

COMMUNITY & ECONOMIC DEVELOPMENT AGENCY
ROUTE SLIP
REDEVELOPMENT DIVISION

Agency Division: Redevelopment Division Date: 12.22.10

Subject: EXCLUSIVE NEGOTIATION
SCREENER
PODILL & SEMINARY

CITY COUNCIL/ORA AGENDA ITEM: _____

Resolution: Attached _____ Pending _____ None _____
Draft _____ Final _____ Approval _____ Signature _____

Routing Sequence:

Initial

From: GREGORY HUNTER

To: DAN LINDHEIM

Comments: For your signature

Please Return To: Dave Cole By (Date): 1.6.11

Disk/Document Name: _____

Assistant: _____ Originator: _____

BC: _____ Copies: _____

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() Review &/or Comment

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RECEIVED
CITY OF OAKLAND
CEDA



City of Oakland
Memorandum

2010 JAN 18 PM 1:02

To: Walter Cohen, Director of Community and Economic Development Agency; *WDC*
Daniel Lindheim, Agency Administrator
From: Gregory Hunter, Deputy Director of Economic Development and Redevelopment *GH*
Date: December 2, 2010
Re: Exclusive Negotiation Agreement by and between the Redevelopment Agency of the City of Oakland and Sunfield Development, LLC for Foothill & Seminary

Purpose of the Exclusive Negotiation Agreement (ENA):

The purpose of the ENA is to enable the Agency and Sunfield Development, LLC to further evaluate feasibility of the proposed Foothill and Seminary opportunity development site and to, if appropriate, negotiate the terms of a Disposition and Development Agreement. More specifically, the ENA period will allow the Developer to demonstrate financial capacity, financial feasibility, finalize project design, solidify cost estimates, solicit statements of interest from retail operators, and conduct applicable market feasibility studies for the retail and mixed use components. Developer would also utilize the ENA period to complete California Environmental Quality Act (CEQA) review.

Proposed Development:

The Project as currently proposed includes the development of a new Neighborhood Commercial Retail Center consisting of 34,500 SF (14,500 SF National Drug Store Anchor / 20,000 SF single user retail anchor or multiple in-line retail tenants) and / 76 on-site parking spaces. The proposed Foothill and Seminary development will serve as the major anchor to this very important retail node and is a very important part of the City's business retention, attraction and redevelopment effort.

Project Manager: Douglas Cole, CEDA Redevelopment; ext. 7661

Deputy City Attorney: Dan Rossi, ext. 6510

Authority:

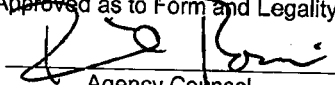
On July 13, 2010, pursuant to Resolution No. 2010-0093 and on November 9, 2010, pursuant to Resolution No. 2010-0112 C.M.S., the Agency Administrator has been granted authorization to execute the attached ENA by and between the Agency and Sunfield Development, LLC for the Foothill and Seminary Development Opportunity Site.

ENA Timeframe:

15-months (two six month terms with an additional three month extension, if warranted and necessary).

CITY OF OAKLAND
OFFICE OF CITY MANAGER
DEC 22 PM 5:14

2010 JUN 30 AM 10:56

Approved as to Form and Legality

Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. 2010 - 0093 C.M.S.

**AGENCY RESOLUTION AUTHORIZING AN EXCLUSIVE
NEGOTIATING AGREEMENT WITH SUNFIELD DEVELOPMENT,
LLC, FOR DISPOSITION OF ELEVEN AGENCY-OWNED
PARCELS BOUNDED BY FOOTHILL BOULEVARD, SEMINARY
AVENUE AND BANCROFT AVENUE, AND DEVELOPMENT OF A
NEIGHBORHOOD-SERVING RETAIL CENTER**

WHEREAS, the Redevelopment Agency has determined that it desires to encourage infill development at specific retail nodes identified in a City-wide Retail Strategy along the Foothill and MacArthur Boulevard Corridors in the Central City East Redevelopment Project Area; and

WHEREAS, the City of Oakland ("City") and Agency have determined that the best way to encourage development is to make Agency-owned land available and to work with developers to consolidate land; and

WHEREAS, the Agency has acquired a total of 11 contiguous parcels of land at the southwest corner of Foothill Boulevard and Seminary Avenue totaling 1.724 acres (75,093 square feet) of land zoned commercial use (together, the "Property"); and

WHEREAS, on September 4, 2009, the Agency issued a Notice of Development Opportunity ("NODO") to solicit development proposals for the Property; and

WHEREAS, the Agency received three proposals and formed a Selection Committee ("Committee") for the purpose of reviewing the proposals and to conduct in-depth interviews with all three respondents; and

WHEREAS, the Committee evaluated each proposal in multiple categories and ranked them accordingly; and

WHEREAS, Sunfield Development, LLC ("Sunfield" or the "Developer") ranked first in the initial round of evaluations and their submittal of additional information further solidified the Agency's selection of their Project; and

WHEREAS, the City and Redevelopment Agency have determined that the Redevelopment Agency is the proper entity to prepare the site for development and enter into an Exclusive Negotiating Agreement ("ENA"); and

WHEREAS, an initial term sheet outlining the terms of the ENA has been agreed to by the Agency and Developer; and

