

# **2020 EXCLUSIVE NEGOTIATION** **AGREEMENT**

WITH THE SKID ROW HOUSING TRUST FOR THE  
DEVELOPMENT OF A MULTI-UNIT VETERANS RENTAL HOUSING DEVELOPMENT

THIS EXCLUSIVE AGREEMENT TO NEGOTIATE ("Agreement") is made this 14<sup>th</sup> day of January, 2020, by and between the City of Hawthorne/Housing Successor, a municipal corporation ("City"), and The Skid Row Housing Trust, a California nonprofit California corporation ("Developer").

## **RECITALS**

The parties enter into this Agreement on the basis of the following facts, understandings, and intentions:

**A.** The City acting as the successor to the housing assets of the former Hawthorne Redevelopment Agency, is a municipal corporation, exercising governmental functions and powers.

**B.** The City is the owner of the approximate 40,260 square foot of property ("Site"), Assessor's Parcel Number 4051-030-902, and adjacent to property address 14115 Cordary Avenue in the City of Hawthorne, California.

**C.** The Developer has experience in the development of real property similar to the Site and in connection with such development has worked with cities.

**D.** The City and Developer desire, for the period set forth herein, to negotiate diligently and in good faith to attempt to agree on the terms of and then prepare a Disposition and Development Agreement, (a "DDA"), whereby the Developer would acquire title to and develop the Site, among other terms and provisions of the DDA.

NOW, THEREFORE, and in consideration of the mutual covenants contained herein, the parties mutually agree to the following:

## **SECTION 1. NATURE OF NEGOTIATIONS.**

**A. Good Faith.** The City and the Developer agree that, for the period set forth in Section 2 herein, they will negotiate diligently and in good faith to attempt to agree on the terms of and then to prepare and enter into a DDA for the development of the Site. The development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan, applicable specific plans and zoning regulations (which may necessitate amendment or other modification to accommodate Developer's proposed redevelopment) and this Agreement and all other applicable laws. City agrees, for the period stated below, not to negotiate with any other person or entity regarding development of the Site or any portion thereof without the prior written consent of Developer, which Developer may withhold in its sole and absolute discretion.

Nothing in this Agreement shall be deemed a covenant, promise or commitment by City, the City of Hawthorne, or any subdivision of the City or Housing Successor, with respect to the sale of property or the approval of any development of the Site or otherwise.

**B. Site.** The proposed development (“Project”) shall be located upon all or a portion of the real property designated as the Site, as shown in the "Site Map," attached hereto as Exhibit “A” and incorporated herein by this reference.

**C. Environmental Review.** The Developer will have the sole responsibility to pursue and obtain any necessary environmental approvals for the Project, including any required environmental review.

**D. Use and Transfer Restrictions.** This Agreement shall not be assigned by Developer without the prior written approval of City, which approval may be withheld at the sole and complete discretion of the City; however, the City’s approval shall not be required for an assignment to any entity controlled by Developer (such as a limited partnership in which Developer or a wholly owned subsidiary of Developer is the general partner) provided that copies of the assignment and assumption agreement and the assignee’s organizational documents are provided to the City prior to the assignment.

## **SECTION 2. PERIOD OF NEGOTIATIONS**

**A. Period of Exclusive Negotiation.** City and Developer agree to negotiate for up to 6-months after the execution date of this Agreement in order to attempt to agree upon the terms of a DDA and prepare a DDA. City shall prepare and revise the DDA. If, upon the expiration of such period, City and Developer have not each approved and executed a DDA, this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Site.

**B. City Approval.** Developer understands and acknowledges that if negotiations culminate in a DDA, the DDA shall be effective only after and if the DDA has been considered and approved by the City Council after public hearing thereon as required by law.

**C. Termination.** Either party may terminate this Agreement at any time, with or without cause, upon forty-five (45) days' written notice to the other party and the obligations of each party shall cease with neither party being liable to the other for any costs or expense except as otherwise described herein.

