

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (WESTSIDE FLATS)

This EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this "Agreement") is entered into by and between the City of Las Vegas, a political subdivision of the State of Nevada (the "City"), and Westside Flats Owner, LP, a Nevada limited partnership (the "Developer"). The City and the Developer are sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. The City owns two adjacent parcels of real property comprised of approximately 0.33 acres, located at 600 Van Buren Avenue, Las Vegas, Nevada with APN 139-27-110-038 and the adjacent parcel with APN 139-27-110-037. The City designated these certain properties for the development of an affordable housing project ("Project Site"). The Project Site is more particularly described in Exhibit A.

B. On May 2, 2022, the City issued the RFP for the development of 600 Van Buren Avenue (APN 139-27-110-038; 139-27-110-037) for affordable housing. The City established a number of objectives in its RFP to guide its selection of a development partner, including: a project that can deliver long-term, sustainable affordability for the housing units developed; a high-quality development; and an experienced and able development partner.

C. Developer submitted a proposal in response to the RFP on or about June 30, 2022 (the Developer's Proposal). Developer originally proposed the new construction of seventeen (17) units in one (1) building of affordable housing at the Project Site.

D. With feedback from the City, Developer updated their proposal for the new construction of twenty-two (22) units in one (1) building of affordable housing (the "Project") at the Project Site.

E. In September 2022, the City approved a resolution selecting the Developer to develop the Project and authorizing the City to work with Developer in pursuing the Project.

F. In March 2023, Developer discovered the land was possibly contaminated from a previous petroleum station, requiring an Environmental Site Assessment Phase 2 to be conducted.

G. In August 2023, the Environmental Site Assessment Phase 2 was completed by the City. Field observations and screening results during drilling and the soil analytical results do not indicate that any significant subsurface contamination is present that would require remediation at the Site. Based on the findings of this Phase II Environmental Site Assessment, no additional assessment of subsurface soils at the Site is recommended.

H. Developer plans to submit a request for tax credits and other funding mechanisms to the Nevada Housing Division.

I. Developer is currently seeking financing for the Project from sources, including, without limitation, State of Nevada low income housing tax credits and the Federal Home Loan

of tax-exempt bonds, and private investment through the Low-Income Housing Tax Credit program, Federal Housing Trust Funds and HOME funds through the State of Nevada.

J. It is anticipated that the City and the Developer will enter into a Disposition and Development Agreement (a "DDA"). It is further anticipated that the DDA will provide for conveyance of the Project Site to the Developer. The Parties recognize and acknowledge that a full DDA has not occurred and will not be in place at the time of submission of an application to the Nevada Housing Division, and this Agreement is intended to serve as, and satisfy the "site control" requirement while the final DDA is being negotiated between the Parties.

K. ~~The purpose of this Agreement is to establish the procedures and standards for the negotiation by the City and Developer for a DDA, pursuant to which, among other matters, the Parties will agree to terms for: (i) conveyance of the Project Site from the City to Developer, (ii) affordability requirements, and (iii) Developer to construct the Project. As more fully set forth in Section 3.1, the Parties acknowledge and agree that this Agreement in itself does not obligate either Party to acquire or convey any property, does not grant Developer the right to develop the Project, and does not obligate Developer to any activities or costs to develop the Project, except for the continuation of progress towards a DDA within the timeframe delineated by this Agreement.~~

AGREEMENT

NOW, THEREFORE, in consideration of the recitals hereof and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 EXCLUSIVE NEGOTIATION RIGHTS

Section 1.1 Recitals. The above Recitals are hereby expressly incorporated herein and made a part of this Agreement by this reference.

Section 1.2 Good Faith Negotiations. During the Negotiating Period, the City and Developer shall negotiate diligently and in good faith the terms of the DDA for the development of the Project.

Among the issues to be addressed in the negotiations are the detail of the targeting for affordable units, the overall financing structure as submitted to Nevada Housing Division, the requirement for environmental review to take place, prior choice limiting activities, and the site design and aesthetic considerations of the Project. The Parties will use the RFP and the Developer's Proposal, as a starting point for the DDA.

Section 1.3 Negotiating Period.

(a) The Negotiating Period under this Agreement (the "Negotiating Period") shall be for a period of 365 days and shall commence as of the Effective Date and shall expire at 5:00 p.m. Pacific Time on the date which is 365 days thereafter unless earlier terminated by written notice from one Party to the other. The Negotiating Period may be extended at the request of

Developer for up to two (2) successive period of thirty (30) days ("Extension Period"); provided that Developer delivers a written request for such extension prior to expiration of the Negotiating Period or applicable Extension Period, and provided further that Developer is not then in default under this Agreement.

