



## **Staff Report**

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RESOLUTION APPROVING A FIRST AMENDMENT TO 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**

Approval of the attached resolution will approve a first amendment to the current Exclusive Negotiating Rights Agreement (ENR Agreement) between the Redevelopment Agency of the City of Belmont (“Agency”) and David D. Bohannon Organization and Bohannon Development Company (Shoreway Place Project), extending the negotiating period by 3 months.

### **Background**

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”). In September of 2008, the Agency determined that David D. Bohannon Organization and Bohannon Development Company (collectively, the “Bohannons”) 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 (ENR Agreement).

The ENR Agreement was executed by both parties on October 1, 2009, and included a Schedule of Performance (“Schedule”) which established performance milestones for the Project. The Agreement is set to expire on March 31, 2011.

### **Discussion**

Thus far, the Bohannons have satisfied the first four milestones set forth in the Schedule (Exhibit B of the ENR): 1) submittal of a complete list of development team members; 2) submittal of Basic Concept Drawings; 3) submittal of Financial Analysis; and 4) submittal of a preliminary non-binding commitment letter from Accor.

Due to the current economic conditions and volatility in the market making it difficult to determine the Project’s feasibility, Bohannon has submitted a request for an additional 3-month extension (Pursuant to Section 1.2 of the ENRA) for the Negotiating Period and the Planning Stage. Such an extension will allow for more time to facilitate the feasibility determination of the Project and, if

applicable, the negotiation and execution of a mutually acceptable Owner Participation and Disposition and Development Agreement (“OPDDA”).

A first amendment to the ENR Agreement would authorize an extension of the Negotiation Period to allow for completion of the Preliminary Stage negotiations and a revision to certain performance milestones set forth in the Schedule of Performance.

**General Plan/Vision Statement**

No impact.

**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.

**Recommendation**

Staff recommends approval of the attached resolution.

**Alternatives**

1. Take no action.
2. Direct staff to return with alternative milestones and due dates in Schedule of Performance to the ENR Agreement.
3. Provide other direction and refer matter back to staff.

**Attachments**

- A. Resolution Approving a First Amendment to 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. First Amendment to the Exclusive Negotiating Rights Agreement (Shoreway Place Project)

Respectfully submitted,

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Thomas Fil  
Finance Director

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Greg D. Scoles  
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 A FIRST AMENDMENT TO 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**, on October 1, 2009, the Redevelopment Agency of the City of Belmont (“Agency”) entered into an Exclusive Negotiating Rights Agreement (“ENR”) with David D. Bohannon Organization, a California corporation, and Bohannon Development Company, a California corporation (collectively, the “Developer”) providing for, among other things, Agency and Developer to exclusively negotiate agreements for Developer's potential acquisition and development of that certain approximately 8.6 acres of property at the intersection of Highway 101 and Ralston Avenue, commonly known as Shoreway Place (the “Site”, as defined in the ENR); and,

**WHEREAS**, the ENR is currently scheduled to expire on March 31, 2011; and,

**WHEREAS**, Developer has completed the first four performance milestones set forth in the Schedule of Performance (Exhibit B of the ENR) and, due to the current economic conditions and volatility in the market making it difficult to determine the Project’s feasibility, has requested an additional 3-month extension to complete the feasibility analysis to be conducted during the Preliminary Stage, as defined in the ENR; and,

**WHEREAS**, Agency and Developer desire to amend the ENR, by entering into a First Amendment to the Exclusive Negotiating Rights Agreement, attached hereto as Exhibit A, to (i) extend the Negotiation Period to allow for completion of the Preliminary Stage negotiations, and (ii) revise certain performance milestones set forth in the Schedule of Performance;

**NOW, THEREFORE, BE IT RESOLVED** that the Redevelopment Agency of the City of Belmont hereby approves and authorizes the Executive Director to execute the First Amendment to the Exclusive Negotiating Rights Agreement in the form attached hereto, subject to any non-substantive changes approved by Agency Counsel.

\* \* \* \* \*

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 special meeting thereof held on March 22, 2011, by the following vote:

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

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

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

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

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

APPROVED:

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

**FIRST AMENDMENT TO  
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT**  
(Shoreway Place Project)

This First Amendment to Exclusive Negotiating Rights Agreement (“First Amendment”) dated March 23, 2011, is entered into by and between the Belmont Redevelopment Agency, a public body, corporate and politic (“Agency”), and the David D. Bohannon Organization, a California corporation, and Bohannon Development Company, a California corporation (collectively, the “Developer”).

