

EXCLUSIVE NEGOTIATING AGREEMENT

ARTECO PARTNERS

(Development of Fox Entertainment Complex Garage Restaurant Unit Located at 3605 Market Street)

This Exclusive Negotiating Agreement ("ENA") is hereby entered into this _____ day of _____, 2015, ("Effective Date") by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("CITY"), and ARTECO PARTNERS, a California corporation ("Developer"), as follows:

I.

PURPOSE/TERM

1.1. Purpose. The purpose of this ENA is to establish a period during which Developer shall have the exclusive right to conduct investigatory analyses of an approximately 12,000 square foot interior of restaurant space and 2,546 square foot interior of storage space located at 3605 Market Street (the "Site"), for the purpose of determining Developer's interest in negotiating with City for Developer's possible lease of the Site, which is intended to culminate in a Long Term Ground Lease to include the following:

1.1.1. Lease Term. The lease terms are to be based upon fair market value of the Site and mutually agreeable between the City and the Developer.

1.2. Term. The term of this ENA shall begin on the Effective Date and shall continue for a period of one (1) year to and including 5:00 p.m. on the last day of such period ("Termination Date"), with one option to extend for an additional three-month period. Said option to extend must be requested, in writing, by Developer. This ENA may be earlier terminated pursuant to Section 8 herein. Extension to this Agreement shall be granted in accordance with Section 8.2 herein.

1.3. Consideration. City recognizes the value of the Site analyses to be performed by Developer and the documentation and other information likely to result therefrom. In consideration of the exclusive rights granted to Developer hereunder, Developer shall furnish to City copies of all title, parcel maps, records of survey and all related environmental documents pertaining to the Site and acquired or developed by Developer, or by a third party on Developer's behalf, as they become available.

II.

DEFINITIONS

2.1. "Site" shall mean a portion of that certain real property owned by the City and identified as 3605 Market Street, Riverside, California, bearing Assessor Parcel Number 213-221-009, as further described in Exhibit "A" of this ENA, attached hereto and made a part hereof.

2.2. "Site Analyses" shall mean those investigatory activities undertaken by Developer during the Term with respect to the Site and its suitability for development.

III.

OWNER PARTICIPATION

3.1. Participation by City. This ENA shall not be construed as binding the City to enter into negotiations with Developer regarding Developer's possible lease of the Site, or any portion thereof. City may receive competing and alternative proposals from third parties during the term of this ENA, however, City shall be prohibited from considering any such proposals and/or engaging in negotiations with any proposing party, other than Developer, for the lease of the Site, or any portion thereof, until such time as this ENA has been terminated.

IV.

NEGOTIATIONS

4. Negotiations. The parties agree that negotiations, if any, under this ENA shall be conducted in accordance with the following:

4.1. Exclusive Negotiations. The City agrees to negotiate exclusively with Developer and Developer agrees to negotiate exclusively with the City with regard to the leasing and development of the Site. The City shall not consider proposals or engage in negotiations with persons or entities other than Developer, concerning the leasing and development of the Site or development of specific projects on the Site. Notwithstanding the foregoing, nothing in this ENA shall prohibit the City from: (i) providing information the City may have in its possession concerning the Site (provided this information is not confidential information within the meaning of Section 6.1 of this ENA); or (ii) referring third parties to Developer for consideration by Developer of their participation as partners, joint ventures, developers, or contractors with regard to development of the Site, or any portion thereof.

4.2. Diligence and Good Faith. The parties agree that at all times, they will negotiate diligently and in good faith to carry out the obligations of this ENA on or before the times established herein.

4.3. Cooperation. The parties agree that, at all times during this ENA, each party shall cooperate with the other party and shall supply such information and documents related to the Site as may be within the party's possession and reasonably requested by the other party.

V.

DEVELOPER OBLIGATIONS

5. Developer Obligations. Developer promises and agrees to diligently pursue, and to use its best efforts, to complete the following obligations:

5.1. Information. Developer shall respond to all City requests for information by promptly providing such information and documents that are in the possession, custody and control of Developer and which have not previously been submitted by Developer to City. Any such information not transmitted to City as of the date of termination of this ENA shall be sent by the thirtieth (30th) day after termination of this ENA.

5.2. Within one hundred twenty (120) days following the Effective Date, develop and present to the City staff, for review, all of the following:

5.2.1. A conceptual development study for the project that shall include, at a minimum, the proposed lease terms and the development of food and beverage market concept with drawings and a floor plan;

5.2.2. A proposed time schedule for commencement and completion of the Project;
and

5.2.3. A written financial pro-forma in a reasonable form and substance regarding the anticipated costs and returns related to the development, operation, sale and lease (as applicable) of the Project.