## **SECTION 3. DEVELOPER'S RESPONSIBILITIES.**

During the period of negotiation, Developer will prepare such studies, reports, and analysis as shall be necessary to permit Developer to determine preliminarily, the initial feasibility of the Project, subject to any further rights granted Developer with respect to the foregoing. During the period of negotiation, and as requested by the City, the Developer shall submit to the City plans, proformas or other information reasonably requested by the City.

**A. Administrative Fee.** Developer shall deposit with the City an administrative fee (“Administrative Fee”) in the amount of Ten Thousand Dollars (\$10,000.00) to be used to

reimburse the City for its attorneys' fees and third party expenses whether or not negotiations result in the execution of a DDA. In the event, at the end of the negotiation period set forth in this Agreement, a DDA is not executed, the balance of the Administrative Fee shall be refunded to Developer, less the costs set forth above. If negotiations result in the execution of a DDA, the Administrative Fee shall be applied to the good faith deposit to be required under such DDA.

**B. Negotiations.** The Developer shall negotiate exclusively with the City's negotiating team and with no third parties unless expressly authorized to do so by the City's negotiating team.

**C. No Obligation by City.** Developer acknowledges that City is under no obligation to enter into any proposed DDA and that any actions taken or investments made by Developer in anticipation of a proposed agreement prior to such agreement being considered and approved by the City Council after a public hearing and signed and delivered, are undertaken at Developer's sole risk and expense. Prior to the execution and delivery of a DDA by City, any reliance by Developer on any representations or promises by City or City staff or consultants, or individual Council or Housing Successor members, is undertaken at Developer's sole risk and expense.

#### **SECTION 4. RIGHT OF ENTRY.**

Provided Developer shall have first delivered to the City reasonable evidence of the insurance required below and given City prior written notice of each entry, Developer (and its consultants designated in writing to City) may enter the Property (subject to any recorded documents and the terms thereof) to inspect the Property and perform tests and surveys, all as necessary to obtain information necessary or appropriate to negotiate the DDA.

Developer shall promptly deliver copies of all written inspection results, tests and reports to the City.

Developer shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses incurred or suffered by City as a result of any such entries by Developer or its consultants, and the obligations of Developer hereunder shall survive the expiration or any earlier termination of the Agreement.

Prior to entering or allowing any consultants to enter the Property, Developer shall obtain, and shall deliver to City reasonable evidence (such as an insurance certificate) of, liability insurance for all such entries in the amount of at least \$1,000,000 naming the City as additional insured.

#### **SECTION 5. CITY'S RESPONSIBILITIES.**

The City shall cooperate fully in providing Developer with appropriate information and assistance, including assistance in preparing any environmental documentation that may be necessary for the Project at Developer's cost.

Nothing in this Agreement shall create any personal obligation or liability of the City Manager or any elected member, staff member, employee, or agent of the City for any obligation of City under this Agreement.

## **SECTION 6. DDA DEPOSIT.**

If the negotiations contemplated by this Agreement result in the execution of a DDA, the DDA will require that Developer submit to the City a deposit to insure that the Developer will proceed diligently and in good faith to perform all of the Developer's obligations under the DDA ("Deposit"). The amount and terms of the Deposit shall be outlined in the DDA. Any remaining portion of the Administration Fee shall be applied against Developer's obligation for the Deposit under the DDA.

## **SECTION 7. MISCELLANEOUS.**

**A. Brokerage Commissions.** The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer agrees to hold the City harmless from any claim by any broker, agent, or finder retained by the Developer.

### **B. Purpose of Contract.**

**1.** City's acceptance of this Agreement is merely an agreement to enter into a period of exclusive, good faith negotiations according to the terms hereof, reserving final discretion and approval by City as to any actions required of it.

**2.** Nothing contained herein shall constitute a waiver, amendment, promise or agreement by City (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of any approval, permit, consent or other entitlement in the exercise of City's regulatory capacity or function.

