

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

(Purchase of 6328 Phillip Road)

THIS AGREEMENT (“Agreement”) is entered into this ____ day of _____, 20____, by and between the City of Roseville, a municipal corporation (“CITY”) and PDC Sacramento LPIV, LLC, a Delaware limited liability company (“DEVELOPER”); and

W I T N E S S E T H:

WHEREAS, CITY is the owner of approximately 237 acres of vacant land located at 6328 Phillip Road in Roseville, California and described as APN 017-101-008 (the “Property”); and

WHEREAS, approximately 55 acres of the Property are undevelopable due to being located in a floodplain and a planned roadway that will bifurcate the Property; and

WHEREAS, as a result, the net developable or useable acreage is approximately 182 acres; and

WHEREAS, the Property is currently used for grazing and lacks the backbone infrastructure improvements (utilities, sewer and drainage) necessary for development; and

WHEREAS, DEVELOPER proposes at its own costs to construct the backbone infrastructure and subsequently develop industrial uses on the Property; and

WHEREAS, this development creates an economic opportunity by converting

vacant land into uses which will assist in creating property and sales tax revenue for CITY's benefit and will fill a need for large industrial space which is currently lacking in the City of Roseville; and

WHEREAS, the purpose of this Agreement is to set forth a framework by which the parties intend to negotiate a purchase and sale agreement; and

WHEREAS, it is the intent of the parties, in entering this Agreement, to:

- A. Negotiate purchase and sale terms and conditions;
- B. Negotiate the increments of acreage for the initial and future purchases and development;
- C. Negotiate potential option fees for reserving acreage for future purchases;
- D. Negotiate and reach agreement on any necessary contracts, financial instruments, purchase and sale agreement, and related documents for the purchase and development of the Property (collectively, "Purchase Agreements"); and

WHEREAS, CITY and DEVELOPER desire to negotiate the terms and conditions of the purchase and development of the Property based on the terms and conditions set forth below.

NOW, THEREFORE, CITY and DEVELOPER agree as follows:

1. Exclusive Right to Negotiate. The parties hereby agree to diligently and in good faith negotiate and prepare Purchase Agreements, subject to the terms and conditions herein, for consideration by CITY and for execution between CITY and DEVELOPER with respect to the purchase and development of the Property. During the term of this Agreement, DEVELOPER and/or CITY shall not negotiate with any other

person or entity regarding the purchase and development of the Property.

The parties shall keep the negotiations confidential and shall not disclose the substance of negotiations to any third party except pursuant to any of the following: (1) any matter relating to the Property is placed on a public meeting agenda for consideration by a CITY discretionary review body; (2) as may be required by law or legal process; (3) upon written permission by both parties; or (4) following termination or expiration of this Agreement.

2. Terms. The details of the following preliminary terms shall be negotiated and addressed in the Purchase Agreements:

A. CITY agrees to sell to DEVELOPER approximately one hundred and eighty-three (183) acres of the two hundred and thirty-seven (237) acre Property at the appraised market rate value.

B. CITY agrees that DEVELOPER may acquire the Property in phases. The parties will negotiate the increments of acreage for the phases and whether DEVELOPER will be required to pay an option fee for reserving acreage for future purchases.

C. CITY will retain the right to retain twenty-one (21) acres to the northwest of the future planned area for Placer Parkway.

D. DEVELOPER shall have one (1) year or until California Environmental Quality Act ("CEQA") review and rezoning has been completed, whichever is sooner, for the purposes of conducting its due diligence with respect to the Property and entitling the Property for industrial development.

E. DEVELOPER will fully entitle the Property including conducting

the CEQA analysis and rezoning efforts, at their expense. City reserves final discretion and approval as to entitlements and as to all related matters, including CEQA review, in connection therewith.

F. DEVELOPER will develop the Master Infrastructure Plan and bring all needed utilities and roadways to the Property.

G. CITY shall not provide any public funds, subsidies, credits, fee reductions, or fee waivers towards acquisition or development of the Property.

3. Negotiation Period. The period for exclusive negotiations shall commence on the date first written above and shall continue for a period of one hundred twenty (120) calendar days. The Negotiation Period may be extended for a reasonable period(s) upon the City Manager's written approval of DEVELOPER's written request, at the City Manager's sole discretion. This Agreement may be terminated at any time by either party, upon ten (10) calendar days' prior written notice to the other party. On behalf of CITY, the City Manager is authorized to terminate the Agreement.

4. Execution of Purchase Agreements. All Purchase Agreements resulting from the negotiations pursuant to this Agreement shall become effective only upon City Council approval and execution by the parties. If any Purchase Agreement is approved by the CITY and is fully executed by CITY and DEVELOPER, the Purchase Agreement shall thereafter govern the rights and obligations of the parties with respect to the purchase and development of the Property and such approval and execution shall terminate this Agreement.