(b) If a DDA has not been executed by the Parties by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of the preceding paragraph), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement except as set forth in Section 3.5. If a DDA is executed by the Parties, then upon such execution this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.4 Exclusive Negotiations. During the Negotiating Period, the City shall negotiate exclusively with Developer, or any City-approved assignee of Developer, as set forth herein and shall not negotiate with any other person or entity regarding the development of the Project Site or any portion thereof or solicit or entertain bids or proposals to do so.

ARTICLE 2 NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the DDA, 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 DDA prior to the expiration of the Negotiating Period.

Section 2.2 Schedule of Performance.

(a) Within thirty (30) days after the date of this Agreement, Developer shall provide the City with a proposed schedule of activities to be accomplished during the Negotiating Period.

(b) Within such thirty (30) day period, Developer shall also provide the City with a preliminary schedule of performance (the "Schedule of Performance") for activities to be undertaken under this Agreement by Developer and the City during the Negotiating Period or thereafter.

Section 2.3 Final Reports. Developer shall provide the City with copies of all final third-party reports, studies, analyses, and similar documents commissioned by Developer with respect to this Agreement and the development of the Project Site, promptly upon their completion. Developer makes no representation or warranty and shall have no liability to City as to the accuracy or reliability of any such materials.

Section 2.4 Planning Approvals. Developer shall submit applications to the applicable government agency for any land use zoning, subdivision and other entitlements required for the Project (the "Planning Approvals"). The Parties acknowledge that the submission and processing of the Planning Approvals may occur after the Negotiation Period, in accordance with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.5 Environmental Review. If it has not done so already, the Developer, upon successful application to Nevada Housing Division, shall prepare or shall cause to be prepared any environmental documentation required by 24 CFR Part 58 ("Environmental Review"); provided, however, that nothing in this Agreement shall be construed to compel the City to approve or make any particular finding with respect to such Environmental Review. Developer shall provide such information about the Project as may be required to enable the City to prepare or cause preparation and consideration of any required document and shall otherwise generally cooperate with the City to complete this task. The Parties acknowledge that the preparation of the documentation may occur after the Negotiation Period, in accordance with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.6 Subdivision Map. Developer shall submit any parcel map, tentative subdivision map or any other mapping actions required by the City for the proposed Project. The Parties acknowledge that the submission and processing of such mapping actions may occur after the Negotiation Period, in accordance with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.7 Financial Proforma Analysis. Developer shall provide the City with a preliminary financial proforma for the Project containing matters typically contained in such proformas, including (without limitation) a general development cost budget and an operating income and expense estimate (excluding confidential or proprietary information). Developer shall provide this to the City in accord with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.8 Organizational Documents. Developer shall provide the City with copies of its organizational documents evidencing that Developer exists and is in good standing to perform its obligations under this Agreement. Developer shall provide this to the City in accord with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.9 Utilities. Developer shall consult with the utility companies serving the Project Site to determine if existing utility facilities require expansion, relocation or undergrounding in connection with development of the Project. Developer shall do so in accord with the Schedule of Performance to be developed pursuant to Section 2.2.

Section 2.10 Progress Reports. Upon reasonable notice, as from time to time requested by the City, Developer shall make progress reports advising the City on the studies being made and matters being evaluated by Developer with respect to this Agreement and the Project. Such progress reports shall be in writing, if so requested by the City. The City shall not request written reports more frequently than once each month.

ARTICLE 3 GENERAL PROVISIONS

Section 3.1 Limitation of Agreement. This Agreement shall not obligate Developer or the City to enter into a DDA. By execution of this Agreement, neither the City nor Developer is committing itself to or agreeing to undertake acquisition or disposition over the Project Site. In the event Developer determines at any time that the Project is infeasible, in Developer's discretion,

Developer may terminate this Agreement by providing written notice to the City. In the event that Developer fails to secure the funding resources necessary to construct and complete this Project, the City may terminate this Agreement by providing written notice to Developer. Similarly, the City may terminate this Agreement by providing written notice to Developer if Developer seeks an assignment of its right to pursue the Project or its rights under this Agreement to another entity, and the City declines to authorize that assignment. Nothing in this Agreement shall be construed as requiring the City to approve any assignment Developer seeks. 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 action the final discretion and approval regarding the execution of a DDA, related Project Site conveyances, and all proceedings and decisions in connection therewith. ~~Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if, and after, such document(s) has been considered and approved by the City of Las Vegas City Council following all legally required procedures and executed by duly authorized representatives of the City and Developer. Until and unless a DDA is signed by Developer, approved by the City of Las Vegas 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 Developer or the City to enter into, or support entering into, a DDA or be used as evidence of any oral or implied agreement by Developer or the City to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by email; certified mail, postage prepaid, return receipt requested; or express 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.

