

INFILL INFRASTRUCTURE GRANT PROGRAM IMPLEMENTATION AGREEMENT

THIS INFILL INFRASTRUCTURE GRANT PROGRAM IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of _____, by and between SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a California body corporate and politic (“CDC”) and 5TH AND MENDOCINO PARTNERS, LLC, a Delaware limited liability company (“Developer”). Developer and CDC are referred to herein individually as “Party” and jointly as “Parties.”

RECITALS

A. The California Department of Housing and Community Development (“HCD”) administers the Infill Infrastructure Grant (“IIG”) Program. The IIG Program provides grant assistance through a competitive selection process for infrastructure improvements necessary for specific residential or mixed-use infill development projects.

B. Developer, or a limited partnership to be formed by Developer, is developing a new multifamily market rate housing development with at least 116 units and at least 1,600 square foot retail space (“Developer Project”). The Developer Project will be situated on the parcel of land located at 420 Mendocino Avenue, 433 Riley Street and 611 5th Street in the City of Santa Rosa, County of Sonoma, California (the “Property”).

C. To facilitate the development of the Roseland AH Project and other housing projects, CDC will be responsible for constructing certain “backbone” infrastructure improvements (the “CDC Infrastructure Improvements”) as shown in Exhibit “A”.

D. Pursuant to that certain Award Announcement letter dated June 23, 2020, CDC applied for and received IIG funding for construction of certain infrastructure improvements related to the Roseland AH Project (the CDC Infrastructure Improvements) and the Developer Project (the “Developer Improvements,” as shown in Exhibit “B,” and together with the CDC Infrastructure Improvements, the “Improvements”). The Improvements are described in more detail in the IIG application submitted to HCD on February 18, 2020 (the “IIG Application”) and the IIG standard agreements to be issued by HCD (together, the “IIG Standard Agreement”).

E. The IIG Standard Agreement provides an IIG grant award to CDC in an aggregate amount of \$11,876,050, of which \$1,573,998 has been allocated for construction of the Developer Improvements (the “IIG Grants”).

F. Each Party shall bear individual responsibility for developing and constructing their respective obligations set out in this Agreement and the IIG Documents (as such term is defined in the subsection below) and for all costs and expenses related thereto, including: (i) Developer has obligations to complete construction of and pay for the Developer Project and the Developer Improvements (collectively, the “Developer Obligations”); and (ii) CDC has obligations to complete construction of the CDC Infrastructure Improvements (the “CDC Obligations,” and together with the Co-Developer Obligations, the “Obligations”)

G. In connection with the IIG Grants, CDC is required to enter into the IIG Standard Agreement, disbursement agreements, and regulatory agreements with HCD where CDC will be liable for the full and timely performance by the Parties to complete the obligations set forth therein. The IIG Application, the IIG Standard Agreement, all disbursement agreements, regulatory agreements, and any other agreements required by HCD in connection with the IIG Grants shall be collectively referred to herein as the “IIG Documents”.

H. The Parties acknowledge and agree that the inability or failure by another Party to fully and timely complete their respective obligations required by the IIG Documents may affect the timing and rights of another Party to receive disbursement of IIG funds, notwithstanding that Party’s full and timely performance of its obligations.

I. The Parties are entering this Agreement for the purpose of confirming Developer’s schedule on which it will complete its obligations required by the IIG Documents, and to indemnify the CDC for any potential failure to accomplish the same.

NOW, THEREFORE, in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Obligations. The Developer shall, in its sole responsibility, complete the Developer Obligations in accordance with the terms of the IIG Documents and the approved design and construction documents. CDC shall, in its sole responsibility, complete the CDC Obligations in accordance with the terms of the IIG Documents and the approved design and construction documents. Developer will provide CDC with copies of all requisitions for work, notices of completion, and other documents related to its work as CDC may reasonably request. CDC will submit such requisitions to HCD as a Request for Disbursement as outlined in Section 7 below.

2. Developer Indemnity. The Developer is responsible for carrying out the Developer Obligations using IIG Grants in accordance with the IIG Documents, including, but not limited to, any disbursement deadlines contained therein. The Developer shall indemnify, defend, protect, and hold harmless CDC and the County of Sonoma, and its officials, directors, officers, partners, members, agents and employees (each, a “CDC Indemnified Party”) against any and all claims, actions, suits, causes of action, losses, liabilities, injuries, costs, damages, or expenses (collectively, “Claims”), including, without limitation, any direct liability, damage, or expense, court costs and attorneys’ fees, arising out of or in connection with the Developer’s performance of or failure to perform its obligations to complete the Developer Obligations, in the manner and within the time periods, and to otherwise perform any covenants constituting the Developer Obligations, set forth in the IIG Documents. However, in no event shall a CDC Indemnified Party be indemnified hereunder for any Claims resulting from such Party’s sole negligence or willful misconduct. The Developer agrees to pay all of the CDC Indemnified Party’s costs and expenses, including attorneys’ fees, which may be incurred in any effort to enforce any term of this Agreement, including, but not limited to, all such costs and expenses that may be incurred by any CDC Indemnified Party in any legal action, reference or arbitration proceeding brought by HCD or other third party.

