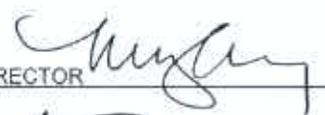
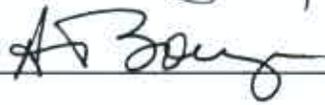


City of  
**FRESNO**  **REPORT TO THE CITY COUNCIL**  
**REPORT TO THE REDEVELOPMENT AGENCY**

AGENDA ITEM NO. <u>10:45am A</u>
AGENCY MEETING <u>4/8/08</u>
APPROVED BY _____
EXECUTIVE DIRECTOR 
CITY MANAGER 

April 8, 2008

**FROM:** ANDREW T. SOUZA, City Manager  
Office of the City Manager

MARLENE MURPHEY, Executive Director  
Redevelopment Agency

**BY:** SCOTT JOHNSON, Director  
Economical Development Department 

KELLY S. RIDDLE, Economical Development Coordinator  
Office of the City Manager

**SUBJECT:** AUTHORIZE THE EXECUTIVE DIRECTOR AND CITY MANAGER TO ENTER INTO AN EXCLUSIVE NEGOTIATION AGREEMENT (ENA) BETWEEN THE REDEVELOPMENT AGENCY, CITY OF FRESNO AND FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR THE PROPERTY LOCATED AT 800 – 808 'M' STREET, FRESNO, CA.

**KEY RESULTS AREA**

Economic Development

**RECOMMENDATIONS**

It is recommended that the City Council and Agency Board authorize the City Manager and Executive Director, to enter into this ENA to study the feasibility for the development of a 3 – 4 star hotel on City owned property located at 800 – 808 'M' Street, which is the northeast corner of 'M' and Inyo Streets.

**EXECUTIVE SUMMARY & BACKGROUND**

The City of Fresno property located on the corner of 'M' Street and Inyo is vacant land and adjacent to the Convention Center Exhibit Hall. The property was purchased by the City, and worked in conjunction with the RDA for a hotel development to serve the Convention Center, Exhibit Hall, Saroyan Theater, and Selland Arena, and to attract more convention and other events to Downtown Fresno.

Fresno Convention Center Hotel Properties, LP (Tom Richards, Principal Developer) will fund the necessary market, financial and environmental analysis, and other studies, required to determine project feasibility within the timeframe covered in a negotiated ENA. The ENA will serve to protect the developer's investment to produce the necessary studies, determine project feasibility, hire a major hotel operator.

During the ENA period, the City will assist the Developer in pursuing New Market Tax Credits, which are a critical component of the project financing plan.

Presented to Fresno Redevelopment Agency  
Date 4/8/08  
Disposition rec approved

REPORT TO THE CITY COUNCIL

AUTHORIZE THE EXECUTIVE DIRECTOR AND CITY MANAGER TO ENTER INTO AN EXCLUSIVE NEGOTIATION AGREEMENT (ENA) BETWEEN THE REDEVELOPMENT AGENCY, CITY OF FRESNO AND FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR THE PROPERTY LOCATED AT 800 – 808 'M' STREET, FRESNO

April 8, 2008

Page 2

**FISCAL IMPACT**

The City will fund CEQA and entitlement costs not to exceed \$5,000. The City will also fund services related to obtaining new market tax credits. Costs associated with the services have not been determined and will require a competitive process. The contract will be brought back to council for approval. The City will provide services from internal staff including legal and administrative assistance.

Attachment – Exclusive Negotiation Agreement

The Preconstruction Development Schedule is also provided for City Council Review.

10:45 am A  
4/8/08

CITY OF FRESNO  
City Clerk's Office (Original)

EXCLUSIVE NEGOTIATION AGREEMENT  
(Fresno Convention Center Hotel)

This Agreement is made and entered into on [ April 8, 2008], by and between the FRESNO REDEVELOPMENT AGENCY, a Redevelopment Agency and public body corporate and politic, organized and existing under the laws of the State of California, ("AGENCY"), and the CITY OF FRESNO, a municipal corporation, ("CITY"), and FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP, a California limited partnership ("DEVELOPER".)

R E C I T A L S

WHEREAS, AGENCY desires to enter this Agreement in furtherance of the public purposes set forth in the Community Redevelopment Law ("CRL") and the AGENCY adopted Plan for the Mariposa Project Area; and

WHEREAS, the CITY desires to enter this Agreement in furtherance of the best interests of the CITY and in pursuit of the health and welfare of the CITY and its residents to increase employment opportunities, to generate stable long-term sources of revenue to support public services and improvements, and to provide a stable economy consistent with the CITY'S 2025 General and Specific Plan(s); and

WHEREAS, this CITY/AGENCY conceived project ("Project"), is a key underpinning to downtown revitalization/redevelopment since 2001 as variously reflected in/initially assessed under CUP No. C-01-145 including any/all amendments thereto, as to the construction of a conference center hotel, an all purpose restaurant, meeting space, and hotel amenities, to be constructed upon vacant real property owned and controlled by the CITY and commonly known as 800/808 M Street ("Site"); and

WHEREAS, DEVELOPER has expressed its interest and willingness to negotiate with the AGENCY and the CITY for the development of the Project on the Site; and

WHEREAS, the parties mutually desire to negotiate exclusively and to draft and agree upon the terms of a Disposition and Development Agreement or an Owner Participation Agreement and/or a Development Agreement (collectively "Development Agreement") for the Project and Site, in accordance with the terms and conditions of this Exclusive Negotiation Agreement; and

WHEREAS, the DEVELOPER, prior to any AGENCY Board and CITY Council action on this Agreement shall have submitted and the AGENCY and CITY shall each have accepted a copy of DEVELOPER'S limited partnership agreement including the identity and contact information for all the general partners, principals and venturers therein/thereunder, and key personnel/lead negotiators under this Agreement.

