



**REPORT TO THE
REDEVELOPMENT AGENCY
of the City of Sacramento** |
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Consent
September 28, 2010

**Honorable Chair and
Members of the Board**

**Title: APPROVAL OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENTS WITH
800 K STREET, LLC AND 8TH AND L PARTNERS, LP FOR THE 800 BLOCK OF K
AND L STREETS**

Location/Council District: 800 to 816 K Street and 809 to 815 block of L
Street/Council District 1

Recommendation: Adopt a Redevelopment Agency Resolution: authorizing the Executive Director or her designee, on behalf of the Redevelopment Agency, to 1) execute an Exclusive Right to Negotiate Agreement (ERN) with 800 K Street, LLC (David S. Taylor Interests, Inc., and CIM Group) for the redevelopment of 800 to 816 K Street and 2) execute an Exclusive Right to Negotiate Agreement with 8th and L Partners, LP (David S. Taylor Interests, Inc., and Domus Development) for 809 to 815 L Street.

Contact: Denise Malvetti, Senior Economic Development Project Manager, 808-7064; Sheri Smith, Senior Economic Development Project Manager 808-7204; Leslie Fritzsche, Downtown Development Manager, 808-5450

Presenters: None

Department: Economic Development Department

Description/Analysis

Issue: On July 13, 2010, the Agency Board selected two development teams for the redevelopment of Agency-owned properties in the 700 and 800 blocks of K and L Streets. D&S Development and CFY Development were selected for the redevelopment of the south half of the 700 block of K Street and David Taylor Interests, Inc., the CIM Group, and Domus Development were selected for the redevelopment of portions of the 800 blocks of K and L Streets (Attachment 1). The Agency Board directed staff to return with Exclusive Right to Negotiate agreements (ERN) with each of the development teams for Agency Board consideration.

This staff report seeks approval to enter into a 10 month ERN with 800 K Street, LLC (David S. Taylor Interests, Inc. and CIM Group) for the Agency-owned properties on the 800 Block of K Street and a 10 month ERN with 8th and L Partners, LP (David S. Taylor Interests, Inc., and Domus Development) for the 800 block of L Street.

Policy Considerations: Entering into an ERN is a critical next step in the redevelopment of K Street. The redevelopment of the 800 block of K Street is consistent with the Merged Downtown Redevelopment Plan and the approved Implementation Plan. Redeveloping the affected parcels supports the Redevelopment Plan goals of eliminating blight, increasing private investment, reusing parcels that are stagnant or improperly utilized, providing for mixed use development including mixed income housing opportunities, and providing uses that will broaden the appeal of downtown.

Environmental Consideration: The proposed action to approve an ERN with the development team, which is the first step in determining project feasibility and planning, is exempt from environmental review under CEQA Guidelines Section 15262. There is no federal funding or other federal involvement associated with this action; therefore, the National Environmental Policy Act (NEPA) does not apply.

Sustainability Considerations: During the ERN process and negotiations, staff will incorporate sustainability elements into the project's design. The project is considered to be an infill development, which provides multiple benefits including providing mixed income housing options close to jobs, reducing the need to build new development on the urban fringe, increasing the viability of and dependency on alternative modes of transportation, preserving natural resources, and providing for efficient use of land, services and infrastructure.

Rationale for Recommendation: The Agency's goal for K Street is to redevelop Agency-owned properties into a vibrant mixed-use development including residential, retail, and commercial uses. On July 13, 2010, the Agency Board determined that the development concept proposed by David S. Taylor Interests, CIM Group and Domus Development achieved the Agency's redevelopment goals for K Street. Further, the development team was selected on its experience and qualifications to undertake these projects.

If the Agency Board so approves, the 2 ERNs (attachments 3 and 4 in substantially complete form) will be executed with the development teams. The ERNs set specific milestones for the project. Some of the developer obligations of the ERN include (table of terms, Attachment 2):

- Developer deposit of \$50,000 (for each ERN) within 10 days of Effective Date
- Conceptual design that describes both the location and orientation of proposed buildings, conceptual plans and elevations within 90 days of Effective Date
- Project description sufficient for environmental review within 90 days of Effective Date
- Leasing strategy within 90 days of Effective Date

- Refined construction costs and prepare a financial pro forma within 150 days of Effective Date
- Letters of Intent from private funding sources within 210 days of Effective Date
- Letters of Interest from retail tenants

The ERNs establish specific milestones allowing the Agency and the development teams to investigate the scope and feasibility of the proposed project prior to entering into Disposition and Development Agreements (DDA). It is envisioned that project feasibility will be analyzed over the next 10 months and that staff will return to the Agency with a DDA and related documents by the end of July 2011.

Financial Considerations: In consideration of the Exclusive Right to Negotiate, each team will deposit \$50,000, as consideration, within 10 days of execution of the ERN. The Agency will use the deposit fee for the project-related expenses related to the preparation of environmental documents and related environmental studies.

M/WBE Considerations: Minority and Women’s Business Enterprise requirements will be applied to all activities to the extent required by federal funding to maintain that funding.

Respectfully Submitted by:



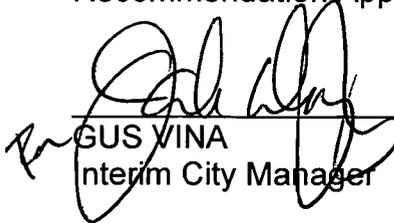
 LESLIE FRITZSCHE
 Redevelopment Manager

Approved by:



 JAMES R. RINEHART
 Economic Development Director

Recommendation Approved:



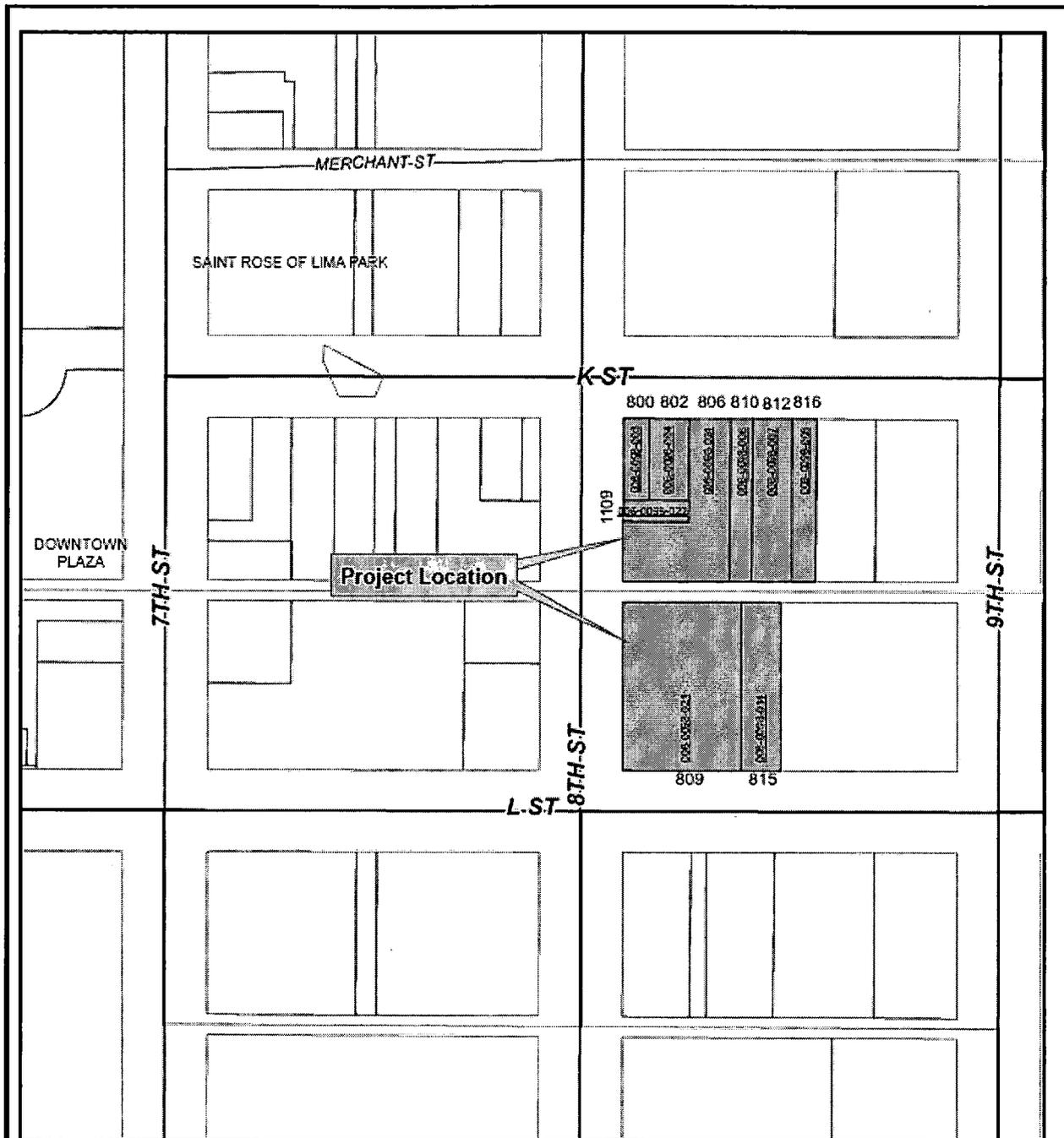
 GUS VINA
 Interim City Manager

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Attachment 1



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Attachment 1 800 Blocks of K & L Streets Location Map

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Attachment 2

Background

In October 2004, the Economic Development Department in conjunction with the Mayor's office, hosted the "JKL Corridor Workshop" to establish the vision and strategic direction for the heart of the downtown area. The JKL Corridor Strategy Plan and the Downtown Sacramento Partnership Strategic Action Plan identified these blocks as a key target area for economic development. These plans recommended strategic attention be given to the 700 and 800 blocks of K and L Streets, with specific attention to mixed-use development including ground floor retail, housing, cultural and commercial uses for the following reasons:

- The site connects two regional destinations, the Downtown Plaza and the Convention Center. The 700/800 blocks of K and L Streets both continue to experience high vacancy rates and significant blight.
- The property's footprint is relatively large and could support significant housing, retail and commercial uses.
- Development of the site could provide uses that will assist in the elimination of blight and will bolster current and recently completed investments made in the Downtown area including Westfield Downtown Plaza, the Citizen Hotel, the Cosmopolitan, and three new entertainment venues on the 1000 block of K Street.

The strategic direction for the both 700 and 800 blocks of K and L Streets focused on creating a mixed-use development to include:

- Provision for cultural uses such as live theatre, art galleries, and museums
- Creation of unique commercial uses such as restaurants, mixed specialty retail and entertainment uses
- Development of residential uses to support commercial uses to create a vibrant 24-hour city

Agency Board Action:

On July 13, 2010, the Agency Board selected two development teams as the preferred developers to redevelop the Agency-owned properties on both the 700 and 800 blocks of K and L Streets. D&S Development and CFY Development were selected for the south half of the 700 block of K Street and David Taylor Interests, Inc., CIM Group and Domus Development for portions of the 800 block of K and L Streets.

Proposed ERN Terms

The milestones included in the ERNs proposed in this report are:

Responsible Party	Action	Due Date
Developer	<ul style="list-style-type: none"> • Submit \$50,000 deposit to prepare environmental documents and any related environmental studies 	Within ten (10) days following the Effective Date
Developer and Agency	<ul style="list-style-type: none"> • Meet and confer concerning progress of the foregoing actions 	At least once each month during the term of this

	<ul style="list-style-type: none"> Developer to submit progress reports at each meeting 	agreement, commencing no later than ten (10) days of the Effective date
Agency	<ul style="list-style-type: none"> Define CEQA process and identify entity to prepare environmental documents 	Within thirty (30) days following the Effective Date
Developer	<ul style="list-style-type: none"> Refine project concepts on Agency-owned property including conceptual plans and elevations Finalize project description for Agency-owned sites sufficient for environmental review Provide evidence of financial capacity Provide a proposed leasing strategy with a list of proposed business types 	Within ninety (90) days following the Effective Date
Developer and Agency	<ul style="list-style-type: none"> Solicit comments from Community Development, the Preservation Commission and Planning Commission regarding design and entitlements 	Within one hundred fifty (150) days following the Effective Date
Developer	<ul style="list-style-type: none"> Refine estimated construction costs including all applicable fees and contingencies Provide a proposed timeline for project completion Update finance plan identifying all financing resources for private and public improvements Refine development and operating ProFormas 	
Agency	<ul style="list-style-type: none"> Finalize third party financial analysis 	Within two hundred and ten days (210) days following the Effective Date
Developer	<ul style="list-style-type: none"> Provide letters of interest for the private financing 	
Developer and Agency	<ul style="list-style-type: none"> Prepare schedule of performances Negotiate terms of the DDA 	
Agency	<ul style="list-style-type: none"> Finalize and adopt, as necessary, the CEQA document Obtain project approval from the Agency and execute Disposition and Development Agreement and related documents 	Within three hundred (300) days following the Effective Date.

