

**RESOLUTION NO. OB 2014-2**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE LA HABRA REDEVELOPMENT AGENCY APPROVING AND ADOPTING THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT BETWEEN ICI DEVELOPMENT COMPANY, INC. AND THE SUCCESSOR AGENCY FOR THE DEVELOPMENT OF THE PROPERTIES AT 951-1001 EAST IMPERIAL HIGHWAY**

**WHEREAS**, pursuant to Health and Safety Code Section 34173(g), the Successor Agency to the Redevelopment Agency for the City of La Habra (“Successor Agency”) is a public entity, separate and distinct from the City of La Habra; and

**WHEREAS**, on August 1, 2013, the Oversight Board to the Successor Agency adopted Resolution 2013-3 approving the Long Range Property Management Plan, designating certain assets and properties of the former Redevelopment Agency for the City of La Habra (“Agency”) for disposal pursuant to Health and Safety Code Section 34177(e); and

**WHEREAS**, the Successor Agency is still awaiting final approval of the Long Range Property Management Plan from the State of California Department of Finance; and

**WHEREAS**, in the interim, ICI Development Company, Inc. has expressed an interest in developing certain properties held by the Successor Agency for future development and disposal; and

**WHEREAS**, the Successor Agency and ICI now wish to enter into an Exclusive Negotiating Agreement to continue the discussions for the disposal and future development of the properties located at 951 E. Imperial Highway (APN 019-111-80) and 1001 E. Imperial Highway (APN 019-111-60) as provided for in the Long Range Property Management Plan.

**NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY FOR THE CITY OF LA HABRA, DOES HEREBY RESOLVE AND FIND AS FOLLOWS:**

**Section 1. Recitals.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**Section 2. CEQA Compliance.** The approval of the Exclusive Negotiating Agreement through this resolution does not commit the Successor Agency or Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The Secretary of the Oversight Board is authorized and

directed to file a Notice of Exemption with the appropriate official of the County of Orange, California, within five (5) days following the date of adoption of this Resolution.

**Section 3. Approval of the Exclusive Negotiating Agreement.** The Oversight Board hereby approves the Exclusive Negotiating Agreement, in substantially the form attached to this Resolution as Exhibit A

**Section 4. Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**Section 5. Certification.** The Oversight Board Secretary shall certify to the adoption of this Resolution.

**Section 6. Effective Date.** Pursuant to Health and Safety Code Section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of Finance, and, therefore, this Resolution shall not be effective for five (5) business days after the date of its adoption, pending a request for review by the State of California Department of Finance. This Resolution shall become effective immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the Oversight Board of the Successor Agency to the La Habra Redevelopment Agency on the 20th day of March, 2014.

By:   
Jim Byerrum, Oversight Board Chairman

Attest:

  
Carmen Henderson, Oversight Board Secretary

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            )        ss.  
CITY OF LA HABRA                )

I, Carmen Henderson, Secretary of the Oversight Board of the Successor Agency to the dissolved La Habra Redevelopment Agency, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. OB 2014-2 introduced and adopted at a meeting of the Oversight Board of the Successor Agency to the dissolved La Habra Redevelopment Agency held on the 20<sup>th</sup> day of March, 2014, by the following roll call vote:

AYES: WILLIAMS, STEVES, SADRO, PATTERSON, BYERRUM  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: SHEPARD

  
\_\_\_\_\_  
Carmen Henderson, Oversight Board Secretary

**EXHIBIT A**

**EXCLUSIVE NEGOTIATING AGREEMENT**

**[Attached behind this page]**

## EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

This Exclusive Right to Negotiate Agreement (this “**Agreement**”) is dated March 3, 2014 (“**Effective Date**”), by and between **ICI DEVELOPMENT COMPANY INC.**, a California corporation (“**ICI**”) and **SUCCESSOR AGENCY OF THE CITY OF LA HABRA REDEVELOPMENT AGENCY**, acting as Successor Agency to the La Habra Redevelopment Agency, a dissolved public body (the “**Successor Agency**”).

### RECITALS

A. ICI and its affiliates have developed several retail properties within the City of La Habra and most recently that certain real property located in the City of La Habra, County of Orange, State of California, as more particularly described on **Exhibit A** attached hereto (the “**ICI Parcel**”).

B. Successor Agency, acting as successor agency to the La Habra Redevelopment Agency, a dissolved public body, pursuant to Section 34173 of the California Health and Safety Code, is the fee owner of that certain real property located in the City of La Habra, County of Orange, State of California, as more particularly described on **Exhibit B** attached hereto (the “**Successor Agency Parcels**”).

C. Successor Agency desires the future development of the Successor Agency parcels for retail use, and ICI is experienced in the development of commercial properties including power centers and neighborhood shopping centers.

D. The parties hereto have agreed to enter into this Agreement to grant ICI the exclusive right to negotiate a purchase and sale agreement with the Successor Agency concerning the Successor Agency parcels, on the terms and conditions set forth herein.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Exclusive Negotiations.** Successor Agency agrees for a period of one hundred twenty (120) days from the Effective Date (“**Negotiation Period**”) not to entertain, solicit, discuss, negotiate or enter into any agreement with any other person or any other entity other than ICI (or an “**affiliate**” of ICI, hereinafter defined as an entity in which R. Scott Bell, Leo David, or Dan Wojkowski has a majority ownership interest) concerning the development, construction, marketing, leasing or sale of all or any portion of the Successor Agency parcels, including without limitation a letter of intent, term sheet, purchase and sale agreement, option agreement, joint venture agreement or development agreement, without the prior written consent of ICI, which consent may be withheld in ICI’s sole and absolute discretion; provided, however, this Agreement shall not apply to any negotiations of the Successor Agency regarding that certain reciprocal easement agreement proposed by ICI to provide reciprocal access to Harbor Boulevard and Imperial Highway. During the Negotiation Period, Successor Agency and ICI shall diligently and in good faith negotiate a purchase and sale agreement for the Successor Agency parcels, and following the parties’

agreement of the terms and conditions of such purchase and sale shall promptly execute a definitive purchase and sale agreement.

2. Extension of Negotiation Period. Extension of the Negotiation Period for an additional period of sixty (60) days by providing written notice to Successor Agency on or before the expiration of the initial Negotiation Period may be permitted by mutual consent and authorized by the Interim City Manager.

3. Termination. If Successor Agency and ICI are unable to agree upon terms and conditions for the purchase and sale of the Successor Agency Parcels by the end of the Negotiation Period, this Agreement shall terminate, and neither party shall have any further obligations to the other arising under this Agreement.

4. Miscellaneous.

a. Amendment. This Agreement may only be amended by a writing executed by the parties hereto.

b. Notices. All notices, requests, demands, approvals and consents required or permitted by this Agreement shall be in writing, shall be delivered personally or sent by registered or certified by mail, postage prepaid or by commercial overnight courier service, addressed as indicated below or to such other address or addresses as designated from time to time by either party to the other party. Notice given in compliance with the foregoing provisions shall be deemed to be received on the earlier of actual receipt or two (2) business days after mailing.

ICI: ICI Development Company, Inc.  
2222 E. Seventeenth Street  
Santa Ana, CA 92705  
Attention: R. Scott Bell

Successor Agency: City of La Habra  
201 E. La Habra Blvd  
La Habra, CA 90631  
Attention: Jim Sadro

c. Entire Agreement. This Agreement shall constitute the entire Agreement between the parties hereto concerning the subject matter hereof and supersedes all prior agreements and negotiations.

d. Governing Law. This Agreement shall be enforced by, governed by, and construed in accordance with the laws of the State of California.

e. Attorney's Fees. In the event of any dispute between the parties hereto involving the performance or interpretation of the covenants contained in this Agreement or arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, expenses, and costs, including costs on appeal and costs in any bankruptcy proceeding (including any post-petition proceedings).

f. No Waiver. No failure or delay of any party in the exercise of any right hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of such right include any further exercise thereof or any other right. The waiver by a party of any breach or any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof, or of any breach or any other provision thereof.

g. Additional Documents/Cooperation. Each party when and as requested will execute such other instruments or agreements as may be reasonably requested by the other party and required in order to carry out the purposes of this Agreement.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

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

**ICI:**

**ICI Development Company Inc.,  
a California corporation**

By: \_\_\_\_\_  
R. Scott Bell, President

**SUCCESSOR AGENCY:**

**SUCCESSOR AGENCY OF THE CITY OF LA HABRA  
REDEVELOPMENT AGENCY,**  
acting as successor agency to the  
La Habra Redevelopment Agency,  
a dissolved public body

By: \_\_\_\_\_  
Name: Jim Sadro  
Its: Interim City Manager

**EXHIBIT A**

**ICI PARCEL  
LEGAL DESCRIPTION**

That certain real property in the County of Orange, State of California, described as follows:

PARCEL 2, IN THE CITY OF LA HABRA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36, PAGE 20 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ANY AND ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, AS MORE PARTICULARLY SET FORTH AND PROVIDED IN THAT CERTAIN DOCUMENT RECORDED AUGUST 2, 1971 IN BOOK 9743, PAGE 709 OF OFFICIAL RECORDS.

**EXHIBIT B**

**SUCCESSOR AGENCY PARCEL  
LEGAL DESCRIPTION**

That certain real property in the County of Orange, State of California, described as follows:

Parcel A:

PARCEL 2, IN THE CITY OF LA HABRA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 44, PAGE 13 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Parcel B:

PARCEL 2, IN THE CITY OF LA HABRA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 107, PAGE 19 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF LA HABRA, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED NOVEMBER 13, 2008 AS INSTRUMENT NO. 2008000530247 OF OFFICIAL RECORDS.