



Staff Report

DISCUSSION AND DIRECTION REGARDING CONSIDERATION OF RESOLUTION APPROVING THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF BELMONT AND DAVID D. BOHANNON ORGANIZATION AND BOHANNON DEVELOPMENT COMPANY (SHOREWAY PLACE PROJECT)

Honorable Chair and Board Members:

Summary

Since early 2008, the Agency has been engaged in a planning process to redevelop the 8.6 acres of property at the intersection of Highway 101 and Ralston Avenue located within the Los Costanos Redevelopment Project Area ("Shoreway Place Project"). Last September, the Redevelopment Agency of the City of Belmont ("Agency") determined that David D. Bohannon Organization and Bohannon Development Company (collectively, "Bohannon") has the requisite skill, experience, and financial capacity to redevelop the Site and selected Bohannon to be the master developer for the Shoreway Place Project with an Exclusive Negotiation of Rights Agreement ("Prior ENR Agreement").

Since that time, staff and Bohannon have been in active discussions regarding the Shoreway Place Project. In light of these discussions, Agency staff and Bohannon have substantially revised the Prior ENR Agreement. Staff now seeks an opportunity to discuss the attached Revised Exclusive Negotiating Rights Agreement ("ENR Agreement") for redevelopment of the Shoreway Place Project Site with the Agency Directors and obtain direction on the Agency's adoption of the attached draft resolution for the September 8, 2009 regular meeting.

Background

The Los Costanos Community Development Plan ("Plan") for the Los Costanos Community Development Project Area ("Project Area") was adopted by the City Council in 1981. On May 28, 1991, the Agency adopted the Amended and Restated Rules for Business Tenant Preference and Owner Participation for the Los Costanos Community Development Area ("Rules").

On February 12, 2008, the Agency created a unified development area for the Site by adoption of Resolution No. 464, to facilitate redevelopment of the Site by a master developer and authorized staff to solicit proposals for a master developer. The Site is made up of parcels owned by several owners, including the City, Bohannon affiliates, and Empire Lumber. Shortly thereafter, the Agency issued a request for proposals for redevelopment of the Site at which time the request was

distributed to owners of affected parcels within the Site and such other persons or entities deemed potential developers of the Site.

In response to the request, the Agency received one proposal from Bohannon, which proposal provided for redevelopment of the Site in phases with hotel, office, restaurant and commercial uses, including parking.

On July 8, 2008, after it was brought to the Agency's attention that certain property owners and ground lessees had not received the request for proposals, the Agency adopted Resolution No. 474, directing staff to re-circulate the request for proposals and re-distribute the request. Thereafter, on July 9, 2008, the request for proposals was re-circulated and re-distributed, but no additional proposals were submitted for consideration.

On September 9, 2008, the Agency determined that Bohannon has the requisite skill, experience, and financial capacity to redevelop the Site and selected Bohannon to be the master developer for the Shoreway Place Project by adoption of Resolution No. 481. By the same resolution, the Agency approved an earlier draft version of an Exclusive Negotiation of Rights Agreement or Prior ENR Agreement.

Since September 8, 2009, staff and Bohannon have been in active discussions regarding the Shoreway Place Project. In light of these discussions, Agency staff and Bohannon have substantially revised the Prior ENR Agreement. Staff seeks direction on approval of the ENR Agreement attached to this report.

Discussion

Bohannon has proposed developing the Site with the Shoreway Place Project, which is comprised of 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. Bohannon and Agency expect the Shoreway Place Project to be developed and constructed in phases with the first phase consisting of an ACCOR "Phoenix" concept 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 uses on the Site.

The ENR Agreement provides the terms under which the Agency and Bohannon will negotiate proposed agreements for redevelopment of the Site. It sets forth the terms by which the Agency and Bohannon will make a preliminary determination on the feasibility of the proposed Shoreway Place Project from a design, financial and market perspective, including Bohannon's responsibility to undertake good faith and diligent efforts to identify and obtain binding commitments from ACCOR for operation of the Phoenix focused service hotel that is to be part of the initial phase.

