



**REPORT TO REDEVELOPMENT
AGENCY**

City of Sacramento

915 I Street, Sacramento, CA 95814-2671

www.CityofSacramento.org

12

Consent

November 23, 2010

Honorable Chair and Members of the Redevelopment Agency

Title: Exclusive Right to Negotiate with Gerald W. Greenberg for 2300 Del Paso Boulevard and Environmental Clean Up of Site

Location/Council District: 2300 Del Paso Boulevard; North Sacramento
Redevelopment Area (District 2 and 3)

Recommendation: Adopt a **Redevelopment Agency Resolution** a) authorizing the Executive Director, or designee, to execute an Exclusive Right to Negotiate with Gerald W. Greenberg for the real property at 2300/2308 Del Paso Boulevard, and b) authorizing the Executive Director, or designee, to execute and amend contracts for remediation services for costs associated with obtaining environmental closure at the site.

Contact: Chris Pahule, Assistant Director of Housing and Community Development;
La Shelle Dozier, Executive Director

Presenters: None

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: On October 10, 2008, the Redevelopment Agency (Agency) acquired four parcels at 2300/2308 Del Paso Boulevard as part of its revitalization effort on this historic commercial corridor. Prior to the acquisition, the Agency conducted environmental assessments and discovered soil contamination and underground storage tanks. The Agency removed two tanks, but found a third tank during excavation. Additional authority is necessary to complete remediation of the site including removing the third tank and excavating/disposing of contaminated soil. Included in the 2010 Annual Agency budget was \$800,000 allocated to complete remediation, rehabilitation, and future disposition and development of the property. Although funding is in place, additional Redevelopment Agency authorization is required to enter into contracts to complete remediation and obtain environmental site closure from Sacramento County's Environmental Management Department.

Exclusive Right to Negotiate and Remediate 2300/2308 Del Paso Boulevard

With Agency ownership of the buildings at 2300/2308 Del Paso Boulevard, an adjacent property owner with the capacity and track record to rehabilitate the buildings has expressed interest in the property. Mr. Jerry Greenberg has completed his own renovation project across the street at 2313 Del Paso Boulevard. Using the Agency's Commercial Revitalization Program, he successfully acquired and completed tenant improvements to an existing building that resulted in four ground floor commercial units and seven second story residential units above. In addition to renovating two commercial buildings at 4405 Franklin Boulevard and 3011 Academy Way for his business, Ace Plumbing, Heating and Air, Mr. Greenberg has also renovated several other commercial buildings in Sacramento including 2106 11th Avenue, 2730 Broadway and 2001 P Street.

Based on his demonstrated commitment and excellent development track record, staff recommends entering into a six-month Exclusive Right to Negotiate (ERN) agreement with Mr. Gerald W. Greenberg giving the Executive Director authority to extend the ERN for an additional six months if deemed necessary. An ERN with Mr. Greenberg will facilitate further research and investigation to develop a viable project at the site.

Policy Considerations: The recommended actions are consistent with the North Sacramento Five Year Implementation Plan goal to reinvigorate the Boulevard and prepare the area for private investment.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed action is exempt from CEQA per Guidelines Section 15330, which exempts minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance costing \$1 million or less.

Sustainability Considerations: The recommended activities advance the goals of the City of Sacramento's Sustainability Master Plan by:

Climate Protection/Air Quality: Reducing vehicle trip generation by improving infill properties for future use.

Public Health and Nutrition: Improving soil and groundwater conditions by cleaning brownfields for future use.

Water Resources and Flood Protection: By remediating groundwater contamination to protect water resources.

Exclusive Right to Negotiate and Remediate 2300/2308 Del Paso Boulevard

Other: There is no federal funding or other federal involvement associated with this action; therefore, no further action under National Environmental Policy Act (NEPA) is required.