**3.** It is expressly understood and agreed by the parties that this is an agreement regarding the conduct of contract negotiations only and does not convey any interest in the Site whatsoever. It is further agreed and understood that this Agreement does not imply any obligation on the part of the City to enter into any agreement that may result from negotiations contemplated herein.

**C. Corporate Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

**D. Amendment.** This Agreement may only be amended by a document in writing signed by the parties.

**E. Notices.** All notices, including without limitation all approvals and consents, required or permitted under this Agreement shall be delivered by overnight courier, or by certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party:

City: City of Hawthorne  
4455 West 125<sup>th</sup> Street  
Hawthorne, CA 90250  
Attention: Mr. Erick Lee, City Manager  
Telephone: (310) 349-2909

Developer: The Skid Row Housing Trust  
1317 E. Seventh Street  
Los Angeles, CA 90021  
Attention: Ms. Sierra Atilano, Chief Real Estate Officer  
Telephone: (213) 683-0522

**F. Termination for Default.** Either party may terminate this Agreement if the other party should fail to comply with and perform in a timely manner any obligation to be performed by such other party under this Agreement, provided the party seeking to terminate this Agreement shall provide ten (10) days written notice to the other party of such failure or nonperformance and such other party shall have such 10 day period within which to cure such failure or nonperformance. Notwithstanding the foregoing, in no event shall any cure period hereunder extend the term of this Agreement.

**G. General Provisions.** This Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California. Any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

**H. Time of Essence.** Time is of the essence of every provision hereof in which time is a factor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

**"CITY":**

CITY OF HAWTHORNE

By:   
Erick Lee, City Manager

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:A

  
\_\_\_\_\_  
City Attorney

**“DEVELOPER”:**

The Skid Row Housing Trust,  
a California nonprofit corporation

By: \_\_\_\_\_  
Sierra Atilano, Chief Real Estate Officer

APPROVED AS TO FORM:A

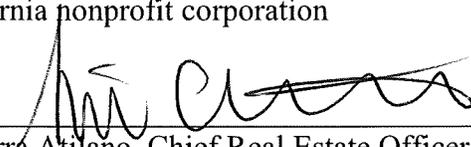
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City Attorney

**“DEVELOPER”:**

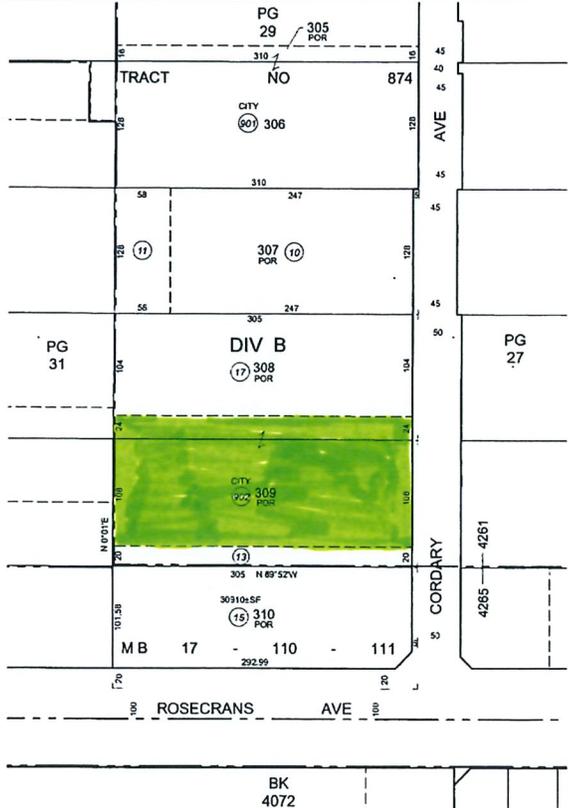
The Skid Row Housing Trust,  
a California nonprofit corporation

By: \_\_\_\_\_

  
Sierra Atilano, Chief Real Estate Officer

# Exhibit "A" SITE MAP

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