The ENR Agreement also establishes procedures and standards for the negotiation of an owner participation and disposition and development agreement ("OPDDA"), if both parties desire to continue with the Shoreway Place Project, pursuant to which:

- (1) the Agency would acquire and convey to Bohannon the portion of the Site owned by the City;
- (2) Bohannon and the Agency would make good faith efforts to acquire the portion of the Site owned by a third party; and
- (3) Bohannon 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 redevelopment on the Site.

General Plan/Vision Statement

Thriving Economy -

1. Our economy prospers with a mix of attractive, successful businesses that fit with our community character.
2. We look first in our own shops and restaurants for what we need.
3. Education, arts and the economy flourish in concert.

Fiscal Impact

No fiscal impact at this time beyond staff and consultant time to negotiate and prepare the OPDDA. The OPDDA itself, if approved by the Agency, may have fiscal impacts on the Agency.

Public Contact

Posting of City Council/Redevelopment Agency Agenda. The proposed Master Developer has been contacted.

Recommendation

Staff seeks an opportunity to discuss the attached ENR Agreement for redevelopment of the Shoreway Place Project Site with the Agency Directors and obtain direction on the Agency's adoption of the attached draft resolution for the September 8, 2009 regular meeting.

Alternatives

1. Take no action.
2. After discussion with staff, consider alternative milestones and due dates in Exhibit B, Schedule of Performance to the ENR Agreement.
3. Provide other direction and refer matter back to staff.

Attachments

- A. Draft Resolution Approving the Exclusive Negotiating Rights Agreement between the Redevelopment Agency of the City of Belmont and David D. Bohannon Organization and Bohannon Development Company (Shoreway Place Project).
- B. Draft Exclusive Negotiating Rights Agreement between David D. Bohannon Organization and Bohannon Development Company (Shoreway Place Project).

Respectfully submitted,

Thomas Fil
Finance Director

Jack Crist
Executive Director

Staff Contact:

Thomas Fil, Finance Director
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REDEVELOPMENT AGENCY RESOLUTION NO. _____

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF BELMONT
APPROVING THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN
THE REDEVELOPMENT AGENCY OF THE CITY OF BELMONT AND DAVID D.
BOHANNON ORGANIZATION AND BOHANNON DEVELOPMENT COMPANY
(SHOREWAY PLACE PROJECT)**

WHEREAS, the City Council of the City of Belmont adopted the Los Costanos Community Development Plan ("Plan") for the Los Costanos Community Development Project Area ("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, Ordinance No. 1000 on May 11, 2004, and Ordinance No. 1040 on November 12, 2008; and

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

WHEREAS, on May 28, 1991, the Agency adopted the Amended and Restated Rules for Business Tenant Preference and Owner Participation in the Los Costanos Community Development Project Area ("Rules") by Resolution No. R.A. 105; and

WHEREAS, since early 2008, the Agency has been engaged in a planning process to redevelop the 8.6 acres of property at the intersection of Highway 101 and Ralston Avenue ("Site") located within the Los Costanos Redevelopment Project Area; and

WHEREAS, during this time, the Agency issued a request for proposals for redevelopment of the Site and distributed the request to the owners of the Site and such other persons or entities staff deemed appropriate as potential developers of the Site, all in accordance with the Rules. On July 9, 2008, the request for proposal was re-circulated and distributed to ground lessees in addition to the above-mentioned recipients; and

WHEREAS, the Agency received one proposal from David D. Bohannon Organization, a California corporation, and Bohannon Development Company, a California corporation (collectively, "Bohannon"); and

WHEREAS, Bohannon's proposal contemplates development of the Site in phases with hotel, office, restaurant and commercial uses, including parking ("Project").

WHEREAS, on September 9, 2008, the Agency determined that Bohannon has the requisite skill, experience, and financial capacity to redevelop the Site and selected Bohannon as the entity with which to enter into exclusive negotiations for redevelopment of the Site with hotel, office, restaurant and commercial uses as well as joint use parking structures; and

WHEREAS, on September 9, 2008, the Agency authorized the Executive Director and his designees to enter into an earlier draft of an Exclusive Negotiating Rights Agreement for exclusive negotiations of an owner participation and disposition and development agreement; and

WHEREAS, since September of 2008, the Agency and Bohannon have been engaged in active discussions regarding redevelopment of the Site and the Project, and have made substantial changes to the earlier draft Exclusive Negotiating Rights Agreement; and

