# RESOLUTION NO. 2007-029

Adopted by the Redevelopment Agency
of the City Of Sacramento

June 5, 2007

## APPROVAL OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH DOMUS DEVELOPMENT, LLC, FOR AGENCY-OWNED PROPERTIES LOCATED AT 12TH STREET IN THE VICINITY OF D AND E STREETS

## BACKGROUND

A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Alkali Flat Redevelopment Plan ("Redevelopment Plan") and a 2005 – 2009 Implementation Plan for the Alkali Flat Project Area ("Project Area").

B. Agency owns certain real property in the Project Area generally described as being located on the east side of 12th Street from the alley north of D Street south to E Street (APNs 002-0082-016; 002-0082-024; 002-0121-027; 002-0121-032; 002-0121-034; 002-0121-036; 002-0121-038) ("Property").

C. The Property is adjacent to the La Valentina Light Rail Station and the Property includes seven tax parcels that are zoned General Commercial or Residential Mixed Use by the City of Sacramento.

D. The Agency is seeking redevelopment of the Property for a transit-oriented development that would have a mix of retail/commercial and residential uses, with the residential units appealing to a range of household income levels.

E. A Selection Committee has evaluated the credentials of four teams that responded to a Request for Qualifications and has recommended a development team led by Domus Development, LLC ("Developer") to engage in pre-development activities intended to result in a specific project proposal for the Property and to negotiate terms of a Disposition and Development Agreement.

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

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

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Exhibit A – Exclusive Right to Negotiate Agreement

Adopted by the City of Sacramento Redevelopment Agency on June 5, 2007 by the following vote:

Ayes: Members Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Chair Fargo.

Noes: None.

Abstain: None.

Absent: None.

Chair Heather Fargo

Attest:

Shirley Concolino, Secretary

Exhibit A

# AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
# LA VALENTINA PROJECT

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

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

a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, as described in the Legal Description attached and incorporated in this Agreement by this reference. The Property is within Alkali Flat Neighborhood Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the Property ("Project") consistent with Alkali Flat Neighborhood Redevelopment Project Plan ("Redevelopment Plan") and its implementing documents has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.

b. The parties desire to investigate the feasibility of the Project and to negotiate a Disposition and Development Agreement ("DDA") for transfer, financing and development of the Property.

c. The development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.

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

a. Developer is Domus Development, LLC, a limited liability company, organized and doing business in the State of California. The principal office of Developer is located at 9 Cushing, Suite 200, Irvine, CA 92618. The project development office of Developer is located at 149 Fell Street, San Francisco, CA 94102. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer. Initially, the principals of Developer are Meea Kang, President and member; Jong C. Limb, member; and Monique R. Hastings, member.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 630 I Street, Sacramento, California 95814. If copy to Developer, send to principal office and to project development office.

c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention: La Valentina Project".

3. **EXCLUSIVE NEGOTIATION.** During the term of this Agreement, the parties shall negotiate exclusively with each other, and in good faith, regarding the Property and the Project. The parties acknowledge and agree that neither party is obligated by this Agreement or otherwise to undertake the Project or any other Project on the Property and that no party has a cause of action against the other arising under this Agreement for failure to approve or undertake the Project.

4. **TERM.** This Agreement shall be effective as of the Effective Date, and shall terminate upon the earlier of completion of all obligations or two hundred seventy (270) days after the Effective Date unless extended by written agreement of the parties.

5. **LEGISLATIVE ACTION.** Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This Agreement does not restrict the legislative authority of the Agency in any manner, whatsoever, and does not obligate the Agency to enter into the DDA or to take any course of action with respect to the Project.

a. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.

b. Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Planning Department, Design Review/Preservation Board and Building Department. If the Project is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise, this Agreement shall terminate as of the date of such disapproval.

6. **CEQA REVIEW**. In accordance with the California Environmental Quality Act ("CEQA"), 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.

