

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (“ENA”) is entered into by and between the CITY OF SANTA ROSA, a municipal corporation (“City”) and Cornerstone Properties, a California limited liability company (“Owner”) under the terms and provisions set forth below.

RECITALS

- A. City is the owner of that certain real property located in the City of Santa Rosa as legally described on “**Exhibit A**” hereto consisting of approximately 1.49 acres, which is currently improved with an approximately one hundred forty (140) space public parking lot and is commonly known as 521 Fifth Street (“521 Fifth”).
- B. Owner is the owner of that certain real property located in the City of Santa Rosa as legally described on “**Exhibit B**” hereto consisting of approximately 1.37 acres, which is currently improved with an approximately 57,670 sq. ft. office building and a parking lot, and is commonly known as 427 Mendocino Avenue (“427 Mendocino”). 427 Mendocino is located adjacent to, and shares a common property line with 521 Fifth.
- C. Government Code section 37364 provides that notwithstanding any provision of law, the City has the option to sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at less than fair market value, or purchase an interest in the real property, to provide affordable housing on such site.
- D. Given the size, proximity and location of 521 Fifth and 427 Mendocino, the City is presented with a unique opportunity to collaborate with Owner regarding the potential development of a project in downtown Santa Rosa that would provide a mix of housing to include affordable housing units, as well as retail space and more efficiently designed public parking spaces.
- E. City and Owner desire to enter into exclusive negotiations with one another for Owner’s potential acquisition of 521 Fifth by Owner subject to a disposition and development agreement meeting the requirements of Government Code Section 65864 et seq. (“DDA”) and the approval of all requisite environmental review activities and entitlements necessary to authorize the development of 521 Fifth by Owner as part of a mutually acceptable master-planned project entailing 521 Fifth and 427 Mendocino Avenue, that could include development of 521 Fifth in compliance with the requirements of Government Code section 37364.

AGREEMENT

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, City and Owner hereto mutually agree as follows:

- 1. Exclusive Negotiation Period
 - A. Unless this ENA has been terminated in accordance with Section 7 hereof, the Parties shall exclusively negotiate with one another in good faith

regarding the items set forth in Section 2 for a period of one year commencing on the effective date, as defined below (the “Exclusive Negotiation Period” or “Term”).

- B. If this ENA has not been terminated in accordance with Section 7 hereof and Owner, as determined by the Santa Rosa City Manager (“City Manager”) in the exercise of his/her reasonable and good faith discretion, is in substantial compliance with this ENA, and the Parties’ negotiation of the items set forth in Section 2.A have not been completed, the City Manager may approve an extension of the Exclusive Negotiation Period for such time as the City Manager determines is reasonable and necessary to complete the processing of all land use entitlements necessary and/or desirable for the City Council’s consideration of approval of the Project (hereinafter, collectively “City’s Discretionary Actions”) and the DDA.
- C. During the Exclusive Negotiating Period, City shall not: (1) solicit, receive, entertain, negotiate with, or consider any offers or solicitations from any person or entity other than from Owner, to acquire or lease all or any portion of 521 Fifth; (2) propose or process any legislative or administrative actions, authorizations, or entitlements for any change of use of 521 Fifth from its present use as a surface public parking lot other than other than pursuant to this ENA; (3) conduct any public hearing to consider approve, or conditionally approve any development of the 521 Fifth other than pursuant to this ENA.

2. Implementing Actions. During the Exclusive Negotiation Period, the Parties shall negotiate diligently and in good faith with each other regarding the following:

- A. The description, uses, configuration, and design of a mutually acceptable master-planned project (the “Project”) entailing 521 Fifth and 427 Mendocino Avenue (the “Project Site”) that includes:
 - 1. The number of affordable housing units to be development on the Property, including but not limited to the level of affordability and the manner in which the units will be restricted and managed; and
 - 2. other community benefitting uses as part of the Project that will further the planning and economic development objectives of the City, including but not limited to, ground floor retail space and parking to replace the City-operated parking spaces currently located at 521 Fifth, and/or a potential hotel.
- B. The preparation of a mutually acceptable DDA for Owner’s acquisition of 521 Fifth from the City on terms and conditions that will enable Owner’s economically feasible development of the Project.
- C. The identification of City’s Discretionary Actions and the schedule for the City’s processing of the same (the “Schedule”).