WHEREAS, in light of the substantial changes to the rights and obligations of the parties originally contemplated under the draft Exclusive Negotiating Rights Agreement, staff seeks Agency's approval of, and authorization to execute, the attached Exclusive Negotiating Rights Agreement ("ENR Agreement"); and

WHEREAS, Bohannon has agreed to the terms of the ENR Agreement and staff recommends its approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED that the Redevelopment Agency of the City of Belmont does hereby approve the attached ENR Agreement between the Redevelopment Agency of the City of Belmont and David D. Bohannon Organization and Bohannon Development Company, and authorizes the Executive Director to execute on behalf of the Agency the ENR Agreement, 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 ENR Agreement and to carry out the terms and conditions of the ENR Agreement.

* * * * *

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 September 8, 2009, 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 11th day of August, 2009 (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 corporation, and Bohannon Development Company, a California corporation (collectively, the "Developer") (Agency and Developer are sometimes referred to individually herein as a "Party," and collectively as the "Parties"), 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, 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.

B. The Agency is vested with responsibility pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the California Health and Safety Code) (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 uses on the Site.

E. The Agency and the Developer desire to enter into this Agreement in order to set forth the terms under which the Parties will make a preliminary determination on the feasibility of the proposed Development from a design, financial and market perspective, and, if desired by both Parties, to establish procedures and standards for the negotiation of an owner participation

and disposition and development agreement (an "OPDDA") pursuant to which, among other matters: (1) the Agency would acquire and convey 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 as otherwise expressly set forth herein.

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 agree for the Negotiating Period described in Section 1.2, to work together cooperatively and in good faith to make a preliminary feasibility determination, and, if the Development is determined to be feasible by both Parties, to negotiate diligently and in good faith 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 preliminary feasibility determination and, if applicable, the negotiation of a mutually satisfactory OPDDA.

Section 1.2 Negotiating Period. The negotiating period (the "Negotiating Period") shall be conducted in two stages, the combined initial term of which shall not exceed fifteen (15) months, commencing on the Effective Date. Unless extended as provided below, the first stage of the Negotiating Period (the "Preliminary Stage") shall commence on the Effective Date and expire on May 31, 2010. On or before expiration of the Preliminary Stage, the Parties shall work together in good faith to determine whether the proposed Development is viable from a financial, design and market demand perspective. If either Party determines in its sole discretion that the proposed Development is infeasible, such Party may terminate this Agreement by written notice to the other Party; the Good Faith Deposit, and any interest earned thereon, shall be fully refunded to the Developer; 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 Agency and Developer each determine that the proposed Development is feasible, the Parties shall proceed to the second stage of the Negotiating Period (the "Planning Stage"), which shall commence on the date the Parties make such feasibility determination, and unless extended as provided below, shall expire on the date which is fifteen (15) months following the Effective Date. The Preliminary Stage and/or Planning Stage of the Negotiation Period may each be extended from time to time on the

Agency's behalf by the Executive Director of the Agency if the Executive Director determines in his sole discretion that Developer has made substantial progress toward meeting the performance milestones identified in the schedule attached hereto as Exhibit B (the "Schedule of Performance") to merit such extension. However, the cumulative total of all such extensions granted by the Executive Director shall not exceed one hundred eighty (180) days. The Negotiating Period may also be extended by mutual written agreement of the Parties. If an OPDDA has not been executed by the Agency and the Developer by the expiration of the Planning Stage of the Negotiating Period, 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 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, less any amounts expended by Agency to reimburse Agency for Eligible Costs as provided in Section 3.4 below, 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; Schedule of Performance; Progress Reports. To facilitate the making of the initial feasibility determination and, if applicable, negotiation and execution of a mutually acceptable OPDDA prior to the expiration of the Negotiating Period, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in the Schedule of Performance within the times set forth therein. Each Party shall keep the other advised as to the status of all work to be undertaken by or on its behalf as described in the Schedule of Performance. Within ten (10) days following either Party's request, which may be made from time to time during the Negotiation Period, the other Party shall submit to the requesting Party a written progress report advising the requesting Party on the status of all work being undertaken by or on its behalf.

Section 2.2 Preliminary Stage Negotiations.

