

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
FOR DEVELOPMENT OF THE AIRPORT WAY & SECOND STREET PROPERTY
WITH 1501 S. AIRPORT WAY, LLC**

This Agreement is made on _____ by and between the **CITY OF STOCKTON**, a municipal corporation, (hereinafter referred to as the “City”), and **1501 S. AIRPORT WAY, LLC**, a limited liability company (hereinafter the “Developer”), collectively referred to as “Parties”, on the terms set forth below:

1. During the term of this Agreement, City and Developer agree to negotiate, diligently and in good faith, the terms and conditions of a Purchase Option and/or Sales Agreement (“Purchase Agreement”) by and between City and Developer for the development of certain real property (the “Site”) located within South Stockton. The Site is described as San Joaquin County Assessor Parcel Numbers 169-030-13 and 169-020-11, with addresses 1670 South Union Street and 1501 South Airport Way respectively, as shown on the map attached hereto as Exhibit “A” and incorporated herein by reference.

2. 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. The Parties understand that final accord on all issues may not be reached.

3. Developer has submitted a project proposal (“Proposal”), a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference. The development is more specifically described in the Proposal but it is generally described as a commercial/retail shopping center to complement the existing retail across the street, with other commercial and retail users that currently do not exist near the Site. The proposed shopping center may contain a mix of small, medium and large quality tenants in order to accommodate various uses to best serve the neighborhood. The terms of the Purchase Agreement, including without limitation, the timing, assistance, responsibilities, financing, and schedule for planning and construction of the proposed project may be the subject of the negotiations.

4. City agrees, during the term of this Agreement, to refrain from consideration of proposals from other developers for the Site. City further agrees to not solicit or entertain proposals from others regarding acquisition and/or development of the Site during the term of this Agreement. City may provide information that is publicly available regarding the Site to any person or entity requesting information, but shall not provide any information or details concerning the Developer’s evolving concept for the Site beyond what is contained in Exhibit “B” in the Developer’s Proposal.

5. During the Term of this Agreement, the City shall make good faith efforts to:

- a. Work with Developer to establish a reasonable time schedule, within the Term of this Agreement, for negotiations and drafting of a Purchase Agreement.
- b. Review Developer's renderings and/or plans and determine consistency with the General Plan, zoning, and other relevant land use regulations on the proposed Site.
- c. Provide Developer with documents in City's possession that would assist Developer with the development of the Site and Developer's responsibilities described in this Agreement.

6. Both Developer and City shall mutually make good faith efforts to respond on a timely basis to all submittals and inquiries made by either Party.

7. The Term ("Term") of this Agreement shall be for a period of one hundred eighty (180) days after the date of its approval by the Stockton City Council. Developer may extend the term of this agreement for an additional one hundred eighty (180) days, if the Parties mutually agree that substantial progress has been made in negotiation of the terms of the Purchase Agreement.

8. The Parties acknowledge that no real estate brokers and/or real estate agents have been or will be employed by either City or Developer in connection with this Agreement or the Purchase Agreement. If Developer has retained or in any other way become responsible to any broker, Developer shall be solely responsible for payment of any commission due and agrees to indemnify, defend and hold City harmless from any claims, including all defense costs and attorney's fees, by any broker, agent, or finder retained by the Developer, or other similar person or entity claiming to have dealt with Developer.

9. This Agreement shall not obligate either the City or Developer to enter into any other agreement or an agreement containing any particular terms, to acquire any property, or to convey any property to Developer. Failure of the Parties to reach an agreement on the terms and conditions of a Purchase Agreement shall not, by itself, constitute a failure on the part of either party to negotiate in good faith. Developer understands and agrees that the concurrence of City staff to the terms and conditions of an agreement does not constitute the agreement of the City, and that the City cannot agree to enter into any agreement until a public meeting is held as required by law, a resolution approving the agreement has been adopted, and the City has fully executed the document. Developer acknowledges that the City does not control or influence any action within the jurisdiction of the City of Stockton. The Parties understand that the City reserves the right to exercise its discretion as to all matters which it is, by law, entitled or required to exercise its discretion, including, but not limited to, the approval of a final development and the approval of any and all plans, permits or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any department thereof.

10. Any notices to be given shall be in writing and shall be effective either (a) when delivered in person to the recipient to whom addressed, or (b) three (3) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the recipient at the address below, whichever is earlier:

To City: City of Stockton
425 North El Dorado Street
Stockton, California 95202
Attn: City Manager

To Developer: 1501 S. Airport Way, LLC
3031 West March Lane, Suite 112 South
Stockton CA 95219
Attn: Douglas J. Rishwain

Such addresses may be changed from time to time by written notice given in accordance with this section. No person shall refuse or evade delivery of any notice.

11. The Developer, and including but not limited to Developer's contractors, subcontractors, architects, and engineers, shall have the right of entry to the Site for testing and inspection purposes.

12. The Developer, without prior written approval of the City, shall not assign this Agreement. The City agrees that, notwithstanding the foregoing, the Developer may assign without the City's prior written approval, but with thirty (30) days prior written notice to the City, its rights under this Agreement to a limited liability company, corporation, trust, or partnership of which the Developer and/or Developer's principals, own the majority beneficial interest and has operational control.

13. No member, official, employee, or contractor of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount, which may become due to Developer or on any obligations under the terms of the Agreement. Further, no director, officer, or employee of the Developer shall be personally liable to the City in the event of any default or breach by Developer or for any amount, which may become due to City or on any obligations under the terms of the Agreement.

14. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

15. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities

of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

16. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

17. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

18. Developer acknowledges and agrees that the City 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 the Developer to the City with respect to the Site, the Development 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 the Developer reasonably deems and identifies in writing as proprietary and confidential in nature, the City agrees to exercise its best efforts to keep such information confidential as allowed by law. Notwithstanding the foregoing, the City shall provide Developer at a minimum seven (7) days advance written notice of City's intention to disclose to the public or the media any information provided by Developer to the City.

19. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

[illegible]

20. The undersigned represent and warrant that they are each authorized to execute this Agreement by the party on whose behalf they have signed.

“CITY”

CITY OF STOCKTON, a municipal corporation

Approved as to form and content:

City Attorney

City Manager

ATTEST:

“DEVELOPER”

1501 S. AIRPORT WAY, LLC, a Limited Liability Company

City Clerk

Joseph T. Rishwain, Jr., Manager

Douglas J. Rishwain, Manager

Christopher L. Rishwain, Manager

Exhibit "A"

PROJECT SITE MAP

Airport Way & Second Street Site

1670 S. Union Street & 1501 S. Airport Way

Stockton, CA 95206

APN(s): 169-030-13 & 169-020-11



Site Data

- General Plan Designation: Commercial
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Site Size: consists of two contiguous parcels totaling 3.21 acres

Exhibit “B”

PROPOSAL

The proposed concept includes a commercial/retail shopping center consisting of approximately 20,000 to 40,000 square feet on the 3.21-acre Site. The shopping center would complement the existing Rancho San Miguel supermarket across the street to the north, located at 1409 South Airport Way. Rancho San Miguel has proven to serve a definite need for the surrounding neighborhoods, as well as the high traffic corridors of Airport Way and Dr. Martin Luther King Jr. Boulevard.

The proposed concept builds on the existing retail development, and will serve the area with other commercial and retail users that do not currently exist in the area. The proposed shopping center may contain a mix of small, medium and large quality tenants in order to accommodate various uses to best serve the neighborhood.

With the proximity to Downtown Stockton, Highway 4, and the surrounding residential neighborhoods in South Stockton, an expanded commercial development on this Site would benefit the neighborhood residents, many daytime employees, and patrons of the San Joaquin County Fairgrounds located directly across the street to the east.