5.3. Developer to assist City by providing all construction, maintenance, and operation of all proposed private improvements so the City can prepare the costs of additional or increased levels of public services and any new public revenues, anticipated to be generated by the Project, by phase, if applicable.

VI.

CITY OBLIGATIONS

6. City Obligations. The City promises and agrees to diligently use its best efforts to complete the following obligations within the times required herein:

6.1 Developer's Financial Information is Confidential. City shall keep Developer's statements of personal worth or personal financial data provided to establish his or her personal

qualification for the project confidential as permitted by the exemption stated in California Government Code section 6254 (n).

6.2. Confidentiality of Information. For a period of two (2) years after termination of this ENA, City shall consider as confidential any proformas or similar documents prepared by Developer, related to development of the Site, and any work-product of Developer or its consultants related to the Site, which is supplied by Developer to City. During the term of this ENA, and for the period after termination specified in the immediately preceding sentence City shall refrain from releasing such information to any person or entity other than Developer or its designees, unless Developer consents to release of such information or until the City's legal counsel has determined, after notification to Developer's legal counsel, that the release of such information is required by the California Public Records Act (Government Code §6250 et al.), the U.S. Freedom of Information Act (5 U.S.C. §552 et seq.) or other applicable federal, state, or City statute, laws, or ordinances, or as may be required by an order of a court of competent jurisdiction. This section shall survive the expiration of the ENA.

6.3. Governing Body Approval Process. This ENA is subject to approval by the City Council of the City of Riverside ("City Council").

VII.

LIMITING CONDITIONS

7.1. Discretionary Approval. The acceptance by the parties hereto of the terms and provisions of this ENA is merely an accommodation to clarify the process the parties desire to commence and pursue in connection with Developer's evaluation of the Site and the conveyance by Developer to City of information pertaining to the Site and obtained or developed by Developer, or a third party on Developer's behalf. No purchase and sale or lease shall be binding upon the City until the City Council has an adequate opportunity to consider any purchase and sale or lease for approval and have, in the free exercise of their discretion, approved the purchase and sale or lease. Developer acknowledges and agrees that nothing herein restricts nor shall be deemed to restrict the City Council in the free exercise of its discretion, or in the free exercise of its executive, quasi-judicative, or legislative powers.

7.2. Limitation on Remedies. City and Developer each acknowledge and agree that neither the City nor the Developer would have entered into this ENA if it were to be liable to the other for monetary damages or other remedies. Accordingly, City and Developer each acknowledge and agree that their respective sole and exclusive right and remedy upon the breach of this ENA by the other is to terminate this Agreement.

7.3 Subject to Approval. This ENA and any subsequent conveyance or agreement contemplated by this ENA is subject to subsequent approval of the City Council.

VIII.

TERMINATION/EXTENSION

8.1. Termination. This ENA may be terminated in one of the following ways: (i) lapse; (ii) mutual agreement of the parties; or (iii) the expiration of fifteen (15) days after one party sends the other party written notice of the noticed party's failure to timely and diligently perform any of its obligations under this ENA, and the noticed party's failure to cure or correct the failure to perform within the same fifteen (15) day period.

8.2. Extension. The parties agree that Developer shall have the option to request, in writing, to extend this ENA for an additional six-month period.

IX.

GENERAL TERMS AND CONDITIONS

9. General Terms and Conditions. The following general terms, conditions, and covenants shall apply to this ENA:

9.1. Assignment. There shall be no assignment or other transfer ("Assignment") of the rights and/or obligations of Developer under this ENA unless the City has given its prior written approval to the Assignment. The City shall not unreasonably withhold its approval of an Assignment that meets the following requirements: (i) the Assignment is to a validly organized and existing business entity which is a corporate affiliate or subsidiary of Developer, of which Developer is a general partner, or of which Developer is the majority shareholder (meaning owning at least 51% of the outstanding stock entitled to voting rights in the business entity); (ii) the Assignment is to an entity that expressly assumes the obligations of Developer under this ENA in a writing satisfactory to the City; (iii) Developer remains fully responsible for the performance of, and liable for the obligations of, Developer under this ENA; and (iv) the assignee is financially capable of performing the duties and discharging the obligations it is assuming. Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the persons in control of Developer and the degree thereof.