(a) Purpose. In light of the many challenges to potential redevelopment of the Site, the Parties acknowledge that it is mutually beneficial to make a preliminary determination as to the feasibility of the proposed Development prior to commencing negotiation of an OPDDA. Accordingly, the Parties agree to work together in good faith during the Preliminary Stage to determine whether the proposed Development is potentially feasible in light of, among other factors, Site acquisition and assembly costs, availability of financing, construction and development costs and market demand for the proposed uses, including a new focused services hotel proposed by ACCOR. If, during the Preliminary Stage, either the Agency or the Developer determine in its sole discretion that the Development is infeasible, that Party may terminate this Agreement as provided in Section 1.2 above.

(b) ACCOR Preliminary Commitments. Within the time specified in the Schedule of Performance, the Developer shall undertake good faith, diligent efforts to obtain a preliminary commitment letter from ACCOR for development and operation of the focused service hotel proposed to be included within the initial phase of the proposed Development which would replace the existing Motel 6.

(c) Financing and Costs of Development. Within the time specified in the Schedule of Performance, 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, including ACCOR's proposed new focused service hotel ("Financial Analysis"). The 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.

(d) Basic Concept Drawings. Within the time specified in the Schedule of Performance, the Developer shall provide the Agency with conceptual drawings for the Development, including materials; color board; a rendered perspective of the focused service hotel, office buildings and other proposed buildings; preliminary landscape plans (as shown on a site plan); and a traffic and circulation plan (collectively, the "Basic Concept Drawings")

Section 2.3 Planning Stage Negotiations.

(a) Purpose. Provided Agency and Developer have each determined in its sole discretion that the proposed Development is feasible, the Parties shall work together cooperatively and good faith during the Planning Stage to negotiate the terms and conditions of the proposed OPDDA and to meet their other respective obligations set forth herein and in the Schedule of Performance.

(b) Negotiation Items. The items to be addressed in the Planning Stage negotiations shall include, without limitation, the following:

(1) the design and operation requirements, including quality standards, for ACCOR's proposed focused service hotel;

(2) allocation of costs associated with acquisition of property interests that would need to be acquired to effectuate the proposed Development;

(3) purchase prices or consideration for conveyance of the portion of the Site the Agency would convey to the Developer, including sale at the reuse value if necessary to make the Development feasible. 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 2.3(d) below;

(4) physical and land title conditions of the Site;

(5) schedule for the Development and Development phasing, which shall include the dates for obtaining land use entitlements and financing commitments for the Development, the dates for completion of design development drawings for the Development, the dates for close of escrow on the conveyance of each portion of the Site, and the dates for the commencement and completion of construction of each phase of the Development;

(6) financing of various portions of the Development;

(7) density, intensity, mix and phasing of uses within the Development;

(8) design and aesthetic considerations of the Development;

(9) marketing and management of the Development;

(10) conditions for Developer's sale, lease or joint venture for development of the Site; and

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

(c) 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. The Developer acknowledges that, in conjunction with the City permits and approvals and the Agency consideration of an OPDDA for the Development, it will be necessary to undertake environmental review of the Development pursuant to CEQA and that such environmental review may require preparation of an environmental impact report for the Development. The 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.

(d) 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.

(e) Hotel Operator Binding Commitments. Within the time specified in the Schedule of Performance, the Developer shall undertake good faith and diligent efforts to identify and obtain binding commitments from ACCOR for operation of the focused service hotel that is to be part of the initial phase of the Development.

Section 2.4 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 an 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 an 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 an 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
One Twin Pines Lane, Suite 320
Belmont, California 94002
Attention: Thomas Fil

with a copy to: Belmont Redevelopment Agency
One Twin Pines Lane, Suite 320
Belmont, California 94002
Attention: City Attorney