NOW, THEREFORE, the parties mutually agree as follows:

I. Term of Agreement.

(A) Subject to paragraph (B) below, the AGENCY, CITY and DEVELOPER shall negotiate exclusively for the period set forth in the Project Performance Schedule attached to the

Agreement as Exhibit A and incorporated herein and shall devote such personnel, consultants and resources as may be reasonably necessary to complete negotiations within that time limit.

(B) The time limit above may be extended by written amendment, approved and executed by all the parties. The approval of any such extension by the AGENCY and the CITY shall be in their respective sole and absolute discretion.

## 2. The DEVELOPER.

(A) The parties agree that the DEVELOPER under the Development Agreement shall be the DEVELOPER or a partnership or corporation or LLC established or to be established by DEVELOPER, the general partners or major shareholders or members of which shall be subject to the approval of the AGENCY and CITY respectively, prior to or concurrently with the approval of the Development Agreement. The DEVELOPER, prior to the effective date of this Agreement shall make full disclosure of its general partners, principals, joint venturers, key managerial employees/lead negotiators, and all other material information concerning the DEVELOPER and its associates, as required by this Agreement or requested by the CITY and/or the AGENCY. Except as specifically set forth herein, any significant change in the general partners, principals, joint venturers, key managerial employees/lead negotiators, and all other material information concerning the DEVELOPER is subject to the approval of the CITY and the AGENCY. Notwithstanding the foregoing, without the approval of the CITY or the AGENCY, the DEVELOPER reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Site, provided that the DEVELOPER retains management and control of such entities and gives the CITY and AGENCY prior written notice thereof.

(B) During the term of this Agreement, DEVELOPER shall have no right to assign this Agreement, or any interest herein, without the express written consent of each of the AGENCY and the CITY, of the proposed assignee, buyer or transferee unless DEVELOPER retains management and control of the proposed assignee and gives the CITY and AGENCY prior written notice thereof. Such approvals of assignee, buyer, or transferee shall not be unreasonably withheld or delayed and shall be based on the criteria set forth in Paragraph (C) of this Paragraph 2, below.

(C) AGENCY and CITY consideration of a proposed transferee may include, but need not be limited to, the following criteria: (i) whether the proposed transferee has the qualifications, development experience and financial capability necessary and adequate, as may be reasonably determined by the AGENCY and the CITY, to fulfill the obligations to be undertaken by the DEVELOPER in this Agreement; (ii) whether the proposed transferee is in default of any obligations to the AGENCY and the CITY; (iii) whether the consideration payable by the transferee to the DEVELOPER would impair the ability of the transferee to fulfill all of the obligations to be undertaken in this Agreement by the DEVELOPER.

## 3. The Project.

(A) The Development Agreement shall incorporate a scope of development which specifically describes, at a minimum, the design, development and operational features of the Project (the "Scope"). The actual development of the Project shall conform to these objectives as

well as the CRL and the Mariposa Project Area requirements. All drawings, plans and specifications shall be subject to the approval of the AGENCY and the CITY, consistent with CEQA and the Redevelopment Plan and the applicable provisions of the General Plan and any applicable Specific Plans.

(B) The Development Agreement shall incorporate a Project Schedule of Performance, which shall set forth, at a minimum, the respective times for submittal of evidence of financing, time for satisfaction of all conditions precedent to conveyance of the interests in the Site, start of construction and completion of construction.

(C) The Development Agreement shall set forth the allowable uses of the Site.

(D) The Development Agreement shall contain all other conditions and requirements that the AGENCY and the CITY may deem necessary or appropriate.

#### 4. Financing.

(A) It is anticipated that the Project will be financed from a combination of private construction and permanent financing, DEVELOPER equity, New Market Tax Credit investors and other public and/or private sources, as determined by DEVELOPER, CITY and AGENCY in the course of their good faith negotiations. The DEVELOPER shall use commercially reasonable efforts to obtain as much private equity and mortgage financing as the Project can reasonably support. CITY and AGENCY shall use commercially reasonable efforts to research, identify and obtain New Market Tax Credit investment for the Project and shall consider such other sources of public financing as may be necessary to make the Project financially feasible, in the CITY and AGENCY'S sole determination. Within the time set forth in the Performance Schedule (Exhibit "A"), DEVELOPER shall prepare and submit to CITY and AGENCY a Project economic model to include development costs, income, supportable investment and public revenues to be generated by the Project. Concurrently with the execution of the Development Agreement, DEVELOPER shall provide to the AGENCY and the CITY a financing plan, containing such modifications to the previously submitted economic model as may reasonably be necessary, to be approved by the AGENCY and the CITY concurrently with approval of the Development Agreement.

(B) CITY, AGENCY and DEVELOPER, shall each be solely responsible for paying all costs including for any third party professional, services or consultant costs relating to their performance of this Agreement, as set forth in Exhibit "B."

#### 5. Negotiations.

(A) The parties shall negotiate diligently, exclusively and in good faith to complete the Development Agreement prior to the expiration of the term of this Agreement. During negotiations, the parties shall meet as frequently as may be necessary and diligently engage in such activities as may be necessary, to accomplish this end.

(B) During negotiations, DEVELOPER, CITY and AGENCY shall designate such experienced and authorized representatives, counsel and other consultants as may be necessary to review/advise regarding deliverables hereunder, and shall make such personnel available for meetings as often as may be necessary to implement this Agreement.

(C) During negotiations, the parties shall prepare and submit written progress reports to the other parties on a monthly basis, advising the other parties on the status of all matters pertaining to the Project.

(D) Upon execution of the Development Agreement by DEVELOPER, the AGENCY and CITY staff shall schedule such public hearings as may be required by law. DEVELOPER hereby acknowledges that the Development Agreement shall be subject to the final approval of the AGENCY and CITY.

