



## **Staff Report**

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### RESOLUTION SELECTING MASTER DEVELOPER AND AUTHORIZING EXECUTION OF EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT FOR SHOREWAY PLACE

Honorable Chair and Board Members:

#### **Summary**

On February 12, 2008, the Redevelopment Agency adopted a Resolution 464 creating a unified development area for the Shoreway Place Project (the "UDA Resolution"). This was done pursuant to the Agency's owner participation rules allowing the Agency to identify parcels to be assembled and developed by a master developer. The UDA Resolution also authorized staff to solicit proposals for a master developer. The staff subsequently solicited proposals. The staff is now recommending that the Agency select the Bohannon Companies ("Bohannon") to be the master developer for the Shoreway Place parcels designated in the UDA Resolution and that the Agency authorize the City Manager to enter into a Exclusive Negotiating Rights Agreement ("ENRA") with Bohannon to provide for a period of negotiations for the agreements that would lead to redevelopment of the Shoreway Place parcels.

#### **Background**

As a part of its efforts to focus redevelopment activity, the Redevelopment Agency considered an area just south of Ralston east of Highway 101 for potential redevelopment. The parcels in that area are owned by the City, Empire Lumber and affiliates of Bohannon. On February 12, 2008, the Agency adopted the UDA Resolution designating those parcels as a unified development area and instructing staff to solicit proposals for the development of the area.

The request for proposals was sent to the owners in the Shoreway Place area. The Agency received only one proposal in response. The proposal was from Bohannon Companies and was consistent with the Agency's request for proposals. The proposal contemplates development of the parcels in phases with hotel, office, parking and other restaurant and commercial uses. There could be as many as 2 hotels, with 2 focused service or 1 full service and 1 focused service hotel. Office space would total approximately 300,000 square feet. Bohannon is an experienced Bay Area developer and owns the largest portion of the land in the Shoreway Place site. The Bohannon Companies is made up of two other Bohannon entities, David D. Bohannon Organization and Bohannon Development Company.

The staff recommendation is to select Bohannon Companies as the master developer of the

Shoreway Place site. If the Redevelopment Agency accepts the staff recommendation, then staff also recommends that the Agency authorize the Executive Director to enter into the ENRA with Bohannon. The ENRA would provide for a 180 day period for Agency negotiation with Bohannon of the agreements needed to accomplish redevelopment of the parcels. The Executive Director would also have authority to extend the term of the ENRA for up to an additional 180 days if sufficient progress is being made towards agreement. The ENRA will also provide for completion of certain pre-development tasks important to reaching agreement between the Agency and Bohannon.

The proposed resolution selecting the Bohannon Companies as the master developer and a draft of the ENRA are included with this report.

### **Discussion**

The staff recommends selection of Bohannon to be the master developer for several reasons. First, because Bohannon already has a large land ownership within the site, the need for future acquisition of privately-owned land is minimized. If all phases of the project were to be built, the only other privately-owned fee interest that would require acquisition is the Empire Lumber property.

Second, Bohannon is an experienced Bay Area developer who has developed and owned a number of high quality projects in the Bay Area including Hillsdale Mall and over 1,500,000 square feet of office and research and development space in Menlo Park.

Third, as confirmed by analysis by the Agency's financial consultants, Keyser Marston & Associates, Bohannon has the financial experience, contacts and capacity to take the project to successful completion.

If the Redevelopment Agency selects the Bohannon Companies as the master developer, then the Agency would enter into the ENRA with Bohannon. The ENRA is an agreement that provides for exclusive negotiations for the agreements necessary to obtain redevelopment of a site. In this case, the Agency and Bohannon would negotiate for an owner participation and disposition and development agreement ("OPDDA") that would provide for Bohannon's acquisition of the City-owned property on Sem Lane and the Empire Lumber property (if the owner is willing to sell or the Agency later, in its discretion, determines to use eminent domain to acquire that property). The ENRA would also provide for redevelopment of those parcels and the parcels Bohannon already owns in a manner consistent with the Redevelopment Plan and the City's General Plan and zoning regulation. In addition, the ENRA would provide for certain pre-development tasks including preparation of conceptual plans, a preliminary time schedule and phasing plan and preliminary financial plan. As noted above, the ENRA term would be 180 days with the Executive Director having authority to grant extensions for up to an additional 180 days if progress is being made towards reaching an agreement.