5. No Public Reimbursement or Public Financial Commitment.
DEVELOPER shall have no right to be reimbursed by CITY for any costs incurred by

DEVELOPER pursuant to this Agreement. Upon termination of this Agreement, neither party shall accrue any further rights nor incur any further obligations or liability to the other under this Agreement. By execution of this Agreement, CITY is not committing itself or agreeing to undertake:

- A. Acquisition of land;
- B. Disposition of land to DEVELOPER;
- C. Pre-commitment or commitment of any public funds; or
- D. Any other act or actions requiring the subsequent independent

exercise of discretion by CITY or any of its departments.

CITY reserves final discretion and approval as to the development, the Purchase Agreements, entitlements, permits, environmental review, and all related matters in connection therewith. Nothing in this Agreement shall limit the type or extent of obligations or commitments, including the commitments set forth above, which CITY may elect to include in the Purchase Agreements. Similarly, DEVELOPER reserves discretion and approval as to whether to proceed with the purchase and development of the Property and, further, the right to terminate this Agreement by immediate notice to CITY if CITY imposes business terms and conditions as part of the purchase and approval process which are unacceptable to DEVELOPER in DEVELOPER's sole discretion.

This Agreement does not constitute a disposition of property or exercise of control over property not owned or controlled by CITY. Execution of this Agreement by CITY is merely an agreement to enter into a period of negotiations according to the terms of this Agreement, reserving final discretion and approval by CITY as to any Purchase

Agreements and all proceedings and decisions in connection therewith.

6. DEVELOPER's Representations and Warranties. DEVELOPER hereby represents and warrants that it has made full disclosure to CITY of its principals, officers, major stockholders, major partners, joint venturers, key managerial employees and other associates, and other material information relating to DEVELOPER's proposed development. Any significant or material change in such management ownership or control of DEVELOPER or such information shall be reported to CITY and is subject to the approval of CITY prior to the execution of the Purchase Agreements. All persons executing this Agreement on behalf of DEVELOPER represent and warrant that they are authorized to do so.

7. Agreement and Development Subject to Applicable Policies and Laws. This Agreement and any development of the Property are subject to all applicable policies and laws, including but not limited to, the provisions of the Roseville General Plan and the Roseville Municipal Code and Zoning Ordinance, as they currently exist, or may hereafter be amended. The parties acknowledge that any project approval will be subject to CEQA.

8. Consultant Fees, Commissions and Brokerage Fees. CITY shall not be liable for any consultant fees, real estate commissions or brokerage fees which may arise from this Agreement as a result of a consultant, broker, agent or finder engaged by DEVELOPER. CITY represents that it has engaged no consultant, broker, agent or finder in connection with this transaction and that CITY agrees not to engage any consultant, broker, agent or finder in connection herewith. DEVELOPER agrees to hold CITY harmless from claims of any consultant, broker, agent or finder retained by

DEVELOPER.

9. Assignment. CITY enters into this Agreement solely because of the resources, skills, characteristics, and abilities which are unique to DEVELOPER, and which CITY believes are necessary for the successful development of the Property. Therefore, the obligations of DEVELOPER pursuant to this Agreement may not be assigned. Notwithstanding the foregoing, the parties hereby agree that any Purchase Agreement can be entered into by and between CITY and an entity created by and under the control of DEVELOPER, Carl Panattoni, Adon Panattoni, the Panattoni Living Trust, dated April 8, 1998, or an entity owned or controlled by Panattoni Development Company, Inc.

10. Attorney's Fees; Venue; Governing Law. If either party commences any legal action against the other party arising out of this Agreement or the performance hereof, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's fees. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Modification. This Agreement and each provision contained herein may be waived, amended, supplemented or eliminated only by mutual written agreement of the parties.

12. Severability. If any of the provisions contained in this Agreement are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

13. Notice. Any notices to parties required or permitted by this Agreement shall be delivered personally or mailed, U.S. first class postage prepaid, addressed as follows:

CITY OF ROSEVILLE

Laura Matteoli
Economic Development Director
City of Roseville
311 Vernon Street
Roseville, CA 95678

DEVELOPER

Tim Schaedler
PDC Sacramento LPIV, LLC
8775 Folsom Blvd., Suite 200
Sacramento, CA 95826

Either party may amend its address for notice by giving notice to the other party.

14. Integrated Agreement. This is an integrated agreement, and contains all of the terms, considerations, understandings and promises of the parties. It shall be read as a whole.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of the Agreement in duplicate by its City Manager and attested to by the City Clerk under the authority of Resolution No. _____, adopted by the City Council of the City of Roseville on the ____ day of _____, 20____, and DEVELOPER has caused this Agreement to be executed.

[Signatures Next Page]

CITY OF ROSEVILLE, a
municipal corporation

PDC SACRAMENTO LPIV, LLC,
a Delaware limited liability company

BY: _____
DOMINICK CASEY
City Manager

BY: PDC Sacramento, LLC, a
a Delaware limited liability
company
Its Manager

ATTEST:

BY: _____
TIMOTHY SCHAEDLER
Local Partner

BY: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

BY: _____
ROBERT R. SCHMITT
City Attorney

APPROVED AS TO SUBSTANCE:

BY: 
LAURA MATTEOLI
Economic Development Director