EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(Fontana – Slovene Hall)

This Exclusive Negotiating Rights Agreement (this "**Agreement**") is entered into as of this ____ day of _____, 20__ (the "**Effective Date**") by and between the CITY OF FONTANA, a California municipal corporation (the "**City**"), the FONTANA HOUSING AUTHORITY, a public body corporate and politic (the "**Authority**"), and SLOVENE PARTNERS LLC, a California limited liability company (the "**Developer**"). The Authority, the City and the Developer are each a "**Party**" and collectively the "**Parties**." The Parties have entered into this Agreement on the basis of the following facts:

RECITALS

A. The City is the owner of approximately 1.04 acres of vacant land located at 8425 Cypress Avenue (the "**Site**") as more particularly described on Exhibit A and depicted in Exhibit B attached hereto.

B. The City currently holds fee title to the Site and will retain fee title throughout the development and operation of the Project (defined below). The City will lease the Site to the Developer. And the Developer (or its affiliates) plans to construct and operate an Authority-sponsored housing development for the homeless, or those at risk of becoming homeless, on the Site (the "**Project**").

C. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Authority, the City, and the Developer of a disposition and development agreement (a "**DDA**") pursuant to which, it is presently contemplated: (i) if specified preconditions are satisfied, the City will ground lease the Site to the Developer; and (ii) the Developer will construct and operate the Project on the Site. As more fully set forth in Section 3.1, the Developer acknowledges and agrees that this Agreement in itself does not obligate any Party to acquire or convey any interest in the Site, does not grant the Developer the right to develop the Project, does not obligate the Authority to make the Authority Grant (defined below), and does not obligate the Developer to any activities or costs to develop the Project, except the costs for the preliminary analysis and negotiations contemplated by this Agreement (subject to reimbursement from the Predevelopment Advance described below).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1
EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations. During the Negotiating Period described in Section 1.2 below, the Authority, the City, and the Developer shall negotiate diligently and in good faith the terms of a DDA for the ground lease of the Site and the development of the Project on the Site. During the Negotiating Period, the Parties will use good faith efforts to facilitate the

negotiation of a mutually satisfactory DDA. It is presently contemplated that the DDA will attach a form of ground lease, along with development budgets and other documents as required by the Authority and the City and agreed to by the Developer.

Among the issues to be addressed during the Negotiating Period are: (i) the provisions and conditions of the ground lease for the Site by the City to the Developer, including, without limitation the term of the ground lease, (ii) the number of units that will be constructed on the Site as part of the Project; (iii) the Authority's financial assistance provided to construct and operate the Project, and (iv) conceptual planning activities, including preparation of a schematic design of the Project and preliminary analysis of land use entitlements needed to develop the Project on the Site.

Subject to further negotiation, the DDA is anticipated to contain the following terms:

(a) The ground rent for the Site will be One Dollar ($1) per year for the term of the ground lease. The Parties acknowledge that this and other provisions contemplated herein may trigger prevailing wage requirements for the Project.

(b) The Authority will grant to the Developer an amount not to exceed Eleven Million Dollars ($11,000,000) to finance the Developer's predevelopment and development of the Project on the Site ("**Authority Grant**").

(c) The Developer anticipates that the City will secure a welfare tax exemption for the Project.

(d) The Authority will fund a social services budget for the Project, with services to be provided by Quality Management Group as property manager.

(e) The Authority and the City will cooperate with the Developer in obtaining all required entitlements to develop and operate the Project.

Section 1.2 Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall be two hundred and seventy (270) days, commencing on the Effective Date. The Negotiating Period may be extended on the Authority's and the City's behalf for an additional period of ninety (90) days by the Executive Director (for the Authority) and the City Manager (for the City) if, in the Executive Director's and the City Manager's reasonable judgment, sufficient progress toward a mutually acceptable DDA has been made to merit such extension.

If by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of the preceding paragraph), the Authority, the City, and the Developer have not agreed upon a form of DDA to be presented to the Authority Board and the City Council for approval, then this Agreement shall terminate and no Party shall have any further rights or obligations under this Agreement. If a DDA is executed by the Authority, the City, and the Developer, this Agreement shall thereupon terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the Authority and the City shall not negotiate with any entity, other than the Developer, regarding development of the Site, or solicit or entertain bids or proposals to do so. Notwithstanding the foregoing, to the extent required by law, the City shall comply with the Surplus Lands Act, Government Code section 54222, et seq., during the Negotiation Period.