**RECITALS**

A. Agency and Developer have entered into that certain Exclusive Negotiating Rights Agreement dated for reference purposes as of October 1, 2009 (“ERN”), which currently expires on March 31, 2011. The ERN provides, among other things, for Agency and Developer to exclusively negotiate agreements for Developer's potential acquisition and development of that certain approximately 8.6 acres of property at the intersection of Highway 101 and Ralston Avenue, commonly known as Shoreway Place (the “Site”, as defined in the ERN). Capitalized terms used herein shall have the meanings set forth in the ERN, unless otherwise defined herein.

B. Developer has completed the first four performance milestones set forth in the Schedule of Performance (Exhibit B of the ERN) and, due to the current economic conditions and volatility in the market making it difficult to determine the Project's feasibility, has requested an additional 3-month extension to complete the feasibility analysis to be conducted during the Preliminary Stage negotiations.

C. The parties desire to enter into this First Amendment to (i) extend the Negotiation Period to allow for completion of the Preliminary Stage negotiations, and (ii) revise certain performance milestones set forth in the Schedule of Performance, all as set forth herein.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and conditions identified herein, Agency and Developer hereby agree as follows:

1. Negotiating Period. The Negotiating Period, as set forth in Section 1.2 of the ERN, is hereby extended for an additional three (3) months to June 30, 2011. If, on or before expiration of the Negotiating Period, as extended, both Agency and Developer determine, each in its sole discretion, that the proposed Development is feasible, the Parties shall proceed to the Planning Stage of the negotiations, and to accommodate such Planning Stage negotiations, the Parties shall consider entering into an additional amendment to the ERN to further extend the Negotiating Period for up to an additional nine (9) months. If either Agency or Developer determines for any reason that the

proposed Development is infeasible, the ERN, as amended hereby, shall terminate as of June 30, 2011; and 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 the ERN, as amended, except for those obligations which by the terms survive expiration or termination of the ERN.

2. Estoppels. Developer hereby acknowledges and agrees that as of the date of this First Amendment, the Agency has diligently negotiated in good faith and otherwise fully performed all of its obligations under the ERN. In consideration for Agency's agreement to further extend the Negotiating Period as provided in this First Amendment, Developer hereby waives, releases and forever discharges the Agency from any and all claims and causes of action Developer may have against the Agency arising under the ERN, which accrued prior to the date of this First Amendment.

3. Schedule of Performance. The performance milestones set forth in the Schedule of Performance (Exhibit B of the ERN) are hereby deleted and replaced with the performance milestones attached hereto as Exhibit B (Revised 3/23/11), and incorporated herein.

4. Ratification. Except as expressly amended hereby, the terms and conditions of the ERN shall remain in full force and effect.

5. Counterparts. This First Amendment may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the Agency and Developer as of the date first set forth above.

AGENCY:

BELMONT REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
Greg Scoles, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathleen Kane, Interim Agency Counsel

DEVELOPER:

DAVID BOHANNON ORGANIZATION, a  
California corporation

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

Print Name: \_\_\_\_\_

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

and

BOHANNON DEVELOPMENT COMPANY,  
a California corporation

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

Print Name: \_\_\_\_\_

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

EXHIBIT B  
(Revised 3/23/11)

SCHEDULE OF PERFORMANCE

1.	Within 1 month of the Effective Date. [Completed]	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. [Completed]	Developer provides the Agency with Basic Concept Drawings for the Development.
3.	Within 6 months of the Effective Date. [Completed]	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.	Within 6 months of the Effective Date. [Completed]	Developer provides the Agency with the Financial Analysis for the Development.
5.	Following submittal of the Basic Concept Drawings, Financial Analysis and hotel operator non-binding commitment letter, and in any event no later than 6/30/11.	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 (which completes the Preliminary Stage and commences the Planning Stage).
6.	Within 2 months after commencement of the Planning Stage.	City, at Developer's expense, retains CEQA consultant to prepare appropriate environmental analysis of proposed Development.
7.	Within 2 months after commencement of the Planning Stage.	Agency, at Developer's expense, obtains Phase I environmental assessment of the Site.

8.	Within 3 months 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.
9.	Within 3 months after commencement of the Planning Stage.	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.
10.	Within 3 months after commencement of the Planning Stage.	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.
11.	Within 3 months after commencement of the Planning Stage.	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.
12.	Within 4 months after commencement of the Planning Stage.	Developer reaches agreement with Agency on term sheet for proposed OPDDA.
13.	Prior to expiration of Negotiating Period as further extended.	Parties to complete negotiation and drafting of proposed OPDDA.

Note: Milestones 6-13 shall only apply if and to the extent both Developer and Agency determine, each in its sole discretion, that the proposed Development is feasible and that the Negotiating Period should be further extended to accommodate completion of the Planning Stage milestones.

Exhibit B