RESOLUTION NO. 2005-050

Adopted by the Redevelopment Agency of the City of Sacramento

September 13, 2005

AUTHORIZING AN AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE WITH DAVID S. TAYLOR INTERESTS, INC. AND CIM GROUP FOR 240 DAYS REGARDING THE TERMS OF AN AGREEMENT FOR REDEVELOPMENT OF THE AGENCY-OWNED PROPERTIES LOCATED AT 1000, 1012, AND 1022 K STREET

BACKGROUND

A. In February 2005, the Agency issued a Request for Proposals (RFP) for a Downtown Cultural, Entertainment and Retail Complex for the Agency Site. The RFP also indicated that the Agency would consider proposals for a project that incorporated other parcels in addition to the Agency Site.

B. On April 30, 2005, one proposal was received from the K Street Central development team, which consisted of David S. Taylor Interests, The CIM Group, St. Anton Partners, The Cordano Company and Paragary's Restaurant Group.

C. The K Street Central team proposed a development vision for the 10th and K intersection, which included K Street Central-owned properties in addition to the Agency Site.

D. An Ad Hoc committee of the Agency board (Ad Hoc) reviewed the proposal. Based on K Street Central's development experience, qualifications, and vision for the Agency Site, the Ad Hoc recommended execution of an Exclusive Right to Negotiate agreement with K Street Central and further negotiations to develop the project proposal.

E. On August 16, 2005, the Agency approved the selection of K Street Central as the preferred developer for the Agency Site, authorized the City Manager to negotiate an Agreement for Exclusive Right to Negotiate, and directed staff to bring back the Agreement for Exclusive Right to Negotiate for Agency approval.

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

Section 1. The City Manager is authorized to execute, on behalf of the Agency, an Agreement for Exclusive Right to Negotiate (Exhibit A) with David Taylor Interests and CIM Group, on behalf of the K Street Central team, providing a 240-day period to negotiate the terms of an agreement for redevelopment of the Agency Site, as well as consideration of additional properties controlled by the K Street Central Team.

Adopted by the Redevelopment Agency of the City of Sacramento on September 13, 2005 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Mayor Fargo.

Noes: None

Abstain: None

Absent: None

Heather Fargo, Chair

Attest:

Shirley Concolino, Agency Clerk

AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE
10th/K Streets

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and DAVID S. TAYLOR INTERESTS, INC., / CIM GROUP ***[NOTE: NAME OF LEGAL ENTITY WILL BE INSERTED WHEN FORMED]*** ("Developer"), have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of **September 6, 2005**, ("Effective Date") upon the follow terms:

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

a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, being all or a portion of the properties at the southeast corner of 10th and K Streets, as shown on the map attached hereto as Attachment 1. The Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area"). The redevelopment of the Property and, if applicable, the Adjacent Properties (as defined below) ("Project") consistent with the Merged Downtown Sacramento Redevelopment Plan ("Redevelopment Plan") and its implementing documents, has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.

b. Developer, in cooperation with the Related Parties (as defined below), submitted a proposal dated April 29, 2005 in response to a Request for Proposals process initiated by the Agency on February 2, 2005. Developer's proposal for redevelopment of the Property into a mixed-use specialty retail and entertainment district is the subject of negotiation with the Agency. The parties contemplate that such negotiation will lead to a mutually satisfactory program for acquisition, transfer, financing and development of the Property, and negotiation of a Disposition and Development Agreement ("DDA") under which such program will be prosecuted to completion.

c. In addition to the Property, the Developer intends to attempt to acquire certain other real property, located generally at the northwest corner of 10th and K Streets ("Developer's Acquisition Property"). If Developer is successful in acquiring the Developer's Acquisition Property, it is the intent of the Developer to redevelop the Developer's Acquisition Property in conjunction with the Property. In such event, the Agency and Developer agree that the Developer's Acquisition Property may be included within the negotiations provided for hereunder, and terms and conditions for development of the Developer's Acquisition Property may be included within the DDA or a separate agreement negotiated and prepared in accordance with the intent of this Agreement. Further, Developer has teamed with the third party owners ("Related Parties") of other real property located generally at the northeast and southwest corners of 10th and K Streets ("Related Property") in planning for the coordinated and complimentary development of all the properties located at the 10th & K intersection, including the Property, the Developer's Acquisition Property and the Related Property (collectively herein, the "Adjacent Properties"). The building program contemplated by the Developer and Related Parties (to be negotiated) includes the following components: significant destination ground floor retail space, performing arts space, housing and hotel lodging and/or office uses on the upper floors of properties where applicable.

d. The purpose of this Agreement is to state the obligations of the Agency and Developer to investigate the feasibility of the Project and to develop a proposal for the development of the Property, and as applicable, the Adjacent Properties. Once such feasibility is demonstrated, the parties intend to negotiate the terms and conditions of the DDA, exclusively and in good faith; and to use reasonable good

faith efforts to complete, execute and deliver the DDA at the end of the term of this Agreement, after full and unrestricted CEQA review and consideration of the Project.

e. Agency represents, and Developer agrees, that the development of the Property, and the Adjacent Properties, as applicable, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.

