

RESOLUTION NO. OB-05-15

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE EXECUTION OF AN EXCLUSIVE NEGOTIATION AGREEMENT WITH BRIXTON CAPITAL AND EXCEL HOTEL GROUP, INC., FOR THE PURCHASE AND DEVELOPMENT OF SUCCESSOR AGENCY-OWNED PROPERTY ALONG THE NORTH SIDE OF FLETCHER PARKWAY AND THE EAST SIDE OF NORTH MAGNOLIA AVENUE (100 FLETCHER PARKWAY)

WHEREAS, the City of El Cajon as Successor Agency to the El Cajon Redevelopment Agency (the "Successor Agency") owns one (1) commercial parcel (the "Parcel") identified as 100 Fletcher Parkway, located along the north side of Fletcher Parkway and along the east side of North Magnolia Avenue, in the City of El Cajon; and

WHEREAS, the City of El Cajon (the "City") owns adjacent property acquired from the State of California Department of Transportation, which property lies between the Parcel and the off ramp for California State Route 67, as well as between the Parcel and Fletcher Parkway, which together with the Parcel creates approximately 4.14 acres of commercially-developable property (the "Project Site"); and

WHEREAS, the City, in exercising its powers of redevelopment, has identified the Project Site as a desirable location for the construction of a hotel and additional retail commercial development; and

WHEREAS, the Successor Agency and the City both desire to enter cooperatively and facilitate the development of the Project Site with a quality hotel, along with on-site parking and complementary commercial development; and

WHEREAS, the City and the Successor Agency have jointly marketed the Project Site through a Request For Proposals and, having evaluated the proposals, have determined that it is in the best interests of the Successor Agency, the City, and the various affected taxing entities for the Project Site to be sold and developed by Brixton Capital and Excel Hotel Group, Inc. (the "Developer"), for the purpose of constructing an 80-bed Hampton Inn hotel (the "Hotel"), along with on-site parking, and other commercial buildings that would complement the Hotel with one or more quality restaurants and other retail uses, all to be located on the Project Site;

WHEREAS, the Developer has requested to enter into an agreement (the "Agreement") with the Successor Agency for the exclusive right to negotiate the purchase and development of the Project Site and the creation of a development agreement to direct the desired development of the Project Site; and

WHEREAS, the Developer has qualified through the request for proposal bidding process, and a review of its qualifications, and will expend substantial time and resources in order to negotiate in good faith the price and terms of sale, planned uses, and development of the scope of use of the Project Site.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference; and
 - 2. Approval to execute an Agreement is exempt from the California Environmental Quality Act (CEQA) in accordance with section 15061(b); (General Rule) of the CEQA Guidelines. Any future Disposition and Development Agreement resulting from this ENA will be subject to CEQA review; and
 - 3. The proposed agreement would be in the best interests of the affected taxing entities and the public by bringing buyers who will acquire and develop Successor Agency properties to their fullest potential, resulting in increased property taxes, sale tax, new jobs, and economic prosperity to El Cajon.
- B. The Oversight Board hereby APPROVES the execution of an agreement, as recommended by the City Manager, between the City of El Cajon and Brixton Capital and Excel Hotel Group, Inc., in substantially the form as presented at this meeting; and
- C. The Oversight Board hereby APPROVES the execution of said agreement by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, with such changes as the person executing the agreement and the City Attorney shall approve.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 19th day of August 2015, by the following vote to wit:

AYES: BUXBAUM, CHADWICK, DAVIES, NGUYEN, SHUTE, TURNER-EMERSON
NOES: NONE
ABSENT: ABUSHABAN



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

[This page intentionally left blank.]

**EXCLUSIVE NEGOTIATION AGREEMENT
BY AND BETWEEN THE
CITY OF EL CAJON AND BRIXTON
CAPITAL and EXCEL HOTEL GROUP, INC.**

This Exclusive Negotiation Agreement (the "Agreement") by and between the CITY OF EL CAJON, a charter city and municipal corporation, solely in its capacity as the SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY (the "Successor Agency"), and BRIXTON CAPITAL and EXCEL HOTEL GROUP, INC., a California corporation (collectively, the "Developer") (Successor Agency and Developer are occasionally referred to herein individually as the "Party" and collectively as the "Parties"), is entered into on the date in which it is fully executed, and based on the terms and provisions set-forth below.

RECITALS

WHEREAS, The Successor Agency and the City of El Cajon (the "City") are fee title owners of two parcels comprising approximately 4.14 acres of real property generally located at 100 Fletcher Parkway, on the north side of Fletcher Parkway, the east side of North Magnolia Avenue, and west of Highway 67 in the City of El Cajon, County of San Diego, State of California (the "Property"). The Property is the site of the former El Cajon Police Department Station and adjacent right-of-way previously owned by the Department of Transportation for the State of California. Of the two parcels comprising the Property, the Successor Agency owns the parcel comprising approximately 3.48 acres (the "Successor Agency Parcel"). The City owns the parcel comprising approximately .66 acres (the "City Parcel"). The City is not a party to this Agreement; and

WHEREAS, the Successor Agency is interested in selling the Successor Agency Parcel to the Developer with the intention of combining the Successor Agency Parcel with the City Parcel for the purpose of developing an upscale, approximately 80-bed Hampton Inn hotel project with possible secondary retail and office uses (the "Project"); and

WHEREAS, the Project's intended development is part of the City's efforts to revitalize dormant properties along Fletcher Parkway and maintain a vibrant and expanding group of businesses in the City to promote economic development and employment opportunities for its citizens; and

WHEREAS, recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California require the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increase revenues and employment opportunities, and to continue in efforts to prevent or eliminate blight in the community; and

WHEREAS, the Successor Agency and the Developer desire to enter into this Agreement to: (1) negotiate in good faith as to the development of the Project on the Successor Agency Parcel; (2) outline the Project description and design; (3) conduct due diligence on the economic viability of the Project; (4) prepare separate Development Agreements for the City Parcel and the Successor Agency Parcel (each, a "Development Agreement," together the "Development Agreements") for the Successor Agency's consideration; (5) determine if and how the Successor Agency can promote the economic sustainability of the Project; and (6) determine what, if any, modifications may be necessary and appropriate to the Project to improve its viability as a vital business enterprise in the City; and

WHEREAS, the Successor Agency anticipates that following execution of this Agreement, and through the period of negotiation and preparation of the Development Agreements, the Successor Agency, as well as certain consultants and attorneys for the Successor Agency, will devote substantial time and effort in reviewing documents, proposals, and plans, and meeting with the Developer, each other, and other necessary parties; and

WHEREAS, the Successor Agency acknowledges that the Developer will also expend substantial time and resources hereunder and the Parties are willing to engage in these activities, subject to the terms and conditions set-forth in this Agreement.

NOW THEREFORE, in consideration of the recitals and mutual covenants and conditions contained herein, the parties hereto agree as follows:

A. Project Site.

1. The Developer has selected the Property as the location for development of the Project. The Property is located within the City as generally depicted on Exhibit A, attached hereto and incorporated herein by this reference.
2. During the term of this Agreement, the Developer at its sole expense shall determine the exact square footage of the Property during the planning activities outlined below. The Successor Agency shall provide reasonable cooperative assistance to the Developer, as determined in the reasonable discretion of the City Manager.

B. Period of Negotiations.

1. The Successor Agency agrees to negotiate exclusively with the Developer regarding the future use and disposition of the Successor Agency Parcel and any future modifications to, and use and disposition of, the Successor Agency Parcel during the term of this Agreement. The Agreement shall commence upon the date the Successor Agency approves and executes this Agreement (the "Effective Date") and continue for 180 days (the "Negotiation Period"). The Negotiation Period may be extended as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during

the Negotiation Period and any extension thereof. If Development Agreements for both the Successor Agency Parcel and City Parcel have not yet been executed upon the termination of the initial Negotiation Period, this Agreement may be extended for 90 days by written consent of the Developer and the City Manager to enable the Successor Agency to: (1) determine whether it desires to enter into such Development Agreements, and (2) take the actions necessary to authorize the Successor Agency to sign the Development Agreements, if the City desires to enter into such Development Agreements.

2. If the Successor Agency and the City have not signed both Development Agreements by the expiration of the Negotiation Period (as the Negotiation Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate, unless the Successor Agency, in its sole discretion, agrees in writing to an extension. **It is expressly understood by the Parties that the execution and delivery of each Development Agreement shall be a condition precedent the execution and delivery of the other Development Agreement, so that the Successor Agency Parcel and the City Parcel shall be sold together to the Developer for the Project.**
3. The duration of the Negotiation Period shall be extended by the duration of any "Event of Force Majeure" that may occur from time to time during the term hereof. The term "Event of Force Majeure" shall mean any and all acts of God, strikes, lock-outs, other industrial disturbances, acts of the public enemy, laws, rules, and regulations of governmental entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), insurrections, riots, vandalism, terrorism, epidemics, inclement weather, fire or other casualty, civil disturbances, confiscation or seizure by any government or public authority, lawsuits brought by third parties, governmental or administrative action, inaction, or omission, or any other causes, whether the kind herein enumerated or otherwise, that are not reasonably within the control of, or caused by, the Party claiming the right to delay the performance on account of such occurrence; provided however, in no circumstances shall the monetary inability of a Party to perform any covenant, agreement, or other obligation contained in this Agreement be construed to be an Event of Force Majeure. Upon either Party hereto becoming aware of an Event of Force Majeure, it shall promptly notify the other Party hereof of such occurrence.
4. The Successor Agency agrees that during the Negotiation Period, the Successor Agency shall neither negotiate nor enter into a development agreement with any other person or entity regarding the Successor Agency Parcel. The obligation to negotiate in good faith requires the respective parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow

reasonable negotiation procedures, including meetings, telephone conversations, and correspondence.