3. Owner's Deliveries. In addition to its responsibilities in accordance with Section 2.A of this ENA, Owner shall, at its sole cost and expense and in substantial accordance with the Schedule:
- A. Retain such architects, engineers, market analysts, financial consultants, attorneys and environmental and planning consultants as are necessary to assist Owner in the discharge of its responsibilities under this ENA.
 - B. Prepare and submit to the City:
 - 1. Conceptual plans for the development of the entire Project Site with the Project, including but not limited to the Project's description, uses, and proposed configuration and design (the "Conceptual Plans");
 - 2. a proposed draft DDA;
 - 3. a market feasibility study for all aspects of the Project;
 - 4. a pro forma showing the financial feasibility for all aspects of the Project consistent with the proposed DDA;
 - 5. reasonable evidence of financing, including the financing structure and preliminary commitments, demonstrating Owner's ability to obtain the necessary debt and/or equity financing for the Project, as well as potential public agency participation, in an amount sufficient to finance the acquisition and development of the Project; and
 - 6. such analysis, information, documents and reports for the City's review, processing, and approval as are requested by the City to enable the City to comply with its responsibilities under Section 4.D hereof.
 - C. Conduct due diligence investigation and review of 521 Fifth, and its potential acquisition for development of the Project.
 - D. Meet and confer with City's representatives as reasonably necessary to discharge Owner's responsibilities pursuant to this ENA in accordance with the Schedule.
4. City's Obligations. In addition to its responsibilities in accordance with Section 2.A of this ENA, the City shall, at its sole cost and expense, and in substantial accordance with the Schedule:
- A. Retain such architects, engineers, market analysts, financial consultants, attorneys and environmental and planning consultants as are necessary to assist City in the discharge of its responsibilities under this ENA.

- B. Meet and confer with Owner's representatives as reasonably necessary to discharge City's responsibilities pursuant to this ENA in accordance with the Schedule.
 - C. Diligently and in good faith negotiate with Owner in an effort to reach agreement on a proposed DDA.
 - D. Comply with City's responsibilities, as applicable, under the California Environmental Quality Act ("CEQA").
5. No Obligation by City to Approve the Project or DDA. The parties acknowledge and agree that: (1) nothing in this ENA shall obligate City to approve any of City's Discretionary Actions, enter into the DDA, or sell or convey all or any part of 521 Fifth to Owner; (2) nothing in this ENA shall obligate Owner to enter into the DDA, acquire all or any part of 521 Fifth from the City, or develop all or any part of the Project.
6. Due Diligence. Prior to any termination of this Agreement, Owner may conduct, at its sole cost and expense, all due diligence investigation in connection with its potential acquisition of 521 Fifth and its suitability for development of the Project as Owner deems appropriate and necessary in its absolute and sole discretion.
- A. As soon as possible after the Effective Date, City will provide Owner with a current preliminary title report for 521 Fifth, prepared by First American Title Company. Within thirty (30) business days after the Effective Date, the City will provide copies of all leases, agreements, covenants, tests, surveys, maps, plans, records, studies, reports, operating statements, rent rolls, property records, documents, permits and entitlements and materials, soils and hazardous materials reports, that are in City's possession or reasonable control. City will reasonably cooperate with Owner as required in connection with all of Owner's due diligence investigations, at Owner's sole cost and expense, and will timely provide Owner with all additional documents and other materials in City's possession or control reasonably requested by Owner.

