



**Sacramento
Housing &
Redevelopment
Agency**

REPORT TO REDEVELOPMENT AGENCY

City of Sacramento

915 I Street, Sacramento, CA 95814-2671

www.CityofSacramento.org

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**Staff Report
November 17, 2009**

Honorable Chair and Members of the Redevelopment Agency

**Title: Broadway/Martin Luther King Jr. Boulevard (MLK) Development Site
Exclusive Right to Negotiate Agreement (ERN)**

Location/Council District: Broadway and Martin Luther King Jr. Boulevard, Oak Park
Redevelopment Area, Council District 5

Recommendation: Adopt a **Redevelopment Agency Resolution** authorizing the
Executive Director or her designee to execute an Exclusive Right to Negotiate
Agreement with The Related Companies of California LLC for potential development on
Sacramento Housing and Redevelopment Agency (Agency) owned property at
Broadway and Martin Luther King Jr. Boulevard.

Contact: Lisa Bates, Deputy Executive Director, 440-1316; Christine Weichert,
Assistant Director, Housing and Community Development, 440-1353

Presenters: Chris Pahule, Assistant Director

Department: Sacramento Housing and Redevelopment Agency (Agency)

Description/Analysis

Issue: The Redevelopment Agency of the City owns 11 parcels of vacant land,
totaling approximately 2.5 acres at the intersection of Broadway and Martin
Luther King Jr. Boulevard (MLK) in the Oak Park Redevelopment Area. The
Agency is working to develop a residential/commercial mixed-use project on the
site.

Following discussions with the community, the Agency sent out a Request for
Proposals (RFP) in 2004 and selected a developer to pursue development of the
site. After prolonged discussions with the Agency and the City, the developer
was unable to perform satisfactorily and the Agency terminated the negotiations
in 2008.

The Agency is now pursuing development proposals with The Related Companies of California LLC (Related), a successful developer of affordable housing throughout the state. The company responded to the original RFP in 2004 and was selected then as the alternate developer. The Agency has entered into discussions with Related on a possible proposal for a mixed-use development at the site to include affordable senior apartments with ground floor commercial.

This report recommends approval of an ERN between the Agency and Related. The ERN will have a nine month term with a Disposition and Development Agreement (DDA) being brought before the Agency's governing board prior to its expiration. All performance measures outlined in the ERN will need to be met prior to executing the DDA. A copy of the ERN is included as Exhibit A. During the ERN period, the Related team and Agency staff will continue to work collaboratively on a variety of issues and seek extensive community input.

Policy Considerations: The recommended action supports the Oak Park Redevelopment Area Five-Year Implementation Plan, specifically the strategies and programs that promote quality infill housing development and mixed-use developments, which includes the Broadway/MLK Development project. The Strategy is consistent with the goals of the Broadway/Stockton Urban Design Plan and the Martin Luther King Streetscape and Urban Design Master Plan.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed action is exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Section 15262 as a planning activity for the purpose of defining the project. Environmental review of the proposed project will be conducted once the scope of development of the property has been defined.

Sustainability Considerations: The Broadway/MLK Project has been reviewed for consistency with the goals, policies and targets of the Sustainability Master Plan and the 2030 General Plan. If approved, the contents of this report will advance the following policy: (1) the project supports Focus Area 3 – Air Quality, specifically by reducing the number of commute trips by single occupancy vehicles and reducing vehicle miles traveled, and (2) Focus Area 6 – Urban Design, Land Use, Green Building and Transportation, by reducing dependence on private automobiles due to the close proximity of the project to Regional Transit bus stops.

Other: National Environmental Policy Act (NEPA) does not apply.

Committee/Commission Action: *Oak Park Redevelopment Advisory Committee (RAC):* At its meeting on October 14, 2009, the RAC approved Staff's recommendation to enter into an ERN. The votes were as follows:

AYES: K. Johnson, T. Johnson, Lambertson, Lee, Meng, Shrewsbury

NOES: Kivel, Rentz

ABSTAIN: Hollins

ABSENT: Abdullah, Barnes, Jones

Sacramento Housing and Redevelopment Commission: At its meeting on November 4, 2009, the Sacramento Housing and Redevelopment Commission will consider the staff recommendation for this item. The votes will be reported to the members of the Redevelopment Agency at the November 17, 2009, meeting.