9.2. Nondiscrimination. Developer agrees to refrain from discriminating against persons in the course of its conduct under this ENA on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) and the California Fair Employment and Housing Act (Cal. Government Code §12900 et seq.), as they exist on the date of this ENA or as they may thereafter be amended, repealed and reenacted, or otherwise modified. Developer further agrees not to establish or permit any such practice or practices of discrimination or segregation with reference to its conduct under this ENA. Any further agreement between the parties shall contain appropriate, City approved, non-discrimination and non-segregation provisions binding Developer and its successors and assignees, and shall be covenants running with all affected parcels of the Site.

9.3. Non-liability of City Officials and Employees. No council member, official, consultant, attorney, or employee of the City shall be personally liable to Developer, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or on any obligations arising under this ENA.

9.4. Conflicts of Interest. No board member, official, consultant, attorney, or employee of the City shall have any personal interest, direct or indirect, in this ENA nor shall any such member, official or employee participate in any decision relating to this ENA which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.5. Warranty Against Payment of Consideration for ENA. Developer represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this ENA, other than payments to consultants retained by Developer to assist it in the negotiation of this ENA.

9.6. No Third Party Beneficiaries. This ENA, its provisions, and its covenants, are for the sole and exclusive benefit of the City and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this ENA.

9.7. Integration. This ENA consists of pages 1 through 8, inclusive, and Exhibit "A", attached hereto and incorporated herein by this reference, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

9.8. Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this ENA are a substantive and integral part of this ENA and are incorporated herein by this reference.

9.9. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this ENA or any of its terms. References to section numbers are to sections in this ENA unless expressly stated otherwise.

9.10. Interpretation. The City and Developer acknowledge that this ENA is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this ENA. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this ENA. In any action or proceeding to interpret or enforcement of this ENA, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this ENA to determine and give effect to the intention of the parties hereto.

9.11. Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this ENA shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this ENA is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this ENA and shall not affect any other provision, term, condition, covenant, and/or restriction, of this ENA and the remainder of the ENA shall continue in full force and effect.

9.12. Amendments to ENA. Any amendments to this ENA must be in writing and signed by the appropriate authorities of the City and Developer. The Development Director shall have the authority to make minor amendments to this ENA, including, but not limited to, the granting of extensions of time to Developer, on behalf of the City so long as such actions do not materially change the ENA or make a commitment of additional funds of the City. All other changes, modifications, and amendments shall require the prior approval of the City's governing bodies.

9.13. Administration. This ENA shall be administered by the Development Director, or his or her designated representative, following approval of this ENA by the City Council. The City shall maintain authority of this ENA through the Development Director (or his or her authorized representative). The Development Director shall have the authority to issue interpretations with respect to this ENA on behalf of the City so long as such actions do not materially change the ENA or make a commitment of additional funds of the City.

9.14. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, or by reputable overnight delivery service, or personal delivery, to the principal offices of the parties, as designated below. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received upon the date personal service is affected, if given by personal service, or upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

To City:

City of Riverside
Community & Econ.
Development Dept.
Attn: Emilio Ramirez
3900 Main Street, 3rd Floor
Riverside, California 92522

To Developer:

Arteco Partners
Attn: Gerald V. Tessier
281 S. Thomas Street, Suite 504
Pomona, CA 91766

9.15. Computation of Time. The time in which any act is to be done under this ENA is computed by excluding the first day (such as the Effective Date) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code Sections 6700 and 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

9.16. Authority. The individuals executing this ENA on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

9.17. Counterpart Originals. This ENA may be executed in duplicate originals, each of which is deemed to be an original.

9.18. Effective Date of ENA. This ENA shall not become effective until the date it has been formally approved by the City's governing body and executed by the appropriate authorities of the City and Developer. This date shall be affixed on the cover page of this ENA and shall be used as the "Effective Date" for purposes of calculating time under this ENA.

IN WITNESS WHEREOF, the parties hereto have executed this ENA on the date and year first-above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

ARTECO PARTNERS, a California
corporation

By: _____
City Manager

By: _____

Printed Name: _____

ATTEST:

Its: _____

By: _____
City Clerk

By: _____

Printed Name: _____

APPROVED AS TO FORM:

Its: _____

By: _____
Deputy City Attorney

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charter city and municipal corporation

ARTECO PARTNERS, a California
corporation

By: _____
City Manager

By: _____

Printed Name: Gerald V Tessiere

ATTEST:

Its: President

By: _____
City Clerk

By: _____

Printed Name: _____

APPROVED AS TO FORM:

Its: _____

By: R. Magallon
Deputy City Attorney

EXHIBIT A

SITE MAP

Exhibit "A" - Site Map