(E) All members of DEVELOPER'S development team and changes thereto, shall be disclosed to the AGENCY and CITY.

(F) DEVELOPER shall make full disclosure to the AGENCY and CITY of the methods of financing to be used to provide the funds needed to pay for the Project costs, and the identity and interests of potential lenders and/or investors. DEVELOPER shall submit to the AGENCY and CITY for review any proposed agreements relating to financing the Project costs.

(G) The AGENCY and CITY shall cooperate with DEVELOPER in providing such information regarding the Site as the AGENCY and CITY may have.

(H) The AGENCY and CITY may request further information from DEVELOPER from time to time as to any matter relating to the financing and development of the Site. DEVELOPER shall cooperate with the AGENCY and CITY and provide such reasonable information as may be requested.

(I) During the term of this Agreement, the DEVELOPER shall provide to the AGENCY and CITY for their joint/several deliberation/consideration from time to time, as soon as they are available, copies of all draft/preliminary deliverables described in Exhibit "C" ("Studies"). During the term of this Agreement, the AGENCY and CITY jointly and severally agree to keep the draft/preliminary Studies and all information contained therein confidential, to the fullest extent permitted under the Public Records Act. Any confidential/privileged information/materials shall be expressly marked as such by the DEVELOPER.

(J) Before entering upon any property within the Site, whether for site assessment or other due diligence, DEVELOPER shall first obtain a right of entry from the CITY. The right of entry shall be in a form satisfactory to the CITY.

(K) DEVELOPER, AGENCY and CITY shall timely complete each activity or task set forth in the Project Performance Schedule attached hereto as Exhibit "A" and incorporated herein.

## 6. Termination.

(A) This Agreement shall terminate on December 31, 2008, unless prior to such date:

(i) DEVELOPER has executed a Development Agreement which has been presented by DEVELOPER to the Executive Director of the AGENCY and the City Manager as a "final" Development Agreement, in which case, upon approval of the Development Agreement by the AGENCY Board and the City Council respectively, this

Agreement shall terminate, and be replaced and superseded by the Development Agreement; or

(ii) The parties have extended the term of this Agreement by written amendment, in accordance with Section 1(C) hereof; or

(iii) Any party has terminated this Agreement for cause.

(B) For purposes of this provision, any party may terminate this Agreement for cause in the event the other party is in default of this Agreement for failure to negotiate in good faith. Any substantive breach of this Agreement shall constitute a failure to negotiate in good faith.

(C) No party shall terminate this Agreement unless the party seeking to terminate has first provided written notice of its intent to terminate the Agreement to the other parties, specifying the cause, and the non-performing party(ies) fail(s) to cure the default or other cause within thirty (30) days after receipt of such notice.

(D) In the event this Agreement is terminated, no party shall have any further rights or obligations to the other party as the result of this Agreement.

(E) In the event this Agreement is terminated for any reason other than the default of the AGENCY or the CITY, the Studies referred to in Paragraph 5(I), to any extent paid for by the AGENCY or the CITY as work for hire, shall belong to the AGENCY and the CITY jointly and severally, and the AGENCY and CITY shall each have the right to use the Studies in any manner deemed appropriate thereby. In the event that the Agreement is terminated for any reason other than the default of the AGENCY or CITY, the DEVELOPER shall, subject to the rights of the preparers of such Studies, if any, deliver to the AGENCY and CITY any such work for hire Studies not previously delivered, within five (5) business days of request by the AGENCY and/or CITY.

## 7. Miscellaneous.

(A) By its execution of this Agreement, the AGENCY and CITY respectively are not committing to or agreeing to undertake: (a) any land acquisition or any disposition of land to the DEVELOPER; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by the AGENCY, the CITY or any agency or department thereof. This Agreement does not constitute a disposition of property or exercise of control over property by the AGENCY or the CITY and does not require a public hearing. Execution of this Agreement by the AGENCY and CITY 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 the CITY as to any Development Agreement and all proceedings and decisions in connection therewith.

(B) Each individual executing this Agreement represents and warrants they are duly authorized to execute and deliver this Agreement on behalf of the party named herein and this Agreement is binding upon said party in accordance with its terms. This Agreement may be executed in counterparts.

(C) This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

(D) In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

(E) Any lawsuit pertaining to any matter arising under, or growing out of, this Agreement shall be instituted in Fresno County, California. If any party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by the other party of its obligations hereunder, then the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs and other out-of-pocket expenditures paid by the losing party. Time is of the essence in this Agreement.

(F) The AGENCY and CITY respectively shall not become or be deemed a partner or joint venturer with DEVELOPER or associate in any such relationship with DEVELOPER by reason of the provisions of this Agreement. DEVELOPER shall not for any purpose be considered an agent, officer or employee of the AGENCY and/or the CITY.

(G) No officer or employee of the AGENCY or the CITY shall hold any interest in this Agreement (California Government Code section 1090).

(H) All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF  
FRESNO  
Attn: Marlene Murphy  
2344 Tulare St. Suite 200  
Fresno, Ca. 93721

DEVELOPER: FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP  
Attn: Tom Richards  
855 "M" Street, Suite 1110  
Fresno, CA 93721

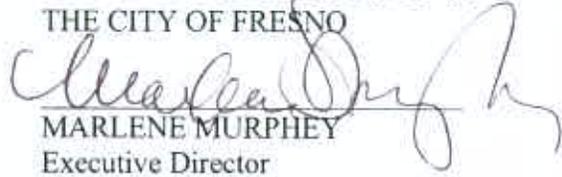
CITY: CITY OF FRESNO  
Attn: AJOY SOUZA  
2600 Fresno Street, Room 2064  
Fresno, CA 93721

