

REPORT TO REDEVELOPMENT AGENCY

DATE: AUGUST 25, 2010

TO: HONORABLE CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GREG RAMIREZ, EXECUTIVE DIRECTOR

BY: NATHAN HAMBURGER, ASSISTANT EXECUTIVE DIRECTOR

SUBJECT: APPROVAL OF AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE AGOURA HILLS REDEVELOPMENT AGENCY AND CONEJO VALLEY U-STORE IT, LP; REGARDING ASSESSOR'S PARCEL NUMBERS 2061-006-035, 2061-006-036, AND 2048-012-025

The purpose of this report is to seek approval from the Redevelopment Agency to enter into an Exclusive Negotiating Agreement (ENA) with the property owner of Assessor's Parcel Numbers 2061-006-035, 2061-006-036 and 2048-012-025, Conejo Valley U-Store It, LP. The ENA provides specific parameters in which the Redevelopment Agency will discuss possible terms and conditions which would be the basis for the respective parties to enter into a Disposition and Development Agreement (DDA) that could result in an exchange of properties and relocation of the owner's business.

The attached ENA has been reviewed and approved as form by the Agency Attorney.

RECOMMENDATION

Staff recommends the Redevelopment Agency approve the attached Exclusive Negotiating Agreement and authorize the City Manager to initiate the outlined negotiating process.

Attachment: Exclusive Negotiating Agreement

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (this "ENA") is made and entered into as of August _____, 2010 by and between the AGOURA HILLS REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency") and CONEJO VALLEY U-STORE IT, LP, a California limited partnership (the "Owner"). The Agency and Owner are each a "Party" hereunder and sometimes collectively referred to as the "Parties."

RECITALS

A. This ENA concerns three certain parcels of real property, located in the City of Agoura Hills, California (the "City"). The real property to be referred to herein as the "Owner Property" consists of two attached and improved parcels with a combined approximate area of 4.94 acres currently owned by the Owner and being operated as a self-storage business; located at 29055 Agoura Road in the City; Assessor's Parcel Numbers 2061-006-035 and 2061-006-036, all as depicted on the diagram attached hereto as Attachment No. 1, and incorporated herein by this reference. The Owner Property is located in Agency's Redevelopment Project Area. The real property to be referred to herein as the "Agency Property" is a single vacant unimproved parcel of approximately 4.66 acres currently owned by the Agency, located at 28661 Canwood Street in the City, with Assessor's Parcel Number 2048-012-025, and as depicted on the diagram attached hereto as Attachment No. 2 and incorporated herein by this reference.

B. The Agency and the Owner wish to enter into this ENA to allow each to candidly negotiate with each other and establish certain information and the possible terms and conditions which would be the basis for the Parties entering into a Disposition and Development Agreement (the "DDA") that would result in an exchange of the Owner Property for the Agency Property between the Agency and the Owner and the relocation of the Owner's existing business into a new self storage facility of approximately 97,000 square feet to be constructed on the Agency Property by Agency or a developer.

C. The Agency and the City wish to encourage the development of residential and commercial uses within the entire City to revitalize commercial activity and increase the number of jobs and houses available to the City's residents. The City and Agency further wish to protect and enhance existing productive businesses such as the Owner's on sites that the City feels are appropriate for such uses. In connection therewith, the Agency wishes to encourage the continued planning and economic, environmental, and financial evaluation of development on the Agency Property and the Owner Property.

D. The Owner is presently operating a self-storage business on the Owner Property, and has operated that on the Owner Property since 1977. The Owner is not looking to relocate but is willing to consider the relocation of that business and the above described real property exchange, provided they have no "net" losses of value and income due to an effective operation arrangement for a self-storage business on the Agency Property.

E. The Owner and the Agency are willing to enter into this ENA setting forth the terms pursuant to which the Agency will deal with the Owner on an exclusive basis for a period of one hundred eighty (180) calendar days regarding the establishment of certain information pertaining to the Owner's possible acquisition of the Agency Property, the relocation the Owner's business to the Agency Property, the Agency's possible acquisition of the Owner Property, and to attempt to negotiate the terms upon which the Agency and Owner would enter into a DDA for such a land exchange and development of a new self-storage facility on the Agency Property and relocation of the existing self-storage business ("Project").

F. Both Parties anticipate that following execution of this ENA and through the ENA Period (as defined below), their staffs, consultants and attorneys will devote substantial time and effort in meetings and generating the relevant information in connection with the proposed Project, and in negotiating and preparing a DDA.