During the term of this ENA, Owner and its representatives may, during normal business hours and upon not less than one (1) business day prior notice (which may be oral notice) to City enter upon 521 Fifth to conduct such inspections, investigations and tests of 521 Fifth (including, but not limited to geologic, soil and water testing) as Owner deems appropriate in its sole and absolute discretion. Prior to entering upon the 521 Fifth to conduct any invasive or destructive testing, including without limitation a Phase II environmental survey or any testing or investigation that might disrupt or materially interfere with City's normal use of 521 Fifth, Owner shall obtain City's written approval of a written scope of work and protocol prepared by Owner for conducting such invasive or destructing testing. Owner shall conduct its invasive or destructive testing only in accordance with such

approved protocol. Upon the conclusion of Owner's inspections, investigations and tests, Owner shall promptly restore 521 Fifth to substantially the same condition as it was in prior to such inspections, investigations and tests at Owner's sole cost and expense. Owner shall cause Owner's inspections, investigations and tests to be conducted (i) in a safe and professional manner, (ii) so as not to create any dangerous or hazardous condition on or 521 Fifth, and (iii) in compliance with all applicable laws and only after obtaining all permits required to be obtained with respect to such activities. Owner shall have no obligation to repair any problems or defects disclosed by Owner's inspections, investigations and tests. Upon City's request therefore, Owner shall provide copies of all tests and reports generated in connection with Owner's investigation activities on 521 Fifth, at no cost to City. Owner shall indemnify, hold harmless, and defend City, its officers, employees and agents from and against any and all claims, demands, suits, liabilities, losses, damages and payments, including reasonable attorney fees and court costs, claimed or made against City, its officers, employees or agents resulting from or arising out of Owner's inspection activities on 521 Fifth. Owner and Owner's contractors performing any work or conducting any investigations on 521 Fifth, if any, shall obtain and maintain in full force and effect during the term of this ENA, the insurance requirements in Attachment One to this ENA which is incorporated herein by this reference.

7. Termination.

- A. Failure of Good Faith Negotiations. Either Party may terminate this ENA at any time by written notice given in accordance with Section 9.L to the other Party in the event that the terminating Party is in compliance with its obligations under the ENA and the Schedule and the Parties, after good faith negotiations in accordance with this ENA and the Schedule, have been unable to agree on a mutually acceptable Project and proposed DDA for processing by the City.
- B. Termination after City Council Consideration. In the event this ENA is not otherwise terminated pursuant to the provisions of this Section 7, this ENA shall automatically be terminated at the end of the term, unless extended as otherwise provided herein, whether or not the parties were able to successfully negotiate a proposed DDA for the Project. This ENA shall automatically terminate after the City Council's consideration and final actions regarding the proposed DDA and the City's Discretionary Actions, in which case this ENA shall be superseded by the City Council's final actions regarding the DDA and the City's Discretionary Actions, whether approved or denied by the City Council.
- C. Owner's Breach. In the event Owner materially breaches any of its obligations under this ENA, then, provided City is not in material breach of its obligations, the City Manager may terminate this ENA provided City has

given Owner written notice given in accordance with Section 9.L of the failure or material breach together with a request to cure the same and Owner has failed to cure the failure or material breach satisfactorily within thirty (30) days after such notice; provided, however, that if such failure or material breach cannot reasonably be satisfactorily cured in such thirty-day (30-day) period, then Owner shall have up to such additional time as is reasonably necessary to cure, but in no event more than sixty (60) days to cure, satisfactorily, the failure or material breach, as long as Owner has initiated the cure of the same within such thirty-day (30-day) period and thereafter diligently prosecutes such cure to completion.

8. Limitation of Remedies.

A. Neither Party would have agreed to any part of this ENA if it were to be liable to the other Party for any amount of monetary damages. Accordingly, both Parties acknowledge and agree each Party's exclusive right and remedy upon any breach or default of the other party to negotiate in good faith, as set forth in this ENA, is to terminate this ENA or seek specific performance of this ENA, as applicable. The prevailing Party in any action brought pursuant to this subsection A shall also be entitled to an award of actually incurred and reasonable attorney's fees and costs.