(I) The DEVELOPER covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in

Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

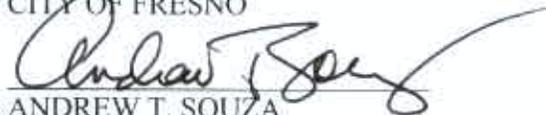
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO

  
MARLENE MURPHEY  
Executive Director

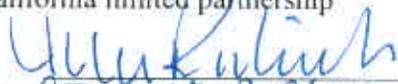
Dated: 7/1, 2008

CITY OF FRESNO

  
ANDREW T. SOUZA  
City Manager

Dated: 7/2/08, 2008

FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP,  
a California limited partnership

By:   
Title: CEO THE RESIDAR GROUP, LP  
Date: 6/10/08

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

REBECCA E. KLISCH  
City Clerk/Ex-officio Clerk

By Cindy Bruer  
Deputy

Date: July 3, 2008

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney/Ex-officio Attorney

By [Signature]  
Deputy / Sr. Deputy / Assistant Coyle

Date: June 17, 2008

Attachments:

Exhibit "A": Performance Schedule

Exhibit "B": Allocation of Costs of Exclusive Negotiation Agreement

Exhibit "C": Studies

Exhibit "A"

PERFORMANCE SCHEDULE

1. Joint DEVELOPER, AGENCY AND CITY Responsibilities.

Fully execute the ENA, subject to approvals by the AGENCY Board and the City Council. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

2. DEVELOPER Responsibilities.

During the exclusive negotiation period, and without limiting any other provision of this Agreement, the DEVELOPER shall complete the following tasks, at its sole cost and expense, in furtherance of the negotiation process, by the times stated. The times stated shall run from the effective date following complete execution of this Agreement by the parties. Should the parties enter an agreement extending the negotiation period and updating this Performance Schedule, the amendment and updated Performance Schedule will supersede this Performance Schedule.

(a) Identify in writing to the AGENCY and CITY, the names of its decision makers, lead negotiators, the authority for the forgoing, design consultants, market consultants, architect, engineer, financial consultant (if any), legal counsel and any other development team members. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(b) Prepare and submit to the AGENCY and CITY a market/feasibility/absorption study, and other Studies for the Project listed in Exhibit C, for their respective review and acceptance. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(c) Prepare, for AGENCY and CITY staff review and comment, a conceptual development plan indicating general land use designations, intensities, et cetera, sufficient to determine the entitlement track necessary. Identify any potential Project area boundary modifications. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(d) Prepare a schematic plan to include number and type of structure(s), square footages, uses, and number and type of parking spaces required. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(e) Prepare a Project economic model to include development costs, income, supportable investment, and significant public revenues to be generated by the Project. The economic model shall project income derived from the Project, operating costs, and debt service, and shall contain a pro forma statement of Project return adequate to enable the AGENCY and CITY to evaluate the economic feasibility of the proposed Project development. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(f) Submit a financial plan and pro forma budget, including a statement of overall construction costs, source and availability of equity capital, construction and permanent financing, and the scope and type of AGENCY and/or CITY investment necessary. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(g) Submit to the AGENCY and CITY a general development plan and a project scope description sufficient for preparing and/or supplementing appropriate CEQA review documentation/findings. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

3. AGENCY/CITY Responsibilities.

During the exclusive negotiation period, and without limiting any other provision of this Agreement, the AGENCY and CITY jointly shall complete the following tasks, all in furtherance of the negotiation process, by the times stated. The times stated shall run from the effective date following parties' complete execution of this Agreement. Should the parties extend the negotiation period and update the Performance Schedule, the updated Performance Schedule shall supersede this Performance Schedule.

(a) Provide DEVELOPER with an inventory of existing public infrastructure, its locations, condition and capacity. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(b) Provide or reasonably assist DEVELOPER in obtaining, available and existing public records, such as, plans, studies, reports and documents relating to the Site. Such information may include, without limitation, EIRs, the General Plan, utility plans, architectural historic surveys, Specific Plans, soils reports, and zoning, redevelopment plan or plans, Owner Participation Rules, any CITY or AGENCY adopted policies, or other information that may assist the DEVELOPER in evaluating the Site and the Project. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(c) Reasonably cooperate with and assist Developer in determining a description and timeline for the entitlement track likely to be necessary to enable the Project to proceed in the timeliest manner. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(d) Make commercially reasonable efforts to obtain commitments from New Market Tax Credit investors sufficient, in combination with private debt and equity sources, to finance construction of the Project. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

(e) Prepare any studies or documents required for compliance with the California Environmental Quality Act, subject to cost allocation in Exhibit B. (Per attached Preconstruction Development Schedule dated March 26, 2008.)

**FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP  
CONVENTION CENTER HOTEL**

M and Inyo Streets  
Fresno, California

**Preconstruction Development Schedule  
March 26, 2008**

<u>Description</u>	<u>Start</u>	<u>Complete</u>
Execute ENA	December 1, 2007	April 8, 2008
Market and Economic Feasibility Study	April 8, 2008	May 16, 2008
Market Demand Analysis	April 8, 2008	May 16, 2008
New Market Tax Credit Search	April 8, 2008	September 26, 2008
Meetings with Hotel and Operating Companies	June 2, 2008	August 1, 2008
Letter of Intent	August 4, 2008	August 29, 2008
Operating Contracts	September 2, 2008	November 7, 2008
Architecture and Engineering		
Design Drawings	September 2, 2008	October 31, 2008
Construction Drawings	November 10, 2008	May 8, 2009
Plan Check and Permits- Progressive	March 6, 2009	June 12, 2009
Grading Drawings	November 10, 2008	December 19, 2008
Plan Check and Permit	December 22, 2008	January 30, 2009
CEQA/CUP Approvals	November 3, 2008	January 2, 2009
Financing		
Approval and Documentation	April 8, 2008	February 2, 2009
Disposition and Development		
Negotiation and Approval	November 10, 2008	December 22, 2008
Close of Escrow		February 15, 2009
Construction		
Ground Breaking		December 24, 2008
Grading	March 2, 2009	
Building	April 27, 2009	