Rationale for Recommendation: Approval will allow the Agency to negotiate mutually agreeable project terms with an experienced developer for development of this important catalyst site. The approved project would be designed to achieve the goals of the Oak Park Redevelopment Area Five-Year Implementation Plan.

Financial Considerations: None at this time.

M/WBE Considerations: The items discussed in the report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully Submitted by: 
LA SHELLE DOZIER
Executive Director

Recommendation Approved:

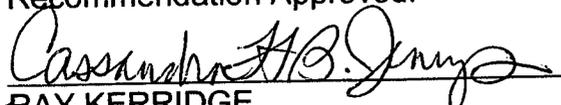

RAY KERRIDGE
City Manager

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Broadway/Martin Luther King Jr. Boulevard Project Background Information

Description of Development: The Redevelopment Agency of the City owns vacant land at the intersection of Broadway and Martin Luther King Jr. Boulevard (MLK) in the Oak Park Redevelopment Area. The site, except for one parcel, is zoned Limited Commercial (C-1-SPD) which allows certain office, retail, and service businesses that are compatible with residential developments. The remaining parcel is zoned Single Family (R-1) which allows for low density residential development. The Agency is working to develop a residential/commercial mixed-use project on the site.

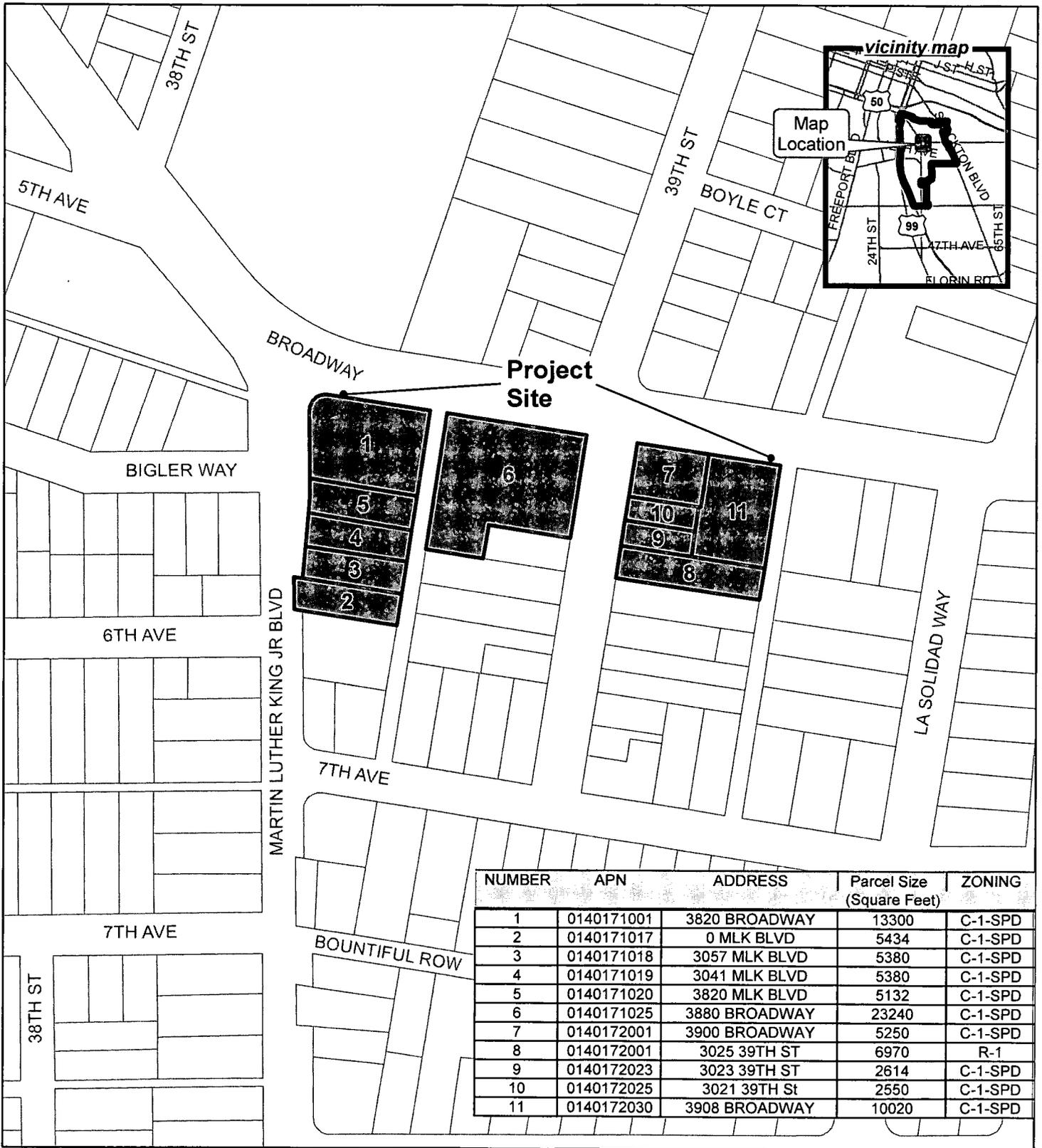
The Agency sent out a Request for Proposals (RFP) in 2004 and selected a developer to pursue development of the site. The developer's proposal included affordable apartments, market-rate for-sale town-homes, and retail space. The Agency entered into an Exclusive Right to Negotiate Agreement (ERN) in 2005 and extended it in 2006. Following a period of community outreach the developer requested entitlements from the City Planning Department. Unfortunately, after a further period of discussion with the Agency and with the City, the developer was unable to perform and the Agency terminated the negotiations in 2008.

