**Memorandum of Understanding**

**By and Between**

**[JUNIOR PARTNER]**

**And**

**[SENIOR PARTNER]**

This Memorandum of Understanding (“MOU”), entered into as of [MONTH] [DAY], [YEAR], sets forth the basic understanding of [JUNIOR PARTNER], a California nonprofit public benefit corporation (“JP”), and [SENIOR PARTNER], a California nonprofit public benefit corporation ("SP") (together with [JUNIOR PARTNER], the "Parties," or individually, the “Party”), in connection with proposed affordable housing projects (the "Projects") for tenant populations that may include, but not be limited to, low-income families and other individuals at properties to be identified (the "Properties").

# Recitals

*Whereas*, [SENIOR PARTNER] is a California nonprofit public benefit corporation who [DESCRIPTION OF ACTIVITIES] in [GEOGRAPHIC AREA] for the purpose of [ORGANIZATION’S MISSION STATEMENT];

*Whereas*, [JUNIOR PARTNER] is a California nonprofit public benefit corporation who [DESCRIPTION OF ACTIVITIES] in [GEOGRAPHIC AREA] for the purpose of [ORGANIZATION’S MISSION STATEMENT];

*Whereas*, the Parties hereto wish to explore the feasibility of a joint collaboration to develop the Properties in a manner that will be mutually beneficial to both Parties both financially but also in a way that is accretive to each organizations' business models with the goal of creating housing opportunities that prioritize affordability for households at or below [XX%] AMI where feasible;;

*Whereas*, in advance of executing a more complete partnership agreement or other instruments, this MOU is intended to set forth the current working relationship of the Parties with respect to the intended Projects as well as to outline some of the basic terms and conditions that will be included in future agreements including those described below;

*Whereas*, the Parties hereby agree to collaborate openly and commence Projects involving [DESCRIBE DEVELOPMENT/PROJECT TYPE(S)], with financing including but not limited to [GOVERNMENT PROGRAM / SOURCE OF FUNDING];

*Now, therefore*, in consideration of the foregoing, the Parties hereto agree to continue work together to implement each of their respective commitments under this MOU as follows:

## **The Project**

## *General Project Concepts*: It is anticipated that the Projects will include, but not be limited to [list of any basic project limitations i.e.: max number of units, whether mixed-use or solely residential, etc.] The Projects will provide for a number of rental and/or for sale units, including but not limited to affordable housing.

## *Changes to the Project Concepts*: The ultimate number of units are as yet undetermined and will vary depending upon [CITY AND COUNTY’S] land use and parking restrictions, competitiveness for various financing programs, and costs to construct the building. Notwithstanding the foregoing, if the Parties hereby agree that if the outline of the Projects set forth above is not economically feasible, the Parties shall work together to make such changes as may be necessary to create an economically feasible project. These changes may include, but not be limited to, changes to the number of units of a Project, changing the size of a Project or changing the targeted tenancy in terms of income and/or special needs.

## **Roles and Responsibilities of the Parties, Reflection of such Roles and Responsibilities in Future Agreement**

* 1. *Role of [SENIOR PARTNER]*: [SENIOR PARTNER], as the Party with the most experience developing nonprofit real estate (the “Experience Partner”), will be designated as the managing general partner, manager, or managing member, as applicable, during the development and construction phase of the Projects. In such capacity, [SENIOR PARTNER] will have primary responsibility for all aspects of development of the Projects. [SENIOR PARTNER] agrees and acknowledges that a primary motivation for [SENIOR PARTNER] to undertake this transaction and for [SENIOR PARTNER] to participate in this development is to fulfill its mission of developing affordable housing. To this end, [SENIOR PARTNER] shall use good faith efforts to include [JUNIOR PARTNER] in all Project meetings and to provide other mentoring activities to [JUNIOR PARTNER].