**FRESNO CONVENTION CENTER HOTEL PROPERTIES, LP  
CONVENTION CENTER HOTEL**

M and Inyo Streets  
Fresno, California  
April 2, 2008

**ENA**

Exhibit "B"

**ALLOCATION OF COSTS OF EXCLUSIVE NEGOTIATION AGREEMENT**

**I. DEVELOPER COSTS**

- 1 Developer's legal fees and associated costs
- 2 Market and Economic Feasibility Study
- 3 Market Demand Analysis
- 4 Architectural and Engineering costs
- 5 CEQA and Entitlement costs not to exceed \$10,000
- 6 Traffic Study, if required for Number 5 above

**II. CITY COSTS**

- 1 Legal fees and associated costs
- 2 New Market Tax Credit Consultants
- 3 CEQA and Entitlement costs not to exceed \$5,000

**AGENCY COSTS**

- 1 AGENCY shall bear no costs in pursuit of this Agreement absent the express written consent of the AGENCY's Executive Director.

Exhibit "C"

STUDIES

Conceptual and General Development Plans including Project Scope

Schematic Plan

Feasibility Plan

Marketing Plan

Absorption Plan

Financial Plan

///

**LIMITED PARTNERSHIP AGREEMENT  
FOR  
FRESNO CONVENTION CENTER HOTEL PROPERTIES, A LIMITED  
PARTNERSHIP**

This Limited Partnership Agreement for Fresno Convention Center Hotel Properties, a Limited Partnership ("**Agreement**"), is made and entered into by and between Pentori, a California corporation ("**Pentori**" or "**General Partner**"), as General Partner, and Thomas G. Richards, an unmarried man ("**Richards**" or "**Limited Partner**"), as Limited Partner.

By this Agreement, the General Partner and the Limited Partner join together to form a limited partnership under the California Revised Limited Partnership Act and agree to all terms and conditions of this Agreement.

**Article 1  
Basic Provisions**

Except to the extent modified in later parts of this Agreement, the following provisions apply:

**Section 1.1 Name of Partnership.**

Fresno Convention Center Hotel Properties, a Limited Partnership

**Section 1.2 Percentage Interest.**

- |     |                 |     |
|-----|-----------------|-----|
| (a) | General Partner | 1%  |
| (b) | Limited Partner | 99% |

**Section: 1.3 Fiscal Year of the Partnership.**

Calendar Year.

**Section 1.4 Principal Office.**

855 M. Street, Suite 1110  
Fresno, California 93721

**Section 1.5 Partnership Termination Date.**

December 31, 2057

Section 1.6 **Addresses for Notices.**

**Pentori:** 855 M. Street, Suite 1110  
Fresno, California 93721

**Richards:** 855 M. Street, Suite 1110  
Fresno, California 93721

Section 1.7 **Governing Law.**

California.

Section 1.8 **Definitions.**

Capitalized terms are defined in Article 13 below.

**Article 2**  
**The Partnership**

Section 2.1 **Name.** The business of the Partnership shall be conducted in the Partnership's name described in Section 1.1 or in other business or project names selected by the General Partner from time to time.

Section 2.2 **Principal Office.** The principal office of the Partnership shall be at the location set forth in Section 1.4 hereof, or such other place as shall be selected by the General Partner.

Section 2.3 **Certificate of Limited Partnership – Fictitious Name Statement.** The General Partner shall execute a certificate of limited partnership (the "**Certificate**") and/or any statement of partnership or fictitious business name statement required by law in connection with the formation of the Partnership or its operation and shall cause such statements to be recorded, filed or published as appropriate. The General Partner shall cause amendments to the Certificate to be filed whenever required by law.

Section 2.4 **Partnership Business Purpose.** The purpose for which the Partnership is formed is to participate as a general partner in Fresno Convention Center Hotel Properties, a Limited Partnership, whose business is the development and leasing of the proposed Convention Center Hotel, in the City of Fresno, California, for long-term appreciation. All Partnership business shall be conducted and managed by the General Partner, except as otherwise provided in Section 9.3 below.

**Article 3  
Partnership Term**

The Partnership shall have the term described in Section 1.5 and shall terminate on that date or otherwise as provided in this Agreement.

**Article 4  
Capital**

Section 4.1 **Initial Contributions by Partners.** The parties shall make initial contributions to the Partnership in proportion to their respective Partnership Interests as required by the General Partner.

Section 4.2 **Additional Capital Requirements.**

(a) Should additional capital be required as determined by the General Partner, each Partner shall contribute cash to the capital of the Partnership in proportion to its respective Percentage Interest.

(b) The General Partner shall have the right, from time to time, to determine the amount of Additional Capital Required by the Partnership, as defined herein, and to make a written demand on the Partners to contribute the additional capital. "Additional Capital Required" is the amount of funds required by the Partnership to enable it to conduct its business and pay its debts and obligations. The Additional Capital Required shall be contributed immediately upon the giving of a written demand pursuant to this Section 4.2(b).

Section 4.3 **Percentage Interests.** Provided the parties have made the initial Capital Contributions described in Section 4.1 above, and subject to the provisions of Section 4.2, capital in the Partnership shall be owned by the Partners in the following percentage interests (the "**Percentage Interests**"):

**Percentage Interests**

General Partner	1%
Limited Partner	99%

Section 4.4 **Capital Accounts.** Capital accounts shall be established for each Partner in proportion to their Percentage Interests, subject to adjustment as described in this Agreement.

Section 4.5 **Withdrawal of Capital.** No Partner shall withdraw any capital from the Partnership without the consent of the Partners.

