

## **THIRD EXCLUSIVE NEGOTIATION AGREEMENT**

This **THIRD EXCLUSIVE NEGOTIATION AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between Evans Redevelopment Agency ("ERA"), and Flexible Real Estate Company, LLC ("Flexible Real Estate"). ERA and Flexible Real Estate are sometimes hereinafter collectively referred to as the "Parties" and individually as a "Party."

### **Preliminary Statement**

On September 17, 2019, the ERA approved the EXCLUSIVE NEGOTIATION AGREEMENT ("FIRST AGREEMENT") designating Flexible Real Estate as the Master Developer of the 3108 State Street site for a period not to exceed 120 days. Under Paragraph 3.b of the FIRST AGREEMENT, the 120 day period expired on January 17, 2020.

In furtherance of the objectives of the FIRST AGREEMENT, Flexible Real Estate identified prospective site users on behalf of the ERA, conducted market research and/or feasibility studies, and cooperatively worked with ERA staff to identify key information needed to generate a mutually acceptable Redevelopment Agreement.

On or about January 17, 2020, the parties entered into a SECOND EXCLUSIVE AGREEMENT adopting the same substantive terms of the FIRST AGREEMENT for a period of sixty (60) days. The SECOND EXCLUSIVE AGREEMENT expired on March 21, 2020.

The Parties now desire to enter into this THIRD EXCLUSIVE NEGOTIATION AGREEMENT adopting the same substantive terms of the prior agreements. The THIRD EXCLUSIVE NEGOTIATION AGREEMENT will be effective for 153 days beginning on May 5, 2020, and ending on October 5, 2020 under terms specified below.

### **Agreement**

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. Designation as Master Developer. As an inducement to Flexible Real Estate to accomplish the redevelopment of the Site as above described, and subject to the provisions of this Agreement, ERA hereby determines it to be in the public interest to designate Flexible Real Estate as the sole and exclusive Developer of the Site, and does hereby designate Flexible Real Estate as the "Master Developer" for the Site for a period not to exceed 153 days from the date that the ERA approves this Agreement (the "Feasibility Period"), as more particularly described below.
2. Mutual Agreement to Negotiate Exclusively; Good Faith Negotiations.
  - a. During the Feasibility Period (as defined herein), Flexible Real Estate and ERA shall negotiate exclusively and in good faith with each other concerning the proposed development and operation of the Project and the terms and conditions

of the contemplated Development Agreement. So long as the Parties collectively agree to proceed toward developing the Project, each Party shall promptly engage fully and cooperatively with the other Party with the goal of finalizing a Development Agreement after the expiration of the Feasibility Period. In this regard, each Party shall use its best efforts to attend scheduled meetings, to direct its respective consultants to cooperate with the other Party, to provide information to the other Party that may be necessary to further completion of the Development Agreement, and to promptly review and return with comments all correspondence, reports, documents, or agreements received from the other Party that require such comments, as well as performing the respective obligations set forth below.

b. Flexible Real Estate Obligations. During the Feasibility Period, Flexible Real Estate shall have the following obligations:

- i. Undertake all commercially reasonable efforts to determine the terms and conditions upon which the Site shall redevelop;
- ii. Perform market research and conduct marketing and interviews with prospective tenants to determine tenant demand;
- iii. Perform feasibility analysis to determine Project viability; and
- iv. Prepare preliminary schedule for entitlement, conveyance of the Site, financing, construction and development of the Project.

c. Feasibility Period; ERA Obligations. ERA shall have the following obligations during the Feasibility Period:

- i. ERA shall not enter into any agreements to redevelop the Site or cause the Site to be sold to a third party during the term of the Feasibility Period and thereafter, to the extent the Parties have agreed to negotiate a Development Agreement, unless the Agreement is terminated sooner as defined below;
- ii. ERA shall commit such staff and consultant resources as are necessary to participate fully in negotiations with Flexible Real Estate and to provide Flexible Real Estate such support and information as necessary to determine the feasibility of the Project with the goal of entering into a Development Agreement;
- iii. ERA shall provide Flexible Real Estate with information regarding the Project in ERA's possession or control that to the best of ERA's knowledge will assist Flexible Real Estate in performing its obligations under this Agreement, including but not limited to review and comment on conceptual designs, information regarding the City of Evans' entitlement process and schedule, and information regarding any infrastructure and services available or provided by the City of Evans;

iv. ERA shall manage and maintain all property it owns on the Site;

v. ERA shall provide Flexible Real Estate with any community studies used to collect data regarding market feasibility and community feedback regarding retail demand;

vi. ERA shall grant Flexible Real Estate and its prospective tenants, contractors, agents, investors, employees and lenders access to the Site at all reasonable times for purposes of determining whether the Project is viable and financeable;

vii. ERA shall grant Flexible Real Estate the right to place marketing materials, including signage, on the Site; and

viii. ERA shall not further encumber the Site or grant any leases, licenses or easements burdening the Site without the prior written consent of Flexible Real Estate.

3. Termination. This Agreement shall terminate upon the occurrence of one of the following events, whichever first occurs:

- a. The Parties hereto enter into a Development Agreement for the Site, which includes specific terms and conditions for the redevelopment of the Site;
- b. The expiration of this Agreement will occur on October 5, 2020, or 153 calendar days following ERA approval of this Agreement, whichever is later; or
- c. Upon written notice by one Party to the other indicating its election to terminate this Agreement.

4. Expenses Upon Termination. In the event this Agreement is terminated during the Feasibility Period by either Party, pursuant to Section 3 above, the Parties shall each bear their own costs and expenses associated with any work product developed during the Feasibility Period described herein.

5. Goal of Negotiations.

- a. Development Agreement. The primary goal of the negotiations is to allow Flexible Real Estate time to investigate the market feasibility of the Project, and for the negotiation and execution of a Development Agreement after the expiration of the Feasibility Period that outlines all the various information needed for the development of the Project. It is contemplated that, once mutually executed by the Parties, the Development Agreement will be a binding agreement that will address the Parties' rights and obligations related to major development, entitlement, property acquisition and financial matters, and will establish the major milestones necessary to advance the Project.

- b. The Development Agreement will likely include the following components as well as other agreements and plans as agreed to by the Parties during and after expiration of the Feasibility Period:
- i. Master Preliminary Development Plan. The Master Development Plan will illustrate the development vision for the Project.
  - ii. Conceptual Site Plan. A Conceptual Site Plan showing one or more options for the arrangement of structures and infrastructure on the Site.
  - iii. Financing Plan. A description of the sources and uses of public and private funds for the construction of necessary public and private infrastructure and of necessary structures and improvements to serve the Project.
  - iv. Leasing Plan. A plan for securing tenants and users for the Project.
  - v. Conveyance Agreement. A plan to establish the terms and the timing of the conveyance of property to Flexible Real Estate or other appropriate entities as may be necessary for the development of the Project.
  - vi. Schedule. A preliminary schedule of performance for the Project.

6. Confidentiality.

- a. ERA acknowledges that during the Feasibility Period, Flexible Real Estate may share with ERA certain information which is proprietary, confidential business information prepared by Flexible Real Estate. ERA agrees that to the extent permitted by law it will protect the confidentiality of such information, in compliance with the Colorado Open Records Act (CORA), C.R.S. § 24-72-200.1, *et seq.* In the event that a request is received pursuant to CORA which would include such information, ERA agrees that it will notify Flexible Real Estate immediately, and provide Flexible Real Estate with an opportunity to review any documents ERA believes should be disclosed pursuant to the request.

7. Good Faith.

The Parties agree to exercise good faith in the performance of this Agreement.

IN WITNESS, WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**Evans Redevelopment Agency**

**Flexible Real Estate**

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_