Committee/Commission Action: At its September 16, 2010 meeting, *the North Sacramento Redevelopment Advisory Committee (RAC)* adopted the following motion recommending approval of the staff recommendation in this report. The votes were as follows:

AYES: Garcia, Hubbs, Lukehart, Meeker, Santamaria and Underwood

NOES: None

ABSENT: Clark, McCleary, Plag, Veden and Scott

At its meeting of November 3, 2010, the Sacramento Housing and Redevelopment Commission (SHRC) considered the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Fowler, Gore, Johnson, Morgan, Morton, Rosa, Otto, Shah, Stivers

NOES: None

ABSENT: None

Rationale for Recommendation: The Agency must complete remediation of the site in order to prepare the property for transfer and private investment. A current Project budget of \$800,000 remains to remediate, rehabilitate and assist with disposition and development of the site. Therefore, staff recommends authorizing the Executive Director, or her designee, to enter into a new contract to complete remediation of the site and obtain site closure.

As part of the Agency's goal to redevelop and revitalize the historic Del Paso Boulevard commercial corridor, staff also recommends entering into an Exclusive Right to Negotiate with Gerald W. Greenberg to facilitate the revitalization of the property with a commercial development project. Both of these activities further the Agency's goal of reinvigorating the Boulevard and preparing the area for private investment. Should negotiations prove successful; the Agency will be requested to consider a Disposition and Development Agreement with the developer.

Financial Considerations: There are no financial implications with entering into an Exclusive Right to Negotiate between the Agency and Mr. Gerald W. Greenberg. Funds in the amount of \$800,000 were allocated to the Project for remediation and development of the site during the 2009/2010 budget process and, therefore, no new funds are required.

November 23, 2010

Exclusive Right to Negotiate and Remediate 2300/2308 Del Paso Boulevard

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

Respectfully Submitted by:


LA SHELLE DOZIER
Executive Director

Recommendation Approved:


for GUS VINA
Interim City Manager

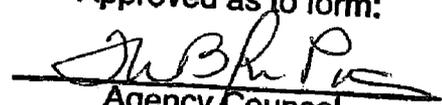
Approved as to form:

Agency Counsel

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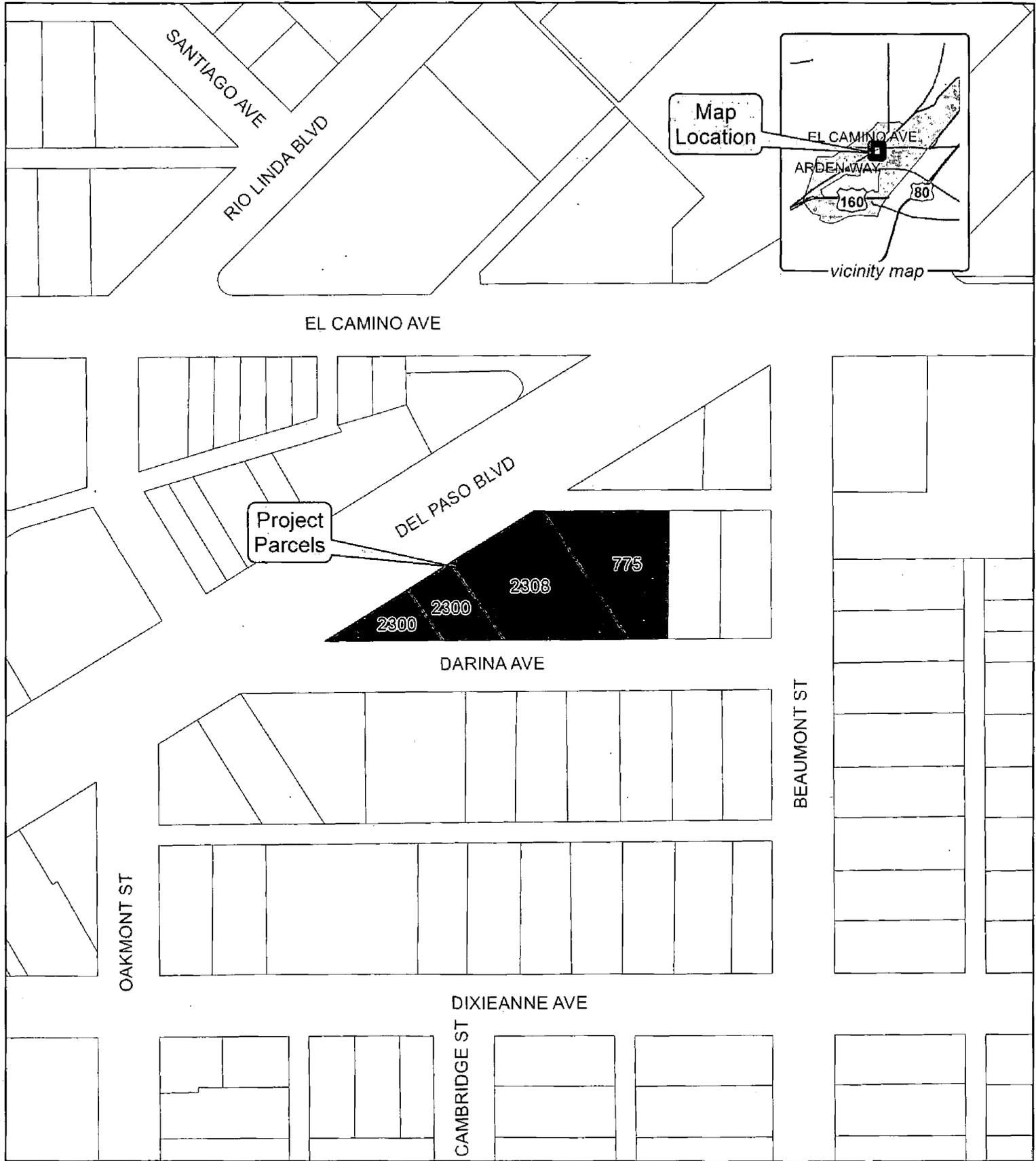
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NA