**Article 5**  
**Allocations and Distribution**

Section 5.1 **Profit and Loss Allocations.** Profits and distributions from the Partnership shall be made in accordance with the Partner's respective Percentage Interests. Losses from the Partnership shall be made in accordance with the Partner's respective Percentage Interests.

Section 5.2 **Section 704 Allocations.** In accordance with Code Section 704 and the Treasury Regulations thereunder, income, gain, loss and deductions with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated between the Partners so as to take account of any variation between the adjusted basis if such property to the Partnership for federal income tax purposes and its initial value reflected on the books and records of the Partnership ("**Gross Asset Value**"), if there is any such difference.

Section 5.3 **Distributions of Net Cash Flow From Operations to Partners.** As and when determined by the General Partner to be the best interest of the Partnership, the Partnership shall distribute to the Partners the Available Cash Flow From Operations from the preceding calendar quarter, based on the General Partner's estimate, adjusted annually upon completion of the annual financial statements. The fees and compensation payable to Partners under Article 7 below shall be paid as an operating cost of the Partnership.

**Article 6**  
**Sale, Assignment, Transfer or Other Disposition**  
**of Partnership Interests**

No Partner may sell, transfer, assign or otherwise dispose of or mortgage, hypothecate or otherwise encumber all or any part of its interest in the Partnership unless approved in advance by the General Partner. Any attempt to transfer or encumber any interest in the Partnership in conflict with the provisions hereof shall be void. The approval of any transfer or encumbrance in any one or more instances shall not limit or waive the need for such approval in any other subsequent instances.

**Article 7**  
**Compensation of Partners**

Section 7.1 **Compensation.** In addition to the allocations and distributions otherwise set forth in the Agreement, the Partners shall be entitled to compensation as follows:

(a) Development and management fees as may from time to time be authorized by the General Partner.

## **Article 8 Special Power of Attorney**

**Section 8.1 Appointment.** The Limited Partner hereby, as a condition of becoming a Limited Partner hereunder, constitutes and appoints Pentori as attorney-in-fact for the Limited Partner with power and authority to act in his name and on his behalf to execute, acknowledge and swear to in the execution, acknowledgement and filing of documents, which shall include, by way of illustration but not limitation, the following:

(a) The Agreement, any separate Certificate of Limited Partnership as well as any amendments to the foregoing which, under the laws of the State of California or the laws of any other state, are required to be filed or which Pentori deems advisable to be filed;

(b) Any other instrument or document which may be required to be filed with the Partnership under the laws of any state or by any government agency, or which Pentori deems advisable to be filed; and

(c) Any instrument or document which may be required to effect the continuation of the Partnership, the admission of additional or substituted Limited Partners, or the dissolution or termination of the Partnership (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement), or to reflect any reduction in the amount of Percentage Interests of the Partners.

### **Section 8.2 Nature of Power.**

THE SPECIAL POWER OF ATTORNEY GRANTED HEREBY BY THE LIMITED PARTNER:

IS A SPECIAL POWER OF ATTORNEY COUPLED WITH AN INTEREST, IS IRREVOCABLE, SHALL SURVIVE THE DEATH AND LEGAL INCAPACITY OF THE GRANTING LIMITED PARTNER, AND IS LIMITED TO THOSE MATTERS HEREIN SET FORTH;

SHALL SURVIVE AN ASSIGNMENT BY A LIMITED PARTNER OF ALL OR ANY PORTION OF HIS LIMITED PARTNERSHIP INTEREST(S) EXCEPT, WHERE AN ASSIGNEE HAS BEEN APPROVED BY THE GENERAL PARTNER FOR ADMISSION TO THE PARTNERSHIP AS A SUBSTITUTED LIMITED PARTNER. THE SPECIAL POWER OF ATTORNEY

SHALL SURVIVE SUCH ASSIGNMENT FOR THE SOLE PURPOSE OF ENABLING THE DESIGNATED ATTORNEY-IN-FACT TO EXECUTE, ACKNOWLEDGE AND FILE ANY INSTRUMENT OR DOCUMENT NECESSARY TO EFFECT SUCH SUBSTITUTION.

This Special Power of Attorney is not to be used to deprive the Limited Partner of his rights under this Agreement and is intended only to provide a simplified system for execution of documents.

## **Article 9 Management**

### **Section 9.1 Management of the Partnership.**

(a) The overall management and control of the business and affairs of the Partnership shall be vested in the General Partner. The General Partner shall establish the policies and operating procedures with respect to the business and affairs of the Partnership. Except for Major Decisions, as described below, the General Partner shall make all decisions for the Partnership and conduct all day-to-day operations of the Partnership.

(b) No act shall be taken or any obligation incurred by the Partnership or by any Partner with respect to a matter within the scope of a Major Decision unless the Partners shall have approved such act or obligation. If the General Partner submits a Major Decision for approval by the Limited Partner, and the Limited Partner fails to respond in writing within ten (10) business days of notice, such Limited Partner shall be deemed to have given its consent to the Major Decision.

### **Section 9.2 Restrictions and Limitations on Limited Partners.**

The Limited Partner shall not have any right, power or authority to act for or bind the Partnership. The Limited Partner shall not take any part in the conduct or control of the Partnership business, except for the Limited Partner's right to vote on Major Decisions. The Limited Partner shall not be personally liable for or bound by any debt, liability or obligation of the Partnership; provided, however, the capital invested by the Limited Partner shall be subject to the risk of the Partnership and the claims of its creditors as provided by law.

### **Section 9.3 Major Decisions/Exclusions.**

(a) "Major Decisions" shall mean any of the following actions taken after the effective date of this Agreement:

- (1) The admission of any new general partner; and

(2) The admission of limited partners.