**General Plan/Vision Statement**

*Distinctive Community Character*

- Its small-town ambience sets it apart as a tranquil, safe and desirable place to live.

*Natural Beauty*

- Our natural surroundings inspire us to play, create and contemplate.
- Our actions today preserve and enhance Belmont's beauty to make it even lovelier for our grandchildren.

**Fiscal Impact**

There is no fiscal impact at this time beyond staff and consultant time to negotiate and prepare the OPDDA. The OPDDA, if later approved by the Agency, may have fiscal impacts on the Agency, but selecting the Bohannon Companies and entering into the ENRA will not commit the Agency to entering into an OPDDA or to any particular terms of an OPDDA.

**Public Contact.**

Affected property owners were solicited to submit proposals. The agenda was posted.

**Recommendation.**

Adopt attached Resolution selecting Master Developer and Authorizing Executive Director to Execute Exclusive Negotiating Rights Agreement for Shoreway Place.

**Alternatives.**

1. With direction, refer matter back to staff.
2. Take no action.

**Attachments.**

- A. Resolution Selecting Master Developer and Authorizing Executive Director to Execute Exclusive Negotiating Rights Agreement for Shoreway Place.
- B. Draft of Exclusive Negotiating Rights Agreement.

Respectfully submitted,

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Thomas Fil, Finance Director

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Jack Crist, Executive Director

**Staff Contact:**

Thomas Fil, Finance Director  
(650) 595-7435  
[tfil@belmont.gov](mailto:tfil@belmont.gov)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BELMONT REDEVELOPMENT AGENCY SELECTING MASTER DEVELOPER AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT FOR THE SHOREWAY PLACE PROJECT IN THE LOS COSTANOS PROJECT AREA**

**WHEREAS**, the City Council of the City of Belmont (the "City Council") has adopted the redevelopment plan (the "Redevelopment Plan") for the Los Costanos Redevelopment Project Area (the "Project Area") by Ordinance No. 692 on November 24, 1981, as amended by Ordinance No. 849 on September 10, 1991, Ordinance No. 887 on November 8, 1994, and Ordinance No. 1000 on May 11, 2004, and as may be further amended from time to time;

**WHEREAS**, the Agency is vested with responsibility pursuant to the Community Redevelopment Law (Part 1 of Division 24 of Health and Safety Code of the State of California) (the "Law") to implement the Redevelopment Plan in the Project Area as well as the responsibility for formulating and carrying out necessary redevelopment projects within the City;

**WHEREAS**, on February 12, 2008 the Agency passed Resolution No. 464 approving the assemblage of parcels in the Los Costanos Community Project Area, known as the Shoreway Place Project and as more particularly described in Exhibit A to the Exclusive Negotiating Rights Agreement ("ENRA") submitted to the Agency in connection with this resolution (the "Site"), to be developed by one master Bohannon Companies following the Amended and Restated Rules for Business Tenant Preference and Owner Participation in the Los Costanos Community Development Project Area (the "Rules") adopted by the Agency by Resolution No. 105 on May 28, 1991;

**WHEREAS**, the Agency issued a "Request for Proposals" ("RFP") in accordance with the Rules;

**WHEREAS**, the Agency received one proposal which was reviewed by Agency staff; based on that review, the Executive Director has recommended that the Agency to select David D. Bohannon Organization and Bohannon Development Company (collectively, the "Bohannon Companies") as the master developer for the Site and enter into an ENRA with Bohannon Companies;

**WHEREAS**, the Bohannon Companies' proposal contemplates development of the Site with hotel, office, restaurant and commercial uses as well as surface parking and parking structures to serve those uses;

**WHEREAS**, after review of the staff report and the proposal, the Agency Board desires to adopt the staff recommendation to select the Bohannon Companies as the master developer for the Site and authorize the execution of an ENRA with Bohannon Companies for a period of exclusive negotiations towards an Owner Participation and Disposition and Development Agreement ("OPDDA") between the Agency and Bohannon Companies providing for redevelopment of the Site or portions thereof;

**WHEREAS**, based on information contained in the proposal and the staff report, the Agency Board has concluded that Bohannon Companies has the requisite skill, experience and financial capacity to redevelop the Site and already are the owners of the largest portion of the Site.