City:

City of Las Vegas
495 S. Main St.
3rd Floor
Las Vegas, NV 89101

Developer:

Westside Flats Owner, LP
c/o Oikos Development Corporation
Attn: Michael Snodgrass
1712 Main Street, Ste. 206
Kansas City, MO 64108

With a copy to:

Ramsey Barhorst, LLC
Attn: Christopher Barhorst
117 W. 20th Street, Ste. 102
Kansas City, MO 64108

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

Section 3.3 Limited Liability and Non-Liability of Officials, Employees and Agents. The City will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases.

Section 3.4 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 Project Site with respect to this Agreement or any dispute or act arising from it.

Section 3.5 Access to Sites. The City shall cooperate with Developer in providing access to the Project Site for the purpose of performing tests, surveys, and inspections. Developer shall indemnify the City, its board members, officials, directors, employees and agents (collectively, the "Indemnities") from and against any losses, claims, damages, liabilities, judgments, causes of action or actions (including reasonable attorneys' fees and costs (collectively, "Claims")) arising out of the entry of Developer (or their consultants) onto the Project Site, except to the extent due to the discovery by Developer of any hazardous substances or other adverse physical condition on the Project Site. Developer shall not permit any liens to attach to the Project Site arising out of its activities thereon.

Section 3.6 Costs and Expenses. Each Party shall be responsible for its owns costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement.

Section 3.7 No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction. Developer shall defend and hold the City harmless from any claims by any broker, agent, or finder retained by Developer.

Section 3.8 Assignment. The Parties acknowledge that the City has entered into this Agreement on the basis of the special skills, capabilities, and experience of Developer. This Agreement is personal to the City and Developer. The City shall not assign this Agreement without the prior written consent of Developer, and the Developer shall not assign this Agreement without the prior written consent of the City, which the Parties recognize would require specific action approving an assignment and assumption agreement by the City of Las Vegas City Council. Upon any permitted assignment hereunder, the assigning party shall automatically without the need for further documentation be released of all of its obligations under this Agreement that are assumed by the assignee under such assignment and assumption agreement. Any attempted assignment of the Agreement in violation of this Section 3.8 shall be considered *void ab initio*, an event of default.

Section 3.9 Default. Failure by any Party to perform its obligations as provided in this Agreement shall constitute an event of default hereunder. A 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. The defaulting Party shall have fifteen (15) days after receipt of such notice to cure, or for such longer period of time as may be reasonably necessary to effect cure, so

long as the defaulting Party has commenced cure within such fifteen (15) day period and is diligently proceeding to completion ("Cure Period"). If the default remains uncured after the Cure Period has ended, the non-defaulting Party may exercise the remedies set forth below.

Section 3.10 Remedies. In the event of an uncured default by the City or Developer, the non-defaulting Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, to require the defaulting Party to specifically perform the terms and conditions of this Agreement, to terminate this Agreement or to obtain any other remedy at law or in equity. Notwithstanding the foregoing, no Party shall be liable to the other Party for monetary damages.

Section 3.11 Legal Action.

(a) If any legal action (including any arbitration or mediation proceeding) is commenced to interpret or to enforce the terms of this Agreement or to adjudicate any alleged breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement). The Parties agree that, in the event a lawsuit is filed, and a Party is awarded attorneys' fees, for any reason, the amount of recoverable attorneys' fees shall not exceed the rate of \$125 per hour.

(b) Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in the Eighth Judicial District Court in Clark County, Nevada.

Section 3.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction.

Section 3.13 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the Project.

Section 3.14 Amendment. Any amendment or other modification of this Agreement must be in a written instrument executed by the City and Developer that expresses the intent to amend or otherwise modify this Agreement.

Section 3.15 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.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

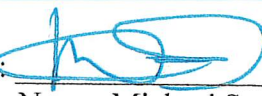
<u>CITY</u> CITY OF LAS VEGAS By: _____ Carolyn G. Goodman, Mayor Date: _____	<u>DEVELOPER</u> WESTSIDE FLATS OWNER, LP, a Nevada limited partnership By: WESTSIDE FLATS GP, LLC, a Nevada limited liability company By: Oikos Development Corporation, a Missouri nonprofit corporation, its Manager
ATTEST: _____ LuAnn D. Holmes, MMC, City Clark Date: _____ APPROVED AS TO FORM: _____ By: Deputy City Attorney CITY OF LAS VEGAS Date: <u>4/4/2024</u> James B. Lewis Deputy City Attorney	By:  _____ Name: Michael Snodgrass Title: President

EXHIBIT A

LEGAL DESCRIPTION

The North Sixty Feet (60') of Lots Five (5) and Six (6) in Block Twenty-Three (23) of H.F.M. & M. Addition OF the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 47, in the Office of the County Recorder of Clark County, Nevada.

The Southerly 80 FEET (80') of lots five(5) and six (6) in Block Twenty-Three (23) of H.F.M. & M. Addition of the City of Las Vegas, As shown by map thereof on file in Book 1, of Plats, page 47, in the office of the County recorder of Clark County, Nevada.