3. Schedule of Performance; Progress Reports. The Parties shall comply with the schedule of performance set forth in the IIG Documents for the completion of their respective obligations hereunder (the “Schedule of Performance”). Developer agrees to give CDC a written monthly status report on the progress toward the milestones listed in the Schedule of Performance for the Developer Obligations. If Developer anticipates not meeting the targeted construction and grant disbursement milestones as established in the IIG Documents, it will promptly notify CDC in writing and will meet with CDC to discuss the reasons why the milestone dates may not be met and what actions Developer intends to take to meet the milestones or otherwise rectify the work schedule in order to maintain good standing with the terms and conditions established in the IIG Documents.

4. Delegation. Notwithstanding the obligations of each Party under this Agreement, each Party shall be entitled to enter into sub-agreements with third parties for assistance or services needed to perform its obligations under this Agreement and the IIG Documents.

5. Cost Overruns. -Developer shall be responsible for paying all costs required to complete its Developer Obligations, irrespective of whether such costs exceed the IIG Grants allocated for completion of such work. CDC shall be responsible for paying all costs required to complete its CDC Obligations, irrespective of whether such costs exceed the IIG Grants allocated for completion of such work.

6. Disbursement of IIG Grants. The Parties agree that the portion of IIG Grants allocated to Developer for completion of its obligations under the IIG Documents shall be reimbursed to CDC by HCD. Upon completion of the Developer Improvements, Developer shall submit to CDC a draw request for the IIG Grants funds for the costs associated with the Co-Developer Improvements, and CDC shall promptly submit such request to HCD and, within five (5) business days of receipt of such funds, CDC shall disburse the funds to Developer. Developer shall apply any such proceeds received to pay the invoices submitted in connection with the draw request. In all events, Developer shall only submit a draw request for, and shall only be entitled to, costs that satisfy the requirements of eligible costs under the IIG Documents.

7. Implementation Agreements. If required by a senior lender or tax credit investor, the Parties agree to cooperate in amending this Agreement and/or entering into an implementation agreement or other documents necessary to provide reasonable assurances and indemnifications related to the disbursement of IIG Grants. The Parties recognize that any such amendments to this Agreement or execution of additional agreements may require approval of the Parties’ respective boards.

8. Notices. Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

CDC:	Sonoma County Community Development Commission 1440 Guerneville Rd. Santa Rosa, CA 95403-4107 Attn: Executive Director
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Co-Developer: **5TH AND MENDOCINO PARTNERS, LLC**
44 Montgomery Street #1300
San Francisco, CA 94104
Attn: Matthew Keipper
e-mail: matthew.keipper@related.com
phone: 415-653-3170

9. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

(a) A Party fails to perform any of its obligations under this Agreement, and does not cure such failure within thirty (30) days after written notice of such failure has been delivered to the defaulting Party in accordance with the Notices Section above; or

(b) A Party purports to revoke this Agreement or this Agreement becomes ineffective for any reason.

10. Termination. This Agreement shall terminate upon the earlier of: (i) completion and satisfaction of all obligations under the IIG Documents as acknowledged by HCD; or (ii) mutual agreement of the Parties.

11. Miscellaneous.

(a) Nothing in this Agreement shall be construed to limit any claim or right which any Party may otherwise have at any time against an Indemnitor or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal or state environmental law or any other applicable law, regulation, or ordinance.

(b) If any Party delays in exercising or fails to exercise any right or remedy against a Party, that alone shall not be construed as a waiver of such right or remedy. All remedies of any Party against the other Party are cumulative.

(c) This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective representatives, heirs, executor, administrators, successors, and assigns. This Agreement may not be amended except by a written instrument executed by the Parties.

(d) This Agreement shall be deemed to have been delivered and accepted in the State of California and governed exclusively by the internal substantive laws of the State of California as the same may exist at the date hereof. The Parties hereby agree that any action hereon between the Parties and their successors in interest may be maintained in a court of competent jurisdiction located in the State of California, and consent to the jurisdiction of any such California court for the purposes connected herewith.

(e) Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties.

(f) This Agreement may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Agreement.

(g) This Agreement shall be effective as of the date first written above

[Signature Page(s) Follow]

Each of the undersigned hereby executes this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement.

5TH AND MENDOCINO PARTNERS, LLC:

By: _____

Name: _____

Its: _____

SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION:

By: _____

Name: Michelle Whitman

Its: Executive Director