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

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

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

7. **SCHEDULE OF PERFORMANCES**. The parties shall perform the following stated obligations at the times specified in the following schedule ("Schedule of Performances"). Items marked "Firm Deadline"are inflexible deadlines and failure to comply with them is a breach. Items not so marked are flexible milestones, and failure to meet a milestone date is not a breach of the Agreement but may be considered in determining the likelihood of a future breach of the Agreement:

| Responsible Party | **Action** | Due Date following Effective Date. Items marked with * are Firm Deadlines. |
|---|---|---|
| Developer | Submit Deposit | Within five (5) days* |
| Developer and Agency | Prepare work plan and schedule for negotiation, including preparation for community involvement | Within thirty (30) days |
| | | |
| Developer | Completes due diligence | Within sixty (60) days |
| Developer | Submits preliminary site plans, elevations, massing, development budget, financial analysis, entitlement actions required | Within ninety (90) days |
| Agency | Review of preliminary Developer documentation | Within one hundred and twenty (120) days |
| Developer | Holds first community meeting to make presentation to, and receive input from, the Alkali Flat Redevelopment Advisory Committee and other stakeholders. | Within one hundred and twenty (120) days |
| Developer | Prepares "design development" level of plans, budgets and *pro forma* | Within one hundred and fifty (150) days |
| Developer | Holds second community meeting and submits application for entitlements and Design Review/Preservation Board approvals | Within one hundred and eighty (180) days |
| Developer | Submits preliminary financing plan to Agency and obtains Environmental Remediation Plan from Sacramento County Environmental Management Department | Within two hundred and ten (210) days |
| Developer | Holds third community meeting | Within two hundred and forty (240) days |
| Developer | Submits evidence of equity and debt financing options for entire Project | Within two hundred and seventy (270) days |
| Developer and Agency | Parties agree to terms and conditions for Project DDA | Within two hundred and seventy (270) days* |

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

9. **DEPOSIT FEE**. Developer, shall deliver to Agency a deposit of Thirty-Nine Thousand Dollars and No Cents ($39,000.00) ("Deposit") not later than the fifth (5th) business day following the Effective Date. In the first ninety (90) days after the Effective Date, Developer may terminate the negotiations and this Agreement and Agency shall return the full amount of the "Net Deposit" (as defined below) to Developer. After ninety (90) days have elapsed following the Effective Date, Developer may terminate the negotiations and this Agreement and Agency shall return fifty percent (50%) of the Net Deposit to Developer. After one hundred and eighty (180) days, Agency shall retain the full amount of the Deposit; provided, however, that if Agency rejects a proposed DDA resulting from the negotiations under this Agreement, Agency shall refund the full amount of the Net Deposit.

a. Prior to execution of the DDA for the Project or termination of negotiations between Agency and Developer, Agency may expend the Deposit solely for payment of all third-party fees, costs and expenses (the "Third Party Costs") for predevelopment activities for the Project incurred by Agency, including, without limitation, costs related to preparation of the environmental documentation for the Project and supporting studies other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement. Funds remaining after payment of all Third Party Costs earned, are the "Net Deposit". Fifteen days prior to any such expenditures, Agency shall provide the Developer with a schedule of anticipated expenditures on the Third Party Costs. The parties anticipate that Third Party Costs will not exceed Thirty-Nine Thousand Dollars and No Cents ($39,000.00). If the actual expenditures exceed the anticipated amount the parties shall meet and confer with respect to the budget for such costs, and Agency is not obligated to continue with the Project until Developer has deposited such additional funds as may reasonably be needed to pay such remaining Third Party Costs. It is agreed and understood that the required Deposit is a Deposit only, and that to the extent that the costs of the Project exceed the Deposit, Developer is responsible for the payment of any and all such additional costs.

b. If Developer and Agency agree in writing to terminate the negotiations, the Net Deposit will be refunded to the Developer

c. If the terms of the DDA are not finalized during the negotiation period for any reason not considered in the foregoing, the Deposit is the property of the Agency, without restriction as to its use, unless the Agency agrees in writing to extend the negotiation period.

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

The defaulting party shall have thirty (30) days to cure the default after receipt of notice of such default. Should the defaulting party fail to cure the default within the thirty (30) days, the nondefaulting party may terminate this Agreement by written notice to the defaulting party, and may pursue equitable remedies available to it for such default. Should the Agency be in default, the Developer is entitled to the unencumbered remainder of the Deposit, if any. In the event of such a default by Developer, Agency may retain the Deposit and may terminate the 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 transfers prior to Project completion; (g) compliance with CEQA mitigation; (h) Agency's rights to revest the Property upon Developer default; and (i) Agency's Art in Public Places requirements; (j) extension fees for delay in construction, and liquidated damages; (k) Agency's

rights to cure defaults, assume loans and complete construction; (l) delayed transfer of title to land; and (m) loan guarantees and additional securities.

12. **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA.

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

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

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

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

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:_____
Anne M. Moore, Executive Director

Approved as to form:

_____
Agency Counsel

DEVELOPER: Domus Development, LLC

By: _____
Meea Kang
President and authorized signatory

Approved as to form:

By:_____
Counsel for Developer