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

a. Developer is DAVID S. TAYLOR INTERESTS, INC., / CIM GROUP ***[NOTE: NAME OF LEGAL ENTITY WILL BE INSERTED WHEN FORMED]***, with lead partnership consisting of the following:

- David S. Taylor Interests, Inc., organized and doing business in the State of California. The principal office of Developer is located at 1201 K Street, Suite 1840, Sacramento, CA 95814. The principal of David S. Taylor Interests is David S. Taylor.

- CIM Group, organized and doing business in the State of California. The principal office of CIM Group is located at 6922 Hollywood Boulevard, Suite 900, Hollywood, CA 90028. The principal of CIM Group is John S. Given.

Developer shall, as a condition precedent to execution of the DDA by Agency, make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 1030 15th Street, Suite 250, Sacramento, CA 95814. Agency includes any successor to operations of Agency.

c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention: Downtown Development Group (10th/K Development)". A copy of all notices to Agency shall be mailed or delivered to 630 I Street, Sacramento, CA 95814 and marked "Attention: Legal Department (10th/K Development)".

3. EXCLUSIVE RIGHT TO NEGOTIATE. Agency grants to the Developer an exclusive right to negotiate for the right to develop the Property in accordance with the terms and conditions of the Proposal (as defined in Section 7) and the DDA to be developed under this Agreement.

4. TERM. This Agreement shall be effective as of the date of its execution by both parties ("Commencement Date"), and shall terminate ("Termination Date") upon the earlier of completion of all obligations or two hundred and forty (240) days after the Commencement Date, unless extended in accordance with Section 9 or Section 18. If the Proposal (as defined in Section 7) is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.

5. CEQA REVIEW. In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency shall prepare the environmental documentation and consider the environmental effects of the Project, at Developer's expense pursuant to Section 10a, below, prior to considering action to approve the proposed DDA.

a. The parties acknowledge and agree that the environmental documentation to be prepared for the Project will be a single, comprehensive environmental impact report (together with other documentation as necessary) and include the proposed development of the Property and the Adjacent Properties as a single coordinated project.

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

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

d. Following approval of the full Proposal, as provided in Section 7, below, the Developer shall prepare and submit to the Agency for approval a project description to be used by the Agency to prepare the environmental documentation for the Project. Upon Agency request, Developer shall supply any additional data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project. As stated in Section 10, the Agency shall use the Deposit to pay Third Party Costs (as defined in Section 10) associated with the environmental review required for the Project.

6. OTHER LEGISLATIVE REVIEW. Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. Developer acknowledges that the Proposal is also subject to review by the City's Design Review/Preservation Board.

7. REFINEMENT OF PROPOSAL. As a condition precedent to the Agency negotiating for and entering into the DDA, Developer must prepare and submit to Agency a full proposal ("Proposal") for the development of the Property, including, as applicable, the development of the Developer's Acquisition Property, in conjunction with the development of the Related Properties by the Related Parties, which Proposal meets the objectives of the parties, and which is to be considered and approved by the Agency as provided in this Agreement. It is agreed and understood that approval of the full Proposal is a prerequisite and preliminary step to further processing of the Project, and that the approval of the full Proposal under this Agreement for further processing and consideration is not intended to, and does not, in fact, compel or require the Agency to approve the Project, or enter into a DDA following completion of the CEQA and

other review processes. The preparation of the Proposal shall be done in accordance with the Schedule of Performances. Developer shall include in its Proposal, without limitation, the following: (a) detailed description of the Developer's development team, naming the principals of Developer, the architectural and design team, the general contractor, and the marketing team; (b) project conceptual design, including site plan, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City and Agency; (c) refined economic estimate of construction costs for project designs; (d) 10-year cash flow analysis for alternative project designs; (e) location of parking spaces, if any, and the physical manner by which those spaces will be operated.

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

Due Date	Action	Responsible Party
Within ninety (90) days of Commencement Date	Continue to pursue live theatre/performing arts options for the Project Site	Agency (with Developer support)
	Refine project concepts for the Property and Developer's Acquisition Property	Developer and Agency
	Pursue private acquisition of the Developer's Acquisition Property, if needed	Developer
Within one hundred twenty (120) days of Commencement Date	Report back to Agency on project analysis findings and recommendations	Developer and Agency
	Prepare and submit refined Proposal for Agency approval	Developer and Agency
	Solicit comments from Design Review and Preservation Board for use in CEQA analysis	Developer and Agency
	Refine estimated construction costs, including all applicable fees and contingencies	Developer
	Refine development and operating proformas	Developer
	Finalize project description and begin CEQA analysis	Developer and Agency
Within one hundred eighty days (180) of Commencement Date	Negotiate the terms of the DDA	Developer and Agency
	Prepare schedule of performances for the construction period	Developer
	Finalize property purchase agreements, if necessary	Developer
	Finalize lease terms with businesses that will be part of the Project	Developer
Within two hundred forty (240) days of Effective Date Developer	Certify CEQA document and adopt Mitigation Monitoring Plan	Agency
	Obtain Project Approval from the Agency and execute the DDA	Developer and Agency