The Agency is now pursuing a development working with The Related Companies of California LLC. The currently proposed mixed-use senior development will complement other efforts underway in the area such as the recently completed streetscape improvements along Broadway and the planned Broadway/MLK intersection improvements and MLK Streetscape (Phase 1) improvements.

Developer: Related was formed in 1989 to focus on the development of multifamily housing in California. Since its inception, Related has developed over 6,000 units of housing in California, including properties in San Francisco, Oakland and San Jose along with numerous developments throughout Southern California. The company's projects include a 487 unit 39 story high-rise apartment development in downtown San Francisco that is the tallest residential building in the city. Their projects are managed by an affiliated entity, Related Management Company, which is an experienced manager of affordable and market-rate housing projects and commercial space. Related is proposing to work with All Nations Church to facilitate resident services at the site. The Church is located across the street from the site and has strong ties to the community.



Broadway / MLK Development Site



NUMBER	APN	ADDRESS	Parcel Size (Square Feet)	ZONING
1	0140171001	3820 BROADWAY	13300	C-1-SPD
2	0140171017	0 MLK BLVD	5434	C-1-SPD
3	0140171018	3057 MLK BLVD	5380	C-1-SPD
4	0140171019	3041 MLK BLVD	5380	C-1-SPD
5	0140171020	3820 MLK BLVD	5132	C-1-SPD
6	0140171025	3880 BROADWAY	23240	C-1-SPD
7	0140172001	3900 BROADWAY	5250	C-1-SPD
8	0140172001	3025 39TH ST	6970	R-1
9	0140172023	3023 39TH ST	2614	C-1-SPD
10	0140172025	3021 39TH St	2550	C-1-SPD
11	0140172030	3908 BROADWAY	10020	C-1-SPD



Project Parcel



Oak Park Redevelopment Area



SHRA GIS
July 31, 2009

RESOLUTION NO. _____

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

APPROVAL OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH THE RELATED COMPANIES OF CALIFORNIA LLC FOR AGENCY-OWNED PROPERTIES LOCATED AT BROADWAY AND MARTIN LUTHER KING JR. BOULEVARD

BACKGROUND.

- A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Oak Park Redevelopment Plan ("Redevelopment Plan") and a 2005–2009 Implementation Plan for the Oak Park Redevelopment Project Area ("Project Area").
- B. Agency owns certain real property in the Project Area generally described as being located on the southeast side of Broadway and Martin Luther King Jr. Boulevard. APN's: 014-0171-001, -017, -018, -019, -020, -025; 014-0172-001, -023, -024, -025, -030 ("Property").
- C. The Agency is seeking redevelopment of the Property for a development that would have a mix of retail/commercial and residential uses.
- D. The Agency and The Related Companies of California LLC (Developer) desire to enter into an Exclusive Right to Negotiate (ERN) agreement in order to investigate the feasibility of developing the Property and to negotiate a Disposition and Development Agreement for transfer, financing and development of the Property.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

- Section 1. The Exclusive Right to Negotiate (ERN) agreement between the Agency and Developer (attached as Exhibit A) is hereby approved and the Executive Director or her designee is authorized to execute the ERN.