C. Negotiation Deposit.

1. The Developer shall tender to the Successor Agency, no later than fifteen (15) days after the Effective Date of this Agreement, and the City shall accept, a deposit (the "Negotiation Deposit") in the amount of Five Thousand Dollars (\$5,000.00), in the form of a cashier or certified check, or wire transfer, payable to the Successor Agency. The Developer agrees that the Successor Agency may use the Negotiation Deposit to reimburse itself for its costs to negotiate the Development Agreement as contemplated under this Agreement (the "Successor Agency Negotiation Costs"). Such Successor Agency Negotiation Costs shall be limited to those costs incurred after the date of this Agreement and shall include costs such as: attorneys' fees, appraiser fees, title reports, and any other third party costs as needed to complete the negotiations of the Development Agreements.
2. The Successor Agency shall submit to the Developer invoices detailing the Successor Agency Negotiation Costs. The Successor Agency shall be free to withdraw funds from the Negotiation Deposit, as needed, provided that it has submitted such invoices to the Developer and those invoices are solely for Successor Agency Negotiation Costs. The Successor Agency shall submit to the Developer prospective costs in excess of the Negotiation Deposit for approval by the Developer. If the Developer fails to approve such costs in excess of the Negotiation Deposit within ten (10) days of submission of said costs by the Successor Agency, this Agreement shall terminate. The Negotiation Deposit, less the Successor Agency Negotiation Costs, shall be refundable to the Developer in the event this Agreement is terminated prior to the execution of a Development Agreement. In the event a Development Agreement is fully executed and approved by all requisite action, the balance of the Negotiation Deposit, if any, shall be either returned to the Developer or applied as a credit against amounts, if any, to be paid by the Developer to the Successor Agency pursuant to the Development Agreement. Should the Successor Agency Negotiation Costs exceed the amount of the Negotiation Deposit, the Successor Agency shall submit to the Developer a reimbursement notice along with written evidence of such additional Successor Agency Negotiation Costs. Within thirty (30) days of the receipt of a reimbursement notice and evidence of additional Successor Agency Negotiation Costs, the Developer shall reimburse the Successor Agency for such Successor Agency Negotiation Costs.

D. Negotiations.

1. Commencing on the Effective Date of this Agreement, the Parties agree to negotiate in good faith to attempt to formulate a plan for development of the Project on the Property, along with the terms and conditions of the

Development Agreements. Negotiations regarding the Project and the Development Agreements shall include, but not be limited to the following elements:

- a. The type and scope of development and planned uses on the site, including at a minimum, an approximately 80-bed Hampton Inn hotel with associated amenities such as onsite parking, pool, gym, and conference rooms (the "Hotel"). The Project may also include secondary retail and office uses unrelated to hotel. The Project shall include a detailed site plan and frontage improvements, floor plans, building elevations, building materials, and signage, and a table showing types of uses, square footage planned for each use, number of parking stalls, lot coverage, and planned compliance with the City of El Cajon's General Plan, any existing or pending specific plans, the City's zoning ordinance, building codes, storm water ordinance and regulations, and state and federal laws and regulations requiring non-discrimination in access to the facilities (e.g., ADA).
- b. The schedule for, and phasing of all required development activities, including construction lending, planning entitlements, building permits, construction activities, and implementation of any required environmental mitigations measures.
- c. Terms of the Development Agreements substantially consistent with the preliminary terms described in Exhibit B, attached hereto and incorporated herein by this reference.
- d. Such covenants necessary to ensure the economic sustainability of the Project.
- e. Any design and operational changes that can and should be made to the Hotel to improve its viability and sustainability.

E. Development Agreement Provisions.

The Parties acknowledge that the financial feasibility of the activity to be proposed and the associated terms are yet to be determined. Although the Parties have reached agreement on preliminary terms of the Development Agreements as described in the attached Exhibit B, each Party assumes the risk that, notwithstanding this Agreement, there is no assurance that the Parties will enter into the Development Agreements.

F. Obligations of the Parties.

1. From time to time, the Successor Agency and the Developer agree to make oral and/or written progress reports advising each other of all material matters and studies being conducted with respect to project feasibility, constraints,

and design. The Successor Agency and the Developer agree to share all results of studies, reports, and findings, which result in the formation of any conclusions or determinations as to the decision of whether to enter into the Development Agreements.

2. The Developer agrees to assume full responsibility for any and all environmental impacts, which impact the Successor Agency Parcel as a result of any action taken by the Developer during the term of this Agreement.

G. Assignment.

The Parties understand and agree that the Successor Agency has selected the Developer as a party to this Agreement based upon its skills and reputation, and its confidence in the Developer successfully constructing and operating the Project. Therefore it is a material condition of this Agreement that the Developer remain a party to this Agreement. Accordingly, this Agreement shall not be assigned by the Developer without the prior written approval of the Successor Agency, which approval the Successor Agency may withhold at its sole discretion, provided, however, the Developer may assign the rights and obligations under this Agreement to any wholly owned subsidiary or other entity of which it maintains control without the consent of the Successor Agency.

H. Successor Agency's Remedies for Breach.

1. In the event that the Developer fails to perform any obligation herein, or in the event that the Successor Agency reasonably believes that the Developer is not negotiating diligently and in good faith, the Successor Agency shall provide written notice of such breach to the Developer. The Developer shall then have ten (10) days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event the Developer shall commence the cure of the breach within the ten (10) day period and thereafter diligently pursue the cure to completion.
2. If the Developer fails to remedy such breach in a timely and reasonable manner within the above period, the Developer and the Successor Agency agree that the Successor Agency may elect to cure a Developer breach and deduct those costs incurred to cure the breach from the Negotiation Deposit, prior to its termination of this Agreement. All remaining amounts of the Negotiation Deposit shall thereafter be refunded to Developer. Should the Successor Agency Negotiation Costs incurred as contemplated by Paragraph C and this Paragraph H exceed the Negotiation Deposit, the Successor Agency shall be entitled to receive from the Developer and the Developer shall pay the Successor Agency such actual costs within fifteen (15) days. Should the Developer fail to pay such costs within fifteen (15) days from notice or invoice from the Successor Agency, the outstanding balance shall

accrue interest at the rate of ten percent (10%) per annum, until all principal and interest is paid.

I. Insurance and Liability.

During the period of this Agreement, and until such time as the parties to the Agreement fail to reach accord on the execution of the Development Agreements, the Developer shall defend, assume all responsibility for, and hold the Successor Agency, its officers, agents and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), to the extent caused by any of its representatives' activities under this Agreement, whether such activities or performance thereof by the Developer or anyone directly or indirectly employed by, or under contract with, the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall take out and maintain during such period, a comprehensive liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, consistent with City Council Policy D-3 on insurance, and shall protect the Developer, the Successor Agency and its elected and appointed officers, officials, agents, and employees from claims for such damages, evidenced by such endorsements approved by the Successor Agency's general counsel. Evidence of such insurance shall be submitted to the Successor Agency prior to the acceptance and execution of this Agreement by the City. The certificate of insurance shall name the Successor Agency and its elected and appointed officers, officials, agents, and employees as additional insureds under the policy. The certificate of insurance by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the Successor Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not contributing with any insurance maintained by the Successor Agency and the policy shall contain such endorsement.

J. Miscellaneous.

1. The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Successor Agency and the Developer.
2. This Agreement contains the entire agreement between the Parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations, which are not expressly set forth in this Agreement are superseded and of no further force or effect. Subsequent modification of this Agreement shall be in writing and signed by both the Successor Agency and the Developer.

3. Captions in this Agreement are for convenience only and shall not be used in construing meaning. This Agreement shall be construed as a whole and in accordance with its fair meaning.
4. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Any action to interpret or enforce the Agreement or any of its terms shall be brought in the Superior Court of California, San Diego County, Central or East County divisions, or (if in federal court) in the Southern District of California, in San Diego County. Developer hereby expressly waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394.
5. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.
6. Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert or enforce any such rights or remedies.
7. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on the Parties.
8. The Successor Agency and the Developer agree to cooperate with each other so as to achieve the objectives of this Agreement in a timely and efficacious manner.
9. Upon further request, the Successor Agency and the Developer shall execute, deliver, or cause to be executed and delivered, such additional instruments and documents as are necessary to perform the terms of this Agreement.
10. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities and representatives of the City and the Developer, and all amendments hereto must be in writing by the appropriate authorities and representatives of the Successor Agency and the Developer.
11. Except as otherwise provided herein, in any circumstance where, under this Agreement, either Party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the respective dates set-forth below.

_____, 2015

SUCCESSOR AGENCY TO THE EI
CAJON REDEVELOPMENT AGENCY
a public body, corporate and politic.

By: _____
DOUGLAS WILLIFORD
Executive Director

EXCEL HOTEL GROUP, INC.
a California corporation

_____, 2015

By: _____

BRIXTON CAPITAL

_____, 2015

By: _____

APPROVED AS TO FORM:

Attorney for Developer

MORGAN L. FOLEY
General Counsel

ATTEST:

BELINDA HAWLEY
City Clerk

Exhibit A
Project Site Description
[To be provided]

Exhibit B

Preliminary Terms of Development Agreement

1.