**NOW THEREFORE, BE IT RESOLVED** that the Agency, pursuant to the Rules, hereby selects the Bohannon Companies to be the master developer for the Site, such designation to remain in effect so long as the ENRA remains in effect.

**BE IT FURTHER RESOLVED** that the Agency hereby authorizes the Executive Director to execute on behalf of the Agency the ENRA in substantially the form submitted to the Agency in connection with the consideration of this Resolution, subject to such minor changes as the Executive Director and Agency Counsel may approve.

**BE IT FURTHER RESOLVED** that the Executive Director and his designees are hereby authorized and directed to take such steps as are reasonable and necessary to performance of the Agency's obligations under the ENRA and to carry out the terms and conditions of the ENRA.

**BE IT FURTHER RESOLVED** that this Resolution shall take immediate effect upon adoption.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Redevelopment Agency of the City of Belmont at a regular meeting thereof held on June 10, 2008 by the following vote:

AYES, DIRECTORS: \_\_\_\_\_

NOES, DIRECTORS: \_\_\_\_\_

ABSTAIN, DIRECTORS: \_\_\_\_\_

ABSENT, DIRECTORS: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Redevelopment Agency

APPROVED:

\_\_\_\_\_  
Chair, Redevelopment Agency

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
(Shoreway Place Project)

This Exclusive Negotiating Rights Agreement (this "Agreement") is entered into as of this \_\_\_\_\_, 2008 (the "Effective Date") by and between the Belmont Redevelopment Agency, a public body, corporate and politic (the "Agency"), and the David D. Bohannon Organization, a California \_\_\_\_\_, and Bohannon Development Company, a California \_\_\_\_\_ (collectively, (the "Developer")), on the basis of the following facts:

RECITALS

A. The City Council of the City of Belmont (the "City Council") has adopted the redevelopment plan (the "Redevelopment Plan") for the Los Costanos Redevelopment Project Area (the "Project Area"), by Ordinance No. 692 on November 24, 1981, as amended by Ordinance No. 849 on September 10, 1991, as further amended by Ordinance No. 887 on November 8, 1994, and as further amended by Ordinance No. 1000 on May 11, 2004, and as may be further amended from time to time.

B. The Agency is vested with responsibility pursuant to the Community Redevelopment Law (Part 1 of Division 24 of Health and Safety Code of the State of California) (the "Law") to implement the Redevelopment Plan in the Project Area.

C. In accordance with the Redevelopment Plan and the Agency's rules for owner participation, the Agency has solicited and evaluated development proposals for approximately 8.6 acres of property at the intersection of Highway 101 and Ralston Avenue, commonly known as Shoreway Place, as is shown on the attached Exhibit A (the "Site"), from development entities, and, based on such evaluation, has selected the Developer as the entity with which to enter into exclusive negotiations for redevelopment of the Site. The Developer owns a portion of the Site.

D. The Developer has proposed developing the Site with hotel, office, restaurant and commercial uses as well as joint use parking structures including up to two hotels, one of which would be focused service and one of which would be full service or focused service, and approximately 300,000 square feet of buildings for office use (the "Development"). The Developer and the Agency expect the Development to be developed and constructed in phases with the first phase including a focused service hotel of at least 90 rooms with surface parking and the second phase including 300,000 square feet of office development combined with, in order of priority, either (i) a full service hotel, (ii) a second focused service hotel, or (iii) other commercial use and structured parking to serve all the use on the Site.

D. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Agency and the Developer of an owner participation and disposition and

development agreement (a "OPDDA") pursuant to which, among other matters: (1) the Agency would convey the to the Developer the portion of the Site owned by the City, (2) the Developer and the Agency would make good faith efforts to acquire the portion of the Site owned by a third party; and (3) the Developer would develop or serve as the master developer (through land leases, conveyances or joint ventures subject to and as permitted by the OPDDA) for the Development on the Site. As more fully set forth in Section 3.1, the Developer acknowledges and agrees that this Agreement in itself does not obligate either party to acquire or convey any property, does not grant the Developer the right to develop the Development, and does not obligate the Developer to any activities or costs to develop the Development, except for the preliminary analysis and negotiations contemplated by this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

### ARTICLE 1. EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations. The Agency and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of an OPDDA for the development of the Development on the Site. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory OPDDA.

Among the subjects to be addressed in the negotiations are the following:

- (a) purchase prices or consideration for conveyance of the portion Site the Agency will convey to the Developer including sale at the reuse value if necessary to make the Development feasible;
- (b) physical and land title conditions of the Site;
- (c) schedule for the Development and Development phasing;
- (d) financing of various portions of the Development;
- (e) density, intensity, mix and phasing of uses within the Development;
- (f) design and aesthetic considerations of the Development;
- (g) marketing and management of the Development; and
- (h) conditions for Developer's sale, lease or joint venture for Development of the Site.

(i) timing and location for relocation of the City corporation yard currently located on the Site.

Section 1.2 Negotiating Period.

(a) Subject to early termination in accordance with the provisions of subsection (b) below, the negotiating period (the "Negotiating Period") under this Agreement shall be one hundred eighty (180) days, commencing on the Effective Date, subject to extension by mutual agreement of the parties in writing. The Negotiating Period may be extended from time to time on the Agency's behalf by the Executive Director of the Agency if, in the Executive Director's judgment, sufficient progress toward a mutually acceptable OPDDA has been made during the initial one hundred eighty day Negotiating Period (or previously extended Negotiating Period) to merit such extension. However, the extensions granted by the Executive Director shall not cumulatively exceed one hundred eighty (180) days. The Negotiating Period may also be extended by mutual agreement of the parties.

(b) If a OPDDA has not been executed by the Agency and the Developer by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of subsection (a) above,), then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement except as set forth in Section 1.4 and except as described in Section 3.6 below. If an OPDDA is executed by the Agency and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed OPDDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of 1.1(a)), the Agency shall not negotiate with any entity, other than the Developer, regarding development of the Site, or solicit or entertain bids or proposals to do so. The foregoing shall not prevent the Agency from providing information regarding the Site and development thereof to persons or entities other than Developer.

Section 1.4. Good Faith Deposit. In consideration for this Agreement, the Developer has, prior to execution of this agreement by the Agency, provided to the Agency a cash deposit of Twenty-five Thousand Dollars (\$25,000) (the "Good Faith Deposit"). During the term of this Agreement, the Agency shall invest the Good Faith Deposit for purposes of earning interest thereon. If the parties enter into an OPDDA, the Good Faith Deposit shall be disposed of as specified in the OPDDA.

If this Agreement is terminated without execution of an OPDDA for any reason other than the Developer's breach of its obligation to negotiate in good faith, then the Good Faith Deposit and any interest earned thereon shall be refunded promptly to the Developer.

If this Agreement is terminated by the Agency at any time due to a breach of the Developer's obligation to negotiate in good faith, then the Good Faith Deposit and any interest earned thereon shall be retained by the Agency, as more fully provided in Section 3.6.

ARTICLE 2.  
NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the OPDDA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable OPDDA prior to the expiration of the Negotiating Period.

Section 2.2 Purchase Price or Other Consideration for the Site. The Agency and the Developer shall seek to agree upon the purchase price or other consideration for the various portions of the Site that the Agency would convey to the Developer. The proposed purchase price or other consideration for various portions of the Site shall be subject to confirmation and refinement pursuant to the formal reuse appraisal and the noticed hearing and City Council finding process to be conducted in accordance with Health and Safety Code Section 33433, as further described in Section 2.7 below.