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Exhibit A: Exclusive Right to Negotiate

**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
BROADWAY/MARTIN LUTHER KING JR. BOULEVARD PROJECT**

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and THE RELATED COMPANIES OF CALIFORNIA LLC ("Developer"), have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of _____, ("Effective Date") upon the follow terms:

1. **RECITALS.** This Agreement is based upon the following recitals, facts and understandings of the Parties:
 - a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California generally described as Assessor's Parcel Numbers 014-0171-001, -017, -018, -019, -020, -025; 014-0172-001, -023, -024, -025, -030. The Property is within the Oak Park Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the Property ("Project") is consistent with the Oak Park Redevelopment Project Area Plan ("Redevelopment Plan") and its implementing documents and has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.
 - b. The parties desire to investigate the feasibility of the Project and to negotiate a Disposition and Development Agreement ("DDA") for transfer, financing and development of the Property.
 - c. The development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.
2. **IDENTITY OF PARTIES.** The legal identities of the parties to this Agreement and their addresses are as follows:
 - a. Developer is The Related Companies of California LLC, organized and doing business in the State of California. The principal office and project development office of Developer is located at 18201 Von Karman Avenue, Irvine, CA 92612. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer. Initially, the principal of Developer is William A. Witte, President.
 - b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 630 I Street, Sacramento, California 95814. If copy to Developer, send to principal office and to project development office.
 - c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention: Broadway/MLK Project".
3. **EXCLUSIVE NEGOTIATION.** During the term of this Agreement, the parties shall negotiate exclusively with each other, and in good faith, regarding the Property and the Project. The parties acknowledge and agree that neither party is obligated by this Agreement or otherwise to undertake the Project or any other Project on the Property and that no party has a cause of action against the other arising under this Agreement for failure to approve or undertake the Project.
4. **TERM.** This Agreement shall be effective as of the Effective Date, and shall terminate upon the earlier of completion of all obligations or two hundred seventy (270) days after the Effective Date unless extended by written agreement of the parties.
5. **LEGISLATIVE ACTION.** Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This Agreement does not restrict the legislative authority of the Agency in any manner, whatsoever, and does not obligate the Agency to enter into the DDA or to take any course of action with respect to the Project.
 - a. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.
 - b. Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Planning Department, Design Review/Preservation Board and Building Department. If the Project is disapproved by

final action of the governing bodies of the Agency, as a result of environmental review or otherwise, this Agreement shall terminate as of the date of such disapproval.

6. CEQA REVIEW. In accordance with the California Environmental Quality Act (“CEQA”), the City of Sacramento as lead agency shall prepare the environmental documentation. The Agency shall consider the environmental effects of the Project prior to considering action to approve the proposed DDA.

a. Nothing in this Agreement shall be construed to limit the application of CEQA to the Project or to changes in the Project or to control the actions of Agency in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its respective obligations under this Agreement. Agency shall not be liable, in any respect, to Developer or any third party beneficiary of this Agreement for their action or inaction in fulfilling their respective CEQA obligations.

b. Agency will not consider the approval of the Project unless and until it has fully reviewed and considered the environmental impacts of the proposed Project in accordance with CEQA. After CEQA review, Agency is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve a DDA or any other agreement. After CEQA review, Agency is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for the approval of the Project or take any other action in support of the proposed Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project.

c. Upon Agency request, Developer shall supply data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project.