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RESOLUTION NO. 2010-

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

APPROVAL OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH 800 K STREET, LLC AND 8TH AND L PARTNERS, LP, FOR THE 800 BLOCK OF K AND L STREETS

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento (Agency) has adopted the Merged Downtown Sacramento Redevelopment Plan (Redevelopment Plan) and an Implementation Plan for the Merged Downtown Sacramento Redevelopment Project Area (Project Area).
- B. Portions of the 700 and 800 blocks of K Street are identified in the Amended Merged Downtown Sacramento Redevelopment Plan and Implementation Plan as having continuing blight conditions characterized by vacant parcels, deteriorating buildings, uneconomic land uses and unsafe sidewalks.
- C. In 2004, the JKL Corridor Workshop identified the 700/800 blocks of K and L Streets as a critical location for revitalization of K Street, with a focus on mixed-use development including ground floor retail; housing; cultural and commercial uses envisioned on this property to eliminate blight, stimulate economic growth and provide for a range of housing types.
- D. In December 2009, the Agency, represented by the City of Sacramento Economic Development Department, issued a Request for Qualifications (RFQ) soliciting qualifications and concept proposals for the development of a mixed-use project in the heart of downtown on the K Street Mall including properties on the southern half of the 700 blocks of K Street and portions of the 800 blocks of K and L Streets. Four responses were received in February, 2010.
- E. On July 13, 2010, the Agency Board selected D&S Development and CFY Development for the redevelopment of Agency-owned properties on the south side of the 700 block of K Street and David Taylor Interests, Inc., CIM Group, and Domus Development for redevelopment of the Agency-owned properties in the 800 blocks of K and L Streets. The Agency Board directed staff to return with negotiated Exclusive Rights to Negotiate Agreements with each of the teams for Agency Board consideration.
- F. The activity recommended in this resolution is a commitment to feasibility and planning studies. It is, therefore, statutorily exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15262.

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

- Section 1. The above statements, including but not limited to the environmental statement, are found to be true and correct.
- Section 2. The Executive Director, or her designee, is authorized to enter into an Exclusive Right to Negotiate Agreement as attached hereto as Exhibit 1, with 800 K Street, LLC (David S. Taylor Interests and CIM Group).
- Section 3. The Executive Director, or her designee, is authorized to enter into an Exclusive Right to Negotiate Agreement as attached hereto, as Exhibit 2, with 8th and L Partners, LP (David S. Taylor Interests and Domus Development)

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- Exhibit 1: Exclusive Right to Negotiate Agreement with 800 K Street, LLC, (David S. Taylor Interests and CIM Group)
- Exhibit 2: Exclusive Right to Negotiate Agreement with 8th and L Partners, LP (David S. Taylor interests and Domus Development)

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**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
FOR CERTAIN PROPERTIES ON THE 800-BLOCK OF K STREET
(SUBSTANTIALLY COMPLETE DRAFT)**

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and 800 K STREET LLC ("Developers"), collectively "Parties" or singular "party," have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of _____, 2010 ("Effective Date") upon the follow terms:

RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:

a. Developer desires to negotiate with Agency to define the parameters for development of certain real property (the "800 K Property") located in the 800 block of K Street in the City of Sacramento, County of Sacramento, State of California, as described in the Legal Description attached and incorporated in this Agreement, as Exhibit A, by this reference. The 800 K Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the 800 K Property must be consistent with the Merged Downtown Sacramento Redevelopment Project Plan ("Redevelopment Plan") and its implementing documents. Development of the 800 K Property 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. Concurrently with the approval and execution of this Agreement, the Agency intends to enter into an "Agreement for Exclusive Right to Negotiate for Certain Property in the 800 Block of L Street" with 8th and L Partners, LLC.

c. Developer and Agency desire to further define the development concept, investigate the feasibility of redevelopment of the 800 K Property in a manner that would eliminate blight focusing on urban, high density housing, retail, arts and entertainment (the "800 K Project") by negotiating the terms of a Disposition and Development Agreement ("DDA") for the transfer, financing and development of the 800 K Property.

d. It is the intent of both the Agency and Developer in entering into this Agreement is to establish a specific, limited period of time to negotiate the terms of the DDA between the Parties regarding: (1) the potential conveyance of the 800 K Property from the Agency to Developer; and (2) the potential development of the 800 K Project, all subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented in the future DDA.

e. The development of the 800 K Property, the completion of the 800 K 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 800 K Project is to be undertaken.

NOW, THEREFORE, IN VIEW OF THE GOALS AND OBJECTIVES OF THE AGENCY RELATING TO THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN, AND THE PROMISES OF THE AGENCY AND DEVELOPER SET FORTH IN THIS AGREEMENT, THE AGENCY AND DEVELOPER AGREE AS FOLLOWS:

1. **IDENTITY OF PARTIES.** The legal identities of the parties to this Agreement and their addresses are as follows:

(a) Developer is 800 K Street LLC, the members of which are David S. Taylor Interests, Inc., and CIM Group. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venture partners/participants, and entities comprising the Developer.

(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 the Agency for purposes of this agreement is 915 I Street, Third Floor, Sacramento, California 95814.

(c) Notices to any party shall be personally delivered or sent by first class mail to its principal office address.

- (i) Notices to Agency shall be clearly marked "Attention: 800 Block of K Street Project, c/o Denise Malvetti, Senior Project Manager.
- (ii) Notices to Developer shall be to Developer's principal office at 1201 K Street, Suite 1840, Sacramento, California 95814, Attention: David Taylor

2. RESTRICTIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER AND ASSIGNMENT OF AGREEMENT.

(a) The qualifications and identity of Developer and its principals are of particular concern to the Agency. The Developer's qualifications, reputed financial capacity, experience and proposed 800 K Project concept are the reasons that the Agency has entered into this Agreement with Developer. During the Negotiation Period, Developer covenants that there will be no voluntary or involuntary change in the ownership, management or control of the Developer, and no other person or entity shall be permitted to acquire any rights or powers in the Developer or in the 800 K Project under this Agreement, except as expressly provided for herein.

(b) Developer may not assign its rights under this Agreement without the prior written consent of the Agency, which the Agency may withhold at its sole discretion.

(c) Notwithstanding subsections (a) and (b), above, the Agency will permit a non-material change in ownership of the Developer which is defined as less than 10% as long as Developer shall within 10 days thereafter notify the Agency in writing of the ownership change and the identity of the business entities or individuals comprising such new ownership interest. Any material change in the ownership interest or the management or control of the Developer (collectively "Material Change" as defined in (d) below) without the Agency's prior written consent shall be a default under this Agreement. The Agency's approval or denial of a Material Change shall be at the Agency's sole discretion. Upon the occurrence of a Material Change, whether voluntary or involuntary, of Developer, the Agency, in its sole discretion, may terminate this Agreement, without liability to Developer or any other person, by sending written notice of termination to Developer, referencing this Section.

(d) For the purposes of this Agreement, the term "Material Change" means either (i) a change in ownership of the Developer, after notification to the Agency of Developer's disclosures required in Section 1(a) and thereafter, of 10% or more ownership interest in Developer, or (ii) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity that is part of the Developer, whether by ownership of equity interests, by contract, or otherwise.

3. TERM OF AGREEMENT

(a) **NEGOTIATION PERIOD.** This Agreement shall be in effect for the period of ten (10) months immediately following the Effective Date unless extended by its terms ("Negotiation Period").

(b) **NO EXTENSION.** The Agency shall not be obligated or expected to grant or permit any extension to the term of this Agreement as specified in (a), above.