(b) "Major Decisions" do not include any of the following matters, all of which shall be within the exclusive management and control of the General Partner:

(1) Borrowing money for the Partnership business or developments on the Property on a long-term basis;

(2) Negotiating and executing leases with tenants for the Property or any portion thereof; and

(3) Sale of the Partnership property or portion thereof, including negotiating and executing sales agreements in connection therewith.

**Section 9.4 Indemnification of General Partner.** The Partnership shall indemnify, defend, hold harmless and pay all judgments and claims against the General Partner and its respective members, managers, assigns, successors, agents, employees, and representatives for any liability, loss, expense or damage incurred by them in connection with the Partnership business, including costs and attorneys' fees unless the loss, liability, expense or damage was caused by the gross negligence, willful misconduct, fraud or criminal act of the indemnified General Partner or is the result of an Event of Default by such General Partner as described in Article 11.

## **Article 10 Accounting**

**Section 10.1 Tax Status and Returns.** Pentori shall employ a certified public accountant at the Partnership's expense, to prepare all tax returns and statements that must be filed with any taxing authority on behalf of the Partnership.

**Section 10.2 Tax Elections.** The Partnership shall utilize all available tax elections and options designed to minimize the then-current year taxable income and increase current year deductible losses of the Partnership, notwithstanding that such elections may have the effect of increasing taxable income and/or decreasing taxable losses in later years.

**Section 10.3 Accounting.**

(a) The fiscal year of the Partnership shall be as specified in Section 1.3.

#### Section 10.4 **Bank Accounts.**

(a) Funds of the Partnership shall be deposited in an account or accounts of a type, in form and in a bank selected by the General Partner. Only persons appointed by the General Partner shall make withdraws from bank accounts.

(b) All accounts in Section 10.4(a) shall be established in connection with this Partnership only and shall serve no other business or purpose. The funds deposited into such accounts shall not be commingled with any other funds of any other person or company. All funds in such accounts shall only be used for authorization expenses of the Partnership.

Section 10.5 **No Political Contributions.** Any provisions hereof to the contrary notwithstanding, no property of the Partnership shall be given or used for any political party, political candidate or organization, or for lobbying in connection with any legislation, unless Approved by the Partners.

Section 10.6 **Tax Matters Partner.** Pentori shall be the Tax Matters Partner of the Partnership until the Partnership is terminated. The Tax Matters Partner for the Partnership shall fulfill all of the obligations of a Tax Matters Partner as set forth in the Code and any regulations promulgated in connection therewith. Pentori shall send to each partner within ninety (90) days after the end of each taxable year the information necessary for the partner to complete its federal and state income tax or returns, and there shall be included within that ninety- (90) day period a copy of the Partnership's federal, state and local income tax or information returns for the year.

#### Section 10.7 **Reports.**

(a) Pentori shall cause an annual financial report to be sent to each Partner at the end of each year, and that financial report shall contain a balance sheet as of the end of such period, and an income statement, and statement of changes in financial position for the period.

(b) Pentori shall promptly notify the Limited Partner of any notice of default under any mortgage, nonpayment of taxes, filing of liens against the Property, notice of any alleged noncompliance with any federal, state or local law, ordinance or regulation, commencement of any lawsuit against the Partnership, cancellation or nonrenewal of any insurance policy, potential or actual substantial construction delay, or any other circumstances which may materially affect the business of the Partnership or the interest of Partners.

### **Article 11** **Default by General Partner**

**Section 11.1 Events of Default by General Partners.** The occurrence of any of the following events shall constitute an event of default ("**Event of Default**") hereunder on the part of a General Partner.

(a) The filing by such General Partner (or the general partner of a General Partner) of a voluntary petition for relief under Title 11 U.S.C.;

(b) The filing of an involuntary petition for relief under Title 11 U.S.C. Chapter 7 against such General Partner (or the general partner of a General Partner) coupled with a failure of the General Partner to obtain dismissal of the bankruptcy case commenced thereby within sixty (60) days after service of the petition and summons;

(c) The material breach by a General Partner of any covenant or obligation under this Agreement;

## **Article 12**

### **Term and Termination and Final Distribution**

**Section 12.1 Term.** The Partnership shall commence on the date hereof and shall continue until terminated in accordance with the provisions of this Article 12, provided that if it is not sooner terminated, the Partnership shall terminate on the date specified in Section 1.5, and will be dissolved and its affairs shall be wound up, unless an extension is Approved by the Partners. No Partner shall have the right and each Partner hereby agrees not to dissolve, terminate or liquidate the Partnership, or to petition a court for the dissolution, termination or liquidation of the Partnership, except as provided in this Agreement, and no Partner at any time shall have the right to take any action to subject the Partnership assets or any part thereof to the authority of any court of bankruptcy, insolvency, receivership or similar proceedings.

**Section 12.2 Dissolution.** The Partnership shall be dissolved only in the event that (i) the Partners mutually agree to dissolve the Partnership, and (ii) the Partnership is terminated by its terms, as set forth in Section 12.1.

### **Section 12.3 Liquidation and Distribution Procedure.**

(a) Upon the dissolution of the Partnership, the Partners shall cause the Partnership to wind up the business and affairs of the Partnership, pay all just debts and obligations of the Partnership, and distribute the assets in accordance with the Partnership Interests of the Partners. The expenses of liquidation shall be expenses of the Partnership. Upon completion of any such distribution and winding up, the parties hereto shall be relieved of all obligations hereunder except for obligations, duties or rights which

have not been determined or ascertained as of the date of such termination and for rights or remedies which any Partner has on account of a default by another Partner. During the period of such winding up, the business and affairs of the Partnership shall be conducted so as to preserve the assets of the Partnership in a manner consistent with the winding up of its affairs.