Section 1.4 Predevelopment Costs. The Authority will provide the Developer with up to Six Hundred Thousand Dollars ($600,000) of the Authority Grant for predevelopment expenses necessary for due diligence outlined in Section 2.4 and to entitle the Project ("**Predevelopment Advance**"). The Predevelopment Advance will be used by the Developer to pay for, among other predevelopment expenses, environmental review, remediating any environmental conditions, structural soils analysis, architectural and engineering plans, and all fees and expenses required by the City in connection with obtaining the land use and other entitlements required to develop and operate the Project. The Parties acknowledge and agree that the Authority shall deposit the Predevelopment Advance funds with First American Title Company ("**Escrow Holder**"), who shall be responsible for disbursing said funds to the Developer. The Parties further agree that the Authority, the Developer, and the Escrow Holder shall enter into an agreement governing the disbursement of the Predevelopment Advance. Said agreement shall be consistent with this Agreement, reasonably satisfactory to the Executive Director and the Developer, include a schedule of performance, and contain reasonable and customary conditions for each disbursement, but not, however, a condition requiring further discretionary consent by the Authority or the City. If a DDA is executed by the Parties, the Parties acknowledge and agree that the Predevelopment Advance shall be included in the Authority Grant provided to the Developer thereunder. If the Parties do not execute a DDA, the Developer shall deliver all work product (including the Project Materials, as defined below) generated with the Predevelopment Advance funds to the Authority, along with an assignment of such work product to the Authority in the form attached as Exhibit C. Such delivery of work product shall render the Predevelopment Advance satisfied and repaid in full. The work product (including the Project Materials) will be delivered without warranty as to accuracy or completeness.

Section 1.5 Identification of the Developer' Representatives. The Developer's representatives to negotiate the DDA with the Authority and the City are Josh LaBarge, R. Stan Smith, Tim Johnson, and the Developer's designated legal representatives.

ARTICLE 2
NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the DDA, the Parties will use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

Section 2.2 Financing and Costs of Project. During the Negotiation Period, the Developer will prepare estimated development and construction budgets for the entitlement, development, and operation of the Project (the "**Financing Proposal**"). The Financing Proposal shall be refined by the Parties during the Negotiating Period, as appropriate, and will be used to

evaluate the financial feasibility of the Project and to assist in the negotiation of the amount of financial assistance which will be provided by the Authority via the Authority Grant.

Section 2.3 Conceptual Site Plans. Within ninety (90) days of the Effective Date of this Agreement, the Developer shall prepare conceptual Site plans, including a preliminary analysis of entitlements required for the Project, for the Authority's and the City's review and approval.

Section 2.4 Physical Due Diligence. During the Negotiating Period the Developer shall conduct physical due diligence of the Site to determine its suitability for the Project ("**Due Diligence Investigations**").

(a) The City licenses the Developer to enter the Site for the sole purpose of conducting the Due Diligence Investigations, subject to all of the terms and conditions of this Agreement. The license given in this Section 2.4 shall terminate with the termination of this Agreement. Any Due Diligence Investigations by the Developer shall not unreasonably disrupt any then-existing use or occupancy of the Site. The Developer shall provide the City with at least forty-eight (48) hours advance written notice of the Developer's intent to enter the Site.

(b) The Developer shall not conduct any intrusive or destructive testing on any portion of the Site, other than low volume soil samples or other testing required to prepare necessary environmental documents for the development of the Project, without the City's prior written consent, which shall not be unreasonably withheld or delayed. Subject to reimbursement as provided in Section 1.4 the Developer shall pay all of the Developer's vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Site, such that no mechanics liens or similar liens for work performed are imposed upon the Site by any third party employed or contracted by the Developer (individually, a "**Developer Party**," and collectively, "**Developer Parties**").

(c) Prior to any entry on the Site by the Developer, the Developer shall secure and maintain (i) Liability Insurance (defined below) that will cover the activities of the Developer and the Developer Parties on the Site and shall name the Authority and the City as additional insureds thereunder, and (ii) workers' compensation insurance. Not less than twenty-four (24) hours prior to entering the Site, the Developer shall provide a certificate of insurance to the City evidencing the insurance required herein.