7. SCHEDULE OF PERFORMANCES. The parties shall perform the following stated obligations at the times specified in the following schedule (“Schedule of Performances”):

Responsible Party	Action	Project Schedule Target Dates
Agency and Developer	<ul style="list-style-type: none"> Execute Exclusive Right to Negotiate (ERN) 	Effective Date
Developer	<ul style="list-style-type: none"> Submit Work Plan 	Within 14 days of Effective Date
Developer	<ul style="list-style-type: none"> Submit operating and development budget, 30 year cash flow projections and estimated construction cost breakdown Submit schematic site plans, plans and elevations Meet with Design Review/ Preservation Departments Determine entitlement actions required Submit for CEQA Approval 	Within 45 days of Effective Date
Agency	<ul style="list-style-type: none"> Review of concept/schematic plans, budget and proforma 	Within 60 days of Effective Date
Developer	<ul style="list-style-type: none"> Submit application for entitlements and Design Review/Preservation Board approvals Present entitlement package to Redevelopment Advisory Committee (RAC), if requested 	Within 90 days of Effective Date
Developer	<ul style="list-style-type: none"> Submit complete application package for Agency funding 	March 17, 2010
Agency and Developer	<ul style="list-style-type: none"> Parties agree to terms and conditions of the DDA Presentation of DDA to RAC 	May 12, 2010
Agency and Developer	<ul style="list-style-type: none"> Presentation of DDA and funding to Sacramento Housing and Redevelopment Commission (SHRC) 	June 2, 2010
Agency and Developer	<ul style="list-style-type: none"> Presentation of DDA and funding to City Council and/or Redevelopment Agency 	June 22, 2010
Developer	<ul style="list-style-type: none"> Submit California Tax Credit Allocation Committee (CTCAC) application (Date may be extended based on actual 2010 CTCAC schedule) 	Within 270 days of Effective Date

8. OTHER EXTENSION. Upon written request of Developer, Agency shall reasonably consider an extension of the initial term of this Agreement for up to six (6) months if Developer has acted diligently and in good faith in performing its obligations under this Agreement and if there is a reasonable likelihood that the parties can negotiate a mutually acceptable DDA.

9. DEPOSIT FEE. In lieu of providing an initial deposit, the Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA. Should a DDA not be successfully agreed to or approved, at the sole discretion of Agency, Agency shall be provided with and own all products of the predevelopment activities as consideration for Agreement. In addition, the Agency will also require a \$12,500 deposit be made when a formal application for funding is submitted.

10. DEFAULTS. Either of the Agency or the Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party, (b) does not negotiate the DDA in good faith and upon the terms stated in this Agreement, (c) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) refuses to execute the DDA when negotiations are completed and deposit any funds then required of it for the DDA (except if the Agency has disapproved the project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

a. The defaulting party shall have thirty (30) days to cure the default after receipt of notice of such default. Should the defaulting party fail to cure the default within the thirty (30) days, the nondefaulting party may terminate this Agreement by written notice to the defaulting party, and may pursue equitable remedies available to it for such default. Should the Agency be in default, the Developer is entitled to the unencumbered remainder of the Deposit, if any. In the event of such a default by Developer, Agency may retain the Deposit, if any, and may terminate the Agreement.

b. After termination of this Agreement for default of Developer, Developer shall have no rights under this Agreement to participate in the development of the Project, and the Agency shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

c. The remedies contained in this Section 10 are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

11. DISPOSITION AND DEVELOPMENT AGREEMENT. In addition to other provisions stated in this Agreement, the DDA will address, without limitation, the following provisions (a) use covenants to run with the land; (b) payment and performance bonding and other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) performance assurances such as the deposit; (f) limitation on transfers prior to Project completion; (g) compliance with CEQA mitigation; (h) Agency's rights to revest the Property upon Developer default; and (i) Agency's Art in Public Places requirements; (j) extension fees for delay in construction, and liquidated damages; (k) Agency's rights to cure defaults, assume loans and complete construction; (l) delayed transfer of title to land; and (m) loan guarantees and additional securities.

12. PREDEVELOPMENT COSTS. Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA. Should a DDA not be successfully agreed to or approved, at the sole discretion of Agency, Agency shall be provided with and own all products of the predevelopment activities as consideration for Agreement.

13. ASSIGNMENT. This Agreement is not assignable by either party in whole or in part without the prior written consent of the other party.

14. APPLICABLE LAW; VENUE. This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

15. ATTORNEYS' FEES. In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO

Approved as to form:

Agency Counsel

By: _____
LaShelle Dozier, Executive Director

DEVELOPER: The Related Companies of California
LLC, a California limited liability company

Approved as to form:

By: _____
Counsel for Developer

By: _____
William A. Witte, President