(c) **AUTOMATIC TERMINATION.** This Agreement shall automatically expire and be of no further force or effect on the earlier of: (1) the expiration or earlier termination of the Negotiation Period; or (2) the execution of a separate DDA by both the Agency and Developer, in their respective sole and absolute discretion.

4. **OBLIGATIONS OF PARTIES AND SCHEDULE OF PERFORMANCE.** During the Negotiation Period, Agency and Developer shall proceed diligently and in good faith to do all of the following:

(a) **DEPOSIT FEE.** Developer shall pay to the Agency a deposit of Fifty Thousand Dollars (\$50,000) ("Deposit") within (ten) 10 days of Effective Date, which shall be used exclusively for third party costs pertaining to the planning and evaluation of the 800 L Project ("Third Party Costs"). Agency agrees to pay for the preparation of CEQA documentation as may be required. If the Agency fails to approve a proposed DDA that has been negotiated under this Agreement, which is duly before it for consideration and which has been executed by Developer, Agency will refund to Developer the Deposit minus the actual Third Party Costs or City Staff Costs, if such staff prepares the environmental documentation, to the extent of costs paid or incurred, as evidenced by invoices.

(i) If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after such Third Party Costs or Staff Costs will be refunded to Developer.

(ii) Provided that the Agency is not in default of this Agreement as contemplated in Section 8, below, and if the terms of the DDA are otherwise not finalized during the Negotiation Period, the Deposit remaining after payment of Third Party Costs or City Staff Costs will be returned to the Developer.

(b) Within thirty (30) days following the Effective Date, Agency shall:

(i) Define the CEQA process and identify the entity to prepare the environmental documents.

(c) Within ninety (90) days following the Effective Date, Developer shall present to the Agency staff, for review, all of the following:

(i) A conceptual design for the 800 K Project that describes and depicts both: (1) the location and orientation of proposed buildings; and (2) the conceptual plans and elevations of the proposed buildings;

(ii) Proposed land use categories on a parcel-by-parcel basis, including any proposed changes to the City's General Plan and/or any applicable Specific Plan, if any, necessary to accommodate the development of the 800 K Project;

(iii) Evidence of current financial capacity of Developer and the amount of equity of Developer that would be made available to fund all or a portion of the 800 K Project development;

(iv) Provide a leasing strategy with a list of proposed business types by building location; and

(v) Prepare 800 K Project Description sufficient for environmental review and complete CEQA Initial Study information submittal.

(d) Within one hundred fifty (150) days following the Effective Date, Developer shall present to the Agency staff for review, all of the following:

(i) Solicit comments, in conjunction with Agency staff, from Community Development, the Preservation Commission, and Planning Commission regarding design and necessary entitlement processes for use and consideration in the environmental document.

(ii) Refine construction costs including all applicable fees and contingencies.

(iii) A proposed time schedule for commencement and completion of the 800 K Project;

(iv) A written financial pro-forma in reasonable form and substance regarding the anticipated costs and returns to the Developer related to development, operation, and lease (as applicable) of the 800 K Project. Assumptions utilized for the pro-forma must be included in the submittal;

(v) A proposed financing plan identifying financing sources for all private and public improvements proposed for the 800 K Project, by phase, if applicable; and

(vi) A preliminary financial analysis demonstrating the costs and benefits of the 800 K Project to the City and the Agency.

(e) Within two hundred ten (210) days following the Effective Date, the following shall be accomplished:

(i) Agency shall finalize third party financial analysis;

(ii) Agency and Developer shall prepare a Schedule of Performances for the construction period;

(iii) Agency and Developer shall negotiate terms of appropriate redevelopment agreements;

(iv) Developer shall provide Letters of Intent from private funding sources; and

(v) Letters of Interest from retail tenants.

(e) The required CEQA documentation shall be presented to the Agency Board within three hundred (300) days following the Effective Date, unless extended in accordance with the terms of this Agreement.

(f) Developer shall, at least once each month throughout the Negotiation Period, submit progress reports to the Agency and meet and confer with the Agency concerning the ongoing progress of the required actions.

(g) Developer shall cooperate with the Agency in connection with the preparation of environmental review of the 800 K Project and within ten (10) days of any request provide requested information to the Agency.

(h) **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement. All fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer, for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the 800 K Property or the 800 K Project or negotiation of a DDA that may be undertaken by Developer

during the Negotiation Period, pursuant to or in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to a DDA, the 800 K Property or the 800 K Project, shall be the sole responsibility of and undertaken at the sole cost and expense of Developer and no such activity or matter shall be deemed to be undertaken for the benefit of, at the expense of or in reliance upon the Agency. Developer shall also pay all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City and/or the Agency of any and all applications and other documents and information to be submitted to the City and/or the Agency by Developer pursuant to this Agreement or otherwise associated with the 800 K Project. The Agency shall not be obligated to pay or reimburse any expenses, fees, charges or costs incurred by Developer in pursuit of any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the 800 K Property or the 800 K Project or negotiation of a DDA that may be undertaken by Developer during the Negotiation Period, whether or not this Agreement is, eventually, terminated or extended or a DDA is entered into between the Agency and Developer, in the future.

5. ADDITIONAL OBLIGATIONS OF THE AGENCY. During the Negotiation Period, and in addition to the obligations it shares with Developer under Section 4, above, the Agency shall proceed diligently and in good faith to do all of the following:

(a) **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency (either independently or in collaboration with the City, should the City participate as co-lead agency) shall prepare the environmental documentation and consider the environmental effects of the 800 K Project prior to considering action to approve the proposed DDA. The scope and schedule for such review shall be at the discretion of the Agency and such review shall not be a condition precedent to Developer's obligations under this Agreement.

(i) Nothing in this Agreement shall be construed to limit the application of CEQA to the 800 K Project or to changes in the 800 K Project or to control the actions of Agency in meeting its CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its 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 CEQA obligations.

(ii) Agency will not consider the approval of the 800 K Project unless and until it has fully reviewed and considered the environmental impacts of the proposed 800 K 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, if required, for the approval of the 800 K Project or take any other action in support of the proposed 800 K Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the 800 K Project or from imposing mitigation measures as a condition of 800 K Project approval, which measures mitigate or avoid direct or indirect environmental effects of the 800 K Project.

(iii) 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 800 K Project.

(b) **PROHIBITION AGAINST NEGOTIATION WITH OTHERS.** During the Negotiation Period, the Agency governing body and Agency staff shall not negotiate with any other person regarding the sale or redevelopment of the 800 K Property. The term "negotiate," as used in this Agreement, means engaging in any discussions with a person other than Developer with respect to that person's redevelopment of the 800 K Property to the total or partial exclusion of Developer from redeveloping the 800 K Property, without Developer's written consent. The Agency may receive and retain unsolicited offers regarding redevelopment of the 800 K Property, but shall not negotiate with the proponent of any such offer during the Negotiation Period. Notwithstanding any other provision of this Agreement, implementation of the Redevelopment Plan shall be and remain in the sole and exclusive purview and discretion of the Agency. Nothing in this Agreement shall limit, prevent, restrict or inhibit the Agency from providing any information in its possession or control that would customarily be furnished to persons requesting information from the Agency concerning the Agency's activities, goals, matters of a similar nature relating to implementation of the Redevelopment Plan or as required by law to be disclosed, upon request or otherwise. Nothing in this Agreement shall prevent or prohibit the Agency from discussing or disclosing the fact that the Agency is a Party to this Agreement.