## *Role of [JUNIOR PARTNER]*: [JUNIOR PARTNER] will participate in community and governmental outreach for the proposed Projects. [JUNIOR PARTNER] will also participate in the ownership structure of the Projects as a limited partner, managing member, or member, as applicable, and in the development and operation of the Projects as described below. [JUNIOR PARTNER] will also participate in the long-term ownership structure of the Project. It is the ultimate intent of the Parties that [JUNIOR PARTNER] retain ownership of the land in perpetuity, and that [JUNIOR PARTNER], an affiliate controlled by [JUNIOR PARTNER], or tenants or potential homeowners retain long-term stewardship of any buildings and other improvements located on or to be located on each Project site (the “Improvements”).

## *Overview of Roles*: Roles and responsibilities will be allocated between the Parties as depicted in the table below. “Primary” means the specified Party is responsible for overseeing and fulfilling the listed responsibility. “Joint” means both Parties are jointly responsible. “Approval” means the specified Party must be notified and provide affirmative written consent before the other Party may take intended actions. “Review” means the specified Party must review and approve any intended plan or action prior to its implementation, but written consent is not required.

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| --- | --- | --- |
| **Responsibility** | **[JUNIOR PARTNER]** | **[SENIOR PARTNER]** |
| Identify Project sites (size, location, alignment with mission) | Primary | Approval |
| Analyze Project feasibility and determine eligibility based on funding source requirements | Primary | Review |
| Submit initial offer on Properties and enter into escrow | Approval | Primary |
| Due diligence of site and Property | Approval | Primary |
| Resident outreach, engagement, and training (if applicable) | Primary | Review |
| Apply for/secure financing | Joint | Joint |
| Identify and contract any professional services needed for development of Projects (costs to be borne by the Project) | Review | Primary |
| Acquisition closing/close of escrow | Approval | Primary |
| Predevelopment -Secure entitlements/approvals (including any maps, if applicable) -Obtain final tract map/lot split (if applicable) -Secure building and other permits | Review | Primary |
| Prepare/revise proforma | Review | Primary |
| Relocation (if applicable)  -[SENIOR PARTNER] to ensure compliance with relocation law  -[JUNIOR PARTNER] to conduct resident outreach and coordinate logistics of relocation placement | Joint | Joint |
| Construction/rehabilitation: -Develop scope of work -Select general contractor -Negotiate and sign contract | Approval | Primary |
| Oversee construction period -Manage change orders or scope change -Obtain certificate(s) of occupancy | Approval | Primary |
| Manage conversion to permanent financing (if applicable) | Approval | Primary |
| Applying for the welfare exemption (if applicable) | Primary | Review |
| Property management -Lease-up  -Rent collection -Property maintenance  *Upon project completion, [JUNIOR PARTNER] or a third party designated jointly by both parties will assume Primary responsibility, and [SENIOR PARTNER] will no longer have any responsibility or role* | Approval | Primary |
| Asset management & Accounting  *Upon project completion, [JUNIOR PARTNER] or a third party designated jointly by both parties will assume Primary responsibility, and [SENIOR PARTNER] will no longer have any responsibility or role* | Approval | Primary |
| Compliance/reporting to funding entities.  *Parties will jointly determine and assign such responsibilities based on requirements of each funding source.* | Joint | Joint |
| Conversion to collective ownership model  -Developing and implementing ground lease, subleases, or condominium plan(s), as applicable | Primary | Approval |

## *Other Partners*: The Project may require the participation of additional participants or partners. Any relationships with additional partners will be documented in specific agreements executed by the Parties and such partners.

## *Future Agreements*: In order to develop the Projects, the Parties will execute future agreements (1) to form each entity that will develop and own each Project site and, as applicable, (2) to lease the land and/or the buildings and other improvements identified or to be constructed on each Project site (the “Improvements”). The Parties intend that these future agreements will be more complete than this MOU but will conform to the agreed upon terms of this MOU, particularly as to the roles of the Parties and the decision-making process.

## *Form of Collaboration*: For each respective Project, [JUNIOR PARTNER] and [SENIOR PARTNER] will form a single legal entity, either a limited liability company or a partnership (the "Partnership") to develop, own and operate each Project. For convenience, the term Partnership will be used throughout this MOU to describe the ownership entity irrespective of whether a limited liability company or partnership structure is used. The formation of the Partnership will be effectuated by a separate agreement per the following:

## *Ownership Entity*: For each respective Project, the Parties will form a Partnership that will take and hold title to the Improvements. When necessary due to real estate conditions or other relevant considerations, [SENIOR PARTNER] will, with written approval from [JUNIOR PARTNER], submit Project purchase offers as sole buyer directly to sellers, with the commitment to transfer title to the Partnership.