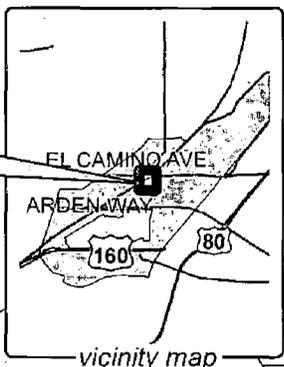
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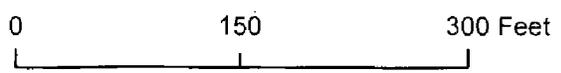
2300 / 2308 Del Paso Boulevard



Map Location



Project Parcel



SHRA GIS
August 30, 2010



Exclusive Right to Negotiate and Remediate 2300/2308 Del Paso Boulevard

RESOLUTION NO. 2010 -

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

EXCLUSIVE RIGHT TO NEGOTIATE WITH GERALD W. GREENBERG FOR 2300 DEL PASO BOULEVARD AND ENVIRONMENTAL CLEAN UP OF SITE

BACKGROUND

- A. On October 10, 2008, the Redevelopment Agency acquired 2300/2308 Del Paso Boulevard and 775 Darina Avenue (APN 275 0052 005, 006, 007 and 008) as part of the Agency's larger strategy to revitalize Del Paso Boulevard's historic commercial corridor.
- B. The Agency conducted a Phase I and Phase II environmental assessment. Soil contamination and underground storage tanks were discovered. Two of the three tanks have been removed from the site.
- C. In order to prepare the site for transfer and development, the Agency must complete the remediation of the property including removing the one remaining tank and excavating and removing any contaminated soil.
- D. Since its acquisition, Mr. Gerald W. Greenberg has approached the Agency demonstrating interest to acquire and develop the property and enter into an Exclusive Right to Negotiate (ERN) with the Agency.
- E. During the 2009/2010 budget process, the Agency allocated \$800,000 to the Project to remediate the Site, rehabilitate the two buildings on the property, and assist with its disposition and development.
- F. The proposed clean up action is exempt from CEQA per Guidelines Section 15330, which exempts minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance costing \$1 million or less.