WHEREAS, the Agency and Developer recognize and acknowledge that the feasibility of the development proposed by Developer has not been determined to the satisfaction of the Agency and the purpose of the ENA is to allow the Agency and Developer to determine the feasibility of the Project proposal and negotiate the terms for possible Agency financial assistance to the Project; and

WHEREAS, the proposed action is consistent with and will further the purposes of the Redevelopment Plan adopted for the Central City East Redevelopment Project on July 29, 2003 (Resolution No. 2003-__ C.M.S.) and Five Year Implementation Plan adopted for the Central City East Redevelopment Project on July 15, 2008 (Resolution No. 2008-70 C.M.S.); now, therefore, be it

RESOLVED: That the Agency Administrator is authorized to negotiate and enter into an ENA by and between the Agency and Developer for purposes of studying and evaluating the feasibility of, and further negotiating terms and conditions for, the transfer of the Property and its development for commercial use; and be it

FURTHER RESOLVED: That the ENA period will be for fifteen months from the date of this Resolution, equal to two six month review periods with the option to extend said period by an additional three months with the approval of the Agency Administrator in his sole discretion; and be it

FURTHER RESOLVED: That the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it

FURTHER RESOLVED: That the Agency finds and determines, after independent review and consideration, that this action complies with the California Environmental Quality Act ("CEQA") because it is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, JUL 20 2010

PASSED BY THE FOLLOWING VOTE:

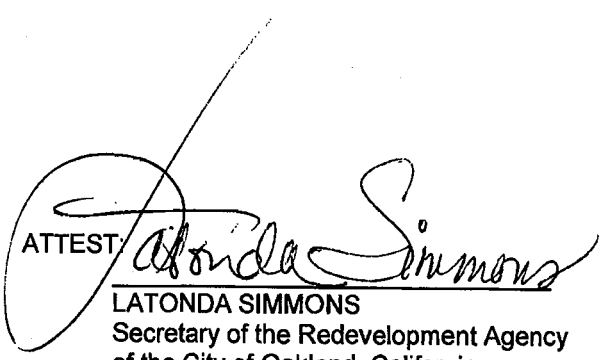
AYES - KERNIGHAN, NADEL, QUAN, DE LA FUENTE, BROOKS, REID, KAPLAN, AND
CHAIRPERSON BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST


LATONDA SIMMONS

Secretary of the Redevelopment Agency
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 OCT 28 PM 2:21

Approved as to Form and Legality

Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. 2010 - 0112 C.M.S.

AN AGENCY RESOLUTION AMENDING RESOLUTION NO. 2010-0093 C.M.S. TO REDUCE THE EXCLUSIVE NEGOTIATING AGREEMENT DEPOSIT REQUIREMENTS WITH SUNFIELD DEVELOPMENT, LLC FROM \$50,000 TO \$25,000 FOR THE FOOTHILL AND SEMINARY DEVELOPMENT OPPORTUNITY SITE

WHEREAS, the Redevelopment Agency has determined that it desires to encourage infill development at specific retail nodes identified in a City-wide Retail Strategy along the Foothill and MacArthur Boulevard Corridors in the Central City East Redevelopment Project Area; and

WHEREAS, the City of Oakland ("City") and Agency have determined that the best way to encourage development is to make Agency-owned land available and to work with developers to consolidate land; and

WHEREAS, the Agency has acquired a total of 11 contiguous parcels of land at the southwest corner of Foothill Boulevard and Seminary Avenue totaling 1.724 acres (75,093 square feet) of land zoned commercial use (together, the "Property"); and

WHEREAS, on September 4, 2009, the Agency issued a Notice of Development Opportunity ("NODO") to solicit development proposals for the Property; and

WHEREAS, the Agency received three proposals and formed a Selection Committee ("Committee") for the purpose of reviewing the proposals and to conduct in-depth interviews with all three respondents; and

WHEREAS, the Committee evaluated each proposal in multiple categories and ranked them accordingly; and

WHEREAS, Sunfield Development, LLC ("Sunfield" or the "Developer") ranked first in the initial round of evaluations and their submittal of additional information further solidified the Agency's selection of their Project; and

WHEREAS, the City and Redevelopment Agency have determined that the Redevelopment Agency is the proper entity to prepare the site for development and enter into an Exclusive Negotiating Agreement ("ENA"); and

WHEREAS, the Agency and Developer recognize and acknowledge that the feasibility of the development proposed by Developer has not been determined to the satisfaction of the Agency and the purpose of the ENA is to allow the Agency and Developer to determine the feasibility of the Project proposal and negotiate the terms for possible Agency financial assistance to the Project; and

WHEREAS, the proposed action is consistent with and will further the purposes of the Redevelopment Plan adopted for the Central City East Redevelopment Project on July 29, 2003 (Resolution No. 2003-64 C.M.S.) and Five Year Implementation Plan adopted for the Central City East Redevelopment Project on July 15, 2008 (Resolution No. 2008-70 C.M.S.); and

WHEREAS, the reference to both a refundable \$25,000 Good Faith Deposit and non-refundable \$25,000 Project Expense Payment were included in the original staff report, initial term sheet and resolution; and

WHEREAS, for reasons of maintaining consistency with other Exclusive Negotiating Agreements by and between the Agency and developer, the required ENA deposit should only include a non-refundable \$25,000 Project Expense Payment; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby amends Resolution No. 2010-0093 C.M.S. to reduce the Exclusive Negotiating Agreement deposit requirement to include only a non-refundable \$25,000 Project Expense; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to negotiate and enter into an ENA by and between the Agency and developer for purposes of studying and evaluating the feasibility of, and further negotiating terms and conditions for, the transfer of the Property and its development for commercial use; and be it

FURTHER RESOLVED: That the ENA period will be for fifteen months from the date of this Resolution, equal to two six month review periods with the option to extend said period by an additional three months with the approval of the Agency Administrator in his sole discretion; and be it

FURTHER RESOLVED: That the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it

FURTHER RESOLVED: That the Agency finds and determines, after independent review and consideration, that this action complies with the California

Environmental Quality Act ("CEQA") because it is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, NOV 9 2010

PASSED BY THE FOLLOWING VOTE:

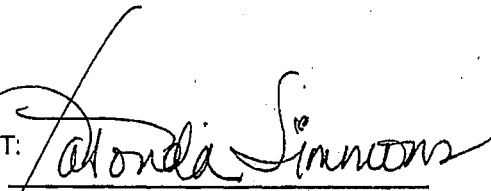
AYES - KERNIGHAN, NADEL, QUAN, DE LA FUENTE, BROOKS, REID, KAPLAN, AND
CHAIRPERSON BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

Secretary of the Redevelopment Agency
of the City of Oakland, California

**EXCLUSIVE NEGOTIATING AGREEMENT
(Foothill and Seminary)**

This Exclusive Negotiating Agreement (the "Agreement" or "ENA"), is made and entered into as of this 9th day of November, 2010, by and between the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law (the "Agency") and Sunfield Development, LLC ("Developer"), a California limited liability company, pursuant to Agency Resolution No. 2010-0093 C.M.S., adopted on July 20, 2010, and as amended pursuant to Agency Resolution No. 2010-0112 C.M.S., adopted on November 9, 2010.

RECITALS

A. The Agency owns property in the Central City East Redevelopment Project Area that is approximately 73,428 square feet or 1.69 acres in size, located at the northwest corner of Foothill Boulevard and Seminary Avenue, and bounded by Bancroft Avenue to the west (the "Project Site" or the "Property"), as further described in Exhibit A, attached hereto and incorporated herein by reference.

B. On September 4, 2009, the Agency issued a Notice of Development Opportunity ("NODO") for the Property that called for proposals to provide a mixed-use housing over ground-floor retail or retail-only development proposal. In response to the NODO, Developer submitted a retail-only proposal proposing to develop about 23,000 to 36,000 gross building square feet of community-serving retail uses and on-site parking (the "Project").

C. The Agency established a selection committee to review responses to the NODO and to recommend a developer, and after careful review and evaluation of the proposals, the selection committee recommended Developer's proposal for the development of a retail only Project on the Property.

D. The Agency and Developer wish to enter into a period of preliminary study and exclusive negotiations over the Project proposal, understanding that this does not constitute a binding commitment on the part of the Agency to any project or developer for the Property.

NOW THEREFORE, the Agency and Developer agree as follows:

1. NEGOTIATIONS

1.1. Length of Negotiation Period

Unless extended by mutual agreement, the period for exclusive negotiations between the Agency and Developer under this Agreement shall be for twelve (12) months, commencing on November 9, 2010, and terminating on November 9, 2011 (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement. The Agency Administrator or his or her designee, at his or her sole and absolute discretion, may extend the Negotiation Period in writing for an additional period of up to three (3) months (the "Extended Negotiation Period"), provided that Developer has made acceptable progress and has, among other requirements as more particularly described below, provided evidence during the Negotiation Period that the Project is feasible within mutually agreed upon timeframes and terms.

1.2. Good Faith Negotiations

The Agency and Developer (collectively hereinafter referred to as the "Parties") shall negotiate diligently and in good faith during the Negotiation Period toward a Disposition and Development Agreement ("DDA"), or similar instrument. The Parties contemplate that the negotiations regarding the DDA will commence after mutual execution of this Agreement, and will continue while Developer submits certain information to the Agency and the Parties undertake preliminary planning and analysis of the Project.

The Parties contemplate that the DDA will set forth the terms and conditions for the conveyance of the Property to Developer, the development of the Project on the Project Site by Developer, and subsequent uses of the Project Site by Developer and any successors-in-interest to the Project Site. The conceptual proposal for the Project prepared by Developer shall serve as the basis for such negotiations, with the understanding that no commitment has been made by the Agency or Developer to the Project as set forth therein.

If the terms of a mutually satisfactory DDA (or similar instrument) have not been negotiated by Developer and Agency staff during the Negotiation Period or if the Agency Board (i.e., the City Council acting as the Agency's governing body) declines to authorize execution of the DDA (or similar instruments) for any reason, then, without further action, this Agreement shall automatically terminate and no Party shall have further rights or obligations with respect to the other.

1.3. Exclusive Negotiations

The Agency shall not negotiate regarding development of the Property with any other person or entity during the Negotiation Period.

2. SCHEDULE OF PERFORMANCE

The Parties shall perform the following activities during the Negotiation Period and within the time periods set forth below:

2.1. Project Team

- a) Within 90 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency the following:
 - (i) A description of the specific financial structure and legal structure of the proposed development team in a form that reasonably satisfies the Agency that the Project is feasible. This shall include a written description of the specific and general roles, responsibilities, and obligations of Developer, Developer's members and partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project. Additionally, the written description of roles, responsibilities, and obligations shall identify the principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.
 - (ii) Copies of balance sheets and income/loss statements, prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by the Agency covering the last two years of Developer, Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project, except for any entities that will enter into partnership agreements, operating agreements, joint venture agreements, or similar instruments with the Developer per Section 2.1(b)(i)
 - (iii) All documents related to Developer's corporate, LLC, or partnership status, and the status of its members or partners, including but not limited to articles of incorporation, by-laws, and proof of good legal standing.
 - (iv) A detailed description, including references, of the Project development team's experience. The team shall cover at a minimum, the architect, the candidate structural engineers, the candidate general contractors, and the marketing and real estate firm for the proposed undertaking.
 - (v) A written statement concerning any litigation in which Developer or Developer's partners or members is a party that may have an impact on the negotiations. Developer shall provide to the Agency copies of any litigation documents or filings in connection with such litigation within 10 business days of the Agency's written request.

- b) Within 150 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency the following:
 - (i) All documents related to Developer's corporate, LLC, or partnership status, and the status of its members or partners, including partnership agreements, operating agreements, joint venture agreements, and lists of members of board of directors.
 - (ii) Copies of balance sheets and income/loss statements, prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by the Agency covering the last two years of any entity entering into an agreement with the Developer, as listed in Section 2.1(b)(i).

2.2. Market Research and Project Marketing

- a) Within 120 calendar days of the commencement of the Negotiation Period, Developer shall conduct and complete a market feasibility study for all aspects of the Project proposal based on the contemplated Project development schedule required per Section 2.4(b) below.
- b) Within 180 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency a market strategy for the Project based on the findings of the market study that shall include identification of key tenants, a detailed description of the type of tenancy for all remaining tenants, the estimated gross leasable square feet to be developed for each type of use, a merchandising plan for the leasable spaces, the amount of parking that will be required to support such use, and the proposed location of such parking in the Project.
- c) Within 210 calendar days of the commencement of the Negotiation Period, Developer shall contact key tenants and submit to the Agency Project-specific letters of intent for the retail components of the Project.

2.3. Project Design

- a) Within 180 calendar days of the commencement of the Negotiation Period, Developer shall hold at least one public meeting in the community in order to present its proposed development plan for the construction of the Project. Developer shall hold such additional community meetings as reasonably required by the Agency. The Agency shall assist Developer in facilitating community meetings.
- b) Within 180 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency the following:
 - (i) The Schematic Design Plans for the Project. The term "Schematic Design Plans" means schematic drawings, exterior elevations, site plans, floor plans, a landscaping plan, schematic plans for street and sidewalk

improvements, and a sample materials board. Site plans should also show parking lot layout and the total number of spaces.

The Schematic Design Plans shall demonstrate how principles of environmental sustainability will be incorporated to meet the City's Green Building Requirements for non-residential new construction development, which includes a completed checklist under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System published by the U.S. Green Building Council for new construction of commercial buildings, exceed Silver Certification under LEED, and receive a Green Building Certification. Project design shall include substantial use of such green building techniques as energy-conserving design and appliances, water-conserving fixtures and landscape, recycled-content building materials, and low waste construction techniques.

- (ii) A plan to incorporate public art in the Project. Developer shall include concepts and examples of public art, all possible locations for placement of the public art component, and a plan for maintenance of the public art. Developer may elect to work with City of Oakland Public Arts Commission to assist with the placement and selection of public art components.
- (iii) A list of all public improvements, if any, presently anticipated or required for the Project. For purposes of this subparagraph, the term "public improvements" shall include without limitation such matters as: (1) any permanent closure or rerouting of any existing public streets or sidewalks; (2) any traffic signals that may need to be replaced or installed; (3) any street lights that may need to be replaced or installed; and (4) any act that may be required to be performed as a mitigation measure under any environmental document for the Project or as a condition to the issuance of any governmental permit for the Project and any other improvement currently anticipated to be required to develop the Project.

2.4. Project Economics

Within 180 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency a conceptual financing plan that includes:

- a) A detailed and itemized project pro forma that reflect the concept design and schedule for construction of the Project. Pro formas shall include a development budget for each Project component, a statement describing the sources and uses of funds to finance each Project component, a 10-year cash flow analysis for each Project component, and an annotated operating budget to a level of detail reasonably acceptable to the Agency. Development budget for each Project component shall include construction cost estimates, any and all soft (or indirect) costs related to the development of Project including all on and off site improvements required to make the Project operational and leasable. Construction cost estimates shall be performed by a firm experienced in preparing construction

cost estimates for retail development, including landscaping, on-site parking lot, and public improvements.

- b) A detailed Project development schedule, which shall include construction and absorption projections of the Project's retail spaces.
- c) A list of lenders and investors that will be approached for financing the Project.

2.5. Environmental Site Assessment, Environmental Review, Planning and Other Permits and Approvals

- a) Within 90 calendar days of the commencement of the Negotiation Period, Developer shall retain environmental and professional design consultants to prepare all necessary environmental documentation required to conduct environmental review under the California Environmental Quality Act ("CEQA") for the Project. Except as otherwise specifically provided for below, all environmental documents shall be prepared within the time periods required by CEQA.
- b) Within 90 calendar days of the commencement of the Negotiation Period, Developer shall develop a Project description suitable for environmental review purposes.
- c) Within 60 calendar days of the commencement of the Negotiation Period, the Agency shall provide to Developer all existing environmental, geological, engineering and other reports within the Agency's possession or control pertaining to the condition of the Property.
- d) Within 135 calendar days of the commencement of the Negotiation Period, Developer shall identify all relevant zoning, design review, environmental review and code requirements for the Project and shall submit all necessary and applicable zoning permit applications and other land use permit applications for the Project. Developer shall submit a schedule identifying when approval of all such zoning, design review, environmental review and code requirements for the Project will be obtained.
- e) Within 150 calendar days of the commencement of the Negotiation Period, Developer's environmental and professional design consultants shall complete all necessary environmental documentation required by the Planning and Zoning Division of CEDA for an Initial Study to enable the Planning and Zoning Division of CEDA to determine whether an Environmental Impact Report ("EIR"), Negative Declaration, or Mitigated Negative Declaration for the Project is required under CEQA.
- f) Within 210 calendar days of the commencement of the Negotiation Period, Developer shall cause the issuance of a Notice of Preparation, if an EIR is required under CEQA.

- g) Within 330 calendar days of the commencement of the Negotiation Period, Developer shall complete the environmental assessment and identification of the nature and extent of required environmental site mitigations, and the Agency and City shall have completed CEQA environmental review for the Project, including filing of a Notice of Determination.
- h) Within 330 calendar days of the commencement of the Negotiation Period, Developer shall obtain all necessary zoning permits determined appropriate by the Planning Department.

The Agency shall cooperate with Developer to attempt to ensure the timely processing of the environmental review and zoning permits. However, any efforts by the Agency are independent of the City's jurisdiction and authority to issue any reviews or approvals including, without limitation, CEQA or zoning approvals. Nothing in this Section shall be interpreted to imply that the City is required to issue any approvals or permits for any improvements, or to obligate the Agency to influence the City's independent authority to issue CEQA and zoning approvals.

2.6. Financing Plan and Project Schedule

- a) Within 210 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency the following:
 - (i) Refined development costs for the Project.
 - (ii) A detailed development schedule for the construction and lease-up of all Project components.
- b) Within 240 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency the following, with exception to the New Market Tax Credits program, which shall be submitted per Section 2.6 (c):
 - (i) An updated and refined Project financing plan describing the sources and uses of funds and a cash flow analysis for the retail component of the Project to a level of detail reasonably acceptable to the Agency; provided that no firm financial commitments will be necessary for the retail component at such time.
 - (ii) Letters of intent from lenders and equity partners, if any, expressing willingness to provide Project financing.
- c) Within 270 calendar days of the commencement of the Negotiation Period, Developer shall submit to the Agency an updated and refined Project financing plan describing the sources and uses of funds, including the New Market Tax Credits, and a cash flow analysis for the retail component of the Project to a level of detail reasonably acceptable to the Agency, letters of intent from lenders and equity partners, if any, expressing willingness to provide Project financing,

provided that no firm financial commitments will be necessary for the retail component at such time.

2.7. DDA

- a) Within 240 calendar days of the commencement of the Negotiation Period, the Agency shall prepare and submit to Developer a final appraisal report of the fair market value of the Property prepared by a professional appraiser selected by the Agency in consultation with Developer.
- b) Within 300 calendar days of the commencement of the Negotiation Period, the Agency and Developer shall endeavor to complete the negotiations of a DDA for the Project for presentation to the City Council and the Agency Board for consideration.

3. AGENCY APPROVAL OF SUBMISSIONS

Within 15 business days after the Agency receives any information or documents required to be submitted by Developer pursuant to Section 2 of this Agreement, the Agency shall inform Developer of its acceptance or rejection of the submission. The Agency may approve those portions of a submission that are satisfactory and reject those portions that are not, or may approve all or a portion of a submission subject to conditions requiring further submissions for Agency review and approval. If the Agency rejects all or any part of a submission, the Agency shall provide to Developer written notice of the reasons for such rejection within said 15-day period. Developer shall then have 15 business days to correct or supplement its submission to respond to the Agency's rejection. Agency shall consider in good faith approving Developer's reasonable request for an extension of the 15-day response period for a submission based on factors not within Developer's control, provided, however, that any extension shall not otherwise negatively impact the Schedule of Performance or extend the Negotiation Period. Approvals on behalf of the Agency shall be granted by the Agency Administrator, or his or her staff designees.

4. PROJECT EXPENSE PAYMENT

Developer shall make a payment of \$25,000 to the Agency (the "Project Expense Payment" or "PEP") within 10 calendar days of the date of this Agreement for purposes of reimbursing Agency for its staff costs and third party expenses as set out in the budget attached to this Agreement as Exhibit B. Payment of the PEP shall be in the form of a check, wired funds, or a letter of credit in favor of the Agency drawn by an institution satisfactory to the Agency. The PEP is non-refundable. In the event that this Agreement is terminated or the Parties fail to reach agreement for any reason, the PEP will not be returned to Developer, except for any PEP funds that have not been expended by the Agency. The PEP budget may be modified by the Agency from time to time so long as such amendments are reasonable and do not cause the budget to exceed the total amount of PEP authorized by this Agreement. Developer agrees that in the event Developer requests an extension of the Negotiation Period, Developer will consider in good faith a request by the Agency to increase the PEP to cover the Agency's staff costs and reasonable expenses that are otherwise eligible PEP expenses, if the

initial PEP has been exhausted or the remaining PEP is insufficient to cover such expenses. At the request of the Developer, the Agency shall provide a report to Developer on expenditures from the PEP made by the Agency. The Developer shall give at least three (3) business days of advanced notice to the Agency for such a request.

5. RIGHT OF ENTRY

Developer and its agents, contractors and representatives shall have the right to enter upon the Property at any time during the Negotiation Period to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments. Developer shall not alter the Property except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and Developer agrees upon completion of any testing or other activity under this Agreement to remove all debris, litter, equipment, and other materials placed on the Property by Developer and its agents, and to restore the Property as much as reasonably possible to its original condition. The Developer shall give at least three (3) business days of advanced notice to the Agency prior to entering the Property and shall take steps to minimize any disruption to the operations of the existing lessee.

Developer shall indemnify, defend and hold the Agency and its officers, employees and agents, harmless from any and all claims, demands, damages, losses, actions, liabilities, causes of action or judgments, including reasonable attorney's fees, which the Agency may incur or be required to pay by reason of entry onto the Property and activities thereon by Developer or Developer's agents, employees, contractors or consultants, including, without limitation, any damages, injury or death to any person or property suffered by any person, firm or corporation, except to the extent the same are attributable to the negligence or willful misconduct of the agency or any person or entity acting on the Agency's behalf or under the Agency's authority. Notwithstanding any other provision of this Agreement, Developer shall have no liability to the Agency or any other party by reason of, nor shall Developer have any duty to indemnify, defend or hold any person harmless from or against, any claim, demand, damage, loss, action, liability, cause of action or judgment, including without limitation, any claim for diminution in value of the Property or for environment remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported any adverse physical condition, title condition or other condition or defect with respect to the Property. For the duration of this Agreement, Developer shall cause the Agency to be named as an additional insured on applicable commercial general liability insurance policies with coverage of at least one million dollars (\$1,000,000) and shall cause certificates or such insurance to be delivered to the Agency. The protection afforded by such insurance shall not be limited by the liquidated damages provisions of this Agreement.

Notwithstanding any other provision in this Agreement, this right of entry shall not relieve Developer from the necessity of obtaining any applicable governmental approvals or permits that may be necessary to perform such tests or conduct other activities on the Property.

6. EFFECT OF NEGOTIATIONS

Developer understands and acknowledges that any DDA resulting from the negotiations arising from this Agreement shall become effective only if and after such DDA has been considered and approved by the Agency Board and the City Council in their sole and absolute discretion at a public hearing called for that purpose pursuant to the California Community Redevelopment Law, and only if and after such DDA has been executed by the Agency Administrator. Developer understands that the Agency Board retains the sole and absolute discretion to approve or not approve the Project or any alternative project proposed by Developer. If the terms of a mutually satisfactory DDA have not been negotiated by Developer and Agency staff during the Negotiation Period, or if the Agency Board declines to authorize a DDA for any reason, then, without further action, this Agreement shall automatically terminate and no Party shall have further rights or obligations with respect to the other.

7. TERMINATION AND EXTENSIONS

7.1. Time of the Essence

Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement.

7.2. Notice to Developer of Breach

In the event that Developer fails to materially perform any of Developer's obligations pursuant to the terms and conditions of this Agreement within the time herein specified, the Agency shall promptly give Developer notice of such default. Developer shall have a period of 15 business days from receipt of such written notice from the Agency to Developer within which to cure such default.

7.3. Remedies Upon Developer Default

If Developer fails to cure any material default during the cure period described above, this Agreement may be terminated upon written notice of termination from the Agency, and thereafter no Party shall have any further rights or obligations hereunder.

7.4. Agency Discretion to Extend Time for Performance

Notwithstanding the above, if the Agency determines that it is in the best interest of the Agency, the Agency may extend the time for Developer's performance of any of the terms and conditions of this Agreement. Any such extension beyond the Negotiation Period shall be granted in the Agency's sole and absolute discretion, and in no event shall this provision be construed as conveying any right or entitlement to an extension.

7.5. Default by Agency

If the Agency fails to cure any material default during the cure period described above, this Agreement may be terminated upon written notice of termination from Developer, and thereafter no Party shall have any further rights or obligations hereunder.

8. INDEMNIFICATION

Each of the Parties hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, defend (with legal counsel reasonably satisfactory to the indemnified Party), save and hold harmless the other Party and their respective agents, officers, officials, employees and other representatives of the indemnified Party from all claims, demands, liabilities, actions or causes of actions, including without limitation, reasonable attorney's fees and litigation costs, arising out of or resulting from, or in connection with the negligence or willful misconduct of the indemnifying Party with respect to this Agreement, including, but not limited to, the indemnifying Party's actions or lack of actions with respect to the Property, the negotiation and execution of this Agreement, or the negotiation and execution of a DDA for the Project.

9. LIMITATIONS

This Agreement does not obligate the Agency to transfer the Property to Developer or any other person, nor does it obligate the Agency to approve the Project or any other project. Developer acknowledges and agrees that no Agency commitment to move forward with the Project can be made other than by a resolution of the Agency Board after a public hearing and subject to the requirements of the California Community Redevelopment Law, CEQA, and other applicable laws, and understands that adoption of any such resolutions will be at the Agency's sole and absolute discretion. Any costs incurred by Developer, Developer's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate the DDA shall be the sole responsibility of Developer, and in no event shall the Agency have any responsibility to pay for or reimburse Developer for any of said costs.

Developer understands and acknowledges that the Agency is subject to the City of Oakland Sunshine Ordinance and the California Public Records Act, and therefore recognizes that the Agency shall make information regarding the Property, the Project, Developer, and this Agreement available to the public upon request as required by said laws.

10. CAMPAIGN CONTRIBUTION RESTRICTIONS

Developer is aware of and shall abide by the prohibition on campaign contributions from contractors doing business with the Agency between commencement of contract negotiations and either (a) 180 days from completion of contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. Developer acknowledges that it has executed and submitted to the Agency a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

11. NON-DISCRIMINATION

Developer agrees that there shall be no discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, age, marital status, religion, disability, creed, national origin, ancestry, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-Related Conditions (ARCS) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, buyers, lessees, subtenants, sublessees or vendees of the Property.

12. NO ASSIGNMENT

This Agreement is personal to Developer and is not assignable to any other person or entity without the prior written consent of the Agency. Any attempt to assign this Agreement or any part of the Agreement without the prior written consent of the Agency shall constitute a breach of this Agreement and shall be void and of no force and effect.

13. INFORMATION

Upon Developer's request, the Agency shall promptly furnish Developer all material information within its possession or control concerning the Property, including without limitation, copies of all topographical surveys, environmental reports, engineering studies, soil-bearing test data, and any similar reports and studies with respect to the Property.

14. NOTICES

All notices under this Agreement shall be sufficiently given if delivered, faxed (but only if simultaneously served by another method herein specified), or mailed by registered or certified mail, postage prepaid, addressed to:

DEVELOPER: Sunfield Development, LLC
114 Camino Pablo,
Orinda, CA 94563
Att'n: Sid Afshar

AGENCY: Redevelopment Agency of the City of Oakland/City of Oakland,
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA 94612
Att'n: Doug Cole

Copy to:
Deputy City Attorney/Agency Counsel
c/o Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Att'n: Daniel Rossi

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the State of California or upon actual receipt by the addressee if earlier.

15. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of California, except for those provisions preempted by federal law.

16. ATTORNEYS' FEES

In the event that any Party commences litigation to enforce the terms of this Agreement, the prevailing party in such litigation shall be entitled to recover its costs and fees incurred in such action, including reasonable attorneys' fees.

17. COUNTERPARTS

This Agreement may be signed in multiple counterparts which, when signed by both Parties, shall constitute a binding agreement.

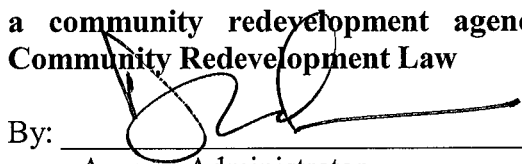
[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Exclusive Negotiating Agreement as of the date first written above.

"AGENCY"

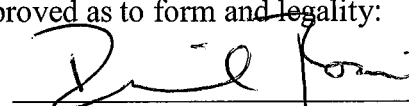
REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,

a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: 

Agency Administrator

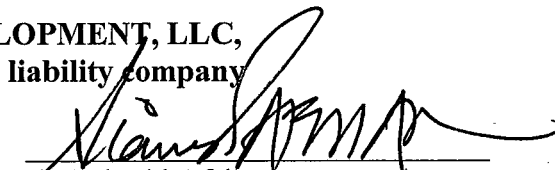
Approved as to form and legality:

By: 

Agency Counsel

"DEVELOPER"

SUNFIELD DEVELOPMENT, LLC,
a California limited liability company

By: 