(b) The assets of the Partnership shall be applied or distributed in liquidation in the following order of priority:

- (1) Debts and obligations of the Partnership to third parties shall be paid;
- (2) Debts and obligations of the Partnership to any Partner shall be paid;
- (3) To the Partners in accordance with the balances in their Capital Accounts until such Capital Accounts are reduced to zero;
- (4) To the Partners in accordance with their Percentage Interests.

(c) Upon dissolution, every reasonable effort shall be made to dispose of the Partnership's assets so that distributions may be made to the Partners in cash. If upon termination of the Partnership the Partnership shall nevertheless own noncash assets, such assets, if any, may be distributed in kind to the Partners in lieu of cash, in proportion to their right to receive the cash assets of the Partnership, on an equitable basis reflecting the net fair market value of the assets so distributed, and reflecting all allocations that would have been made had the assets distributed in kind been sold by the Partnership for their fair market value.

### **Article 13** **Definition**

Section 13.1 **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

- (a) **"Approved by the Partners"** shall mean approved by partners holding a majority of the Partnership Interest.
- (b) **"Asset Value"** means the fair market value of an asset.

(c) **“Available Cash Flow From Operations”** means the total cash receipts of the Partnership from the conduct of its business, less:

(1) All expenses incurred by the Partnership (including the compensation to the General Partner under Article 7) in the conduct of its business; and

(2) Any amount required to be added to the Partnership's reserves to maintain those reserves as a reasonable level, in consideration of the nature and scope of the Partnership's business and its business prospects, as reasonably determined by the General Partner.

(d) **“Capital Account”** shall mean the account maintained for each Partner in accordance with the following provisions:

(1) The Partner's Capital Contributions, the amount of Profits allocated to such Partner and the amount of any Partnership liabilities that are assumed by such Partner shall increase the Partner's Capital Account.

(2) The Partner's Capital Account shall be decreased by the amount of cash and the Asset Value of any Partnership assets distributed to such Partner (net of liabilities secured by such property which the Partner assumes or takes subject to) pursuant to any provisions of this Agreement, the amount of Losses allocated to such Partner and the amount of any liabilities of such Partner that are assumed by the Partnership.

In the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

The foregoing provisions and the other provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulation.

(e) **“Capital Contribution”** shall mean, with respect to a Partner, the amount of money contributed to the Partnership by such Partner or the agreed value of any assets transferred to the Partnership by such Partner.

(f) **“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time.

(g) **“Depreciation”** shall mean, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery

deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at any time during such year or other period, Depreciation shall be an amount which bears the same ratio to the Gross Asset Value, as of such date, as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to the adjusted tax basis as of such date.

(h) **“Entity”** shall mean any person, corporation, partnership, association, estate or trust.

(i) **“Event of Default”** shall mean the occurrence of an event specified in Section 11.1.

(j) **“Percentage Interest”** means the interest set forth in Section 4.3, hereof.

(k) **“Profits”** and **“Losses”** shall mean, for each fiscal year or other period, an amount equal to the Partnership’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703 (a)(1) shall be included in taxable income or loss).

## **Article 14 General**

### Section 14.1 **Notices.**

(a) Any notices, demands, requests for approval and other communications required to be given to a Partner may be given by any of the following means:

(1) By facsimile or E-mail addressed to the Partner at his designated facsimile or E-mail number;

(2) In writing, by personal delivery to the receiving person’s designated address;

(3) By first-class U.S. Mail, postage prepaid, if the sender is in the U.S. and the receiving party has a designated U.S. address;

(4) If the sender is outside the U.S., or the receiving party has a designated address outside the U.S., the communication may be delivered, in writing, by any international courier service in general used in daily international

commercial communication from the place of dispatch to the location of the addressee, prepaid by the sender;

(5) The designated address, E-mail and facsimile number of a Partner is set out in the Partner's Signature Page or in Article 1 of this Agreement. Any party may change his designated address, facsimile or E-mail number by giving notice to the General Partner, who in turn shall notify the Limited Partner of the change; and

(6) Any notice given by E-mail or facsimile shall be deemed received on the date sent. Any notice given by U.S. mail or by international courier service shall be deemed received three days after it has been posted or delivered to the courier.

(b) No transferee of any interest of any Partner shall be entitled to receive a notice independent of the notice sent to the Partner making such transfer until such transferee has provided its address and other communications information to the Partnership.

(c) All other notices, demands, requests, documents and information may be delivered either by facsimile or by one of the other methods described in paragraph (a).

**Section 14.2 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

**Section 14.3 Changes in Agreement.** No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

**Section 14.4 Waiver.** No consent or waiver, express or implied, by any Partner or the Partnership, to or of any breach or default by any other party in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any part to complain of any act or failure to act of any other party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

**Section 14.5 Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provisions to

other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby and shall be enforced to the furthest extent permitted by law, provided the invalidity of such provision does not materially affect the benefits accruing to any Partner hereunder.

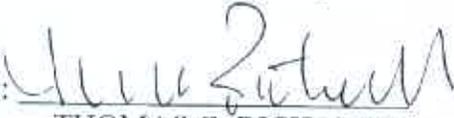
**Section 14.6 Recovery of Attorneys' Fees.** In any action between the parties to enforce any of the terms of this Agreement or of any other contract relating to the Partnership or in any action in any other way pertaining to Partnership affairs or this Agreement, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees.

**Section 14.7 Counterparts.** The parties may execute this Agreement in any number of counterparts with the same effect as if the parties each signed the very same document. All such counterparts shall be construed together and shall constitute one agreement.

EXECUTED as of the date set forth adjacent the respective signatures below.

**GENERAL PARTNER**

PENTORI, a California corporation

By:   
THOMAS G. RICHARDS

Its: President

Executed on: January 1, 2008

**LIMITED PARTNER**

  
THOMAS G. RICHARDS

Executed on: January 1, 2008