B. Each Party acknowledges it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor.

C. Civil Code Section 1542 notwithstanding, it is the Parties' intention to be bound by the limitation on remedies set forth in this Section, and each Party hereby releases any and all claims against the other Party for monetary damages or other legal or equitable relief except as set forth in subsection A., whether or not such released claims were known or unknown to the releasing Party as of its entry into this ENA. Each Party hereby waives the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect.

City Initials

Owner Initials

9. General.

- A. Financial Investment. City and Owner, in entering into this ENA, have directed their respective representatives to undertake good faith negotiations regarding the Project and DDA to accomplish the purposes of this ENA.
- B. City's Right to Additional Information. City reserves the right, during the term of this ENA, to request reasonable additional information and data from Owner necessary for review and evaluation of the Project. Owner agrees to provide such additional information or data as requested in a timely manner. All information regarding the Owner's business which may be provided to City shall remain confidential to the extent permitted by law.
- C. Change in Ownership or Control of Owner. Owner understands City is entering into this ENA based on the prior experience and qualifications of Owner. Therefore, Owner shall not assign, sell or otherwise transfer any or all of its rights under this ENA to any party not owned, in the majority, or controlled by Cornerstone Properties without the prior written approval of City, at its sole discretion.
- D. Governing Law. This ENA shall be interpreted and enforced in accordance with the provisions of California law in effect at the time it is executed, without regard to conflicts of laws provisions.
- E. No Third Party Beneficiaries. City and Owner expressly acknowledge and agree they do not intend, by their execution of this ENA, to benefit any persons or entities not signatory to this ENA, including, without limitation, any brokers representing the parties to this transaction. No person or entity not a signatory to this ENA shall have any rights or causes of action against either City or Owner arising out of or due to City's or Owner's entry into this ENA.
- F. Ownership of all Plans. All plans, drawings, and specifications prepared for the Project prepared by Owner shall remain Owner's property.
- G. Force Majeure. The Parties acknowledge and agree that a Party will not be liable for any failure to timely perform any obligation under this ENA if such failure is substantially due, directly or indirectly, to any fire, earthquake, flood, war, riot, civil disturbance, act of God, third party litigation, or any other occurrence which would generally be considered an event of force majeure.
- H. Counterpart Originals. This ENA may be executed in two (2) counterpart originals which, having been delivered, shall constitute one and the same instrument when taken delivered.
- I. Parties. For purposes of this ENA, the capitalized term "Parties" shall be defined as City and Owner and the capitalized term "Party" shall be defined as either City or Owner.

- J. Entire Agreement. This agreement represents the entire agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to the Project and the potential acquisition of 521 Fifth Street by Owner from City. This agreement may not be amended except in a final written agreement mutually executed by the Parties hereto and formally approved by City.
- K. Effective Date. The effective date of this ENA shall be the date it is signed on behalf of City (the “Effective Date”).
- L. Notices.
1. Any notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a “hard” copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of City and Owner set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.
 2. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its verifiably successful transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

If to City:

City of Santa Rosa
Attn: Director of Planning and Economic Development
100 Santa Rosa Ave., Room 2
Santa Rosa, CA 95404

With a copy to:

City of Santa Rosa
Attn: Santa Rosa City Attorney
100 Santa Rosa Ave., Room 8
Santa Rosa, CA 95404

If to Owner:

Cornerstone Properties
Attn: Alon Adani
5211 Old Redwood Hwy #110,
Petaluma, CA 94954
Email: alon@cornerstone-prop.com
Telephone: 707-526-4799

With a copy to:

Loeb & Loeb LLP
Attn: Allan J. Abshez, Esq.
10100 Santa Monica Boulevard
Los Angeles, CA 90067
Email: aabshez@loeb.com
Telephone: 310.282.2099
Facsimile:

ArchiLOGIX
Attn: Peter Stanley
50 Santa Rosa Ave. Suite 400
Santa Rosa, CA 95214
Email: ps@archilogix.com
Telephone: 707-636-0646 ext. 402

IN WITNESS WHEREOF, the parties hereto have caused this ENA to be executed and therefore become effective as of the last date written below.