9. EXTENSION PERIOD. If Developer fulfills its obligations under this Agreement and prepares and submits the Project Proposal as stated in the Schedule of Performances, and if such Proposal is approved by the governing board of Agency, then this Agreement may be extended for an additional period of

ninety (90) days ("Extension Period"). During the Extension Period, if any, the parties shall accomplish all of the tasks necessary for the consideration and adoption of the DDA for the Project, including without limitation, negotiation of the DDA terms, developing architectural plans, preparing environmental studies and documentation, obtaining financing commitments, obtaining tenant commitments as necessary for financing, and engaging the general contractor.

10. DEPOSIT FEE. Upon approval by the Agency of the Agreement, Developer shall deliver to Agency an initial deposit of Twenty Five Thousand Dollars ($25,000). Upon Agency approval of the project description, as provided in Section 5.d., above, Developer shall deliver to Agency an additional deposit of Twenty Five Thousand Dollars ($25,000) ("Deposits"). The Deposits shall be the property of the Agency, subject to the following:

a. Prior to execution of the DDA for the Project or termination of negotiations between Agency and Developer, Agency may expend the Deposits solely for payment of third-party fees, costs and expenses (the "Third Party Costs") for predevelopment activities for the Project incurred by Agency, including, without limitation, costs related to preparation of the environmental documentation for the Project and supporting studies (other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement). Prior to any such expenditures, Agency shall provide the Developer with a schedule of anticipated expenditures for Third Party Costs. The parties anticipate that Third Party Costs may exceed $50,000. If the actual expenditures exceed $50,000 the parties shall meet and confer with respect to the budget for such costs. It is agreed and understood that the required $50,000 deposits are Deposits only, and that to the extent that the costs of the Project exceed $50,000, Developer is responsible for the payment of any and all such additional costs.

b. If the Developer enters into the DDA with the Agency, the Deposits remaining after the Third Party Costs may, at Developer's election, be applied to the good faith deposit required under the DDA.

c. If the Agency fails to approve a proposed DDA developed in accordance with the provisions of this Agreement, which is duly before it for consideration and which has been executed by the Developer, Agency will refund to Developer the Deposits remaining after payment of such Third Party Costs incurred to the date of the hearing regarding approval of the DDA.

d. If Developer and Agency mutually agree in writing to terminate the negotiations under this Agreement, or if the Developer terminates this Agreement due to a default by Agency, any Deposits remaining after payment of Third Party Costs incurred by the Agency prior to any such termination shall be refunded to the Developer.

e. If the terms of the DDA are otherwise not finalized during the negotiation period, the Deposits shall be the property of the Agency, without restriction as to its use, unless the Agency agrees in writing to extend the negotiation period.

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

provided, however, that neither party shall be in default if such event is a result of Unavoidable Delays as defined in Section 17.

a. If the defaulting party commences and diligently prosecutes the cure of such default and if the defaulting party completes such cure not later than thirty (30) days prior to the Termination Date (including any Extension Period) or, if later, within five (5) calendar days after the nondefaulting party's written notice of default to the defaulting party, then the nondefaulting party may terminate this Agreement by written notice to the defaulting party, and may pursue equitable remedies available to it for such default. Additionally, in the event of such a default by Developer, Agency may retain the Deposit and may terminate this Agreement.

b. After termination of this Agreement for default of Developer, Developer shall have no rights under this Agreement to participate in the development of the Project, and the Agency shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

c. The remedies contained in this Section 11 are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

12. DISPOSITION AND DEVELOPMENT AGREEMENT. In addition to other provisions stated in this Agreement, the DDA will address, without limitation, the following provisions (a) use covenants to run with the land; (b) payment and performance bonding and other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) Agency's local hiring policy and provisions, as applicable; (f) performance assurances such as the deposit; (g) limitation on transfers prior to Project completion; (h) compliance with CEQA mitigation; (i) Agency's rights to revest the Property upon default; and (j) Agency's Art in Public Places requirements. The DDA may also address, without limitation, the following provisions: (a) extension fees for delay in construction, and liquidated damages; (b) Agency's rights to cure defaults, assume loans and complete construction; (c) delayed transfer of title to land; (d) loan guarantees and additional securities; (e) Agency assistance to the Project; and (f) customary protections for lenders providing financing for the Project.

13 REDEVELOPMENT COSTS. Subject to Section 10, Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA.

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

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

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

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17. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developers shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

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

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:_____
Robert P. Thomas, City Manager, as Designated Signatory

Approved as to form:

By:_____
Agency Counsel

DAVID TAYLOR INTERESTS, INC.

By: _____
David S. Taylor

Approved as to form:
McDonough Holland and Allen PC

By:_____
Edward J. Quinn, Jr., Attorney

CIM GROUP

By: _____
John Given

ATTACHMENT 1