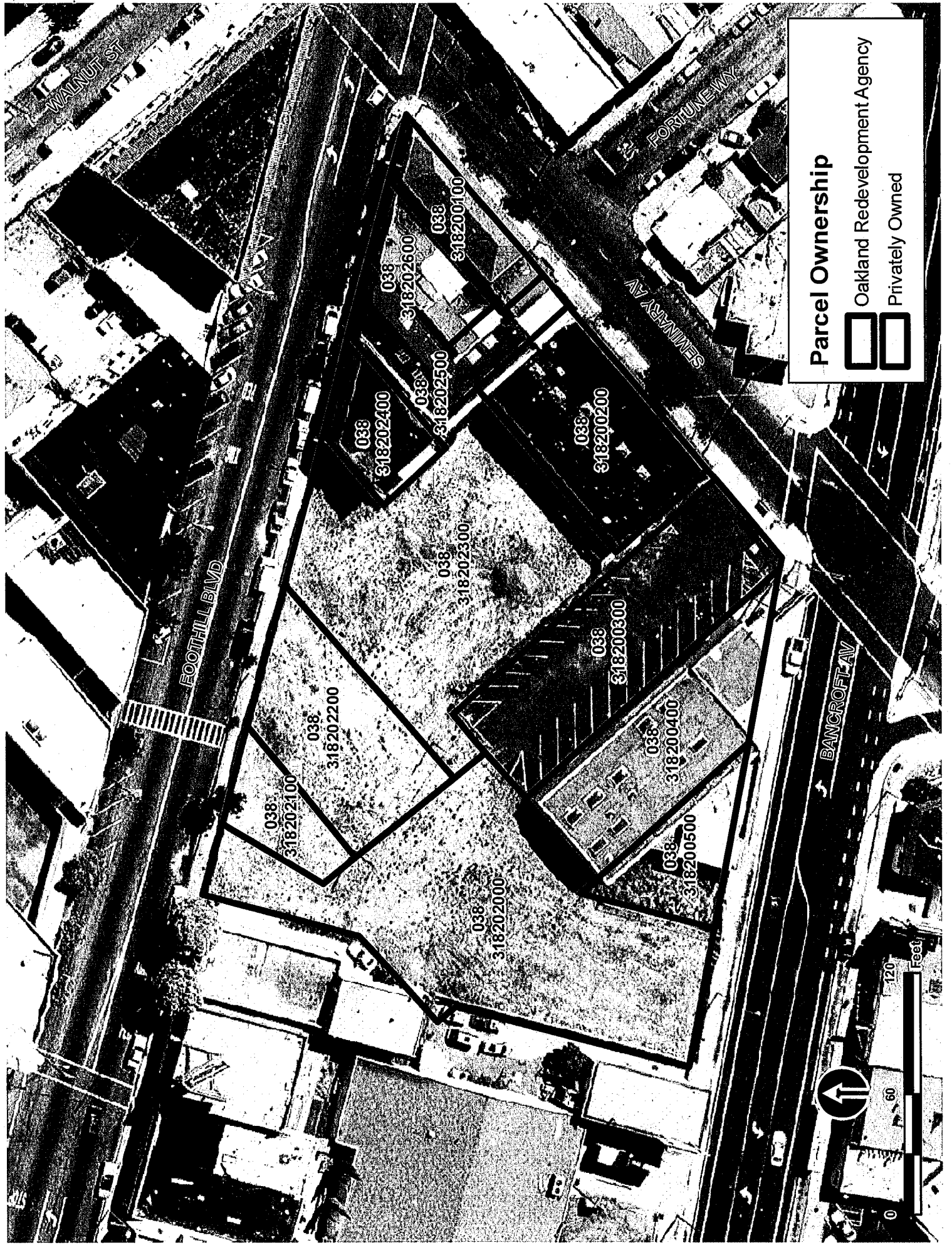
Slavash Sid Afshar

Its: Managing Member

EXHIBIT A
(Foothill and Seminary ENA)

Project Site

(attached)



Parcel Ownership



Oakland Redevelopment Agency



Privately Owned



FOOTHILL & SEMINARY AGENCY OWNED PARCEL SUMMARY

APN	Address	Current Owner	Square Feet*	Acres**
1 038-3182-01	5859 Foothill Blvd.	Redevelopment Agency of the City of Oakland	2,827.00	0.06
2 038-3182-02	2529 Seminary Ave.	Redevelopment Agency of the City of Oakland	6,276.00	0.14
3 038-3182-03	2521 Seminary Ave.	Redevelopment Agency of the City of Oakland	9,580.00	0.22
4 038-3182-05	5844 Bancroft	Redevelopment Agency of the City of Oakland	3,238.00	0.07
5 038-3182-20	5803 Foothill Blvd.	Redevelopment Agency of the City of Oakland	18,127	0.42
6 038-3182-21	5805 Foothill Blvd.	Redevelopment Agency of the City of Oakland	2,324	0.05
7 038-3182-22	Foothill Blvd.	Redevelopment Agency of the City of Oakland	6,638	0.15
8 038-3182-23	5833 Foothill Blvd.	Redevelopment Agency of the City of Oakland	15,755.00	0.36
9 038-3182-24	5835 Foothill Blvd.	Redevelopment Agency of the City of Oakland	2,555.00	0.06
10 038-3182-25	5847 Foothill Blvd.	Redevelopment Agency of the City of Oakland	3,868.00	0.09
11 038-3182-26	5851 Foothill Blvd.	Redevelopment Agency of the City of Oakland	2,240.00	0.05
Acreage Subtotal			73,428.00	1.69

Source: Alameda County Assessor's Office

* Win2Data Version 4.3

** Calculated

EXHIBIT B
(Foothill and Seminary ENA)

Project Expense Payment Budget

(attached)

Expense Items	Estimated Budget
Economic/Financial Consultant	\$15,000
Appraisal	\$5,000
Other	\$5,000
TOTAL BUDGET	\$25,000

Letter of Transmittal

RECEIVED
CITY OF OAKLAND
CEDA



Date: November 22, 2010

2010 NOV 23 AM 9:52

To: Doug Cole

City of Oakland Redevelopment Agency
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

From: Sid Afshar, President

Sunfield Development
114 Camino Pablo
Orinda, CA 94563

SUBJECT: Foothill & Seminary

☐ For Review ☐ Please Reply
☐ Urgent ☐ Please Comment

ATTACHED: Two Copies - Foothill & Seminary Executed Exclusive Negotiating Agreement (ENA)

- Plus a \$25,000.00 Check

City of Oakland - CEDA
250 Frank Ogawa D2326
238-4774

SUNFIELD DEVELOPMENT
114 CAMINO PABLO
ORINDA, CA 94563

999 - Misc GL - ORA
25,000.00

25,000.00

CB: 5.9540.88699.46611.S233373.0000
Description: Foothill?Seminary Avenue
Expenditures

136

11-35/1210
745

City of
Order Of

Twenty Five

Bank of America
31 Orinda Way
Orinda CA
510.649.6600

Foothill & Seminary

11210003

Harland Clarke

SubTotal: 25,000.00
Total: 25,000.00

ORA Check 25,000.00
Other : Sunfield Development, LLC
Number : 136

11/30/2010 02:49
#0222196 /17/10

Thank You

\$ 25,000.00

Security Features Details on Back

MP