

## RESOLUTION NO. 2009-063

Adopted by the Redevelopment Agency  
of the City of Sacramento

November 17, 2009

### 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

Adopted by the Redevelopment Agency of the City of Sacramento on November 17, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters.

Noes: None.

Abstain: Mayor Johnson (Recused).

Absent: None.

  
Vice Chair Lauren Hammond

Attest:

  
Shirley Concolino, Secretary

**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”):

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