Section 2.3 Financing and Costs of Development. Within ninety (90) days following the Effective Date, the Developer shall provide the Agency with a detailed financial analysis for the Development containing, among other matters, a development budget and operating proforma setting forth the costs and revenues associated with acquiring the Site, and developing and operating the Development. The detailed financial analysis to be submitted by the Developer will be used to evaluate the financial feasibility of the Development and to assist in the negotiation of terms regarding payment of costs of land and development. The Developer shall cooperate with the Agency and the Agency's financial consultants in preparing the financial analysis with the goal of reaching a mutually acceptable approach to evaluating financial feasibility of the Development. Nothing in this Agreement commits either party to a particular purchase price or any level of financial contribution for the Development.

Section 2.4 Hotel Operator Commitments. The Developer shall make good faith and diligent efforts to identify and obtain binding commitments from a qualified hotel operator for operation of the initial focused service hotel that is to be part of the Development.

Section 2.5 Schedule of Performance. At the time of delivery of the detailed financial analysis described in Section 2.3, the Developer shall provide the Agency with a proposed detailed schedule of performance for the Development which shall include, but not be limited to: the dates for obtaining land use entitlements and financing commitments for the Development, the date for completion of construction plans, the date for close of escrow on the conveyance of the Site, and the dates for the commencement and completion of construction of the Development. The schedule of performance shall outline the Developer's proposed phasing of the Development.

Section 2.6. Planning and CEQA Review. The Developer may apply for City permits and approvals for the Development prior to entering into an OPDDA with the Agency.

Developer acknowledges that, in conjunction with the City permits and approvals and Agency consideration of a OPDDA for the Development, it will be necessary to undertake environmental review of the Development pursuant to CEQA and that that environmental review may require preparation of an environmental impact report for the Development. Developer will pay all costs charged by the City in conjunction with the applications for City permits and approvals including all costs associated with environmental review and, if necessary, preparation of an environmental impact report.

Section 2.7 Section 33433 Report. The Agency shall prepare the necessary documentation pursuant to Section 33433 of the California Health and Safety Code to be submitted to the Agency Board and the City Council of the City of Belmont in conjunction with the Agency's and the City's consideration of any OPDDA that is prepared under this Agreement. The Section 33433 report shall contain the cost of the OPDDA to the Agency, the estimated value of the Site determined at its highest and best use under the Redevelopment Plan and, if required, the estimated value of the Site determined at the use and with the conditions, covenants and development costs required pursuant to the OPDDA.

Section 2.8 Progress Reports. From time to time as reasonably agreed upon by the parties, each party shall make oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Development.

### ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the Agency or the Developer to enter into an OPDDA, to enter into any particular OPDDA, or to enter into an OPDDA on or containing any particular terms. By execution of this Agreement (and any extension of the Negotiating Period), the Agency is not committing itself to or agreeing to undertake disposition of the Site. Execution of this Agreement by the Agency is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Agency and City action the final discretion and approval regarding the execution of a OPDDA and all proceedings and decisions in connection therewith. Any OPDDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such OPDDA has been considered and approved by the Agency Board and, if required by law, the City Council of the City, following conduct of all legally required procedures, and executed by duly authorized representatives of the Agency and the Developer. Until and unless a OPDDA is signed by the Developer, approved by the Agency Board, and executed by the Agency, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into a OPDDA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. This Agreement does not constitute a commitment on the part of the Agency to purchase any portion of the Site. This Agreement does not limit in any way the discretion of the City in acting on any applications for permits or approvals for the Development. The Agency and the City retain the absolute discretion before

action on the Development by the Agency or the City Council to (i) subject to the agreement of the parties, make such modifications to the OPDDA and the Development as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided or (iv) determine not to proceed with the Development.