Developer: David D. Bohannon Organization
60 31st Avenue
San Mateo, California 94403
Attention: Scott Bohannon

and Bohannon Development Company
60 31st 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. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken during the Preliminary Stage of the Negotiating Period. If Agency and Developer have each determined that the proposed Development is feasible and proceed to the Planning Stage of the Negotiating Period, then Developer shall pay Agency's actual out-of-pocket expenses incurred during the Planning Stage which are payable to third parties for appraisals, title examination and Site investigation, relocation plans and estimates and business good will estimates and

evaluations (but excluding Agency's staff costs and attorneys fees in connection with the Planning Stage negotiations) (collectively, "Eligible Costs"). Agency shall be authorized to pay for such Eligible Costs from the Good Faith Deposit and shall notify Developer monthly in writing of the amount drawn by Agency to pay such expenses. The notice shall include copies of all invoices paid from the Good Faith Deposit. Within ten (10) business days of each such notice, Developer shall either deposit additional cash with Agency so that the Good Faith Deposit is maintained at \$25,000.00. Agency will promptly notify Developer in the event the total Eligible Costs are expected to exceed \$50,000.00.

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) days 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 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 2.3(c), 3.3, 3.4 and 3.5 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 2.3(c), 3.3, 3.4 and 3.5 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 Venue. The Superior Court of the County of San Mateo 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 2.2(c)) 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 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.10 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

Section 3.11 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 3.12 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 3.13 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 3.14 Warranty of Authority. Each of the entities constituting the Developer hereby covenant and warrant that it is a duly authorized and existing corporation 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 3.15 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.

Section 3.16 Joint and Several. If the Developer consists of more than one entity or person, the obligations of the Developer hereunder shall be joint and several.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

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: _____

APPROVED AS TO FORM:

By: _____
Agency Counsel

DEVELOPER:

DAVID BOHANNON ORGANIZATION, a California corporation

By: _____

Its: _____

BOHANNON DEVELOPMENT COMPANY, a California corporation

By: _____

Its: _____

EXHIBIT A

SITE MAP

[to be inserted]

DRAFT

EXHIBIT B

SCHEDULE OF PERFORMANCE

1.	Within 30 days of the Effective Date.	Developer submits to Agency for review and approval or disapproval a complete list of development team members, including legal counsel, civil engineer, architect, structural engineer and financial partners ("Development Team Submission").
2.	Within 3 months of the Effective Date.	Developer provides the Agency with Basic Concept Drawings for the Development.
3.	Within 6 months of the Effective Date.	Developer provides the Agency with the Financial Analysis for the Development.
		Developer submits to Agency a preliminary non-binding commitment letter from ACCOR regarding development and operation of an initial focus services hotel in the initial phase of the proposed Development.
4.	Promptly following submittal of the Basic Concept Drawings, Financial Analysis and hotel operator non-binding commitment letter, and in any event prior to expiration of the Preliminary Stage.	Agency and Developer shall meet and confer (and include ACCOR if so requested by ACCOR) to review the Basic Concept Drawings and Financial Analysis, discuss progress on developing the hotel concept, including design and operating quality standards, for the initial focus services hotel, and perform such further analysis as is reasonably necessary for the Parties to each make its independent feasibility determination regarding the proposed Development.
5.	Within 60 days after commencement of the Planning Stage.	City, at Developer's expense, retains CEQA consultant to prepare appropriate environmental analysis of proposed Development.
		Agency, at Developer's expense, obtains Phase I environmental assessment of the Site.
6.	Within 90 days after commencement of the Planning Stage.	Developer submits revised and updated Financial Analysis, including a financial pro forma reflecting revised estimates of operating revenues and expenses, as well as current construction costs and a financial analysis describing the sources of debt and equity for the Project and setting forth the Developer's projected return on its equity investment.

		Agency, at Developer's expense, obtains preliminary appraisals, including goodwill and relocation cost estimates, for the various portions of the Site that the Agency would convey to the Developer.
		Developer submits executed agreement(s) with ACCOR for the operation of the initial focus services hotel, the design and operating quality standards of which are acceptable to Agency.
		Developer submit to Agency, detailed drawings and specifications with respect to the Development, which must be consistent with the Basic Concept Drawings and include, among other requirements of filing, a fully dimensioned and detailed Site plan, which includes a landscape plan, with hardscape plans, sections and elevations, floor plans, roof plans, elevations and project sections, tabulation of areas/uses, and elevations of major public spaces.
7.	Within 120 days after commencement of the Planning Stage.	Developer reaches agreement with Agency on term sheet for proposed OPDDA.
8.	Prior to expiration of Negotiating Period.	Parties to complete negotiation and drafting of proposed OPDDA.