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

- Section 1. All evidence presented having been duly considered, the findings, including environmental findings regarding this action as stated above, are approved.

Exclusive Right to Negotiate and Remediate 2300/2308 Del Paso Boulevard

Section 2. The Executive Director, or her designee, is authorized to execute an Agreement for Exclusive Right to Negotiate with Gerald W. Greenberg, attached as Exhibit A to this resolution.

Section 3. The Executive Director, or her designee, is authorized to execute contracts and amend contracts for remediation services for costs associated with obtaining environmental site closure at the site.

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Exhibit A: Agreement for Exclusive Right to Negotiate



AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE FOR 2300-2308 DEL PASO BOULEVARD, SACRAMENTO, CALIFORNIA

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and Gerald W. Greenberg ("Developer"), collectively "Parties" or singular "party," have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of October 26, 2010, 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 ("Property") located on Del Paso Boulevard 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 Property is within the North Sacramento Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the Property must be consistent with North Sacramento Redevelopment Project Plan ("Redevelopment Plan") and its implementing documents. Development of the 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. Developer and Agency desire to further define the development concept, investigate the feasibility of redevelopment of the Property in a manner that would eliminate blight and focus on commercial revitalization and transit oriented development at 2300/2308 Del Paso Boulevard ("the Project") by negotiating the terms of a Disposition and Development Agreement ("DDA") for the transfer, financing and development of the Property.

c. 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 Property from the Agency to Developer; and (2) the potential development of the Project, all subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented in the future DDA.

d. The development of the Property, 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.

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 Gerald W. Greenberg. 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. Initially, the principal of Developer is Gerald W. Greenberg ("Principal"). At all times during the term of this Agreement and the DDA, Principal must maintain the controlling interest in the Developer and must manage the Developer through the negotiation process and development of the Project through implementation of the subsequent DDA, if such a DDA is agreed upon and approved in a manner described herein.

(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 801 12th Street, 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: 2300-2308 Del Paso Boulevard Project, Attention: Marti Brown, Project Manager.
 - (ii) Notices to Developer shall be to Developer's principal office at 3011 Academy Way, Sacramento, California 95815, Attention: Gerald Greenberg

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 Principal's qualifications, reputed financial capacity, experience and proposed 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, at all times Principal shall have the primary controlling interest in the Developer, and no other person or entity shall be permitted to acquire any rights or powers in the Developer or in the Project under this Agreement, except as expressly provided for herein.

(b) Developer and Principal 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 and under the DDA. 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 (other than such changes occasioned by the death or incapacity of the Principal) 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, or (iii) if the Principal is no longer the person with the managing control of the Developer.

3. TERM OF AGREEMENT

(a) **NEGOTIATION PERIOD.** This Agreement shall be in effect for the period of six (6) months immediately following the Effective Date ("Negotiation Period").

(b) **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. The Executive Director shall have the discretion to extend the ERN for one additional six month extension and not to exceed a total of 12 months from the original Effective Date.

(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 DEVELOPER.** During the Negotiation Period, Developer shall proceed diligently and in good faith to do all of the following:

(a) **DEPOSIT FEE.** Within (10) days following the Effective Date, Developer shall deliver to Agency a deposit of Ten Thousand Dollars (\$10,000).

(i) Provided that the Developer is not in default of this Agreement and if the terms of the DDA are otherwise not finalized during the Negotiation Period, the Deposit shall be returned to Developer.

(ii) If the Agency's governing Boards, at their sole discretion do not approve a negotiated DDA, Developer's Deposit shall be returned to Developer.

(iii) If the terms of the DDA are successfully negotiated and the Agency's Governing Boards, at their sole discretion, do approve the negotiated DDA, then the Developer's Deposit shall be applicable to the acquisition and/or project.