6. NEGOTIATION OF DDA. During the Negotiation Period, the Agency and Developer shall diligently and in good faith negotiate the potential terms, conditions, covenants, restrictions and agreements of a DDA between them. The Agency and Developer shall generally cooperate with each other and supply such documents and information as

may be reasonably requested by the other to facilitate the conduct of the negotiations. Both the Agency and Developer shall exercise reasonable efforts to complete discussions relating to the terms and conditions of a DDA and such other matters, all as may be mutually acceptable to both the Agency and Developer. The exact terms and conditions of a DDA, if any, shall be determined during the course of these negotiations. Nothing in this Agreement shall be interpreted or construed to be a representation or agreement by either the Agency or Developer that a mutually acceptable DDA will be produced from negotiations under this Agreement. Nothing in this Agreement shall impose any obligation on either Party to agree to a definitive DDA in the future. Nothing in this Agreement shall be interpreted or construed to be a guaranty, warranty or representation that any proposed DDA that may be negotiated by Agency staff and Developer will be approved by the Agency governing body. Developer acknowledges and agrees that the Agency's consideration of any DDA is subject to the sole discretion of the Agency governing body and all legally required public hearings, public meetings, notices, factual findings and other determinations required by law.

7. 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 800 K 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 800 K Project. 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.

8. DEFAULTS. Either the Agency or 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, or otherwise violates any covenant, restriction or obligation contained in this Agreement, (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 800 K Project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have ten (10) days to cure the default. Should the defaulting party fail to cure the default within the thirty (30) days, the non-defaulting party may terminate this Agreement by written notice to the defaulting party. Should the Agency be in default, Developer is entitled to the return of the Deposit. In the event of a default by Developer, Agency may retain the Deposit and may terminate the Agreement. This 10 day period in no way, manner or form extends, continues, tolls or modifies the Term of this Agreement.

(a) After termination of this Agreement for default of Developer, subject to cure rights, Developer shall have no rights under this Agreement to participate in the development of the 800 K Project, and the Agency shall have the absolute right to pursue development of the 800 K Project, in any manner it deems appropriate.

(b) The remedies contained in this Section 8 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.

10. 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 assignments and transfers of the DDA and its obligations and benefits prior to 800 K Project completion; (g) compliance with CEQA mitigation; (h) disposition of the 800 K Property by sale from Agency to Developer ; (i) Agency's rights to revest the 800 K Property upon Developer default; (j) Agency's Art in Public Places requirements; (k) a 800 K Project completion date; (l) extension fees for delay in construction, and liquidated damages; (m) Agency's rights to cure defaults, assume loans and complete construction; and (n) delayed transfer of title to the 800 K Property.

11. AGENCY RELIANCE ON DEVELOPER. Developer understands and acknowledges that the Agency is entering into this Agreement with Developer because Developer has reputed financial capacity, specific expertise and experience.

12. ACKNOWLEDGEMENTS AND RESERVATIONS.

(a) The Agency and Developer agree that, if this Agreement expires or is terminated for any reason, or a future DDA is not signed by both the Agency and Developer, for any reason, neither the Agency nor Developer shall be under any obligation, nor have any liability to each other or any other person regarding the sale or other disposition of the 800 K Property or the redevelopment of the 800 K Project or the 800 K Property.

(b) Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the Agency, nor an acceptance by the Agency of any offer or proposal from Developer for the Agency to convey any estate or interest in the 800 K Property to Developer or for the Agency to provide any financial or other assistance to Developer for redevelopment of the 800 K Project or the 800 K Property.

(c) Developer acknowledges and agrees that Developer has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from the Agency.

(d) Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the 800 K Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Development Services, Planning Commission and either the Design Commission or Preservation Commission. If the Proposal is disapproved by final action of the governing bodies of the Agency or City, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. Certain development standards and design controls for the 800 K Project may be established between Developer and the Agency, but it is understood and agreed between the Agency and Developer that, unless specified otherwise in the DDA and/or in the entitlement actions approved by the City, the 800 K Project and the redevelopment of the 800 K Property must conform to all Agency, City and other applicable governmental developments, land use and architectural regulations and standards. Drawings, plans and specifications for the 800 K Project shall be subject to the approval of the Agency and the City, through the standard development application process for redevelopment projects within the Project Area. Nothing in this Agreement shall be considered approval of any plans or specifications for the 800 K Project or of the 800 K Project itself by either the Agency or the City.

(e) The Agency reserves the right to reasonably obtain further information, data and commitments to ascertain the ability and capacity of Developer to lease, develop and operate the 800 K Property and/or the 800 K Project. Developer acknowledges that it may be requested to make certain financial disclosures to the Agency, its staff, legal counsel or other consultants, as part of the financial due diligence investigations of the Agency relating to the potential acquisition or sale of the 800 K Property and redevelopment of the 800 K Project on the 800 K Property by Developer and that any such disclosures may become public records. The Agency shall maintain the confidentiality of financial information of Developer to the extent allowed by law, as determined by Agency Counsel.

(f) The Agency shall not be deemed to be a party to any agreement for the acquisition of, lease of or disposition of real or personal property, the provision of financial assistance to Developer or development of the 800 K Project on the 800 K Property or elsewhere, until the terms and conditions of a complete future DDA are considered and approved by both the City Council and the Agency governing body, in their respective sole discretion, following the conclusion of any public hearing(s) required by law. Developer expressly acknowledges and agrees that the Agency will not be bound by any statement, promise or representation made by Agency staff or representatives during the course of negotiations of a future DDA and that the Agency shall only be legally bound upon the approval of a complete DDA by both the City Council and the Agency governing body, in their respective sole discretion, following one or more duly noticed public hearings, as required by law.

(g) Developer acknowledges that the Agency is currently in discussion with other developers in the surrounding area to develop similar projects with similar or identical uses. Should the Agency enter into agreements for financial or other assistance with these or other developers, such action shall not constitute a breach of good faith.

13. NONDISCRIMINATION. Developer covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

(a) Standards. That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section

12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the 800 K Property nor shall Developer, itself, himself or herself, or any person claiming under or through it, him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees in the 800 K Property.

(b) Interpretation. Notwithstanding Section 11(a), with respect to familial status, Section 11(a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 11(a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 11(a).

14. **WAIVER OF LIS PENDENS.** The Parties to this Agreement hereby expressly understand, acknowledge and agree that no lis pendens shall be filed against the subject property herein or any portion of such property for any claim, action or dispute arising from this Agreement.

15. **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.

16. **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.

17. **UNAVOIDABLE DELAY.** For the purposes of any of the provisions of this Agreement, neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, litigation filed in state or federal court by any third party which either directly results in a delay of either party's performance, or which, in the reasonable judgment of either party substantially increases the cost or risk of continued performance, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

18. **NO THIRD PARTIES BENEFITED.** This Agreement is made and entered into for the sole protection and benefit of the Agency and Developer, and no other person or entity does now or will have any right of action or any rights under or pursuant to this Agreement.

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

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

Approved as to form:

By: _____
John Dangberg, Assistant City Manager
As Designated Signatory

Agency Counsel

DEVELOPER: 800 K STREET, LLC

Approved as to form:

By: _____
David S. Taylor Interests

By: _____
Counsel for Developer

By: _____
CIM Group

FYi fb'lc'HUVYcZ7 cbHbly

**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
FOR CERTAIN PROPERTIES ON THE 800-BLOCK OF L STREET
(SUBSTANTIALLY COMPLETE DRAFT)**

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and 8th & L Partners, LP ("Developers"), collectively "Parties" or singular "party," have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of _____, 2010 ("Effective Date") upon the follow terms:

RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:

a. Developer desires to negotiate with Agency to define the parameters for development of certain real property (the "800 L Property") located in the 800 block of L Street in the City of Sacramento, County of Sacramento, State of California, as described in the Legal Description attached and incorporated in this Agreement, as Exhibit A, by this reference. The 800 L Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the 800 L Property must be consistent with the Merged Downtown Sacramento Redevelopment Project Plan ("Redevelopment Plan") and its implementing documents. Development of the 800 L Property 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. Concurrently with the approval and execution of this Agreement, the Agency intends to enter into an "Agreement for Exclusive Right to Negotiate for Certain Properties in the 800 Block of K Street" with 800 K Street LLC.

c. Developer and Agency desire to further define the development concept, investigate the feasibility of redevelopment of the 800 L Property in a manner that would eliminate blight focusing on urban, high density housing, retail, arts and entertainment (the "800 L Project") by negotiating the terms of a Disposition and Development Agreement ("DDA") for the transfer, financing and development of the 800 L Property.

d. It is the intent of both the Agency and Developer in entering into this Agreement is to establish a specific, limited period of time to negotiate the terms of the DDA between the Parties regarding: (1) the potential conveyance of the 800 L Property from the Agency to Developer; and (2) the potential development of the 800 L Project, all subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented in the future DDA.

e. The development of the 800 L Property, the completion of the 800 L 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 800 L Project is to be undertaken.

NOW, THEREFORE, IN VIEW OF THE GOALS AND OBJECTIVES OF THE AGENCY RELATING TO THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN, AND THE PROMISES OF THE AGENCY AND DEVELOPER SET FORTH IN THIS AGREEMENT, THE AGENCY AND DEVELOPER AGREE AS FOLLOWS:

1. **IDENTITY OF PARTIES.** The legal identities of the parties to this Agreement and their addresses are as follows:

(a) Developer is 8th & L Partners, LP, the General Partner of which is Domus Development, LLC or affiliate. David S. Taylor Interests, Inc. ("DSTI"), a member of 800 K Street LLC, shall become and remain through the period of negotiations contemplated herein, a special limited partner in 8th & L Partners, LLC. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venture partners/participants, and entities comprising the Developer.

(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 the Agency for purposes of this agreement is 915 I Street, Third Floor, Sacramento, California 95814.

(c) Notices to any party shall be personally delivered or sent by first class mail to its principal office address.

(i) Notices to Agency shall be clearly marked "Attention: 800 Block of L Street Project, c/o Sheri Smith, Senior Project Manager.

(ii) Notices to Developer shall be to Developer's principal office at Domus Development, 594 Howard Street, #204, San Francisco, CA 94105, Attention: Meea Kang.

2. RESTRICTIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER AND ASSIGNMENT OF AGREEMENT.

(a) The qualifications and identity of Developer and its principals are of particular concern to the Agency. The Developer's qualifications, reputed financial capacity, experience and proposed 800 L Project concept are the reasons that the Agency has entered into this Agreement with Developer. During the Negotiation Period, Developer covenants that there will be no voluntary or involuntary change in the ownership, management or control of the Developer, and no other person or entity shall be permitted to acquire any rights or powers in the Developer or in the 800 L Project under this Agreement, except as expressly provided for herein. The parties acknowledge that DSTI intends to acquire a special limited partnership interest in Developer. Accordingly, DSTI has agreed to execute this Agreement in contemplation of such anticipated future interest.

(b) Developer may not assign its rights under this Agreement without the prior written consent of the Agency, which the Agency may withhold at its sole discretion.

(c) Notwithstanding subsections (a) and (b), above, the Agency will permit a non-material change in ownership of the Developer which is defined as less than 10% as long as Developer shall within 10 days thereafter notify the Agency in writing of the ownership change and the identity of the business entities or individuals comprising such new ownership interest. Any material change in the ownership interest or the management or control of the Developer (collectively "Material Change" as defined in (d) below) without the Agency's prior written consent shall be a default under this Agreement. The Agency's approval or denial of a Material Change shall be at the Agency's sole discretion. Upon the occurrence of a Material Change, whether voluntary or involuntary, of Developer, the Agency, in its sole discretion, may terminate this Agreement, without liability to Developer or any other person, by sending written notice of termination to Developer, referencing this Section.

(d) For the purposes of this Agreement, the term "Material Change" means either (i) a change in ownership of the Developer, after notification to the Agency of Developer's disclosures required in Section 1(a) and thereafter, of 10% or more ownership interest in Developer, or (ii) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity that is part of the Developer, whether by ownership of equity interests, by contract, or otherwise.

3. TERM OF AGREEMENT

(a) **NEGOTIATION PERIOD.** This Agreement shall be in effect for the period of ten (10) months immediately following the Effective Date unless extended by its ("Negotiation Period").

(b) **NO EXTENSION.** The Agency shall not be obligated or expected to grant or permit any extension to the term of this Agreement as specified in (a), above.

(c) **AUTOMATIC TERMINATION.** This Agreement shall automatically expire and be of no further force or effect on the earlier of: (1) the expiration or earlier termination of the Negotiation Period; or (2) the execution of a separate DDA by both the Agency and Developer, in their respective sole and absolute discretion.

4. **OBLIGATIONS OF PARTIES AND SCHEDULE OF PERFORMANCE.** During the Negotiation Period, Agency and Developer shall proceed diligently and in good faith to do all of the following:

(a) **DEPOSIT FEE.** Developer shall pay to the Agency a deposit of Fifty Thousand Dollars (\$50,000) ("Deposit") within (ten) 10 days of Effective Date, which shall be used exclusively for third party costs pertaining to the planning and evaluation of the 800 L Project ("Third Party Costs"). Agency agrees to pay for the preparation of CEQA documentation as may be required. If the Agency fails to approve a proposed DDA that has been negotiated under this Agreement, which is duly before it for consideration and which has been executed by Developer, Agency

will refund to Developer the Deposit minus the actual Third Party Costs or City Staff Costs, if such staff prepares the environmental documentation, to the extent of costs paid or incurred, as evidenced by invoices.