NOW, THEREFORE, the Parties hereto agree as follows:

1. TERM. Except as otherwise provided herein, the term of this ENA shall commence on the date hereof and shall end on the date which is one hundred eighty (180) calendar days thereafter (the "ENA Period").

2. EXCLUSIVE NEGOTIATION BY AGENCY. During the ENA Period the Agency shall not solicit or invite any negotiations, entertain any offers or proposals by, or negotiate with any person or entity other than the Owner regarding the disposition and/or development of the Agency Property. The Agency represents to the Owner that the Agency has not entered into any binding lease, option to purchase, or contract to sell or acquire the Agency Property. The restrictions of this section do not prohibit the City or Agency from negotiating or contracting with or soliciting proposals from consultants, contractors or other parties reasonably necessary to assist the Agency in carrying out its responsibilities under the ENA or a subsequent DDA with the Owner.

3. EXCLUSIVE NEGOTIATION BY OWNER. During the ENA Period the Owner shall not solicit or invite any negotiations, entertain proposals or offers by, or negotiate with any person or entity other than the Agency regarding the disposition and/or development of the Owner Property, except for entities or persons, if any, which have an interest therein pursuant to applicable law or the existing storage unit rental or use agreements. The Owner represents to the Agency that, other than the rental or use agreements for the individual storage units and the terms of the Owner's limited partnership or management agreement, the Owner has not entered into any binding lease, option to purchase or contract to sell or acquire the Owner Property.

4. GOOD FAITH EFFORT. During the ENA Period the Agency and the Owner shall work together to reach an agreement which is mutually acceptable to the Agency and Owner with respect to the matters described herein. Throughout the ENA Period, Agency staff shall be available to meet with the Owner to discuss the issues relating to this ENA.

5. RESPONSIBLE FOR OWN EXPENSES. Agency and Owner agree that, except as hereinafter provided, each Party shall be responsible for their own out-of-pocket

expenses incurred in connection with the negotiation and preparation of a DDA and the matters addressed herein.

6. TERMINATION EFFECT. If, prior to the end of the ENA Period, the Owner and the Agency (each in the exercise of their sole discretion) have not entered into the DDA, then this ENA shall automatically terminate and, except as expressly provided herein, neither Party hereto shall have any further rights or obligations under this ENA.

7. CEQA COMPLIANCE. The Agency and Owner acknowledge that all applicable requirements of the California Environmental Quality Act and the Guidelines for Implementation of the California Environmental Quality Act (collectively, "CEQA") must be met in order to execute and deliver the DDA, or develop the properties discussed herein. The Agency and Owner acknowledge that an environmental impact report ("EIR") for the proposed development of the properties may or may not be required by CEQA. The Owner agrees that the Agency shall, in its sole and independent discretion, determine what level of environmental review is necessary to comply with CEQA, and the Agency shall at its cost and expense prepare and process the draft and final form of the environmental documents (including the EIR, if one is required by CEQA). The Agency shall defend, indemnify and hold the Owners harmless for any legal action filed challenging that environmental review by the Agency or City under CEQA of the Project.

8. POSSIBLE DDA CONTENTS. The Parties anticipate that the DDA may include, but not be limited to, the following provisions:

(a) Ownership of the Agency Property and Owner Property will be exchanged. Any net compensation due to one party or the other as a result of the relocation of the business or land exchange shall be determined by a reasonable and legally defensible evaluation method and process acceptable to the Agency and the Owner.

(b) The Agency shall design, prepare plans/specifications and secure all zoning, permits and necessary approvals for a new self-storage facility on the Agency Property, with the Owner's opportunity for a timely and a meaningful input into that process.

(c) The Agency to then construct, or have a third party construct, that new facility to accept the relocation of Owners' existing business and self-storage tenants onto the Agency Property. The construction of that project shall be commenced and completed pursuant to a schedule of performance to be incorporated in the DDA and approved by the Agency in the exercise of its reasonable discretion.

(d) The new facility to be completed to a "turn-key" move-in condition before closing of any land transfer, with Owner continuing to operate its existing business on the Owner Property during such construction. The Owner to be able to monitor the work and progress of the construction of the new facility.

(e) Agency's payment or reimbursement, in a mutually agreed to amount, of Owner's business relocation expenses, its new site evaluation costs, losses, and the expense of moving the personal property of Owner's individual self-storage tenants at the

business on the Owner Property, who desire to have their stored personal property relocated to the new facility and to provide some form of incentives for that storage tenant to relocate.

(f) Owner to have a lease back, for an agreed to fixed period of time, of the Owner Property after closing to continue operating that existing facility (after taking possession of the new completed facility) in order to promote and oversee the relocation of its customers and to direct new customers to the new facility.