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

(i) Building evaluation and needs assessment, market and secure tenants, and propose a Project for the site. A complete conceptual development site plan for the Project that describes and depicts both: (1) the location and orientation of proposed buildings; and (2) the architecture 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 Project; and

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

(c) Within one hundred eighty (180) days following the Effective Date, Developer will submit to Agency staff for review:

(1) Proposed time schedule for commencement and completion of the Project; a written financial pro-forma in reasonable form and substance regarding the anticipated costs and returns to the Developer and to the Principal related to development, operation, and lease (as applicable) of the Project. Assumptions utilized for the pro-forma and a letters of commitment from all proposed tenants must be included in the submittal; and a proposed financing plan identifying financing sources for all private and public improvements proposed for the Project, by phase, if applicable.

(d) Developer's Principal shall, at least once each month throughout the Negotiation Period, meet and confer with the Agency concerning the ongoing progress of the required actions.

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

5. PREDEVELOPMENT COSTS. Developer shall bear all predevelopment costs relating to actions of Developer and its Principal under this Agreement. All fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer or Principal on behalf of 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 Property or the 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 Property or the 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 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 Property or the 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.

6. OBLIGATIONS OF THE AGENCY. During the Negotiation Period, 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 shall prepare the environmental documentation and consider the environmental effects of the 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 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.

(ii) 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 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 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.

(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 Project.

(b) **DELIVERABLES.** Within thirty (30) days following the Effective Date, Agency shall

(i) Provide electronic Auto Cad files of the conceptual plan for the Site (developed by HMR).

(c) Within one hundred eighty (180) days following the Effective Date, Agency shall

(1) complete remediation of the site including excavation of underground storage tanks and soil remediation.

(2) determine all funds available for the Project, if any, but in no event in an amount in excess of \$800,000.

6. 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 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 Property to the total or partial exclusion of Developer from redeveloping the Property, without Developer's written consent. The Agency may receive and retain unsolicited offers regarding redevelopment of the 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.

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

Responsible Party	Action	Project Schedule
Agency and Developer	Execute Exclusive Right to Negotiate (ERN).	Effective Date
Agency	Provide electronic Auto Cad files of the conceptual Plan for the Site (developed by HMR).	Month 1
Agency	Environmental remediation of the Site.	Month 1-6
Developer	Evaluate the building; Market it to potential tenants; Secure tenants; and propose a Project for the Site.	Month 1-4
Agency and Developer	Negotiate deal points of Project	Month 5-6

8. 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, in their respective sole discretion. 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 and absolute discretion of the Agency governing body and all legally required public hearings, public meetings, notices, factual findings and other determinations required by law.

9. 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. 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.

10. 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 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 outstanding balance of the Deposit, if any. In the event of such 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, 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.

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

12. AGENCY RELIANCE ON DEVELOPER. Developer understands and acknowledges that the Agency is entering into this Agreement with Developer because Developer and Principal have reputed financial capacity, specific expertise, experience, contacts and connections. But for Developer's representation that Principal is in charge of Developer based in part on the fact that Principal owns and/or will own the majority percentage of ownership of the Developer and of the Project, and that Principal manages and controls Developer and will continue to manage and control Developer throughout the Negotiation Period and through construction of the Project as evidenced by issuance of a Certificate of Completion, Agency would not otherwise have entered into this Agreement.

13. 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 Property or the redevelopment of the Project or the 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 Property to Developer or for the Agency to provide any financial or other assistance to Developer for redevelopment of the Project or the 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 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 Project may be established between Developer and the Agency, but it is understood and agreed between the Agency and Developer that the Project and the redevelopment of the 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 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 Project or of the 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 Property and/or the 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 Property and redevelopment of the Project on the 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 Project on the 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 and absolute 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 and absolute 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.

14. 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 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 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).

15. 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.

16. **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.

17. **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.

18. **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, 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.

19. **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: _____
LaShelle Dozier, Executive Director

Agency Counsel

DEVELOPER: Gerald W. Greenberg

Approved as to form:

By: _____
Gerald W. Greenberg

By: _____
Counsel for Developer