(i) If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after such Third Party Costs or Staff Costs will be refunded to Developer.

(ii) Provided that the Agency is not in default of this Agreement as contemplated in Section 9, below, and if the terms of the DDA are otherwise not finalized during the Negotiation Period, the Deposit remaining after payment of Third Party Costs or City Staff Costs will be returned to the Developer.

(b) Within thirty (30) days following the Effective Date, Agency shall:

(i) Define the CEQA process and identify the entity to prepare the environmental documents.

(c) Within one hundred twenty (120) days following the Effective Date, Developer shall present to the Agency staff, for review, all of the following:

(i) A conceptual design for the 800 L Project that describes and depicts both: (1) the location and orientation of proposed buildings; and (2) the conceptual plans and elevations of the proposed buildings;

(ii) Proposed land use categories on a parcel-by-parcel basis, including any proposed changes to the City's General Plan and/or any applicable Specific Plan, if any, necessary to accommodate the development of the 800 L Project;

(iii) Evidence of current financial capacity of Developer and the amount of equity of Developer that would be made available to fund all or a portion of the 800 L Project development;

(iv) Provide a leasing strategy with a list of proposed business types by building location; and

(v) Prepare 800 L Project Description sufficient for environmental review and complete CEQA Initial Study information submittal.

(d) Within one hundred fifty (150) days following the Effective Date. Developer shall present to the Agency staff for review, all of the following:

(i) Solicit comments, in conjunction with Agency staff, from Community Development, the Preservation Commission, and Planning Commission regarding design and necessary entitlement processes for use and consideration in the environmental document.

(ii) Refine construction costs including all applicable fees and contingencies.

(iii) A proposed time schedule for commencement and completion of the 800 L Project;

(iv) A written financial pro-forma in reasonable form and substance regarding the anticipated costs and returns to the Developer related to development, operation, and lease (as applicable) of the 800 L Project. Assumptions utilized for the pro-forma must be included in the submittal;

(v) A proposed financing plan identifying financing sources for all private and public improvements proposed for the 800 L Project, by phase, if applicable; and

(vi) A preliminary financial analysis demonstrating the costs and benefits of the 800 L Project to the City and the Agency.

(e) Within two hundred ten (210) days following the Effective Date, above, the following shall be accomplished:

(i) Agency shall finalize third party financial analysis;

(ii) Agency and Developer shall prepare a Schedule of Performances for the construction period;

(iii) Agency and Developer shall negotiate terms of appropriate redevelopment agreements;

(iv) Developer shall provide Letters of Intent from private funding sources; and

(v) Letters of Interest from retail tenants

(e) The required CEQA documentation shall be presented to the Agency Board within three hundred (300) days following the Effective Date, unless extended in accordance with the terms of this Agreement.

(f) Developer shall, at least once each month throughout the Negotiation Period, submit progress reports to the Agency and meet and confer with the Agency concerning the ongoing progress of the required actions.

(g) Developer shall cooperate with the Agency in connection with the preparation of environmental review of the 800 L Project and within ten (10) days of any request provide requested information to the Agency.

(h) **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement. All fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer, for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the 800 L Property or the 800 L Project or negotiation of a DDA that may be undertaken by Developer during the Negotiation Period, pursuant to or in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to a DDA, the 800 L Property or the 800 L Project, shall be the sole responsibility of and undertaken at the sole cost and expense of Developer and no such activity or matter shall be deemed to be undertaken for the benefit of, at the expense of or in reliance upon the Agency. Developer shall also pay all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City and/or the Agency of any and all applications and other documents and information to be submitted to the City and/or the Agency by Developer pursuant to this Agreement or otherwise associated with the 800 L Project. The Agency shall not be obligated to pay or reimburse any expenses, fees, charges or costs incurred by Developer in pursuit of any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the 800 L Property or the 800 L Project or negotiation of a DDA that may be undertaken by Developer during the Negotiation Period, whether or not this Agreement is, eventually, terminated or extended or a DDA is entered into between the Agency and Developer, in the future.

5. **ADDITIONAL OBLIGATIONS OF THE AGENCY.** During the Negotiation Period, and in addition to the obligations it shares with Developer under Section 4, above, the Agency shall proceed diligently and in good faith to do all of the following:

(a) **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency (either independently or in collaboration with the City, should the City participate as co-lead agency) shall prepare the environmental documentation and consider the environmental effects of the 800 L Project prior to considering action to approve the proposed DDA. The scope and schedule for such review shall be at the discretion of the Agency and such review shall not be a condition precedent to Developer's obligations under this Agreement.

(i) Nothing in this Agreement shall be construed to limit the application of CEQA to the 800 L Project or to changes in the 800 L Project or to control the actions of Agency in meeting its CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its 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 CEQA obligations.

(ii) Agency will not consider the approval of the 800 L Project unless and until it has fully reviewed and considered the environmental impacts of the proposed 800 L 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, if required, for the approval of the 800 L Project or take any other action in support of the proposed 800 L Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the 800 L Project or from imposing mitigation measures as a condition of 800 L Project approval, which measures mitigate or avoid direct or indirect environmental effects of the 800 L Project.

(iii) 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 800 L Project.

(b) **PROHIBITION AGAINST NEGOTIATION WITH OTHERS.** During the Negotiation Period, the Agency governing body and Agency staff shall not negotiate with any other person regarding the sale or redevelopment of the 800 L Property. The term "negotiate," as used in this Agreement, means engaging in any discussions with a person other than Developer with respect to that person's redevelopment of the 800 L Property to the total or partial exclusion of Developer from redeveloping the 800 L Property, without Developer's written consent. The Agency may receive and retain unsolicited offers regarding redevelopment of the 800 L Property, but shall not negotiate with the proponent of any such offer during the Negotiation Period. Notwithstanding any other provision of this Agreement, implementation of the Redevelopment Plan shall be and remain in the sole and exclusive purview and discretion of the Agency. Nothing in this Agreement shall limit, prevent, restrict or inhibit the Agency from providing any information in its possession or control that would customarily be furnished to persons requesting information from the Agency concerning the Agency's activities, goals, matters of a similar nature relating to implementation of the Redevelopment Plan or as required by law to be disclosed, upon request or otherwise.

Nothing in this Agreement shall prevent or prohibit the Agency from discussing or disclosing the fact that the Agency is a Party to this Agreement.

6. [INTENTIONALLY OMITTED.]

7. **NEGOTIATION OF DDA.** During the Negotiation Period, the Agency and Developer shall diligently and in good faith negotiate the potential terms, conditions, covenants, restrictions and agreements of a DDA between them. The Agency and Developer shall generally cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. Both the Agency and Developer shall exercise reasonable efforts to complete discussions relating to the terms and conditions of a DDA and such other matters, all as may be mutually acceptable to both the Agency and Developer. The exact terms and conditions of a DDA, if any, shall be determined during the course of these negotiations. Nothing in this Agreement shall be interpreted or construed to be a representation or agreement by either the Agency or Developer that a mutually acceptable DDA will be produced from negotiations under this Agreement. Nothing in this Agreement shall impose any obligation on either Party to agree to a definitive DDA in the future. Nothing in this Agreement shall be interpreted or construed to be a guaranty, warranty or representation that any proposed DDA that may be negotiated by Agency staff and Developer will be approved by the Agency governing body. Developer acknowledges and agrees that the Agency's consideration of any DDA is subject to the sole discretion of the Agency governing body and all legally required public hearings, public meetings, notices, factual findings and other determinations required by law.

8. **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 800 L 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 800 L Project. 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.

9. **DEFAULTS.** Either the Agency or 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, or otherwise violates any covenant, restriction or obligation contained in this Agreement, (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 800 L Project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have ten (10) days to cure the default. Should the defaulting party fail to cure the default within the thirty (30) days, the non-defaulting party may terminate this Agreement by written notice to the defaulting party. Should the Agency be in default, Developer is entitled to the return of the Deposit. In the event of a default by Developer, Agency may retain the Deposit and may terminate the Agreement. This 10 day period in no way, manner or form extends, continues, tolls or modifies the Term of this Agreement.

(a) After termination of this Agreement for default of Developer, subject to cure rights, Developer shall have no rights under this Agreement to participate in the development of the 800 L Project, and the Agency shall have the absolute right to pursue development of the 800 L Project, in any manner it deems appropriate.

(b) The remedies contained in this Section 9 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.

10. **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 assignments and transfers of the DDA and its obligations and benefits prior to 800 L Project completion; (g) compliance with CEQA mitigation; (h) disposition of the 800 L Property by sale from Agency to Developer ; (i) Agency's rights to revest the 800 L Property upon Developer default; (j) Agency's Art in Public Places requirements; (k) a 800 L Project completion date; (l) extension fees for delay in construction, and liquidated

damages; (m) Agency's rights to cure defaults, assume loans and complete construction; and (n) delayed transfer of title to the 800 L Property.

11. **AGENCY RELIANCE ON DEVELOPER.** Developer understands and acknowledges that the Agency is entering into this Agreement with Developer because Developer has reputed financial capacity, specific expertise and experience.

12. **ACKNOWLEDGEMENTS AND RESERVATIONS.**

(a) The Agency and Developer agree that, if this Agreement expires or is terminated for any reason, or a future DDA is not signed by both the Agency and Developer, for any reason, neither the Agency nor Developer shall be under any obligation, nor have any liability to each other or any other person regarding the sale or other disposition of the 800 L Property or the redevelopment of the 800 L Project or the 800 L Property.

(b) Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the Agency, nor an acceptance by the Agency of any offer or proposal from Developer for the Agency to convey any estate or interest in the 800 L Property to Developer or for the Agency to provide any financial or other assistance to Developer for redevelopment of the 800 L Project or the 800 L Property.

(c) Developer acknowledges and agrees that Developer has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from the Agency.

(d) Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the 800 L Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Development Services, Planning Commission and either the Design Commission or Preservation Commission. If the Proposal is disapproved by final action of the governing bodies of the Agency or City, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. Certain development standards and design controls for the 800 L Project may be established between Developer and the Agency, but it is understood and agreed between the Agency and Developer that, unless specified otherwise in the DDA and/or in the entitlement actions approved by the City, the 800 L Project and the redevelopment of the 800 L Property must conform to all Agency, City and other applicable governmental developments, land use and architectural regulations and standards. Drawings, plans and specifications for the 800 L Project shall be subject to the approval of the Agency and the City, through the standard development application process for redevelopment projects within the Project Area. Nothing in this Agreement shall be considered approval of any plans or specifications for the 800 L Project or of the 800 L Project itself by either the Agency or the City.

(e) The Agency reserves the right to reasonably obtain further information, data and commitments to ascertain the ability and capacity of Developer to lease, develop and operate the 800 L Property and/or the 800 L Project. Developer acknowledges that it may be requested to make certain financial disclosures to the Agency, its staff, legal counsel or other consultants, as part of the financial due diligence investigations of the Agency relating to the potential acquisition or sale of the 800 L Property and redevelopment of the 800 L Project on the 800 L Property by Developer and that any such disclosures may become public records. The Agency shall maintain the confidentiality of financial information of Developer to the extent allowed by law, as determined by Agency Counsel.

(f) The Agency shall not be deemed to be a party to any agreement for the acquisition of, lease of or disposition of real or personal property, the provision of financial assistance to Developer or development of the 800 L Project on the 800 L Property or elsewhere, until the terms and conditions of a complete future DDA are considered and approved by both the City Council and the Agency governing body, in their respective sole discretion, following the conclusion of any public hearing(s) required by law. Developer expressly acknowledges and agrees that the Agency will not be bound by any statement, promise or representation made by Agency staff or representatives during the course of negotiations of a future DDA and that the Agency shall only be legally bound upon the approval of a complete DDA by both the City Council and the Agency governing body, in their respective sole discretion, following one or more duly noticed public hearings, as required by law.

(g) Developer acknowledges that the Agency is currently in discussion with other developers in the surrounding area to develop similar projects with similar or identical uses. Should the Agency enter into agreements

for financial or other assistance with these or other developers, such action shall not constitute a breach of good faith.

13. **NONDISCRIMINATION.** Developer covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

(a) **Standards.** That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the 800 L Property nor shall Developer, itself, himself or herself, or any person claiming under or through it, him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees in the 800 L Property.

(b) **Interpretation.** Notwithstanding Section 11(a), with respect to familial status, Section 11(a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 11(a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 11(a).

14. **WAIVER OF LIS PENDENS.** The Parties to this Agreement hereby expressly understand, acknowledge and agree that no lis pendens shall be filed against the subject property herein or any portion of such property for any claim, action or dispute arising from this Agreement.

15. **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.

16. **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.

17. **UNAVOIDABLE DELAY.** For the purposes of any of the provisions of this Agreement, neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, litigation filed in state or federal court by any third party which either directly results in a delay of either party's performance, or which, in the reasonable judgment of either party substantially increases the cost or risk of continued performance, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

18. **NO THIRD PARTIES BENEFITED.** This Agreement is made and entered into for the sole protection and benefit of the Agency and Developer, and no other person or entity does now or will have any right of action or any rights under or pursuant to this Agreement.

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

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

Approved as to form:

By: _____
John Dangberg, Assistant City Manager
As Designated Signatory

Agency Counsel

DEVELOPER: 8th & L PARTNERS, LP

Approved as to form:

By: _____
Domus Development

By: _____
Counsel for Developer

By: _____
David S. Taylor Interests, Inc.
David S. Taylor, President