CITY OF SANTA ROSA

Dated: _____

By: _____
Chris Coursey, Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

CORNERSTONE PROPERTIES, LLC, a California limited liability company

Dated: _____

By: _____

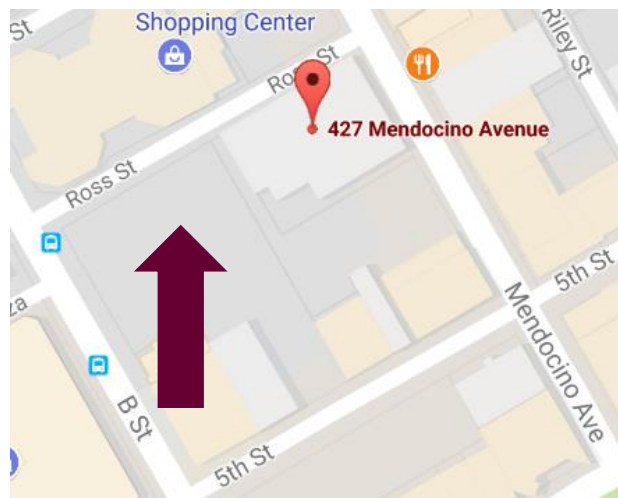
Attachment One – Insurance Requirements

Exhibit A – Legal Description of 521 Fifth

Exhibit B - Legal Description of 427 Mendocino

EXHIBIT A

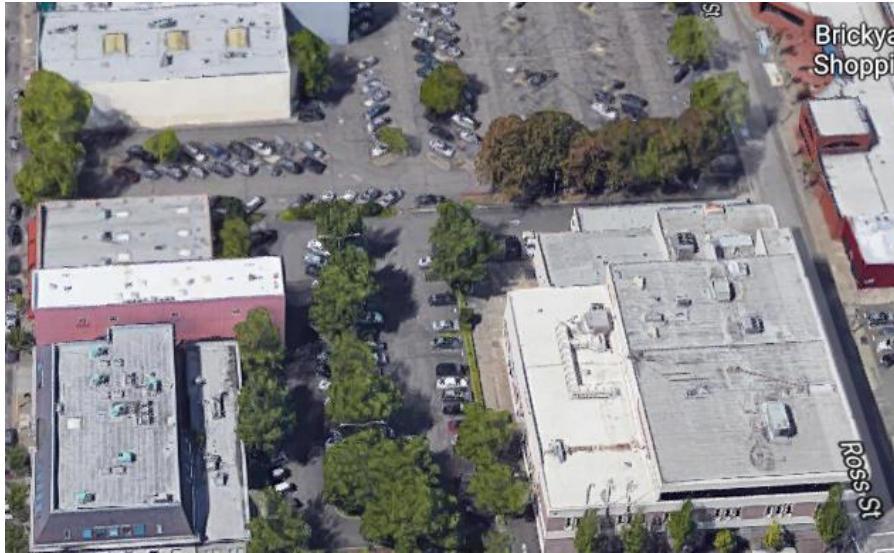
Legal Description of 521 Fifth



521 Fifth Street is a City owned parcel with a Parcel Report Situs Address of 410 B Street, and Parcel Number 010-045-025. The site is currently used as a surface parking lot (Lot 2), with 140 metered parking spaces. The lot is bordered by Ross Street, B Street, and Fifth Street, and shares a common property line with 427 Mendocino Avenue.

EXHIBIT B

Legal Description of 427 Mendocino



427 Mendocino Avenue, Parcel Number 010-045-027 (and accompanying parking lot at 411 Mendocino Avenue, APN 010-045-022) is owned by Cornerstone Properties, a California limited liability company. The site currently houses an office building (aka The Press Democrat building) and private parking lot. The parcel is bordered by Ross Street and Mendocino Avenue.