## [JUNIOR PARTNER] and [SENIOR PARTNER] will each serve as a general partner or limited partner in any partnerships that may be formed, or as a manager or a managing member in any limited liability companies that may be formed, as applicable. Each Partnership will be formed upon filing of an LP-1 (Certificate of Limited Partnership) or LLC-1 (Articles of Organization) with the California Secretary of State. In addition, the Parties will execute an Initial Limited Partnership Agreement or Operating Agreement for each Partnership.

## *Purpose of the Partnership*: The primary purpose of each Partnership will be to develop, own and operate the Projects to provide affordable housing.

## *Managing General Partner or Manager or Managing Member*: During the development and construction of the Projects, [SENIOR PARTNER] will be the managing general partner, manager, or managing member of the Partnership, as applicable. Upon completion of construction, [SENIOR PARTNER] will continue assuming the responsibilities of managing general partner, manager, or managing member of the Partnership, as applicable, until the Parties mutually agree that [SENIOR PARTNER] should exit to allow for long-term Project stewardship by [JUNIOR PARTNER], an affiliate controlled by [JUNIOR PARTNER], or tenants and prospective homeowners. Notwithstanding the forgoing, the Parties agree that any nonprofit housing developer who is admitted as an "experience partner" (as described in paragraph Section 2.1, above) may be designated as a co-managing general partner, co-manager, or co-managing member in order to comply with any relevant financing regulations and guidelines.

## *Principal Place of Business*: The principal place of business of the Partnership will be the principal office of [SENIOR PARTNER].

## *Major Decisions*: As managing general partner, manager, or managing member of each Partnership, as applicable, the development of each Project until construction completion will be under the day-to-day control and responsibility of [SENIOR PARTNER]. However, with respect to the major decisions enumerated in this Section 2.7 (each a “Major Decision”), [SENIOR PARTNER] will work closely with [JUNIOR PARTNER] in accordance with the procedures set forth in Section 2.8 below:

## Making any purchase, except regular, pre-approved expenses, or entering into any contract or agreement in excess of [$ AMOUNT];

## Purchasing or otherwise acquiring any Properties;

## Entering into any contract or agreement with a related or affiliated entity which provides a fee or compensation at a rate or in an amount in excess of prevailing competitive rates;

## Sale, exchange, financing, refinancing or mortgaging the assets of the Partnership or the Projects;

## Acquisition by the Partnership of any assets unrelated to the ownership and operation of the Projects;

## Bestowing money or receiving grants in the Partnership's name or in either Party's name on behalf of the Project;

## Knowingly suffering or causing anything to be done whereby any of the Project(s) may be seized or attached or taken in execution or its possession otherwise endangered;

## Any other issue or decision that comes to the attention of the Parties through funders’ reporting requirements and that either Party requests should be treated as a Major Decision.

## *Decision-Making Procedure*: [SENIOR PARTNER] and [JUNIOR PARTNER] will make Major Decisions per the following process:

* + 1. *Notice*: [SENIOR PARTNER] will make reasonable efforts to notify [JUNIOR PARTNER] and other Project partners of a potential decision with [XX] business days’ notice where possible, but in all cases with no fewer than [XX] business day’s notice;
    2. *Consensus*: [SENIOR PARTNER] will also work with [JUNIOR PARTNER], and other Project partners to reach a mutually amicable decision on all such matters;

## When purchasing or acquiring any Property per Section 2.7(b):

## The Parties will obtain all necessary resolutions and other approvals for the intended acquisition from their respective Boards of Directors. Where intended acquisition deposits are anticipated to exceed three percent (3%) of the total purchase price, the Parties will make best efforts to begin the Board of Directors approval process as early as possible;

## The Parties will collaborate to complete a Project Approval Memorandum (“PAM”), in form and substance similar to the attached Exhibit A, for review by the Real Estate Committee of [JUNIOR PARTNER’S] Board of Directors (the “REC”). The PAM will be submitted to the REC at or about the time when any offer to purchase or acquire Property is submitted to the seller. The REC will approve or deny the PAM within fourteen (14) calendar days;

## The Parties will endeavor to negotiate an escrow period of between [XX] to [XX] calendar days, with deposits refundable up to the [XX] day of the escrow period *but in all cases after the deadline for the REC to approve or deny the PAM*; and

## The Parties will use good faith efforts to follow the process outlined in this subsection even where [SENIOR PARTNER] submits a Project purchase offer as sole buyer directly to a seller in accordance with Section 2.6(a).

* + 1. *Final Decision*: Should [SENIOR PARTNER], [JUNIOR PARTNER] and other partners and their attorneys, after good faith, reasonable attempts to reach a consensus, not be able to reach consensus on a decision for whatever reason, including disagreement between the Parties, and should [SENIOR PARTNER] determine in its sole and absolute discretion that (1) a decision is in the best interests of the Partnership or a Project and (2) not making the decision in a timely manner would negatively impact the Partnership or a Project, then [SENIOR PARTNER] will have the full and exclusive right to make such decision. Notwithstanding the foregoing, [SENIOR PARTNER] shall not have the right to make any decision which would impose material liability upon any Party without the written consent of said Party, which consent may be withheld in said Party's sole and absolute discretion.

## *Internal Reporting Between the Parties*: [SENIOR PARTNER] will give to [JUNIOR PARTNER] monthly reports on the status of each Project and Partnership and quarterly reports on the finances of the Project and Partnership. All Parties have a duty to report to the other Parties any unreported developments in which the reporting Party's reasonable business judgment is material to the business of the Project and Partnership. [SENIOR PARTNER] will provide copies of all reports, applications and similar materials related to the Projects to [JUNIOR PARTNER] within ten (10) days from their preparation.

1. **Capital Contributions, Costs and Revenue**
   1. *Property*: In general, all real and personal property acquired on behalf of each Project prior to the formation of the Partnership will be transferred to the Partnership at the time of the formation of the Partnership or some time shortly thereafter as agreed upon in writing by the Parties. After the formation of the Partnership, title to all real and personal property acquired by either of the Parties on behalf of a Project will initially be taken solely in the name of the corresponding Partnership.
   2. *Predevelopment Expenses*: Any Party who incurs any predevelopment expenses on behalf of any Project prior to the formation of the Partnership to take title to that Project, including but not limited to due diligence expenses, shall be reimbursed for these expenses, provided that the Parties have previously approved said expenses.
   3. *Accounts*: [SENIOR PARTNER] will maintain each Project's funds in a federally insured bank account or accounts in which all of each Partnership's funds will be deposited and no other monies. From these accounts, [SENIOR PARTNER] will pay on behalf of each Project and Partnership all taxes and governmental charges assessed against each Project, Partnership or Property and all other reasonable expenses incurred in accordance with this MOU in connection with the development, ownership, maintenance and operation of each Project.
   4. *Developer Fees*: Any developer fee awarded in connection with any Project will be allocated proportionately between the Parties, with [SENIOR PARTNER] receiving [X%] and [JUNIOR PARTNER] receiving [X%].
2. **Indemnity and Insurance** 
   1. *Indemnity between the Parties*: Each Party agrees to indemnify, defend and hold harmless the other Parties for any liability, claim or demand, including attorney's fees and other legal expenses, resulting from the gross negligence or willful misconduct or breach of fiduciary duty by the indemnifying Party. No Party shall have any right to seek indemnification from the other Parties for its own gross negligence, willful misconduct or failure to meet its fiduciary obligations to the other Parties.
   2. *Indemnity between the Partnership and the Parties*: Once formed, up to and limited to the value of each Partnership's assets, each Partnership will indemnify, defend and hold the Parties harmless from any liability, claim or demand, including attorney's fees and other legal expenses, arising from the activities of a Project or Partnership including any act or refraining from action that the Partners may do for or on behalf of a Project or Partnership, provided that such act or refraining from action conforms with the terms of this MOU.
   3. *Additional Insured*: The Parties shall add each of the others as an additional insured on the Parties' respective general liability insurance policies.
   4. *Partnership's Insurance*: On behalf of each Partnership, [SENIOR PARTNER] will take out and maintain adequate insurance including general liability and property insurance. The insurance policies will include, as an additional insured, [JUNIOR PARTNER] and any other Partnership that [SENIOR PARTNER] deems necessary and advisable.