Section 3.2 Notices. Formal notices, demands and communications between the Agency and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Agency: Belmont Redevelopment Agency  
106 Lincoln Avenue  
Belmont, California 93901  
Attention: Thomas Fil

Developer: Bohannon Companies  
60 31<sup>st</sup> Avenue  
San Mateo, California 94403  
Attention: Scott Bohannon

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against any portion of the Site with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Costs and Expenses. Except as otherwise expressly provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 3.5 No Commissions. Each party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement and any resulting OPDDA. If a real estate commission is claimed through either party in connection with the transaction contemplated by this Agreement or any resulting OPDDA, then the party through whom the commission is claimed shall indemnify, defend and hold the other party harmless from any liability related to such commission. The provisions of this section shall survive termination of this Agreement.

Section 3.6 Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the Agency, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to repayment of the entire amount of the Good Faith Deposit and any interest earned thereon, and neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's obligation pursuant to Sections 2.6, 3.3, 3.4, 3.5 and 3.9 shall survive such termination.

In the event of an uncured default by the Developer, the Agency's sole remedy shall be to terminate this Agreement and to retain the entire Good Faith Deposit and any interest earned thereon. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the Developer's obligation pursuant to Sections 2.6, 3.3, 3.4, 3.5 and 3.9 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 3.7 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party (including fees and costs in any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement). The Superior Court of the County of Monterey shall be the situs and have jurisdiction for the resolution of all such actions.

Section 3.8 Confidentiality of Information. While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the Agency will need sufficient, detailed information about the proposed Development (including, without limitation the financial information described in Section 2.3) to make informed decisions about the content and approval of the OPDDA. The Agency will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on the Agency by the Public Records Act (Government Code Section 6253 et seq.). The Developer acknowledges that the Agency may share information provided by the Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the Agency concerning matters related to this Agreement and to Agency Board members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of an OPDDA, the Agency shall return to the Developer any confidential information submitted by the Developer under this

Agreement. If any litigation is filed seeking to make public any information Developer submitted to the Agency in confidence, the Agency and Developer shall cooperate in defending the litigation. The Developer shall pay the Agency's reasonable costs of defending such litigation and shall indemnify the Agency against all costs and attorneys fees awarded to the plaintiff in any such litigation.

Section 3.9 General Indemnity. The Developer shall indemnify, defend and hold the Agency, the City and their respective officers, employees, representatives and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) which arise out of the performance of this Agreement by the Developer and its directors, officers, employees, agents or owners; provided, however, that this indemnification obligation shall not extend to any matters arising from the sole negligence or willful misconduct of any of the Agency, the City or their respective officers, employees, representatives and agents..

Section 3.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.11 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 3.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.13 Assignment. The Developer may not transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the Agency, which consent shall be granted or withheld in the Agency's sole discretion, and any such attempted transfer or assignment without the prior written consent of Agency shall be void.

Section 3.14 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Agency and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.15 Warranty of Authority. Each of the entities constituting the Developer hereby covenant and warrant that it is a duly authorized and existing \_\_\_\_\_ in good standing and qualified to do business in the State of California; that it has full right, power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreements were duly authorized by proper action of each and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement except as have been obtained and are in full force and effect, and that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the Developer and/or the entities constituting the Developer.

Section 3.16 Actions By The Agency. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the Agency, the approval, consent, authorization, or waiver of the Executive Director shall constitute the approval, consent, authorization or waiver of the Agency without further action of the Agency Board.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the parties on the date first above written.