(1) "Liability Insurance" means commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Site, the Project or adjoining streets or passageways, with a minimum liability limit of Two Million Dollars ($2,000,000) for any one occurrence and which may be provided through a combination of primary insurance in the amount of One Million Dollars ($1,000,000), and excess or self-insurance for the balance.

(d) The Developer shall indemnify, defend, and hold harmless the Authority and the City against any claim to the extent such claim arises from: (i) any wrongful intentional act or negligence of the Developer and Developer Parties relating to the Project; (ii) any claims relating to Due Diligence Investigations except for the mere discovery of existing hazardous materials; (iii) any agreements that the Developer (or anyone claiming by or through the

Developer) makes with a Developer Party regarding the Site, the Due Diligence Investigations, or the Project; (iv) any worker's compensation claim or determination relating to any employee of the Developer or the Developer Parties; or (v) any prevailing wage action pertaining to this Agreement, Due Diligence Investigations, or the Project. The foregoing indemnity obligations do not apply to (A) any loss, liability, cost, claim, damage, injury or expense to the extent arising from or related to the acts or omissions of the Authority or the City, (B) any diminution in value in the Site arising from or relating to matters discovered by the Developer during its investigation of the Site, and (C) any latent defects in the Site discovered by the Developer. Such obligation to indemnify shall include all reasonable legal fees and costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action.

Section 2.5 Independent of Insurance Obligations. The Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Developer's insurance or other obligations under this Agreement.

Section 2.6 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

Section 2.7 Environmental Review. During the Negotiating Period, subject to reimbursement by the Authority as provided in Section 1.4, the Developer shall prepare and submit to the City such plans, specifications, drawings, and other information, as specified by the City, that are reasonably required for the performance of the environmental review process required by CEQA for the Project (the "**Project Materials**").

ARTICLE 3
GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate the Authority, the City, or the Developer to enter into a DDA for the Project. Except for the obligations arising under Section 1.4, which are immediately effective and binding, execution of this Agreement by the Authority and the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Authority Board and City Council action the final determination, in the Authority Board's and City Council's sole and absolute discretion, regarding the execution of a DDA 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 DDA has been considered and approved by the Authority Board and the City Council, in the Authority Board's and City Council's sole and absolute discretion, following conduct of all legally required procedures, and executed by duly authorized representatives of the Authority, the City, and the Developer. Until and unless a DDA is signed by the Developer, approved by the Authority Board and the City Council, and executed by the Authority and the City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on any Party to

enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by any Party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the Authority, the City, and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery 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:

If to the Authority:	Fontana Housing Authority Attn: Executive Director 8353 Sierra Avenue Fontana, CA 92335
If to the City:	City of Fontana Attn: City Manager 8353 Sierra Avenue Fontana, California 92335
With a copy to:	Best Best & Krieger, LLP Attn: Elizabeth W. Hull 18101 Von Karman Ave, Suite 1000 Irvine, CA 92614
If to the Developer:	Slovene Partners LLC Attn: Joshua LaBarge 3105 East Guasti Road, Suite 100 Ontario, CA 91761
With a copy to:	Fennemore, LLP Attn: Kevin K. Randolph 550 E. Hospitality Lane, Suite 350 San Bernardino, CA 92408

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

Section 3.3 Costs and Expenses. Except with respect to the Developer's reimbursement right referenced in Section 1.4 of this Agreement, each party shall be responsible for its owns costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 3.4 Defaults and Remedies.

(a) Default. Failure by any Party to negotiate in good faith as provided in this Agreement shall constitute an event of default under this Agreement. The 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. If a default remains uncured fifteen (15) days after

receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the Authority or the City, the Developer's sole remedy shall be to terminate this Agreement. Following such termination no Party shall have any further right, remedy or obligation under this Agreement, except that the Authority shall reimburse the Developer as provided in Section 1.4 for those predevelopment expenses incurred prior to termination and for the Developer's consultants' and contractors' reasonable termination expenses.

In the event of an uncured default by the Developer, the Authority's and the City's sole remedy shall be to terminate this Agreement and obtain the work product (including the Project Materials) from the Developer as provided in Section 1.4. Following such termination and the Developer delivering of these materials (without representation or warranty) to the Authority and the City, no Party shall have any right, remedy or obligation under this Agreement.

Except as expressly provided above, no Party shall have any liability to the other Party for damages or otherwise for any default, nor shall any Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.5 Attorneys' Fees. The prevailing Party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the non-prevailing Party(ies).

Section 3.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.7 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement.

Section 3.8 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.

Section 3.9 Amendment. To be effective, any amendment to this Agreement must be in writing and signed by the Executive Director, the City Manager, and the Developer.

Section 3.10 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Authority and the City, which consent shall be granted or withheld in the Authority's and the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of Authority and City shall be void. Notwithstanding the foregoing, the Developer may assign its interest in this Agreement to a limited partnership or limited liability company in which the Developer, and/or its members, and/or partners maintain a "controlling interest." "Controlling interest" means the legal right to direct and control the activities of the assignee.

[Signatures on next page]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

DEVELOPER:

SLOVENE PARTNERS, LLC, a California limited liability company

By:_____
Name:_____
Its:_____

AUTHORITY:

FONTANA HOUSING AUTHORITY, a public body corporate and politic

By:_____
Name: Matthew Ballantyne
Its: Executive Director

CITY:

CITY OF FONTANA, a California municipal corporation

By:_____
Name: Matthew Ballantyne
Its: City Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

_____
General Counsel

ATTEST:
By:_____
City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

All that certain real property located in the City of Fontana, County of San Bernardino, State of California, as more particularly described as follows:

[INSERT LEGAL]

APN _____

EXHIBIT B

DEPICTION OF THE SITE

EXHIBIT B-1

EXHIBIT C

ASSIGNMENT OF ARCHITECTURAL AGREEMENTS
AND PLANS AND SPECIFICATIONS

[Slovene Hall**]**

FOR VALUE RECEIVED**,** the undersigned, Slovene Partners, LLC, a California limited liability company ("**Developer**"), assigns to the Fontana Housing Authority, a public body, corporate and politic ("**Authority**") all of its right, title and interest in and to all architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, "**Architectural Agreements**"), and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively, "**Construction Documents**"), heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively, "**Architect**"), for or on behalf of Developer in connection with the construction of the improvements on the real property described on Exhibit A-1 attached hereto.

This **ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS** ("**Assignment**") constitutes a future and conditional assignment to the Authority that may be enforced subject to the terms and conditions of that certain "Exclusive Negotiating Rights Agreement" dated _____, 202__ ("**ENA**"), among the Authority, the City of Fontana, and the Developer.

Developer acknowledges that by accepting this Assignment, the Authority does not assume any of Developer's obligations under the Architectural Agreements with respect to the Construction Documents.

Developer represents and warrants to the Authority that: (a) all Architectural Agreements entered into by Developer are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; and (b) Developer has not assigned any of its rights under the Architectural Agreements or with respect to the Construction Documents.

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Developer consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Developer and the Authority.

The attached Architect's/Engineer's Consent and Exhibit A-1 are incorporated by reference.

Executed by Developer on [date].

DEVELOPER:

SLOVENE PARTNERS, LLC,
a California limited liability company

By:_____
Name:_____
Its:_____
Dated:_____

ARCHITECT'S/ENGINEER'S CONSENT
[Slovene Hall]

The undersigned architect and/or engineer (collectively referred to as "**Architect**") hereby consents to the foregoing Assignment to which this Architect's/Engineer' s Consent ("**Consent**") is a part, and acknowledges that there presently exists no unpaid claims due to the Architect arising out of the preparation and delivery of the Construction Documents to Developer or the performance of the Architect's obligations under the Architectural Agreements described in the Assignment.

Architect agrees that, by virtue of the foregoing Assignment, the Authority has succeeded to all of Developer's right, title and interest in, to and under the Architectural Agreements and the Construction Documents and, therefore, so long as the Architect continues to receive the compensation called for under the Architectural Agreements, the Authority and its successors and assigns may, at their option, use and rely on the Construction Documents for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of the Authority and its successors and assigns in the same manner as if performed for the benefit or account of Developer in the absence of the Assignment.

Architect warrants and presents that Architect has no knowledge of any prior assignment(s) of any interest in either the Construction Documents or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed on [date].

ARCHITECT

By:_____
Name: _____
Title: _____

Architect's Address:
_____
_____
Phone No.:
Fax No.:

ASSIGNMENT EXHIBIT A-1
PROPERTY DESCRIPTION

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO DESCRIBED AS FOLLOWS:

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows: