

RESOLUTION NO. OBSARDA2012-008

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF HIGHLAND REDEVELOPMENT AGENCY APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH TARGET FOR PURCHASE OF COUNTY FLOOD CONTROL PROPERTY FROM THE AGENCY

RECITALS:

A. Pursuant to Health and Safety Code Section 34177(l), the Successor Agency to the City of Highland Redevelopment Agency (the "Successor Agency") must adopt a Recognized Obligation Payment Schedule ("ROPS") for each six-month fiscal period (commencing each January 1 and July 1) and submit each proposed ROPS to the oversight board for the Successor Agency (the "Oversight Board") for approval.

B. Pursuant to Health and Safety Code Section 34177(l)(2)(C) and (m), the Successor Agency must (1) submit the Oversight Board-approved ROPS for the six-month fiscal period from January 1, 2013 through June 30, 2013 ("ROPS No. 3"), to the DOF, the Office of the State Controller, and the County Auditor-Controller no later than September 1, 2012; and (2) post a copy of the Oversight Board-approved ROPS No. 3 on the Successor Agency's website.

C. Both the currently approved ROPS and the proposed ROPS No. 3 list the acquisition of the County Flood Control property at the northeast quadrant of the 210 Freeway and Greenspot Road as a project for the Agency to complete.

NOW, THEREFORE, THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF HIGHLAND REDEVELOPMENT AGENCY, HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Oversight Board has approved ROPS No. 2 and the proposed ROPS No. 3 which authorizes the Agency to acquire the County Flood Control property as part of a program to sell the property to a developer to facilitate construction of a retail center at that location.

Section 3. Target Corporation has indicated an interest in purchasing the subject property and has proposed to enter into an Exclusive Negotiating Agreement with the Agency to begin the process of negotiating with County Flood Control for the acquisition of the County Flood Control property.

Section 4. The Successor Agency to the City of Highland Redevelopment Agency acted to approve the proposed Exclusive Negotiating Agreement with Target Corporation at its regular meeting held on August 14, 2012.

Section 5. The Oversight Board hereby authorizes and approves the Agency entering into the Exclusive Negotiating Agreement with Target Corporation for this purpose. (A copy of the ENA as approved by the Successor Agency is attached as Exhibit A)

Section 6. The officers of the Oversight Board and the staff of the Successor Agency are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary to implement this action and any such actions previously taken by such officers and staff are hereby ratified and confirmed.

PASSED, APPROVED AND ADOPTED this 27th day of August, 2012.


Larry McCallon
Chair

ATTEST:


Betty Hughes, MMC
Secretary

EXHIBIT A

**SUCCESSOR AGENCY TO THE CITY OF HIGHLAND REDEVELOPMENT AGENCY
EXCLUSIVE NEGOTIATING AGREEMENT WITH TARGET CORPORATION**

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (this "Agreement") is dated August 15, 2012, and is entered into by and between the SUCCESSOR AGENCY TO THE HIGHLAND REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and TARGET CORPORATION, a Minnesota corporation (the "Developer").

RECITALS

A. The Agency is in the process of negotiating a potential purchase of the land in the City of Highland, State of California depicted in Attachment No. 1 (the "Site") from the San Bernardino County Flood Control District (the "District"). The Agency has provided documents to the Developer showing that the Agency's potential purchase of the Site from the District has been designated by the Agency as an "enforceable obligation" of the Agency on its applicable Recognized Obligation Payment Schedule ("ROPS"), which has been approved by the Oversight Board to the Agency and the California Department of Finance.

B. The Developer has expressed to the Agency a request to purchase the Site from the Agency for commercial/retail development including a Target store on the Site (the "Target Project").

C. After considering the Developer's request, the Agency Board has instructed the Agency's staff to prepare this Agreement between Agency and Developer to negotiate on an exclusive basis to establish the terms and conditions of a purchase and sale agreement between the Agency and the Developer for the sale of the Site from the Agency to the Developer should the Agency acquire the Site from the District, and one or more agreements and related documents (collectively, the "Project Agreements") that would result in the Developer's development of the Site.

D. The Developer understands and acknowledges that the Agency is not obligated to acquire the Site if, in its sole discretion, the Agency Board determines that such an acquisition is not in the public interest, not permitted by law or not consistent with the City of Highland General Plan. Further, the Developer understands and acknowledges that the parties hereto are not obligated to reach agreement on the terms of the Project Agreements.

E. The Developer and the Agency are willing to enter into this Agreement setting forth, among other things, the terms pursuant to which the Agency will negotiate with the Developer on an exclusive basis for a limited period regarding the Project Agreements and Project.

F. The staff, consultants and attorneys of the Agency will devote substantial time and effort in meeting with the Developer and its representatives, reviewing proposals, plans and reports, and negotiating and preparing the Project Agreements.

NOW, THEREFORE, the Parties hereto agree that the foregoing recitals are true and correct, and as follows:

1. The term of this Agreement shall commence on the date approved by the Agency's Board hereof and shall end on the earliest of: (i) August 15, 2013, subject to one (1) extension for up to six (6) calendar months thereafter by written agreement of the Agency's Executive Director (acting on behalf of the Agency) and the Developer; (ii) the date on which the Agency terminates this Agreement as provided in Section 2 below, or (iii) the date on which Developer terminates this Agreement as provided in Section 3 below (the "ENA Period").

2. Subject to Developer's notice and cure rights hereinafter set forth, the Agency may terminate this Agreement if the Developer fails to comply with or perform any provisions of this Agreement. The Agency shall provide written notice to the Developer which specifies the failure of the Developer to perform and the steps necessary for the Developer to cure such failure. The Agency shall not terminate this Agreement if the Developer cures the deficiencies specified by the Agency within ten (10) business days after such notice is given; however, in no event shall such cure period extend beyond the expiration of the ENA Period.

3. Developer may terminate this Agreement at any time in its sole discretion, by providing not less than fourteen (14) calendar days advance written notice to the Agency. In the event of such a termination, Developer shall be responsible for all costs incurred by of the Agency, subject to Section 8, prior to the date the Agency receives Developer's written notice of termination.

4. During the ENA Period: (i) the Agency shall not negotiate with any person or entity other than the District and the Developer for the sale, acquisition, lease or development of the Site (except for short term uses that will not interfere with the Project); (ii) the Developer, shall not negotiate with any person or entity other than the authorized representative of the Agency for the purchase, lease or sublease of Site from the Agency; and (iii) both the Agency and the Developer shall cooperate in the Agency's negotiation of purchase terms and price for the Site with the District.

5. Throughout the ENA period, the Agency shall supply to the Developer periodic reports regarding its progress in acquiring the Site from the District. Throughout the ENA Period, the Developer shall deliver to the Agency the items listed on Attachment 2 on the schedule specified therein, and the Agency shall use good faith efforts to make its staff reasonably available to meet with the Developer to discuss the Project and the Project Agreements.

6. During the ENA Period, the Agency shall use good faith and commercially reasonable efforts to negotiate with the District for the purchase of the Site at a price agreeable to Agency, District and Developer based on at least one (1) timely MAI appraisal of the Site. Upon execution of this ENA by both parties, the Agency shall disclose to Developer the contents of the most recent existing MAI appraisal of the Site and the purchase price proposed by the District for the Site. It is the intent of the parties hereto that if the Agency purchases the Site from the District, the Developer shall immediately thereafter purchase Site from the Agency at exactly the Agency's full and complete cost, defined to include the purchase

price Agency paid the District plus the Agency's actual legal fees, consultants' fees, appraisal, title and closing costs incurred in selling the Site to Developer. It is further the intent of the parties hereto that the Agency shall deliver the Site to the Developer, if at all, in an "as-is" condition, with no representation to the Developer as to the environmental status of the site or its fitness for development. However, the parties anticipate that the Project Agreements will give Developer a reasonable due diligence opportunity to inspect the Site and related matters to ensure Developer can develop and use the Site for its intended purpose, including whether it contains any hazardous materials or other impediments to development and use. The Agency shall not be obligated to offer to purchase or purchase the site from District unless and until the Agency and Developer shall have first executed a mutually agreeable purchase and sale agreement and Developer has deposited in escrow an amount equal to the agreed upon purchase price plus any additional Agency costs of acquisition.

7. The Agency and Developer acknowledge that all applicable requirements of CEQA must be met in order for the Agency to approve the acquisition and subsequent sale of the Site, the zoning for the Project and the Project Agreements, and that this may require environmental reports and/or other reports or analyses for CEQA purposes (collectively, the "EIR"). The Developer will, at its sole cost, fully cooperate with the Agency in the Agency's preparation of the EIR.

8. The Agency and Developer acknowledge that all applicable State laws relating to the dissolution of former Redevelopment Agencies may apply to the transaction under negotiation as part of this ENA, and both parties intend to fully comply with such laws.

9. As an accommodation to the Developer, and at the Developer's specific request, the Agency shall expedite its environmental and planning review of the Project on a schedule to be negotiated between the parties. In addition to the Agency's costs of acquisition and the purchase price for the Site, if any, as set forth in Section 6 above, Developer shall reimburse Agency and/or the City of Highland for its actual out-of-pocket costs and expenses incurred (including legal fees and costs and consultants' fees and costs) incurred in negotiating and preparing the Project Agreements, conducting the planning and environmental review of the Project and fulfilling its obligations under this Agreement, including, but not limited to: (i) actual City fees and charges in effect as of the date the Developer applies for Project land use approvals, (ii) the Agency's actual cost of negotiating, and preparing the Project Agreement and related documents; and (iii) the City's usual processing fees for reviewing applications, reports and plans relating to the Project (collectively, the "Reimbursable Costs"). Within two (2) business days after Agency approves and executes this Agreement and delivers a copy to Developer, Developer shall deposit with the Agency the sum of five thousand dollars (\$5,000.00) (the "Reimbursement Funds"). The Reimbursement Funds shall be used and applied from time to time by the Agency to pay itself for the Reimbursable Costs. The Agency shall provide Developer with an accounting of the Agency's use of any of the Reimbursement Funds within a reasonable time after the end of each calendar quarter during the term of this Agreement. The Reimbursement Funds are processing fees and therefore City shall account and be responsible for them pursuant to the Government Code. Developer shall further deposit with the City monies sufficient to cover additional Reimbursable Costs within ten (10) days after receipt of written notice from the Agency that the Reimbursable Costs are expected to exceed the sum of the deposited Reimbursement Funds. If Developer fails to timely deposit additional Reimbursement

Funds following notice from the City (without terminating this Agreement pursuant to Section 3), the City may, at its discretion, stop work under this Section until such deposit is made, as well as pursue any available remedy at law or equity. The parties hereto intend that Developer shall fully fund the Reimbursable Costs. Developer's total deposits of Reimbursement Funds shall not exceed five thousand dollars (\$5,000.00) without Developer's express written consent thereto given before City has committed to incur any higher amount. Any remaining amount of the Reimbursement Funds shall be delivered to the Developer (along with a final accounting of the Agency's use of the Reimbursement Funds) within thirty (30) business days after the earlier of: (i) the execution of the Project Agreements, or (ii) the termination of this Agreement.

10. The Developer shall also bear its own costs and expenses of any and all title, appraisal, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities it or its consultants perform for the Project.

11. The Developer and the Agency understand and agree that neither Party is under any obligation whatsoever to enter into the Project Agreements. Additionally, the Developer acknowledges that the City of Highland and the Agency must in good faith review and consider any environmental impacts of the Project before deciding whether to approve the Project and the Project Agreements. In the event of the expiration or earlier termination of this Agreement, the Agency shall be free at the Agency's option to negotiate with any persons or entities with respect to the sale, lease and/or development of the Site.

12. This Agreement may not be assigned by the Developer without the prior express written consent of the Agency in its sole and absolute discretion.

13. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by personal service or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the Developer:

Target Corporation
Property Development – TPN-12th Floor
attn: Real Estate Portfolio Management
1000 Nicollet Mall
Minneapolis, MN 55403

If to the Agency:

Successor Agency to the Highland Redevelopment Agency
27215 Baseline
Highland, California 92346
Attn: Joseph A. Hughes, Executive Director

With a copy to:

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attn: Craig Steele

14. For purposes of the negotiations contemplated by this Agreement, the Developer's representative shall be Brandon Lee, (Phone: (612) 761-1083; Email: Brandon.Lee@target.com) and the Agency's representative shall be Joseph A. Hughes, Executive Director (Phone: (909) 864-6861, ext. 221 Email: jhughes@cityofhighland.org.

15. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no other agreements or understandings between the parties with respect to the subject matter hereof or any related subject and no representations by either party to the other have been made as an inducement to enter into this Agreement. All prior negotiations between the parties are superseded by this Agreement.

16. This Agreement may not be altered, amended or modified except by a writing executed by all parties hereto.

17. If any party should bring any legal action or proceeding relating to this agreement or to enforce any provision hereof, or if the parties agree to arbitration or mediation relating to this Agreement, the party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees, costs and out-of-pocket expenses (including but not limited to the fees and costs of experts) from the other. The parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of San Bernardino.

18. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California, as if this Agreement was jointly drafted by the parties hereto.

19. Time is of the essence with regard to each and every provision of this Agreement, including the attachments hereto.

20. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

21. Developer shall execute this Agreement first and shall then deliver the partially executed Agreement to the Agency for approval and execution by the Agency. Developer acknowledges and agrees that the Agency is under no obligation to consider or approve this Agreement until it has been executed by the Developer.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

[SIGNATURES ON FOLLOWING PAGE]

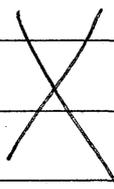
DEVELOPER:

TARGET CORPORATION,
a Minnesota corporation

By: 

Name: **Dietrich Haar**

Title: **Director Real Estate
Target Corporation**

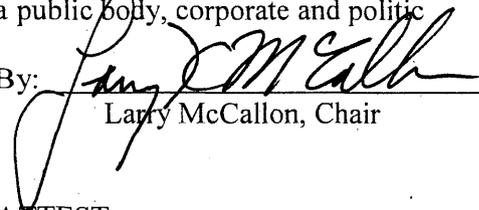
By: 

Name: _____

Title: _____

AGENCY:

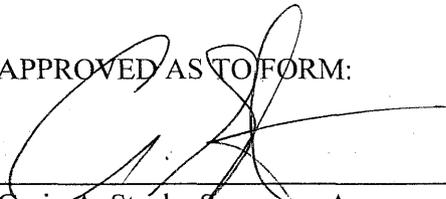
SUCCESSOR AGENCY TO THE
HIGHLAND REDEVELOPMENT
AGENCY
a public body, corporate and politic

By: 
Larry McCallon, Chair

ATTEST:


Betty Hughes, MMC, Agency Clerk

APPROVED AS TO FORM:


Craig A. Steele, Successor Agency
Attorney

ATTACHMENT 1

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF HIGHLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND ON FILE IN THE DISTRICT LAND OFFICE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF GREENSPOT ROAD (FORMERLY FIFTH STREET), HAVING A HALF-STREET WIDTH OF 50.00 FEET, WITH THE WESTERLY LINE OF THE EASTERLY 1452.00 FEET OF THE SAID SOUTHEAST QUARTER; THENCE ALONG SAID WESTERLY LINE, NORTH 00°24'01" EAST, 499.67 FEET TO THE MOST SOUTHERLY CORNER OF THE LAND CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT IN THE DEED RECORDED MAY 21, 1959, IN BOOK 4824, PAGE 494 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE SOUTHEAST LINE OF SAID LAND, NORTH 37°25'52" EAST, 193.15 FEET (RECORD 195.23 FEET) TO THE SOUTHEAST CORNER OF THE LAND CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT IN THE DEED RECORDED JANUARY 22, 1960, IN BOOK 5038, PAGE 137 OF SAID OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE, NORTH 37°23'14" EAST, 1122.01 FEET (RECORD 1120.07 FEET) TO THE SOUTHWEST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, SAID CORNER ALSO BEING AN ANGLE POINT IN THE BOUNDARY OF THE LAND CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT IN THE DEED RECORDED OCTOBER 10, 1942, IN BOOK 1559, PAGE 137 OF SAID OFFICIAL RECORDS; THENCE LEAVING SAID SOUTHEASTERLY LINE, ALONG THE FOLLOWING SEVEN COURSES:

- 1) SOUTH 89°49'21" WEST, 95.26 FEET;
- 2) SOUTH 53°23'36" WEST, 146.94 FEET;
- 3) SOUTH 56°35'01" WEST, 198.86 FEET;
- 4) SOUTH 60°29'07" WEST, 427.26 FEET;
- 5) SOUTH 51°34'02" WEST, 217.97 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 500.00 FEET;
- 6) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°59'14" AN ARC LENGTH OF 261.69 FEET;
- 7) SOUTH 81°33'16" WEST, 314.16 FEET TO A POINT ON THE EASTERLY LINE OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED DECEMBER 28, 2006, AS INSTRUMENT NO. 2006-0892030 OF SAID OFFICIAL RECORDS;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FIVE COURSES:

- 1) SOUTH 06°59'00" EAST, 40.50 FEET;
- 2) SOUTH 33°41'36" WEST, 179.98 FEET (RECORD 180.01 FEET);
- 3) SOUTH 11°15'29" EAST, 112.99 FEET (RECORD 113.01 FEET);

ATTACHMENT 1
LEGAL DESCRIPTION

4) SOUTH 13°00'30" EAST, 581.82 FEET (RECORD 581.82 FEET);

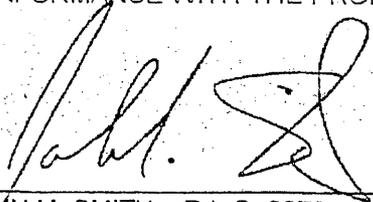
5) SOUTH 54°25'27" EAST, 42.70 FEET (RECORD 42.81 FEET) TO THE
NORTHERLY LINE OF SAID GREENSPOT ROAD;

THENCE LEAVING SAID EASTERLY LINE, ALONG SAID NORTHERLY LINE, NORTH
85°58'41" EAST, 576.28 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 20.935 ACRES, MORE OR LESS.

THE ABOVE LEGAL DESCRIPTION IS DELINEATED ON "ATTACHMENT NO. 1
DEPICTION OF SITE" AND IS MADE A PART HEREOF FOR REFERENCE PURPOSES.

THIS DESCRIPTION WAS PREPARED BY ME, OR UNDER MY DIRECTION, IN
CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.



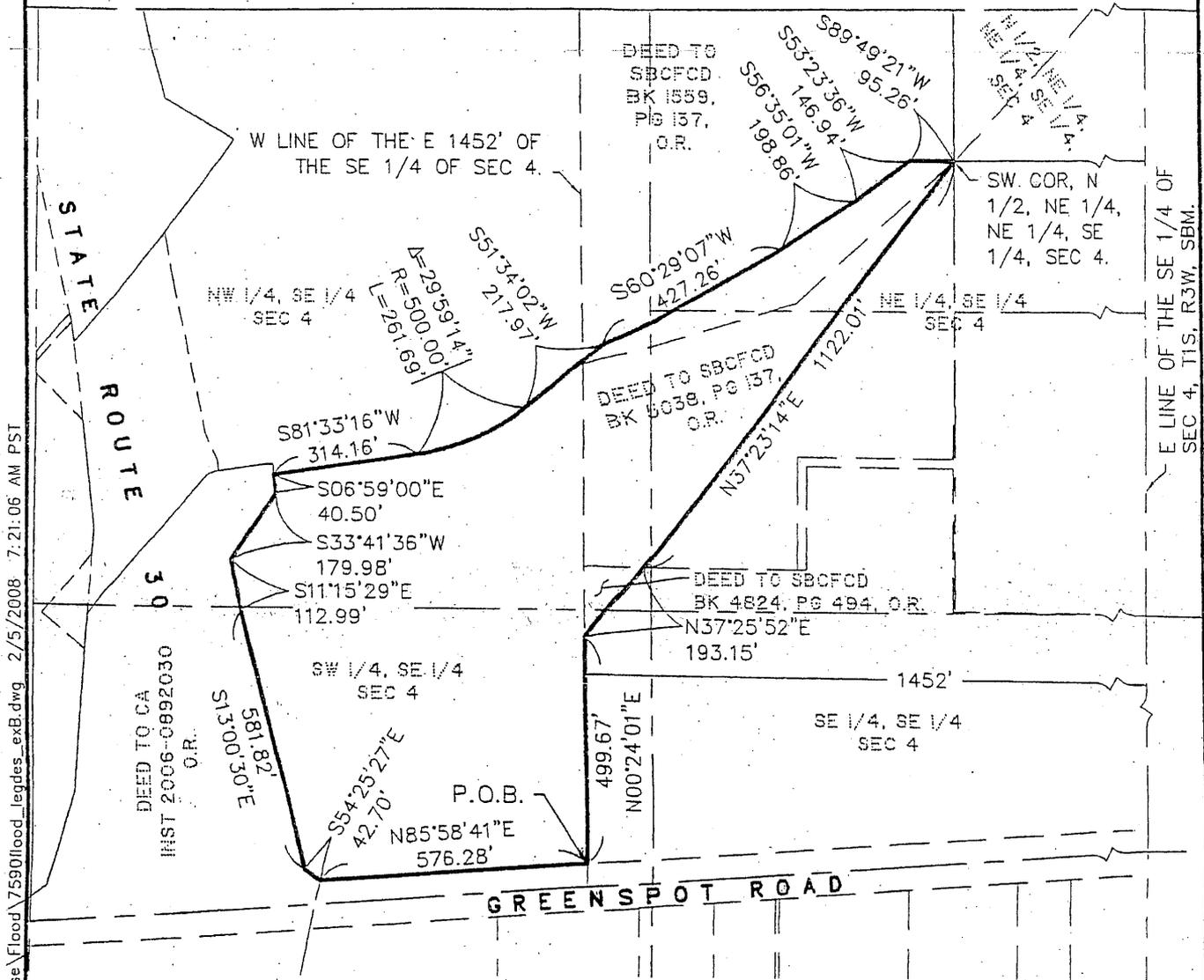
JOHN M. SMITH, P.L.S. 8070
LICENSE EXPIRES 12/31/09



