyer is represented by Shaun Enferadi, of Kidder Mathews, and will pay a brokerage commission, per a separate agreement.
16. **Expenses:** Each party will bear its own expenses relating to the proposed transactions, including without limitation the fees and expenses of its counsel, accountants and consultants, whether or not the transaction is consummated. All closing costs shall be paid as is customary in Santa Clara County.
17. **Counterparts:** This LOI may be executed in separate counterparts, the signature pages of which may be combined to form a single original document.
18. **Disclaimer:** This letter is not intended to be binding upon either party hereto, and only a fully definitive purchase and sale agreement shall legally bind the parties. The Purchase and Sale Agreement shall incorporate the provisions herein, and other such provisions as are customary contained in a purchase and sale agreement subject to the mutual review and approval of the parties hereto and their respective legal counsel.

(Signatures on Following Page)

Sincerely,



James Keith
ROEM Development Corporation
1650 Lafayette Street
Santa Clara, CA 95050
T 408.984.5600 x 55
C 916.838.3672
E jkeith@roemcorp.com

AGREED & ACCEPTED:

SELLER: City of Sunnyvale

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____