3. **Termination**
   1. Termination on Occurrence of Stated Events: This MOU will be terminated automatically upon the unanimous agreement, in writing, of the Parties to terminate, subject to the appropriate approvals of any Lenders, regulators or other interested parties.
   2. *Liquidation of the Partnership*: Notwithstanding any other agreement between the Parties to the contrary, all Partnerships will be dissolved upon termination of this MOU and the assets and liabilities of each will be allocated per the requirements of each Limited Partnership Agreement or Operating Agreement, as applicable.
4. **General Provisions**
   1. *Good Faith and Fair Dealing*: Each Party will deal with the other Party, will discharge its duties for all Projects and Partnerships and will exercise any rights consistent with the obligations of good faith and fair dealing.
   2. *Transfers of Interest*: Neither Party will transfer its interests or obligations under this MOU or in any Projects or Partnerships without the prior written consent of the other Party.
   3. *Authority*: Each Party hereby represents and warrants that it has the full legal power, right and authority to execute, deliver and perform this MOU. This MOU has been duly executed by each Party, constitutes the legal, valid and binding obligation of each Party and is enforceable against each Party in accordance with its terms.
   4. *Independent Activities*: Neither this MOU nor any activities undertaken pursuant to it will prevent either Party from engaging in other activities, business, investment or profession; and, the fiduciary duties of the Parties shall be limited solely to those arising from the development and operation of the Projects and Partnerships in accordance with this MOU and any future agreement between the Parties for the formation of Partnerships.
   5. *Interpretation*: This MOU and the rights and obligations of the respective Parties hereunder shall be governed by and interpreted and enforced in accordance with the laws of the State of California.
   6. *Entire Agreement*: This MOU constitutes the entire Agreement among the Parties with respect to the Projects and Partnerships. This MOU supersedes all previous negotiations and agreements, whether oral or written. This MOU may not be amended, altered or modified except by an instrument in writing and signed by all Parties.
   7. *Time*: Time is of the essence of this MOU, and each and every condition and provision set forth herein.
   8. *Waiver*: No consent or waiver, express or implied, by any Party, or of any breach or default by, any other Party in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare the other Party in default irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.
   9. *Severability*: Each term or provision of this MOU is intended to be severable and shall continue in full force and effect although other provisions herein may be determined to be invalid or void for any reason.
   10. *Counterparts*: This MOU may be executed in a number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.
   11. *Arbitration*: All claims and disputes arising under or relating to this MOU are to be settled by binding arbitration in the State of California, with the prevailing party to be entitled to reasonable attorney's fees and costs. Any arbitration award may be confirmed in a court of competent jurisdiction.
   12. *Confidentiality*: Unless otherwise agreed to, each Party will keep confidential all documents, financial records or other related information and not disclose any such information to any person unless otherwise required by law.
   13. *Notices*: Any notices under this MOU shall be timely provided in writing to the individuals below:

To [JUNIOR PARTNER]: [DIRECTOR NAME]

Director

Email: [DIRECTOR EMAIL]

[PROJECT MANAGER NAME]

Project Manager

Email: [PROJECT MANAGER EMAIL]

To [SENIOR PARTNER]: [DIRECTOR NAME]

Director

Email: [DIRECTOR EMAIL]

[PROJECT MANAGER NAME]

Senior Project Manager

Email: [PROJECT MANAGER EMAIL]

IN WITNESS WHEREOF, this MOU has been executed by the Parties hereto as of the day and year first above written.

**[JUNIOR PARTNER],**

**a California nonprofit public benefit corporation**

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

[EXECUTIVE DIRECTOR NAME], Executive Director

**[SENIOR PARTNER],**

**a California nonprofit public benefit corporation**

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

[EXECUTIVE DIRECTOR NAME], Executive Director