AGENCY:

BELMONT REDEVELOPMENT AGENCY, a public body corporate and politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVES AS TO FORM:

By: \_\_\_\_\_  
Agency Counsel

DEVELOPER:

DAVID BOHANNON ORGANIZATION, a California \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

BOHANNON DEVELOPMENT COMPANY, a California \_\_\_\_\_

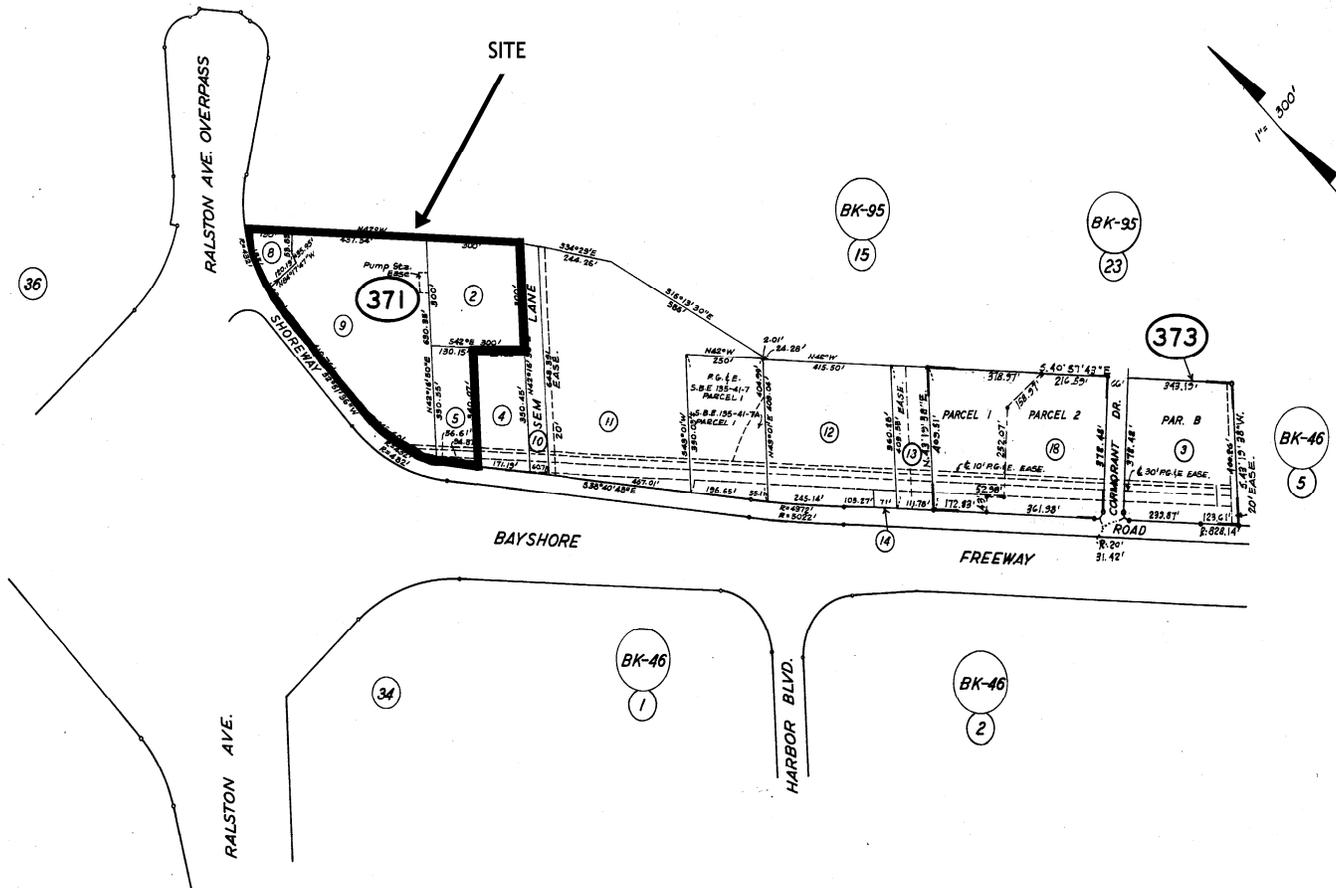
By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A  
SITE MAP

TAX CODE AREA \_\_\_\_\_

40-37



ASSESSOR'S MAP COUNTY OF SAN MATEO, CALIF.

△ PARCEL MAP VOL 55/90  
△ PARCEL MAP VOL 51/49  
ACREAGE CITY OF BELMONT

MAY 18 2007