REDEVELOPMENT
CORPORATION
CHULA VISTA

CVRC Board
Staff Report – Page 1
Item No. 4

DATE: August 23, 2007

TO: CVRC Board Directors

VIA: David R. Garcia, Chief Executive Officer
Scott Tulloch, Assistant City Manager

FROM: Ann Hix, Acting Community Development Director
Eric Crockett, Redevelopment Manager

SUBJECT: Consideration of Two Exclusive Negotiating Agreements for Sites within the Town Centre I Redevelopment Area

Project Areas:	Town Centre I
Agreement:	Exclusive Negotiating Agreements
Developers:	CityMark Communities LLC and Voyage LLC (Public)
Project Sites:	(1) Church and Davidson Northwest and (2) Landis and Davidson Northeast
Project Types:	Mixed-Use and Residential
Project Descriptions:	To Be Determined

BACKGROUND:

Staff is proposing two Exclusive Negotiating Agreements (ENAs) for review and consideration by the CVRC. Although these are considered "new" ENAs in the Third Avenue area, staff has been working closely with these developers during the past two years, examining potential development sites in the Third Avenue Village as the Urban Core Specific Plan (UCSP) was in process. Each developer previously had ENAs for other development sites on City/Chula Vista Redevelopment Agency ("Agency")-owned parking lots. The details of those ENAs and why the ENAs are being proposed for different sites are described in this report.

The new ENAs proposed are as follows:

Developer	Site	Action
CityMark Communities LLC	Landis and Davidson Northeast	New ENA
Voyage LLC (Public)	Church and Davidson Northwest	New ENA

The following staff report provides information about ENAs in general, why one of the previous agreements was allowed to expire and the other was terminated, a brief review of the downtown parking study findings and recommendations, and a description of the two ENAs.

RECOMMENDATION:

Staff recommends that the CVRC adopt the following resolutions:

a) Resolution approving an Exclusive Negotiating Agreement between the CVRC and CityMark Communities LLC regarding the redevelopment of the Landis and Davidson Northeast Site; and

b) Resolution approving an Exclusive Negotiating Agreement between the CVRC and Voyage LLC regarding the redevelopment of the Church and Davidson Northwest site.

DISCUSSION:

Exclusive Negotiating Agreements

Purpose

An ENA is a roadmap for the evolution of a redevelopment project. ENAs establish a predictable and agreed upon process, timeline, and parameters for developers and the staff to cooperatively design and process redevelopment proposals that meet the goals and objectives of both parties. The ENA process strategically evolves a proposal from initial concept to a defined project that is consistent with City and Agency plans and policies (e.g., General Plan, Urban Core Specific Plan and redevelopment plans), creating greater opportunities and incentives for private investment and community benefit.

Structure

As crafted, the ENA generally describes the proposed development site, establishes a timeline for milestones and public participation, defines the negotiation period, and establishes a deposit amount.

An important component of the ENA is the timeline, which is an attachment to the ENA. This document provides clear completion dates for various predevelopment tasks. Two main objectives that this timeline facilitates are:

1. The preparation and completion of market studies, site plans and elevations, financing and development analysis, and public outreach and input
2. The establishment of a framework for negotiations to reach business deal points and terms for entering into a Disposition and Development Agreement (DDA)

Previous ENAS and Parking Study

As noted above, both CityMark's and Public's previous ENAs were on land used for public parking, at Landis and Davidson Southeast (CityMark) and at Church and Madrona Northwest (Public). Prior to entering into Disposition and Development Agreements (DDAs), the City, through the recent completion of a comprehensive downtown parking management study, determined that there would be a potential impact to redeveloping those particular parking lots, possibly requiring replacement parking elsewhere in the urban core.

Parking Study Findings

In October 2006, the City of Chula Vista Community Development Department initiated a comprehensive parking study to look at the management and supply of public parking in the urban core. The results of that study, as well as staff's recommendations, are being presented to the Chula Vista Redevelopment Corporation (CVRC) on August 9, 2007. The parking study findings showed that CityMark's site (referred to as Lot 3 in the study) was highly-utilized, and Public's site (Lot 6) was well-utilized. The preliminary recommendation from the parking consultant was to maintain the public parking on Lot 3; however, the consultant did not make a specific recommendation for Lot 6. Based on staff's analysis of the findings and preliminary recommendations in the parking study, as well as public input from a series of eight community meetings, the two lots will be maintained for public parking.

CityMark

CityMark entered into an ENA on July 19, 2005 with the Agency to develop a one-acre property made up of eight City- and Agency-owned parcels on Landis Avenue

just south of Davidson Street. The 300-day timeline for that ENA was tied to the adoption of the UCSP. The ENA was amended twice - once in August 2006, and again in March 2007 - in accordance with the anticipated approval of the UCSP. The UCSP was ultimately approved on April 26, 2007, around the same time that staff was analyzing the findings and preliminary recommendations from the parking study. The findings showed heavy parking utilization of Lot 3, and recommended maintaining public parking facilities on those parcels. Additionally, adjacent property owners and businesses, including several medical office uses, weighed in during community presentations to recommend against redevelopment of the parking lot. Staff concurred with the consultant's and the public's recommendations, and on June 6, 2007, the ENA on the property was allowed to expire, with the intent of proposing a new ENA on an alternate site at the northeast corner of Landis Avenue and Davidson Street.

Voyage LLC (Public)

On May 11, 2006, the CVRC approved an ENA with Public for a two-parcel Agency-owned property on the northwest corner of Church Avenue and Madrona Street in the urban core, currently in use as a public parking lot. Like CityMark, Public's 300-day ENA timeline was linked to the adoption of the UCSP. In March 2007, the ENA was extended administratively, and on April 26, 2007, the same night the UCSP was approved, the Agreement was amended again, making minor adjustments to the timeline and lengthening the negotiation period. Analyzing the parking study findings and recommendations, staff found that the lot was well-utilized. During community presentations, staff heard from local restaurant and business owners who were vocal about their concerns regarding loss of the 30 parking spaces provided on the lot. As a direct result of public input, staff recommended maintaining the lot for public parking. After discussing the recommendation with the developer, the ENA was terminated on July 6, 2007, with the intent of proposing a new ENA on an alternate site at the northwest corner of Church Avenue and Davidson Street.

New ENAs

Both CityMark and Public are well-qualified and interested developers, capable of implementing the vision of Chula Vista's General Plan, Town Centre I Redevelopment Plan and the UCSP. Both developers were diligent in their efforts to move their projects forward under their previous ENAs.[1] As such, staff is proposing a new ENA for an alternate property in the urban core for each developer.

CityMark

CityMark is proposed to enter into an ENA with the CVRC on the three City-owned parcels at the northeast corner of Davidson Street and Landis Avenue. The site is just over half an acre and is currently used as a public parking lot, but it was not identified in the parking study as being significantly utilized. The site is located in the V-3 subdistrict of the UCSP. The developer is proposing a mid-rise building in conformance with the regulations in the adopted specific plan.

Voyage LLC (Public)

Public has created a new development entity, Voyage LLC, through which it will enter into an ENA with the CVRC. The subject property is the two City-owned parcels at the northwest corner of Church Avenue and Davidson Street. The approximately one-third acre site is also currently used for public parking, but it was not identified as being significantly utilized. The site is located in the V-1 subdistrict of the UCSP. The developer is proposing ten condominium units, two of which will be live/work units, in conformance with the regulations in the adopted plan.

Market

The success of Chula Vista's redevelopment activities is highly dependent upon the City's efforts to time projects to take advantage of market opportunities and to respond quickly to the needs of investors when markets are strong. Although the market is presently soft, putting the proposed agreements in place and starting the entitlement process now will lay the groundwork for these projects to be completed as the cycle starts to improve again.

DECISION-MAKER CONFLICT:

Staff has reviewed the property holdings of the CVRC Members and has found that a conflict exists, in that CVRC Board Member Salas has property holdings within 500 feet of the boundaries of the Church and Davidson site, (Public/Voyage LLC) which is one of the subjects of this action.

[1] The previous ENA schedules for CityMark and Public were linked to the approval of the UCSP, which took effect June 14, 2007. Throughout the negotiating period, CityMark and Public worked cooperatively with staff to make the necessary amendments to their respective agreements, and would have gone forward with the projects as planned, had it not been for the results of the parking study.

No conflicts exist for the Landis and Davidson site.

CONCLUSION:

Since the approval of the original two ENAs with CityMark and Public, the economy and market have shifted, which has been reflected in rising interest rates, increased construction costs and the slowing in the absorption of new units. Due to the financial complexity of urban infill projects, a change in any of these variables has an impact on redevelopment and on Chula Vista's revitalization activities on the west side. As stated above, both developers are well-qualified and interested in developing in Chula Vista. It is therefore important that the CVRC expeditiously capture and take advantage of the opportunity to plan effectively, implementing strategic redevelopment tools through the Exclusive Negotiation Agreement.

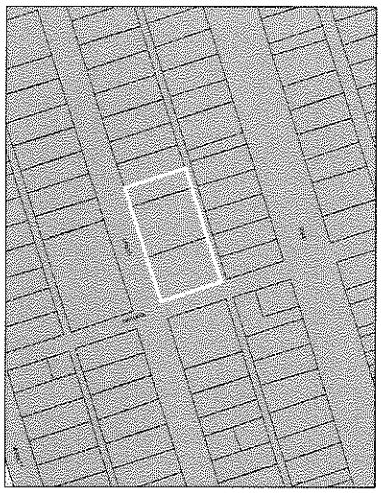
ATTACHMENTS:

A. CityMark Communities LLC Profile
B. Voyage LLC (Public) Profile
C. Map of ENA Sites
D. ENA with CityMark Communities LLC
E. ENA with Voyage LLC

PREPARED BY: Janice Kluth, Senior Community Development Specialist

CITYMARK

LANDIS AVENUE NORTHEAST



Site Description

Located in the heart of Chula Vista's downtown village, the Landis Northeast site is situated in an ideal location for the creation of residential densities to support and reinvigorate the Third Avenue business district. Development at this location will also present important opportunities to create enhanced linkages and pedestrian access to and from local residences, Third Avenue businesses, neighboring parks, and local community centers.

CityMark Communities LCC, is interested in developing a project on the Landis Northeast site within the Agency's Town Centre I Redevelopment Project Area. The subject property consists of eight parcels located on the northeast corner of Landis Avenue and Davidson Street (Assessor's Parcel Numbers 568-044-0900, 568-044-1000, 568-044-1100) and totals approximately 29,319 square feet in area.

Existing Uses & Ownership

The site is owned by the City and is currently used as a metered parking lot. Landis Avenue is a secondary street between E and F Streets that is characterized by a mixture of older and unique residences, many of which have been converted to professional office and multifamily residential uses. The site is located in the Urban Core Specific Plan's West Village V-3 Subdistrict, which allows FARs between 2.0 and 4.5, heights between 18' and 84', primary land use maximums of 100% residential, 10% retail, and 10% office. Surrounding land uses include several medical office buildings and other miscellaneous commercial retail, service, and office uses.

Developer Qualification & Owner Participation Process

CityMark was selected through a Request for Proposals and Qualifications process for another City/Agency-owed site in the vicinity, and the Redevelopment Agency entered into an ENA with the Developer on that property in July 2005. In mid-2007, a City-commissioned parking study recommended against redevelopment of the property. The ENA was allowed to expire, with the intent that the developer would enter into a new ENA on an alternate site.

Developer Profile, History, and Qualifications

CityMark is an urban residential and mixed-use development company based in San Diego and founded in 2000. CityMark primarily develops low-rise and mid-rise

residential projects, including condominiums and mixed-use developments incorporating retail and office space. CityMark's portfolio and business plan include lofts, town homes, flats, and live/work residences.

Notable **completed** CityMark projects in the San Diego region include:

- CityMark at Cortez Hill. 16 two- and three-bedroom townhouse units in the Cortez Hill District of the City of San Diego near the newly renovated El Cortez Hotel.
- Doma. 121-unit mixed-use development in Little Italy consisting of 66 eight-story lofts, 40 four-story townhouses, and 15 four-story flats with almost 60 distinct floor plans.
- Paseo. 18 townhouses and live/work residences in the historic downtown district of the City of La Mesa.
- M2i. Seven-story, 230-unit condominium project in the Ballpark District of the City of San Diego consisting of townhouses, flats, and live/work units.
- Farenheit. Seven-story, 77-unit loft project in the Ballpark District of the City of San Diego that will incorporate ground floor "shopkeeper" units.
- Egyptian. Seven-story, 80-unit mixed-use project in the Hillcrest area of the City of San Diego.

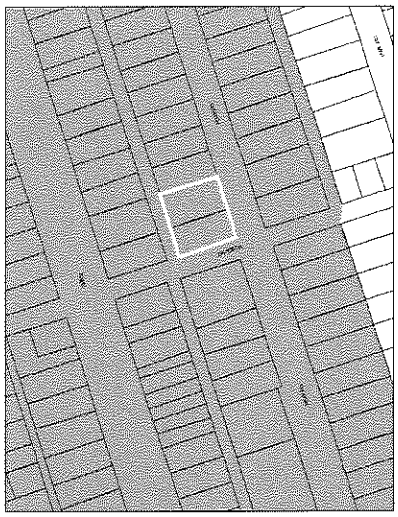
CityMark's Cortez Hill and Doma projects were the recipients of multiple awards at the 2002 and 2003 San Diego Building Industry Association's Sales, Advertising, and Merchandising Awards, including Best Attached Housing Project Award.

CVRC-Developer Partnership

In addition to their experience and depth as an urban residential developer in San Diego County, CityMark is composed of a small and very close development team that has emphasized their desire and commitment to creating close partnerships with staff, the CVRC, and the community to create product types and designs that complement the character and charm of Chula Vista's downtown village. CityMark's commitment to local partnerships was a key factor in their selection during the RFP/Q interview process.

Voyage LLC (Public)

CHURCH AND DAVIDSON NORTHWEST



Site Description

Located on Church Avenue in Chula Vista's downtown village, this site offers an excellent opportunity for showcasing the type of residential density intended by the Urban Core Specific Plan and Updated General Plan. Development at this location will complement Third Avenue businesses, and benefit from neighboring parks, and local community centers.

Voyage LLC, a Limited Liability Company and development entity of Public, a California General Partnership, is interested in developing a project on Church Avenue within the Agency's Town Centre I Redevelopment Project Area. The subject property consists of two parcels located along the western side of Church Avenue, at the intersection of Davidson Street (Assessor's Parcel Numbers 568-071-19-00 and 18-00) and totals approximately 13,855 square feet in area.

Existing Uses & Ownership

The site is owned by the City of Chula Vista and is currently used as a metered parking lot. Church Avenue is a secondary street running parallel to Third Avenue and is characterized by a mixture of retail, office, multifamily and single family uses. The site is located in the V-1 subdistrict of the Urban Core Specific Plan, allowing FARs between 1.0 and 2.0, heights from 18' to 45', and primary land uses of 100% residential (with allowances for Live/Work uses). Surrounding land uses include commercial, residential and office buildings and a public parking lot.

Developer Qualification Process

In 2005, the Community Development Department received a Statement of Qualifications from Public for another site in the urban core. The developer is well qualified, possessing intimate knowledge and experience in urban residential developments. In addition to developer's history, experience, and financial capabilities, there is a commitment to creating positive partnerships and working relationships with CVRC staff, the local community, and other development teams working with the CVRC.

Based upon staff's review of the developer's profile, history, and qualifications for this site, the CVRC entered into an ENA with Public for the Church Avenue site in May 2006. Although external conditions caused that ENA to be terminated earlier this year, staff recommends that the CVRC enter into a new ENA with Public through its development entity, Voyage LLC, on an alternate property in the urban core.

Developer Profile, History, and Qualifications

Public is an urban residential architecture/development company based in San Diego and founded in 1989. Public primarily develops low-rise residential projects, including mixed-use developments incorporating retail and office space. Public's portfolio and business plan include lofts, town homes, flats, and live/work residences. Typically the firm has developed rental units, but is now expanding into the for-sale market. For the purpose of developing the new residential product, Public created a Limited Liability Company, Voyage LLC, in September 2006.

Notable **completed** Public projects in or near the San Diego region include:

- Dutra Brown Building. Four-unit rental apartment building in the Little Italy District of the City of San Diego –building materials and architectural elements were reused from the original buildings on the site.
- Laurel Court. Twenty-unit modern residential project in West Hollywood. Homes are grouped around a series of landscaped courtyards, reminiscent of older residences in the area.
- Lee Residence. Single family home in La Jolla.

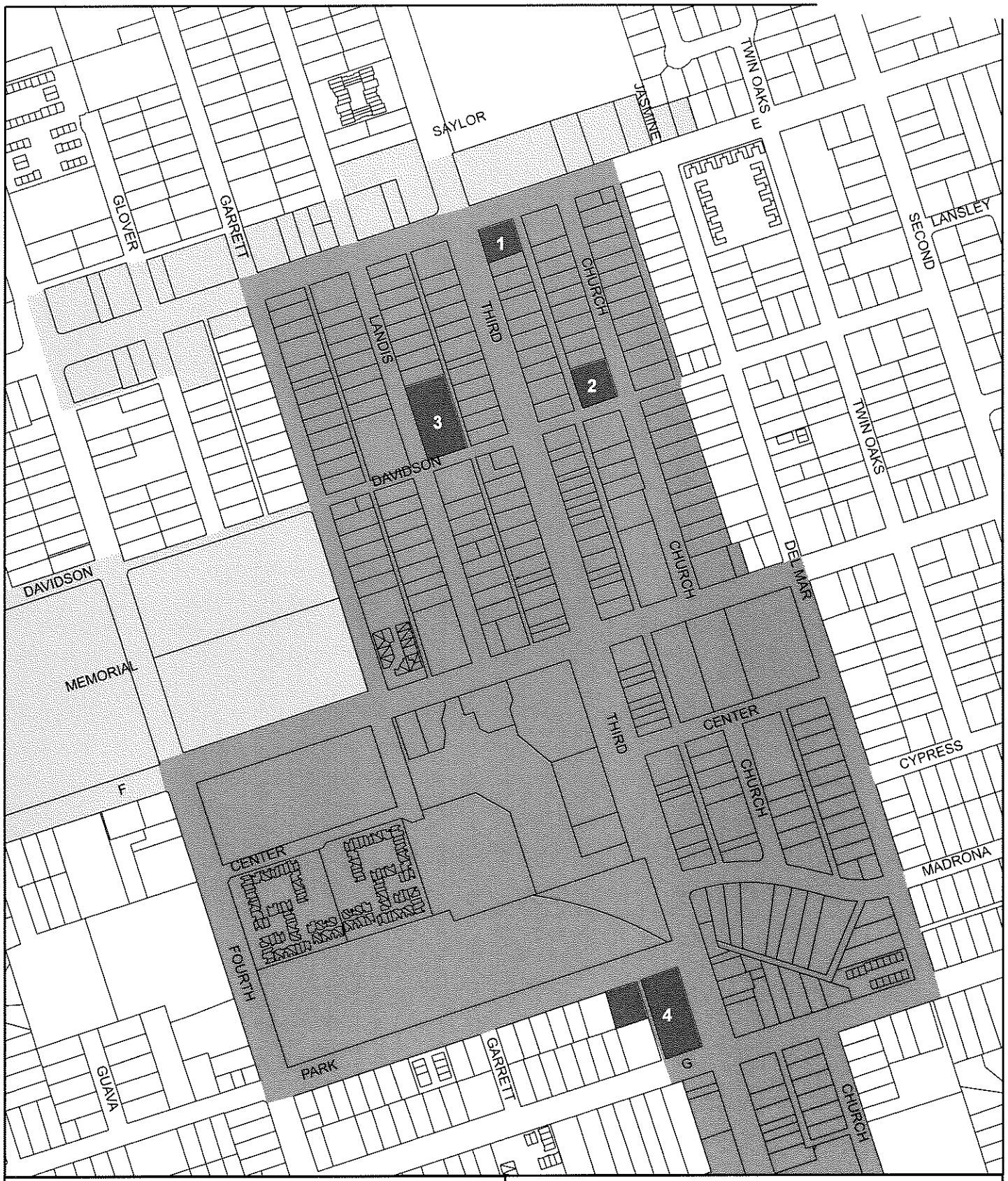
Notable **current** Public projects in the San Diego region include:

- Southblock. One hundred and six-unit mixed use building in downtown San Diego, with apartments above and retail on the ground level.
- Sigbee Row. Fourteen market-rate urban condominiums in the Barrio Logan district of San Diego.
- Baltazar Residence. Single family home in La Jolla.

Public's Dutra Brown Building was the recipient of local, State and national awards by the American Institute of Architects. The Lee Residence also received an AIA award. The firm has been published in Architectural Record, San Diego Home and Garden and Dwell magazine. Public was also short-listed for architectural firm of the year for the entire State of California last year.

CVRC-Developer Partnership

In addition to their experience and depth as an urban residential developer in San Diego County, Public is composed of a small and very close development team that has emphasized their desire and commitment to creating close partnerships with staff, the CVRC, and the community to create product types and designs that complement the character and charm of Chula Vista's downtown village. Public's commitment to local partnerships was a key factor in the decision to move forward with the ENA process.



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Merged Bayfront / Town Centre I Project Area

Merged Chula Vista Project Area

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1. 3rd & E Southeast Corner / Avion Development
2. Church & Davidson Northwest / Voyage LLC
3. Landis & Davidson Northeast / CityMark Development LLC
4. 3rd & G Northwest / Interguif-Mar (Park) Group

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement ("Agreement"), dated as of this 23rd day of August, 2007 ("Effective Date"), is made by and between the Chula Vista Redevelopment Corporation, a California nonprofit, public benefit corporation ("CVRC"), on behalf of and for the Redevelopment Agency of the City of Chula Vista, a public body, corporate and politic ("Agency"), and CityMark Communities, LLC, a California limited liability company ("Developer"), with reference to the following facts:

RECITALS

In furtherance of the objectives of the California Community Redevelopment Law, the Agency has undertaken a program for the redevelopment of certain areas within the City of Chula Vista ("City"), and in connection therewith is undertaking and carrying out activities for redevelopment in the Town Centre I Redevelopment Project Area ("Project Area") pursuant to and in furtherance of the redevelopment plan for the Project Area ("Redevelopment Plan").

The subject matter of this Agreement concerns that certain real property located within the Project Area as depicted on Exhibit "A" hereto ("Property"). The Property consists of three parcels encompassing approximately 29,319 square feet of territory located on the northeast corner of Landis Avenue and Davidson Street in the City of Chula Vista (Assessor Parcel Numbers 568-044-0900, 568-044-1000, 568-044-1100).

The Developer is proposing to develop an urban residential condominium development ("Project") and desires to negotiate a Disposition and Development Agreement ("DDA") with the Agency.

After a competitive Request for Qualifications/Proposal selection process conducted by the Agency for the Property in 2005, the Agency selected the Developer as a qualified entity with which to negotiate terms for an agreement for development of the Property. Based on those qualifications, the CVRC desires to enter into this Agreement with the Developer with the objective of determining the feasibility of the proposed project and consideration of entering into a mutually acceptable DDA for the development of the Property consistent with the terms and conditions of this Agreement at the earliest practical date.

The Developer anticipates that, following execution of this Agreement and through the period of negotiation and preparation of a DDA with respect to the Project, it will devote substantial time and effort in preparing plans, preparing project pro formas, contacting financial institutions, engaging appropriate consultants, and meeting with the Agency and various other necessary third parties in connection with the proposed Project, and in negotiating and preparing a DDA consistent with the basic terms and mutual understandings established in this Agreement.

The CVRC and the Developer ("Parties") desire to enter into this Agreement in order to set forth the rights and duties of the Parties during the term of the Exclusive Negotiating Period.

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Now, therefore, the Parties mutually agree as follows:

1. GOOD FAITH NEGOTIATIONS

A. CVRC and Developer agree (pursuant to Section 2.A) to negotiate in good faith pursuant to the terms of this Agreement, a DDA or other form of agreement or agreements to be entered into between the Agency and Developer concerning the purchase and development of the Property by Developer. During the negotiation period pursuant to Section 2 below, CVRC agrees not to negotiate with any other person or entity regarding development of the Property without the consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by the CVRC, the Agency, the City of Chula Vista, or any agency of the City, with respect to the acquisition of property or the approval of the development project. CVRC's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any actions required of it.

B. Notwithstanding the foregoing, Developer acknowledges that Agency may receive from time to time, unsolicited alternative proposals for the development of the Property. Agency shall notify Developer within ten days after receiving an unsolicited development proposal for all or any portion of the Property. Agency and Developer shall confer in good faith to assess the benefits of the unsolicited proposal.

2. NEGOTIATION PERIOD

A. CVRC and Developer agree to negotiate for an initial period of three hundred (300) days which shall commence on the Effective Date unless earlier terminated in accordance with the provisions hereof ("Initial Negotiation Period").

B. If, upon the expiration of such Initial Negotiation Period, the Parties have not each approved and executed a DDA, then the Chief Executive Officer of the CVRC ("CEO"), in his or her sole discretion, on behalf of the CVRC, is authorized to extend, in writing, the term of this Agreement for up to an additional ninety days (90) days ("Extended Negotiation Period") provided that at the end of the Initial Negotiation Period, neither the CVRC nor the Developer has exercised its right to terminate as provided herein and the Developer is in full compliance with all terms and conditions hereof, the Developer concurs with such extension of the negotiation period, and the CEO has determined that there is a reasonable likelihood that the Developer will agree to terms and conditions for the development of the Project on the Property that Agency staff will be able to recommend approval of the DDA to the Agency prior to the expiration of the Extended Negotiation Period.

C. If, after expiration of the Initial Negotiation Period, or after the Extended Negotiation Period if this Agreement is extended, the Parties have not each approved and executed a DDA, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and Agency shall be free to negotiate with any other persons or entities with regard to the Property.

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3. OBLIGATIONS OF DEVELOPER

A. Schedule

CVRC and Developer agree and acknowledge that all submittals required by this Agreement shall be submitted pursuant to the timeline attached hereto as Exhibit "B." Exhibit "B" may be amended administratively by the CEO as needed and with the concurrence of the Developer in writing, provided the timeline does not exceed the Initial Negotiation Period or the Extended Negotiation Period, if applicable.

B. Development and Design Plans

During the negotiation period, Developer shall submit development and design plans for the Project as described in Exhibit "B." Developer shall also furnish such information to CVRC regarding the Project as may be required by CVRC and/or City to perform an environmental review pursuant to the California Environmental Quality Act ("CEQA"). All fees and expenses for engineers, architects, financial consultants, legal, planning or other consultants retained by Developer to perform Developer's obligations set forth in this Agreement shall be the sole responsibility of Developer.

C. Reports, Studies and Public Participation

Developer shall make written reports to the CVRC on the Developer's progress toward meeting its obligations under this Agreement as requested by the CVRC, and if requested by the CVRC, Developer shall make periodic oral progress reports on all matters and all studies being made related to the acquisition of the Property and development of the Project and other matters under negotiation to the extent that they do not include confidential matters. As CVRC deems reasonably necessary or appropriate, presentations may be requested at public forums to solicit input from citizens, businesses, stakeholders and relevant interest groups.

D. Financing

Developer shall, consistent with Exhibit "B," develop a program of financing that provides the CVRC with reasonably satisfactory evidence that financing will be available for acquisition and development of the Property.

E. Deposit

Developer previously deposited with the Agency in 2005 an amount of Twenty Five Thousand Dollars ($25,000) in immediately available funds ("ENA Deposit") for project analysis, following the execution of an ENA for the site known as Landis Avenue South (Assessor Parcel Numbers 568-152-2300, 568-152-2400, 568-152-2500, 568-152-2600, 568-152-2700, 568-152-2900, 568-152-0100, 568-152-0200, 568-152-0300) on July 18, 2005. CVRC shall continue to utilize the remaining balance of the previous ENA Deposit to conduct project analysis for this Agreement including, but not limited to, payment for third party

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consultants, City/Agency staff time (at applicable full cost recovery rates), and other reasonable costs incurred by the CVRC and Agency in conducting such analysis. CVRC shall request additional deposits if the ENA Deposit is exhausted and CVRC determines further analysis is required. CVRC may cease negotiations and all activities of third party consultants until such time as ENA Deposit is replenished as reasonably requested by CVRC. Any deposit balance remaining upon the termination of the Agreement, less any interest earned on said deposit, shall be returned to Developer or shall be applied to any deposit required by a subsequent DDA.

4. CVRC OBLIGATIONS AND DUE DILIGENCE

A. During the Negotiation Period, CVRC shall conduct a due diligence investigation of the Developer's ability to purchase, own and/or operate the Project in a responsible manner. If the CEO determines in his or her sole discretion that Developer does not have the ability to successfully purchase, own, and/or manage the Project in a responsible manner, the CEO may terminate this Agreement by delivering written notice thereof to Developer. CVRC's due diligence efforts may include, without limitation, the following:

1. Assessment of the proposed financing and the capacity of Developer to qualify for financing for the Project; and

2. Assessment of the capacity of Developer and its principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities.

B. CVRC agrees to cooperate with Developer in providing equity partner(s) and/or lender(s) of Developer with appropriate and necessary information for the Developer to fulfill its obligations hereunder, which information is not otherwise privileged.

C. CVRC shall also cooperate with Developer's professional consultants and associates in providing them with any information and assistance, so far as such information is not otherwise privileged, reasonably within the capacity, possession or control of the CVRC in connection with the preparation of the Developer's submissions to the CVRC.

5. DDA

The Parties hereby acknowledge and agree that, during the Initial Negotiation Period and, if applicable, the Extended Negotiation Period, the Parties shall use their respective good faith efforts to negotiate and enter into a DDA which shall include (but not be limited to) the following: (i) the design of the Project by the Developer, which design and any required permits shall be subject to the approval by the CVRC and/or City, (ii) the construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the CVRC and/or City, pursuant to a detailed schedule of performance by the Developer, (iii) the operation and management of the Project by the Developer in a good and professional manner and subject to the covenants required by law, (iv) the maintenance of landscaping, buildings, and improvements in good condition and satisfactory state of repair so as to be attractive to the community, (v) the operation of the Project by the Developer in compliance with all equal opportunity standards established by federal, state and local law, (vi) provision by each contractor and/or subcontractor (as the case may require and as appropriate)

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performing work on the Project of the requisite performance bond and labor and materials payment bond to assure completion of the Project free of mechanics' liens, (vii) the Project shall be of a quality consistent with plans and renderings provided by Developer and approved by the CVRC, (vii) the terms and conditions upon which Developer shall acquire the Property and (viii) the terms and conditions upon which either party may terminate the DDA (e.g., the discovery of environmental issues/hazardous substances on the Property, unexpected development or construction costs).

6. ADDITIONAL TERMS AND OBLIGATIONS

A. Real Estate Commissions

Neither CVRC nor Developer shall be liable for any real estate commission or brokerage fees which may arise herefrom except for a commission payable by Developer to Voit Commercial Brokerage pursuant to a separate written agreement. CVRC and Developer represent that they have not engaged any other broker, agent or finder in connection with this transaction and each party agrees to indemnify and hold the other party free and harmless from and defend the other against claims for commissions or fees made through such party and against any damage or expense the other party may incur by reason of the untruth as to the warranting party of the foregoing warranty, including expenses for attorney's fees and court costs.

B. Each Party to Bear its Own Cost

Each party shall bear its own costs incurred in connection with the negotiation of a DDA, and the implementation of this Agreement, except as otherwise expressly provided herein or expressly agreed in writing.

C. Confidentiality

CVRC and Developer recognize that disclosures made by Developer pursuant to this Agreement may contain sensitive information and that the disclosure of such information to third parties could impose commercially unreasonable and/or uncompetitive burdens on Developer and, may correspondingly, diminish the value or fiscal benefit that may accrue to the CVRC upon the redevelopment of the Property by the Developer, if a future DDA is entered into by the Parties. Developer acknowledges and agrees that CVRC is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by Developer to CVRC with respect to the Property, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that Developer reasonably deems and identifies in writing as proprietary and confidential in nature, CVRC agrees to exercise its best efforts to keep such information confidential. In addition, if CVRC determines that it is required under applicable law to disclose any information identified by Developer as proprietary and confidential in nature, CVRC shall notify Developer as least three business days before disclosure of such information which will provide Developer the opportunity to seek a protective order preventing such disclosure.

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D. Assignment

1. CVRC would not have entered into this Agreement but for Developer's unique qualifications and experience. Therefore, Developer's rights and obligations under this Agreement may not be assigned without the prior written approval of CVRC in its sole discretion. Notwithstanding the foregoing, subject to the prior written approval of the CEO, Developer may assign its rights hereunder to a new entity formed by the Developer for purposes of developing the Project. Such new entity may include additional parties provided that the Developer retains responsibility for fulfilling its obligations hereunder and Developer retains management control and authority over the entity and the Project.

2. Upon the assignment sale or transfer, whether voluntary or involuntary, of more than fifty percent (50%) of the membership, ownership, management or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the CVRC, prior to the time of such change, the CVRC may terminate this Agreement, without liability, by sending written notice of termination to Developer.

E. Nondiscrimination

Developer shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in undertaking its obligations under this Agreement.

7. RETENTION OF DISCRETION

A. By its execution of this Agreement, CVRC is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by CVRC, Agency, or City, or any department thereof including, but not limited to, the approval and execution of a DDA; the proposal, amendment, or approval of any land use regulation governing the Property; the provision of financial assistance for the development of any public or private interest in real property; the authorization or obligation to use the Agency's eminent domain authority; or, any other such activity.

B. Developer understands and agrees that the CVRC, Agency, and City, in their respective legislative roles, reserve the right to exercise their discretion as to all matters which the CVRC, Agency, and City are by law entitled or required to exercise such discretion, including but not limited to, entitlements or permits for the development of the Property and adoption of any amendments to policy documents (including the General Plan, Urban Core Specific Plan, and Redevelopment Plans). In addition, Developer understands and agrees that the entitlements and any other documents shall be subject to and brought to the CVRC, Agency, or City, as appropriate, for consideration in accordance with applicable legal requirements, including laws related to notice, public hearings, due process, and the California Environmental Quality Act.

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C. Developer acknowledges that any plans processed for the Property will be based upon the current General Plan and Zoning Code of the City. Additionally, Developer acknowledges that the City is still in the process of completing portions of the Urban Core Specific Plan ("UCSP"). Developer acknowledges and agrees that the City may consider a number of development alternatives for the Property for consideration by the City Council as part of City's UCSP process. Developer further acknowledges that the City is currently in litigation over the UCSP and that said litigation could affect the Property and the Developer's interests therein. Developer agrees and acknowledges that the processing, adoption and/or amendment of the General Plan or the UCSP by the City is not a consideration in its proceeding with this Agreement or the proposed development project and Developer may need to request amendments to the General Plan or UCSP. The General Plan and UCSP are legislative actions and this agreement does not limit or in any way interfere with the City Council's ability to exercise their discretionary authority as it relates to these or any other legislative actions. Developer acknowledges and agrees that the exercise of the City's legislative discretion, whether by the City Council's own actions or pursuant to or as a result of any litigation shall not form the basis of breach of this Agreement, express or implied, or any other claims against the City.

D. This Agreement does not constitute a disposition of property or exercise of control over property by CVRC and does not require a public hearing. CVRC execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any proposed DDA and all proceedings and decisions in connection therewith. The parties understand that Agency has the complete and unfettered discretion to reject a DDA without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by the Developer prior to DDA approval shall be absorbed entirely by Developer except unless expressly assumed, by the terms of this Agreement by the CVRC. As to any matter which the CVRC and/or Agency may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein shall obligate the CVRC and/or Agency to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of CVRC duties under this agreement.

8. TERMINATION RIGHTS

Notwithstanding the Initial or Extended Negotiating Periods hereinabove set forth, either party may terminate this Agreement if the other party has materially defaulted in its obligations herein set forth, and the terminating party has provided defaulting party with written notification of such determination, and the defaulting party has refused to cure same. The written notification shall set forth the nature of the actions required to cure such default if curable. Defaulting party shall have 30 days from the date of the written notification to cure such default. If such default is not cured within the 30 days, the termination shall be deemed effective. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Each party shall also have the right to terminate this Agreement in the event that CVRC or Developer determines that: (a) the Project is infeasible or not in the public interest; or (b) the parties reach an impasse in their negotiation of the DDA which cannot be resolved after good faith efforts.

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9. GENERAL PROVISIONS

A. Address for Notice

Developer's Address for Notice:

CityMark Communities, LLC
701 B Street, Suite 1100
San Diego, California 92101
Attention: Mr. Richard V. Gustafson
Telephone: (619) 231-1161
Fax: (619) 235-4691

And

Hecht Solberg Robinson Goldberg & Bagley LLP
600 W. Broadway, Eighth Floor
San Diego, California 92101
Telephone: (619) 239-3444
Fax: (619) 232-6828

CVRC's Address for Notice:

City of Chula Vista – CVRC
Community Development Department
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Director of Community Development
Telephone: (619) 691-5047
Fax: (619) 476-5310
Copy to: City Attorney

B. Authority

Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Agreement on the behalf of such party are duly authorized agents with authority to do so.

C. Counterparts

4-19

This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

D. Entire Agreement

This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

E. Further Assurances

The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

F. No Third Party Beneficiaries

There are no other parties to this Agreement, express or implied, direct or indirect. CVRC and Developer acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

G. Exclusive Remedies

1. In the event of default by either party to this Agreement, the Parties shall have the remedies of specific performance, mandamus, injunction and other equitable remedies. Neither party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute damages based upon breach of this Agreement where such an award is limited to the reasonable costs of litigation incurred by the Parties.

2. Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with debtor.

California Civil Code Section 1542 notwithstanding, it is the intention of the Parties to be bound by the limitation on damages and remedies set forth in this Section 7G, and the Parties hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known to either of the Parties as of the date of this Agreement. The Parties each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions of

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similar effect with regard to the limitations on damages and remedies and waivers of any such damage and remedies contained in this Section 7G.

H. Indemnity

Developer shall indemnify, protect, defend and hold harmless CVRC, City and Agency, its elected officials, employees and agents from and against any and all challenges to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Developer's negligent acts, errors, or omissions with respect its obligations hereunder or the Property, excluding any such losses arising from the sole negligence or sole willful misconduct of CVRC, City or Agency or the conduct of third parties outside the control of the Developer. This indemnity obligation shall survive the termination of this Agreement. Notwithstanding the foregoing, in the event of a third party challenge to the validity of this Agreement, Developer shall have the option to terminate this Agreement in lieu of its indemnity obligation.

I. Time is of the Essence

Time is of the essence for each of Developer's obligations under this Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

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Signature Page

To

Exclusive Negotiating Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above, thereby indicating the consent of their principals.

CHULA VISTA
REDEVELOPMENT CORPORATION

By: _____
Chair

Date: _____

APPROVED AS TO FORM:

By: _____
Ann Moore
General Counsel

Date: _____

ATTEST:

By: _____
Ann Hix
Secretary

CITYMARK COMMUNITIES LLC
California Limited Liability Company

By: _____
Richard Gustafson
President

Date: _____

By: _____
Russell C. Haley
Vice President

Date: _____

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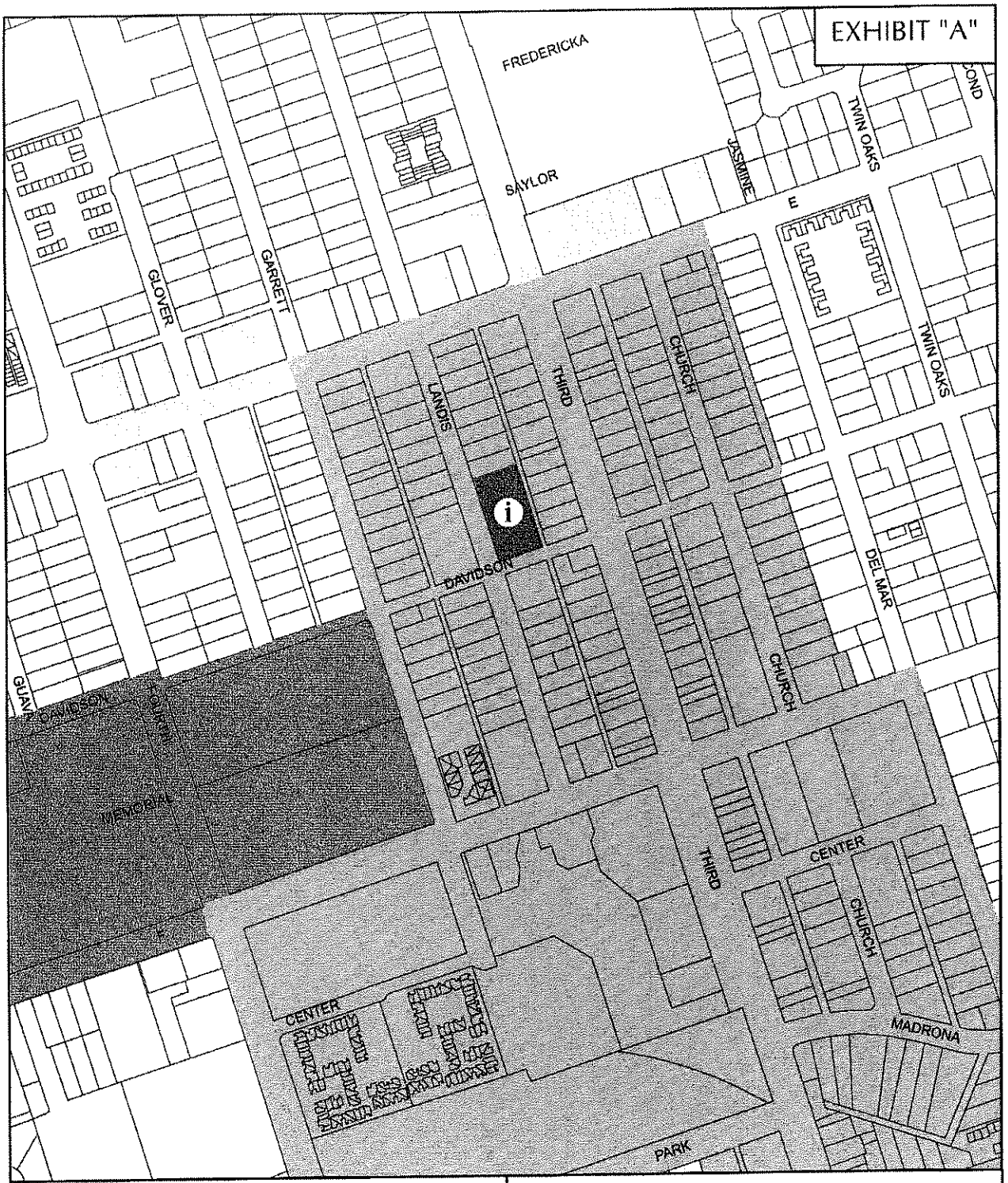

0 0.02 0.04 0.08 0.12 0.16 Miles

Added Area Redev. Project Area

Town Centre I Redev. Project Area

Town Centre II Redev. Project Area

Landis & Davidson Northeast Corner
CityMark Development LLC

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EXHIBIT "B"
EXCLUSIVE NEGOTIATING AGREEMENT
SCHEDULE OF ACTIVITIES

ACTIVITY	DESCRIPTION	RESPONSIBLE PARTY
Within 90 Days of ENA Execution		
Preliminary Design	Submittal of preliminary design concepts and drawings for staff review and comment, including site plans and elevations.	CityMark
RAC #1	Presentation of preliminary design concepts and drawings to the Redevelopment Advisory Committee for early public input on design.	CityMark
Draft Terms Sheet	Submittal of drafts of pro forma, development schedule, and terms sheet containing preliminary deal points.	CityMark
Within 60 Days of Draft Terms Sheet		
Conceptual Financing Plan	Submittal and review of conceptual financing plan with Staff.	Staff & CityMark
CVRC Technical Input #1	Presentation of preliminary design and deal points to CVRC Board of Directors for early technical input and comment.	Staff & CityMark
Within 60 Days of CVRC Technical Input #1		
RAC #2	Presentation of revised design concepts and drawings to the Redevelopment Advisory Committee for review, comment, and advisory recommendation.	CityMark
Draft DDA	Collaboration between Staff and CityMark to develop a Draft Disposition and Development Agreement (DDA).	Staff & CityMark
CVRC Technical Input #2	Presentation of Draft DDA to CVRC Board of Directors for early technical input and comment on DDA structure and conceptual financing plan.	CityMark
Within 60 Days of CVRC Technical Input #2		
DDA	Review and consideration of Disposition and Development Agreement by CVRC and Redevelopment Agency. DDA to include performance schedule for Urban Core Development Permit (UCDP) and project completion.	Staff & CityMark

Disclosure Statement

Pursuant to Council Policy 101-01, prior to any action upon matters that will require discretionary action by the Council, Planning Commission and all other official bodies of the City, a statement of disclosure of certain ownership or financial interests, payments, or campaign contributions for a City of Chula Vista election must be filed. The following information must be disclosed:

1. List the names of all persons having a financial interest in the property that is the subject of the application or the contract, e.g., owner, applicant, contractor, subcontractor, material supplier.

   CityMark Communities LLC

2. If any person* identified pursuant to (1) above is a corporation or partnership, list the names of all individuals with a $2000 investment in the business (corporation/partnership) entity.

   Rich Gustafson
   Rose Haley
   Vince Hoenigman

3. If any person* identified pursuant to (1) above is a non-profit organization or trust, list the names of any person serving as director of the non-profit organization or as trustee or beneficiary or trustor of the trust.

   N/A

4. Please identify every person, including any agents, employees, consultants, or independent contractors you have assigned to represent you before the City in this matter.

   Alex Beaton

5. Has any person* associated with this contract had any financial dealings with an official** of the City of Chula Vista as it relates to this contract within the past 12 months. Yes_____ No X

   If Yes, briefly describe the nature of the financial interest the official** may have in this contract.

6. Have you made a contribution of more than $250 within the past twelve (12) months to a current member of the Chula Vista City Council? No __ Yes X If yes, which Council member?

   Mayor Cox

7. Have you provided more than $340 (or an item of equivalent value) to an official** of the City of Chula Vista in the past twelve (12) months? (This includes being a source of income, money to retire a legal debt, gift, loan, etc.) Yes ___ No X

If Yes, which official** and what was the nature of item provided?

_____

_____

Date: 8-6-07

Signature of Contractor/Applicant APB

Russell C. Haley

Print or type name of Contractor/Applicant

* Person is defined as: any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, any other county, city, municipality, district, or other political subdivision, -or any other group or combination acting as a unit.

** Official includes, but is not limited to: Mayor, Council member, Chula Vista Redevelopment Corporation member, Planning Commissioner, member of a board, commission, or committee of the City, employee, or staff members.

September 8, 2006

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement ("Agreement"), dated as of this 23rd day of August, 2007, ("Effective Date") is entered into by the Chula Vista Redevelopment Corporation, a nonprofit, public benefit corporation ("CVRC"), on behalf of and for the City of Chula Vista Redevelopment Agency, a public body, corporate and politic ("Agency") and Voyage, LLC, a California Limited Liability Company ("Developer"), with reference to the following facts:

RECITALS

In furtherance of the objectives of the California Community Redevelopment Law, the Agency has undertaken a program for the redevelopment of certain areas within the City of Chula Vista ("City"), and in connection therewith is undertaking and carrying out activities for redevelopment in the Town Centre I Redevelopment Project Area ("Project Area") pursuant to and in furtherance of the redevelopment plan for the Project Area ("Redevelopment Plan").

To assist in the carrying out of planning and redevelopment activities the City of Chula Vista created the Chula Vista Redevelopment Corporation ("CVRC"). Pursuant to Chula Vista Municipal Code Section 2.55, the CVRC is authorized to enter into this Agreement on behalf of the Redevelopment Agency.

The subject matter of this Agreement concerns that certain real property located within the Project Area as depicted on Exhibit "A" hereto ("Property"). The Property is situated on two parcels at the northwest corner of Church Street and Davidson Street, known as the Church and Davidson northwest site (APN 568-07-119, 568-07-118). The site totals approximately 13,856 square feet in area.

Agency has received an unsolicited proposal for the redevelopment of the Property from a qualified and interested developer. Therefore, the CVRC desires to enter into this Agreement with the Developer with the objective of determining the feasibility of the proposed project and consideration of entering into a mutually acceptable DDA for the development of the Property consistent with the terms and conditions of this Agreement at the earliest practical date.

The Developer is proposing to develop ten (10) residential for-sale homes ("Project") and desires to negotiate a Disposition and Development Agreement ("DDA") with the Agency.

The Developer anticipates that, following execution of the Agreement and through the period of negotiation and preparation of a DDA with respect to the Project, it will devote substantial time and effort in preparing plans, preparing project proformas, contacting financial institutions, engaging appropriate consultants, and meeting with the City and various other necessary third parties in connection with the proposed Project, and in

negotiating and preparing a DDA consistent with the basic terms and mutual understandings established in this Agreement.

The CVRC and the Developer ("Parties") desire to enter into this Agreement in order to set forth the rights and duties of the Parties during the term of the Exclusive Negotiating Period subject to the Owner Participation rules and regulations established for the Project Area.

Now, therefore, the Parties mutually agree as follows:

1. Good Faith Negotiations

A. CVRC and Developer agree (pursuant to Section 2.A) to negotiate in good faith pursuant to the terms of this Agreement a DDA or other form of agreement or agreements to be entered into between the Agency and Developer concerning the purchase and development of the Property. During the negotiation period pursuant to Section 2 below, CVRC agrees not to negotiate with any other person or entity regarding development of the Property without the consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by CVRC, the City of Chula Vista, or any agency of the City, with respect to the acquisition of property or the approval of development. CVRC's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any actions required of it.

B. Notwithstanding the foregoing, Developer acknowledges that Agency may receive from time to time, unsolicited alternative proposals for the development of the Property. Agency shall endeavor to notify Developer within ten days after receiving an unsolicited alternative development proposal for all or any portion of the Property. Agency and Developer shall confer in good faith to assess the benefits of the unsolicited proposal.

2. Negotiation Period

A. CVRC and Developer agree to negotiate for an initial 300 days which shall commence on the Effective Date unless earlier terminated in accordance with the provisions hereof ("Initial Negotiation Period").

B. If, upon the expiration of such Initial Negotiation Period, the Parties have not each approved and executed a DDA, then the Chief Executive Officer of the CVRC ("CEO"), in his or her sole discretion, on behalf of the CVRC, is authorized to extend the term of this Agreement for up to an additional 90 days ("Extended Negotiation Period") provided that at the end of the Initial Negotiation Period, the CVRC has not exercised its right to terminate as herein provided, the Developer is in full compliance with all terms and conditions hereof, the Developer concurs with such extension of the negotiation period, and the CEO has determined that there is a reasonable likelihood that the Developer will agree to terms and conditions for the development of the Project on the

Property required for the development of the Project that Agency staff will be able to recommend approval of the DDA to Agency prior to the expiration of the Extended Negotiation Period.

C. If, after expiration of the Initial Negotiation Period, or after the Extended Negotiation Period if this Agreement is extended, the Parties have not each approved and executed a DDA, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and Agency shall be free to negotiate with any other persons or entities with regard to the Property.

3. Obligations of Developer

A. Schedule

CVRC and Developer agree and acknowledge that all submittals required by this Agreement shall be submitted pursuant to the timeline attached hereto as Exhibit "B." Exhibit "B" may be amended administratively by the CEO as needed and with the concurrence of the Developer in writing, provided the timeline does not exceed the Initial Negotiation Period or the Extended Negotiation Period, if applicable.

B. Development and Design Plans

During the negotiation period, Developer shall submit development and design plans for the Project. Developer shall also furnish such information to CVRC regarding the Project as may be required by CVRC and/or City to perform an environmental review pursuant to the California Environmental Quality Act (CEQA). All fees and expenses for engineers, architects, financial consultants, legal, planning or other consultants retained by Developer to perform Developer's obligations set forth in this Agreement shall be the sole responsibility of Developer.

C. Reports, Studies and Public Participation

Developer shall make written reports to the CVRC on the Developer's progress toward meeting its obligations under this Agreement and oral progress reports on all matters and all studies being made related to the acquisition and development of the Project and other matters under negotiation to the extent that they do not include confidential matters, as requested. As CVRC deems reasonably necessary or appropriate, presentations may be requested at public forums to solicit input from citizens, businesses, stakeholders and relevant interest groups.

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D. Financing

Developer shall, consistent with Exhibit "B," develop a program of financing that provides the CVRC with reasonably satisfactory evidence that financing will be available for acquisition and development of the Property.

E. Deposit

Developer deposited $25,000 ("ENA Deposit") with Agency in May 2006 for a previous ENA, which has since been terminated, on a site known as Church and Madrona northwest (APN 568-351-04-00 and 568-351-05-00). CVRC shall continue to use the remaining balance ($25,000) of the previous ENA deposit to conduct project analysis for this Agreement, including but not limited to paying for third party consultants, City/Agency staff time (at applicable full cost recovery rates), and other reasonable costs incurred by the CVRC and Agency in conducting such analysis. CVRC shall request additional deposits if the ENA Deposit is exhausted and CVRC determines further analysis is required. CVRC may cease negotiations and all activities of third party consultants until such time as ENA Deposit is replenished as reasonably requested by CVRC. Any deposit balance remaining upon the termination of the Agreement, less any interest earned on said deposit, shall be returned to Developer or shall be applied to any deposit required by a subsequent DDA.

4. CVRC Obligations and Due Diligence

A. During the Negotiation Period, the CVRC shall conduct a due diligence investigation of the Developer's ability to purchase, own and/or operate the Project in a responsible manner. If the CEO determines in his sole discretion that Developer does not have the ability to successfully purchase, own, and/or manage the Project in a responsible manner, the CEO may terminate this Agreement by delivering written notice thereof to Developer. CVRC's due diligence efforts may include, without limitation, the following:

1. Assessment of the proposed financing and the capacity of Developer to qualify for financing for the Project; and

2. Assessment of the capacity of Developer and their principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities

B. CVRC agrees to cooperate with Developer in providing equity partner(s) and/or lender(s) of Developer with appropriate and necessary information for the Developer to fulfill its obligations hereunder, which information is not otherwise privileged.

C. CVRC shall also cooperate with Developer's professional consultants and associates in providing them with any information and assistance, so far as such information is not otherwise privileged, reasonably within the capacity, possession or control of the CVRC in connection with the preparation of the Developer's submissions to the CVRC.

5. DDA

The Parties hereby acknowledge and agree that, during the Initial Negotiation Period and, if applicable, the Extended Negotiation Period, the Parties shall use their respective good faith efforts to negotiate and enter into a DDA which shall include (but not be limited to) the following: (i) the design of the Project by the Developer, which design shall be subject to the approval by the CVRC and/or City, (ii) the construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the CVRC and/or City, pursuant to a detailed schedule of performance by the Developer, (iii) the operation and management of the Project by the Developer in a good and professional manner and subject to the covenants required by law, (iv) the maintenance of landscaping, buildings, and improvements in good condition and satisfactory state of repair so as to be attractive to the community, (v) the operation of the Project by the Developer in compliance with all equal opportunity standards established by federal, state and local law, (vi) provision by each contractor and/or subcontractor (as the case may require and as appropriate) performing work on the Project of the requisite performance bond and labor and materials payment bond to assure completion of the Project free of mechanics' liens, (vii) the Project shall be of a quality consistent with plans and renderings provided by Developer and approved by the CVRC, (viii) the terms and conditions upon which Developer shall acquire the parcel(s), (ix) the terms and conditions upon which either party may terminate the DDA (e.g., the discovery of environmental issues/hazardous substances on the Site, unexpected development or construction costs, inability to acquire parcels), (x) the terms and conditions upon which Developer may have a first right of refusal to purchase property at 250 and 354 Church Avenue.

6. ADDITIONAL TERMS AND OBLIGATIONS

A. Real Estate Commissions.

Neither CVRC nor Developer shall be liable for any real estate commission or brokerage fees which may arise herefrom. CVRC and Developer represent that they have engaged no broker, agent or finder separately in connection with this transaction and each party agrees to indemnify, hold harmless and defend the other against claims for commissions or fees made through such party.

B. Each Party to Bear its Own Cost.

Each party shall bear its own costs incurred in connection with the negotiation of a DDA, and the implementation of this Agreement, except as otherwise expressly provided herein or expressly agreed in writing.

C. Confidentiality.

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CVRC and Developer recognize that disclosures made by Developer pursuant to this Agreement may contain sensitive information and that the disclosure of such information to third parties could impose commercially unreasonable and/or uncompetitive burdens on Developer and, may correspondingly, diminish the value or fiscal benefit that may accrue to the CVRC upon the redevelopment of the Property by the Developer, if a future DDA is entered into by the Parties. Developer acknowledges and agrees that CVRC is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by Developer to CVRC with respect to the Property, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that Developer reasonably deems and identifies in writing as proprietary and confidential in nature, CVRC agrees to exercise its best efforts to keep such information confidential.

In addition, if CVRC determines that it is required under applicable law to disclose any information identified by Developer as proprietary and confidential in nature, CVRC shall notify Developer at least three business days before disclosure of such information which will provide Developer the opportunity to seek a protective order preventing such disclosure. Notwithstanding the above, CVRC's failure to provide said notice shall not constitute a breach of this agreement or grounds for a claim or cause of action of any nature against the CVRC as a result of the release of said claimed proprietary or confidential information.

D. Assignment

1. CVRC would not have entered into this Agreement but for Developer's unique qualifications and experience. Therefore, Developer's rights and obligations under this Agreement may not be assigned without the prior written approval of CVRC in its sole discretion. Notwithstanding the foregoing, subject to the prior written approval of the CEO, Developer may assign its rights hereunder to a new entity comprised of the Developer for purposes of developing the Project. Such new entity may include additional parties provided that the Developer retains responsibility for fulfilling its obligations hereunder and Developer retains management control and authority over the entity and the Project.

2. Upon the occurrence of any change, whether voluntary or involuntary, in membership, ownership, management or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the CVRC, prior to the time of such change, the CVRC may terminate this Agreement, without liability, by sending written notice of termination to Developer.

E. Nondiscrimination

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Developer shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in undertaking its obligations under this Agreement.

7. RETENTION OF DISCRETION

A. By its execution of this Agreement, CVRC is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by CVRC, Agency or City, or any department thereof including, but not limited to, the approval and execution of a DDA; the proposal, amendment, or approval of any land use regulation governing the Property; the provision of financial assistance for the development of any public or private interest in real property; the authorization or obligation to use the Agency's eminent domain authority; or, any other such activity.

B. Developer understands and agrees that the CVRC, Agency and City, in their respective legislative roles, reserve the right to exercise their discretion as to all matters which the CVRC, Agency and City are by law entitled or required to exercise such discretion, including but not limited to, Entitlements for the development of the Property and adoption of any amendments to policy documents (including the General Plan, Urban Core Specific Plan and Redevelopment Plans). In addition, Developer understands and agrees that the Entitlements and any other documents shall be subject to and brought to the CVRC, Agency or City, as appropriate, for consideration in accordance with applicable legal requirements, including laws related to notice, public hearings, due process and the California Environmental Quality Act.

C. Developer acknowledges that any plans processed for the Property will be based upon the current General Plan and Zoning Code of the City. Additionally, Developer acknowledges that the City is still in the process of completing portions of the Urban Core Specific Plan ("UCSP"). Developer acknowledges and agrees that the City may consider a number of development alternatives for the Property for consideration by the City Council as part of City's UCSP process. Developer further acknowledges that the City is currently in litigation over the UCSP and that said litigation could affect the Property and the Developer's interests therein. Developer agrees and acknowledges that the processing, adoption and/or amendment of the General Plan or the UCSP by the City is not a consideration in its proceeding with this Agreement or the proposed development project and Developer may need to request amendments to the General Plan or UCSP. The General Plan and UCSP are legislative actions and this agreement does not limit or in any way interfere with the City Council's ability to exercise their discretionary authority as it relates to these or any other legislative actions. Developer acknowledges and agrees that the exercise of the City's legislative discretion, whether by the City Council's own actions or pursuant to or as a result of any litigation shall not form the basis of breach of this Agreement, express or implied, or any other claims against the City.

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D. This Agreement does not constitute a disposition of property or exercise of control over property by CVRC and does not require a public hearing. CVRC execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any proposed DDA and all proceedings and decisions in connection therewith. The parties understand that Agency has the complete and unfettered discretion to reject a DDA without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by the Developer prior to DDA approval shall be absorbed entirely by Developer except unless expressly assumed, by the terms of this Agreement by the CVRC. As to any matter in which the CVRC and/or Agency may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein shall obligate the CVRC and/or Agency to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of CVRC duties under this agreement.

8. TERMINATION RIGHTS

Notwithstanding the Initial or Extended Negotiating Periods hereinabove set forth, either party may terminate this Agreement if the other party has materially defaulted in its obligations herein set forth, and the terminating party has provided defaulting party with written notification of such determination, and the defaulting party has refused to cure same. The written notification shall set forth the nature of the actions required to cure such default if curable. Defaulting party shall have 30 days from the date of the written notification to cure such default. If such default is not cured within the 30 days, the termination shall be deemed effective. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Each party shall also have the right to terminate this Agreement in the event that CVRC or Developer determines that (a) the Project is infeasible or not in the public interest; or (b) the parties reach an impasse in their negotiation of the DDA which cannot be resolved after good faith efforts.

9. GENERAL PROVISIONS

A. Address for Notice.

Developer's Address for Notice:

Voyage, LLC
4441 Park Blvd.
San Diego, CA 92116
Attention: James Brown
Telephone: 619-682-4083
Fax: 619-682-4084

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CVRC's Address for Notice:

City of Chula Vista - CVRC
Community Development Department
276 Fourth Avenue
Chula Vista, CA 91910

Attn:	Director of Community Development
Telephone:	(619) 691-5047
Fax:	(619) 476-5310
Copy to:	City Attorney

B. Authority.

Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Agreement on the behalf of such party are duly authorized agents with authority to do so.

C. Counterparts.

This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

D. Entire Agreement.

This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

E. Further Assurances.

The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

F. No Third Party Beneficiaries.

There are no other parties to this Agreement, express or implied, direct or indirect. CVRC and Developer acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

G. Exclusive Remedies.

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1. In the event of default by either party to this Agreement, the parties shall have the remedies of specific performance, mandamus, injunction and other equitable remedies. Neither party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute damages based upon breach of this Agreement where such an award is limited to reasonable costs of litigation incurred by the Parties.

2. Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with debtor.

California Civil Code Section 1542 notwithstanding, it is the intention of the Parties to be bound by the limitation on damages and remedies set forth in this Section 7G, and the Parties hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known to either of the Parties as of the date of this Agreement. The Parties each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect with regard to the limitations on damages and remedies and waivers of any such damage and remedies contained in this Section 7G.

H. Indemnity.

Developer shall indemnify, protect, defend and hold harmless CVRC, City and Agency, its elected officials, employees and agents from and against any and all challenges to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Developer's negligent acts, errors, or omissions with respect its obligations hereunder or the Property, excluding any such losses arising from the sole negligence or sole willful misconduct of CVRC, City or Agency or the conduct of third parties outside the control of the Developer. This indemnity obligation shall survive the termination of this Agreement. Notwithstanding the foregoing, in the event of a third party challenge to the validity of this Agreement, Developer shall have the option to terminate this Agreement in lieu of its indemnity obligation.

I. Time is of the Essence.

Time is of the essence for each of Developer's obligations under this Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

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Signature Page
To
Exclusive Negotiating Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above, thereby indicating the consent of their principals.

CHULA VISTA
REDEVELOPMENT CORPORATION

By: _____
Chair

Date: _____

VOYAGE, LLC
A California Limited Liability Company

By: _____
James Brown
Managing Partner

Date: _____

By: _____
James Gates
Managing Partner

Date: _____

APPROVED AS TO FORM:

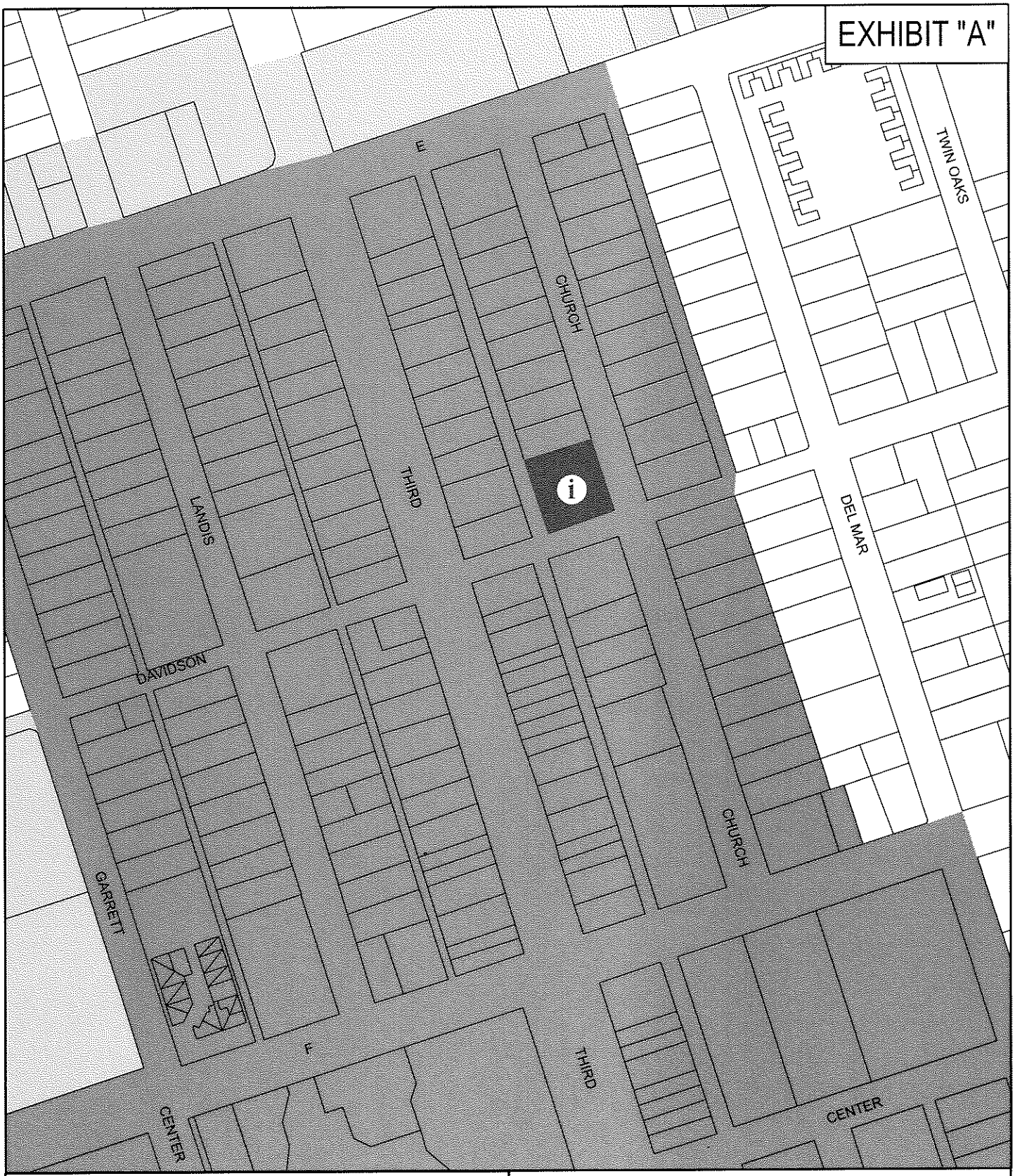
By: _____
Ann Moore
General Counsel

Date: _____

ATTEST:

_____
Ann Hix
Secretary

EXHIBIT "A"



0 0.0125 0.025 0.05 0.075 0.1 Miles

Merged Bayfront / Town Centre I Project Area

Merged Chula Vista Project Area

i Church & Davidson - Northwest Voyage, LLC

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EXHIBIT "B"
Exclusive Negotiating Agreement Timeline

MILESTONE	DESCRIPTION
Within 30 Days of ENA Execution	
Title Report	Agency issues a Preliminary Title Report on the subject Property to the Developer.
Within 60 Days of ENA Execution	
Pre-submittal Meeting with staff	Developer coordinates with city departments on initial project submittal to address issues and objectives as preparation for RAC #1.
RAC #1	Developer presents preliminary design to the Redevelopment Advisory Committee for public input.
Within 90 Days of ENA Execution	
Full Project Submittal/ Completeness Check	Developer submits full project proposal (in accordance with established guidelines in Urban Core Development Permit User Guide), based on pre-design review with staff and public input received at RAC #1.
Initial Pro Forma	Developer submits initial pro forma evaluation for the proposed development.
Project Development Schedule	Developer submits projected timeline and schedule for the construction of the proposed development.
Site Adequacy	Developer provides written determination of whether the subject Property is physically suitable for development taking into account regulatory and environmental conditions that are deemed relevant.
Within 45 Days of Full Project Submittal/Completeness Check	
RAC #2	Developer presents revised development proposal to Redevelopment Advisory Committee.
Within 90 Days of Full Project Submittal/Completeness Check	
Final Site Plans and Elevations	Developer submits final development proposal.
Final Pro Forma	Developer submits revised proforma based on any changes to development proposal.
Development Partners and Structure	Developer submits letter identifying investment partners.
Funding Partners and Structure	Developer submits letter identifying lenders and proof of ability to obtain financing.
Within 120 Days of Full Project Submittal/Completeness Check	
CVRC	Presentation (developer may participate) of final development proposal and revised Disposition and Development Agreement (DDA) for review and consideration. CVRC approves/entitles project and adopts advisory recommendations for Agency and/or Council consideration on DDA.
Within 45 Days of CVRC Hearing	
Redevelopment Agency / City Council	Presentation of DDA to Agency and/or Council for final review and consideration.

Disclosure Statement

Pursuant to Council Policy 101-01, prior to any action upon matters that will require discretionary action by the Council, Planning Commission and all other official bodies of the City, a statement of disclosure of certain ownership or financial interests, payments, or campaign contributions for a City of Chula Vista election must be filed. The following information must be disclosed:

1. List the names of all persons having a financial interest in the property that is the subject of the application or the contract, e.g., owner, applicant, contractor, subcontractor, material supplier.

   James E. Brown
   James F. Gates

2. If any person* identified pursuant to (1) above is a corporation or partnership, list the names of all individuals with a $2000 investment in the business (corporation/partnership) entity.

   James E. Brown
   James F. Gates

3. If any person* identified pursuant to (1) above is a non-profit organization or trust, list the names of any person serving as director of the non-profit organization or as trustee or beneficiary or trustor of the trust.

   N/A

4. Please identify every person, including any agents, employees, consultants, or independent contractors you have assigned to represent you before the City in this matter.

   James E. Brown
   James F. Gates

5. Has any person* associated with this contract had any financial dealings with an official** of the City of Chula Vista as it relates to this contract within the past 12 months. Yes_____ No ✓

   If Yes, briefly describe the nature of the financial interest the official** may have in this contract.

6. Have you made a contribution of more than $250 within the past twelve (12) months to a current member of the Chula Vista City Council? No X Yes __ If yes, which Council member?

7. Have you provided more than $340 (or an item of equivalent value) to an official** of the City of Chula Vista in the past twelve (12) months? (This includes being a source of income, money to retire a legal debt, gift, loan, etc.)
Yes ___ No X

If Yes, which official** and what was the nature of item provided?

Date: 8/6/07

Signature of Contractor/Applicant

Print or type name of Contractor/Applicant

* Person is defined as: any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, any other county, city, municipality, district, or other political subdivision, -or any other group or combination acting as a unit.

** Official includes, but is not limited to: Mayor, Council member, Chula Vista Redevelopment Corporation member, Planning Commissioner, member of a board, commission, or committee of the City, employee, or staff members.

September 8, 2006

CVRC RESOLUTION NO. ____

RESOLUTION OF THE CHULA VISTA REDEVELOPMENT CORPORATION APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH CITYMARK COMMUNITIES LLC FOR CITY-OWNED PROPERTY LOCATED ON THE NORTHEAST CORNER OF LANDIS AVENUE AND DAVIDSON STREET

WHEREAS, it is the role and responsibility of the Chula Vista Redevelopment Corporation ("CVRC") and the Redevelopment Agency of the City of Chula Vista ("Agency") to promote economic vitality, create market confidence, encourage environmental health and remediation, create public benefits and amenities, and facilitate the development, reconstruction, and rehabilitation of residential, commercial, industrial, and retail uses in the City of Chula Vista; and

WHEREAS, an Exclusive Negotiating Agreement ("ENA") is an important redevelopment tool to the Agency to establish a legal and contractual framework for negotiations and provide a defined timeline for completion of predevelopment activities with a developer on a potential redevelopment project; and

WHEREAS, CityMark Communities LLC ("Developer") is interested in developing a residential development project on City-owned property located at the northeast corner of Landis Avenue and Davidson Street, consisting of Assessor Parcel Numbers 568-044-0900, 568-044-1000, and 568-044-1100 ("Property"), located in the Agency's Town Centre I Redevelopment Project Area; and

WHEREAS, CVRC support staff has determined that Developer is qualified to design and develop a high quality project at the proposed development site that is consistent with the goals of the Agency's adopted Redevelopment Plan for the Town Centre I Redevelopment Project Area; and

WHEREAS, the Chula Vista Redevelopment Corporation ("CVRC") became a legal entity on June 15, 2005, and became operational on February 23, 2006; and

WHEREAS, the CVRC is authorized under Chapter 2.55.060 of the Chula Vista Municipal Code ("CVMC") to approve exclusive negotiating agreements within redevelopment project areas on behalf of the Agency; and

WHEREAS, it is in the interest of the Chula Vista Redevelopment Agency and the City of Chula Vista for the Chula Vista Redevelopment Corporation to execute and enter into an ENA with Developer for the proposed development site based on Developer's qualifications; and

WHEREAS, approval of the ENA is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines; and

WHEREAS, state law and locally-adopted owner participation rules provide for the extension of owner participation rights to all property owners who would be affected by the proposed development; and

WHEREAS, no owner participation process is required as the Property is owned by the City of Chula Vista.

NOW THEREFORE BE IT RESOLVED that the Chula Vista Redevelopment Corporation does hereby approve the Exclusive Negotiating Agreement with CityMark Communities LLC for City-owned property located at the northeast corner of Landis Avenue and Davidson Street, and authorizes the Chair to execute said Agreement.

Presented by:

Ann Hix
Secretary

Approved as to form by

For Ann Moore
General Counsel

CVRC RESOLUTION NO. ____

RESOLUTION OF THE CHULA VISTA REDEVELOPMENT CORPORATION APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH VOYAGE, LLC FOR DEVELOPMENT OF THE CHURCH AVENUE AND DAVIDSON STREET NORTHWEST SITE

WHEREAS, it is the role and responsibility of the Chula Vista Redevelopment Corporation ("CVRC") and the Redevelopment Agency of the City of Chula Vista ("Agency") to promote economic vitality, create market confidence, encourage environmental health and remediation, create public benefits and amenities, and facilitate the development, reconstruction, and rehabilitation of residential, commercial, industrial, and retail uses in the City of Chula Vista; and

WHEREAS, an Exclusive Negotiating Agreement ("ENA") is an important redevelopment tool to the Agency to establish a legal and contractual framework for negotiations and provide a defined timeline for completion of predevelopment activities with a developer on a potential redevelopment project; and

WHEREAS, Voyage, LLC ("Developer") is interested in developing a residential project on City-owned property located at the northwest corner of Church Street and Davidson Street, consisting of Assessor Parcel Numbers 568-071-19-00 and 568-071-18-00 ("Property"), located in the Agency's Town Centre I Redevelopment Project Area; and

WHEREAS, CVRC support staff has determined that Developer is qualified to design and develop a high quality project at the proposed development site that is consistent with the goals of the Agency's adopted Redevelopment Plan for the Town Centre I Redevelopment Project Area; and

WHEREAS, the Chula Vista Redevelopment Corporation ("CVRC") became a legal entity on June 15, 2005, and became operational on February 23, 2006; and

WHEREAS, the CVRC is authorized under Chapter 2.55.060 of the Chula Vista Municipal Code ("CVMC") to approve exclusive negotiating agreements within redevelopment project areas on behalf of the Agency; and

WHEREAS, it is in the interest of the Chula Vista Redevelopment Agency and the City of Chula Vista for the Chula Vista Redevelopment Corporation to execute and enter into an ENA with Developer for the proposed development site based on Developer's qualifications; and

WHEREAS, approval of the ENA is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines; and

WHEREAS, state law and locally-adopted owner participation rules provide for the extension of owner participation rights to all property owners who would be affected by the proposed development; and

WHEREAS, no owner participation process is required as the Property is owned by the City of Chula Vista.

NOW THEREFORE BE IT RESOLVED that the Chula Vista Redevelopment Corporation does hereby approve the Exclusive Negotiating Agreement with Voyage, LLC for City-owned property located at Church Avenue and Davidson Street Northwest and authorizes the Chair to execute said Agreement.

Presented by:

Ann Hix
Secretary

Approved as to form by

Ann Moore
for General Counsel