(g) Sale or redevelopment of the Owner Property following the closing of the anticipated exchange shall be at the sole expense, timing and discretion of the City and Agency, subject to applicable zoning and the City's General Plan. However, a deed restriction shall be recorded not allowing any self-storage use of the Owner Property. The Agency's development of the Owner's new storage facility on the Agency Property shall not be delayed due to any Agency redevelopment effort of the Owner Property, and the Owner has no responsibility towards such redevelopment effort.

(h) Agreed to provisions on the Agency's defense, indemnity and hold harmless of Owner due to the Agency's construction of the new facility or performance of the acts described above and the Owner's defense, indemnity and hold harmless of the Agency due to the Owner's negligent acts as described in a DDA.

The subject matter of the DDA shall be the relocation of Owners' self-storage business as it exists on the date of the closing under a DDA. Agency shall have no obligation to execute a DDA, or to relocate or compensate Owner for any material change in the type or character of its business on the Owner Property that occurs after the date of the execution of this ENA.

9. **HOLD ON REZONING AGENCY PROPERTY.** The Agency and the City shall not schedule or hold any hearing on a zone change or the rezoning of the Agency Property to allow, by right or under a conditional use permit, any type of self-storage use during the term of this ENA, unless is that zone change hearing is necessary pursuant to an agreement reached by the parties as to the terms of a DDA to be presented to each party's governing body.

10. **NO DISCRIMINATION.** To the extent the Owner is in control of that property and a DDA is executed, the Owner agrees that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of either property discussed herein, nor shall the Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Project, and this provision shall be contained in the DDA and in any contracts, leases or other agreements (as required by applicable law) respecting the Project.

11. **NOT A COMMITMENT TO A DDA.** The Owner and the Agency understand and agree that neither Party is obligated to enter into a DDA. However, the Owner and the Agency shall negotiate in good faith with respect to the DDA and diligently work toward

accomplishing any task identified herein. In the event of termination or expiration of this ENA, the Agency shall be free at the Agency's option to negotiate with any persons or entities with respect to the development of the Agency Property. It is understood by the Parties that this ENA constitutes solely an exclusive right to negotiate and that the Project is subject to discretionary review by a number of other governmental agencies, environmental analysis, and public comment. It is understood by the Parties that by execution of this ENA, the Agency is not committing itself to or agreeing to undertake any disposition of land or an interest in land to the Owner or any other acts or activities requiring the subsequent independent exercise of discretion by the Agency, the City, or any agency or department thereof. This ENA does not constitute a disposition of any property or an interest in any property or the exercise of control over any property by the Agency or the City and does not require a public hearing. It is further understood by the Parties that execution of this ENA by the Agency is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the Agency and City as to any DDA and all proceedings and decisions in connection therewith, and that neither Party is obligated to enter into a DDA.

12. NO ASSIGNMENT. The Owner represents that its undertakings pursuant to this ENA are for the purpose of Agency's redevelopment of the Owner Property and not for the Agency's speculation in land holding. The Owner recognizes that, in view of the importance of the redevelopment of the Owner Property to the general welfare of the community, the qualifications and identity of the Owner and its principals are of particular concern to the City and the Agency. Therefore, this ENA may not be assigned by the Owner without the prior express written consent of the Agency, which consent is subject to the sole and absolute discretion of the Agency.

13. RIGHT TO TERMINATE. The Agency may terminate this ENA if the Agency reasonably determines that no material progress is being made in negotiations hereunder. The Agency shall provide thirty (30) days written notice to the Owner which specifies any dissatisfaction with such progress, and the Agency shall not terminate this ENA if the Owner cures the deficiencies specified by the Agency to the reasonable satisfaction of the Agency within such thirty (30) day period; provided however, that if Owner shall have commenced such a cure and such cure shall take longer than the thirty (30) day period to cure, Owner shall be provided with a reasonable additional period of time to effectuate such cure. Notwithstanding anything in this ENA to the contrary, in no event shall any cure period under this Section extend beyond the expiration of the ENA Period. The Owner may terminate this ENA upon delivery to the Agency of not less than seven (7) days prior written notice of Owner's election to terminate this ENA.