DATE PREPARED: 02/05/2008

ATTACHMENT NO. 1

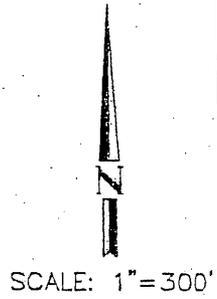
DEPICTION OF SITE



L:\2007\07-590 Vestlar Highland Retail\Exhibits\Purchase\Flood\7590flood_legdes_exB.dwg 2/5/2008 7:21:06 AM PST

LEGEND

- DESCRIPTION AREA
- EXISTING SBCFCD PROPERTY
- ADJACENT PROPERTY
- CENTERLINE
- SECTION LINES



SHEET 1 OF 1

ATTACHMENT NO. 1 - DEPICTION OF SITE
 PORTION OF SE 1/4 OF SECTION 4,
 T1S, R3W, SBM
 CITY OF HIGHLAND, CALIFORNIA.

DRC Development Resource Consultants, Inc.
 Civil Engineering • Land Surveying • Environmental
 8175 E. KAISER BOULEVARD
 ANAHEIM HILLS, CA 92808 (714) 885-6860

ATTACHMENT NO. 2

MATERIALS TO BE DELIVERED BY DEVELOPER TO THE AGENCY

1. Within thirty (30) days after the date this Agreement is approved by the Agency, the Developer shall notify Agency in writing of the specific type of tenant(s) proposed to be located on the Site. It is anticipated that the Project Agreements will, among other provisions, require a specific type of tenant on the Site.
2. Within one hundred twenty (120) calendar days after the date this Agreement is approved by the Agency, the Developer shall deliver to Agency a revised site plan and revised architectural concept drawings identifying the location and uses of buildings and the proposed design characteristics of the Project, including those on the Site.
3. Within three (3) calendar months after the date this Agreement is approved by the Agency, the Developer shall, subject to the terms of a Right of Entry and Access Agreement to be negotiated and executed by Agency, District and Developer, investigate the physical condition of the Site and submit to the Agency in writing any and all objections Developer may have to the physical condition of the Site together with a detailed written explanation of the reasons for each objection.
4. Within six (6) calendar months after the date this Agreement is approved by the Agency, Developer shall; (i) obtain a title report for the Site and copies of the title exceptions described therein; (ii) submit to Agency an ALTA survey of the Site certified to Developer and its title company based on the title report; and (iii) submit to Agency Developer's written objections to any matter revealed by such survey or title report and a detailed written explanation of the reason for such objections.
5. Within sixty (60) calendar days after the date this Agreement is approved by the Agency, Developer shall submit to Agency a schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of each component of the Project (the "Development Schedule"). Developer shall thereafter update the schedule on a monthly basis and provide a copy of the updated schedule to Agency.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF HIGHLAND)

I, BETTY HUGHES, Secretary of the Oversight Board of the Successor Agency to the Highland Redevelopment Agency of the City of Highland, California, do hereby certify Oversight Board of the Successor Agency to the Redevelopment Agency Resolution No. OBSARDA2012-008 was duly and regularly adopted by the Oversight Board of the Successor Agency to the Highland Redevelopment Agency, Highland, California, at a special meeting thereof held on the 27th day of August, 2012, by the following vote:

- AYES: Haller, Huff, Jaquess, McCallon, Saks, Sutorus

- NOES: None

- ABSTAIN: None

- ABSENT: Peukert



BETTY HUGHES, MMC
SECRETARY