14. CONFIDENTIALITY. The Agency acknowledges and agrees that the information provided by Owner to the Agency during the ENA Period is "proprietary and confidential" information and should be marked or identified by the Agency as such. Subject to compliance with applicable law, including, without limitation, the portions of California law known as the Brown Act and the Public Records Act, until the terms of a DDA is finalized: (i) The Agency shall not discuss the contents of its negotiations with the Owner with any third party, other than the Agency's attorneys or consultants; and, (ii) except in response to a subpoena or valid order of a court of competent jurisdiction, any appraisal, pro forma, business data and information obtained from the Owner by the Agency shall not be knowingly copied for,

disclosed or released to any third party other than to the Agency's staff, attorneys, accountants and consultants. All copies of any appraisal, pro forma, business data and information obtained from the Owner and held by the Agency shall be returned to the Owner in the event the ENA expires or is terminated without an agreed to DDA. Once DDA is agreed to, any information then held by the Agency, shall become open and disclosable public records.

15. NOTICES. 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 form of express mail or service and addressed as follows:

If to the Owner:

CONEJO STORAGE MANAGEMENT, LLC
Law Offices of K. McMenamin-Torres
3075 East Thousand Oaks Boulevard, Suite T
Westlake Village, CA 91362
Attention: Kathryn McMenamin-Torres
Tel: 805-491-8434

If to the Agency:

Agoura Hills Redevelopment Agency
30001 Ladyface Court
Agoura Hills, California 91301
Attention: Greg Ramirez
Tel: (818) 597-7300
Fax: (818) 597-7341

with a copy to:

Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attention: Craig A. Steele, Esq.
Tel: (213) 626-8484
Fax: (213) 626-0078

16. NO OWNER OBLIGATION TO ENTER INTO A DDA. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA, except as expressly set forth herein. All prior negotiations between the Parties with respect to the subject matter of this ENA are superseded by this ENA. This ENA may not be altered, amended or modified except by a writing executed by both Parties. The Agency shall have no obligation to enter into a DDA with the Owner and neither the Agency nor its officers, members, staff or agents have made any promises to the Owner other than to exclusively negotiate with the Owner during the ENA Period as provided herein, and no statements of the Agency or its officers, members, staff or

agents as to future obligations shall be binding upon the Agency until and unless a DDA is approved and adopted by the Agency and then duly executed by the officers of the Agency duly authorized to do so. The Agency understands and agrees that the Owner is content to continue operating its business on the Owner Property and only entered into these land exchange discussions at the request of the Agency, as the result of the Agency Executive Director indicating that Agency staff would recommend to the Agency Board it adopt a Resolution of Necessity to acquire the Owner Property through use of eminent domain, if that step is necessary. In any event, the Owner has no obligation to enter into a DDA with the Agency and neither the Owner nor its officers, members, staff or agents have made any promises to the Agency other than to exclusively negotiate with the Agency during the ENA Period as provided herein, and no statements, reports, data or financial information of the Owner and provided by the Owner shall be binding upon the Owner until and unless a DDA is approved by the Agency and duly executed by the Agency.

17. ATTORNEY FEES. If either Party should bring any legal proceeding relating to this ENA, or to enforce any provision hereof, the Party in whose favor judgment is rendered shall be entitled to recover reasonable attorneys' fees and expenses of litigation from the other. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California, with venue in the Superior Court of Los Angeles County, California.

18. WARRANTIES. The Agency and Owner warrants and represents to each other that all legally necessary prerequisites to entering into this ENA have been lawfully taken by each, that the representatives of each who executes this ENA are lawfully authorized to do so, and that each may detrimentally rely on such warranties and representations. Each party warrants that no broker, finder or similar intermediary has acted for or on behalf of it, or is entitled to any broker's, finder's or similar fee or other commission from such party or any of such party's affiliates in connection with this ENA or the transactions contemplated for the land exchange.

19. SIGNED IN COUNTER PARTS. This ENA may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

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

“AGENCY”

“OWNER”

AGOURA HILLS REDEVELOPMENT
AGENCY, a public body, corporate and politic

CONEJO VALLEY U-STORE-IT, a
California Limited Partnership.

By: _____
Name: Greg Ramirez
Title: Executive Director

By Its General Partner: Conejo Storage
Management, LLC, a California limited
liability company

Attest:

By: 
Name: Trip Aiken
Title: Managing Member

Secretary

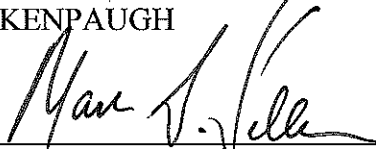
Approved as to form:

Approved as to form:

RICHARDS, WATSON & GERSHON

JACKSON, DEMARCO, TIDUS &
PECKENPAUGH

Agency Counsel


Mark G. Sellers, Esq.

ATTACHMENT NO. 2

Site Map "Agency Property"

The below shown vacant and unimproved parcel (approximately 4.66 acres) located at 28661 Canwood Street, with Assessor's Parcel Number 2048-012-025:

