EXCLUSIVE NEGOTIATION AGREEMENT

(Broadway Mixed Use Project -- YMCA)

THIS EXCLUSIVE NEGOTIATION AGREEMENT (Broadway Mixed Use Project - YMCA) (this “ENA”) dated for purposes of identification only as of March 1, 2008 (the “Date of ENA”), is entered into by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”), and the ANAHEIM FAMILY YMCA, a California non-profit corporation (“YMCA”).

RECITALS:

A. Agency and Brookfield Southland Holdings LLC (“Brookfield”) entered into that certain Exclusive Negotiation Agreement (Broadway Street) dated as of September 1, 2006 (the “Original ENA”) pursuant to which Agency and Brookfield explored the feasibility of Brookfield, Boys and Girls Club of Anaheim (“BGC”), Anaheim Police Activities League (“APAL”) and YMCA utilizing fourteen (14) Agency-owned parcels comprising approximately four (4) acres (the “Original Site”) for development as a mixed-use project consisting of residential, retail and community uses (the “Original Project”). The community uses contemplated by the Original ENA included facilities for BGC, APAL and YMCA.

B. The Original ENA expired in January of 2007; however, Agency, the City of Anaheim (“City”), Brookfield, BGC, APAL, and the YMCA continued to discuss the feasibility of the Original Project and concluded that (i) the Original Site should be expanded to include a City-owned parcel (the “City Parcel”), and (ii) the feasibility of the Original Project should be examined as two projects pursuant to two negotiation agreements.

C. Accordingly, Agency, the City (jointly, “Anaheim”), Brookfield, BGC, APAL and the YMCA contemplate that (i) the Agency and the YMCA will enter into this ENA with respect to the development of YMCA facilities along with complimentary Anaheim-owned community use facilities and other various public improvements (hereinafter defined in Section 2 as the “Project”) on a portion of the Original Site (the “Site”), and (ii) Anaheim, Brookfield, BGC, and APAL will enter into an Amended Exclusive Negotiation Agreement with respect to the development of a mixed-use project consisting of residential, retail and community uses on another portion of the Original Site and the City Parcel (the “Mixed Use Site”). The Site and the Mixed Use Site are delineated on the attached Preliminary Site Plan (Attachment No. 1).

D. The purpose of this ENA is to establish a time period during which Agency and the YMCA (each, a “Party” and collectively, the “Parties”) shall negotiate with the intent to draft and execute more detailed documents dealing with the Project and any other related items including, but not limited to, a “Definitive Agreement” addressing: (i) a Disposition and Development Agreement regarding conveyance of fee interest in a portion of the Site to YMCA at fair market value for the purpose of constructing and operating the YMCA Facilities (as defined herein) (the “DDA”); (ii) provisions for the financing of YMCA’s partial acquisition of the Site; (iii) the construction and operations of the YMCA Facilities; and (iv) the provision for joint use of the YMCA Facilities and the Anaheim Facilities (as defined herein). The matters contained herein shall not be construed as final
commitments by any Party but to state generally the basis upon which they intend to negotiate the Definitive Agreement for the development and use of the Site. YMCA understands that all of the improvements to be developed shall be subject to all of the requisite procedures in the City’s review and approval process.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, AGENCY AND YMCA AGREE AS FOLLOWS:

Section 1. Negotiating Period. The Parties agree to negotiate diligently and in good faith with one another for a one-hundred eighty (180) day period commencing upon the Effective Date of this ENA (the “Negotiating Period”), in order to agree upon a mutually acceptable Definitive Agreement.

The Parties, by written agreement, may extend the Negotiating Period for up to two (2) additional periods of thirty (30) days each. The term “Negotiating Period” as used herein shall include any extensions of such Negotiating Period pursuant to this Section 1.

If a Definitive Agreement acceptable to the Parties is executed and submitted by the YMCA to Agency within the Negotiating Period, then the term of the Negotiating Period and this ENA shall automatically be extended for a period of forty-five (45) days from the date of such submittal to enable the Agency’s staff to take and coordinate the actions necessary to bring such Definitive Agreement before the Governing Board of the Agency and the City Council of the City for consideration, action, and authorization to execute if approved by such entities.

Section 2. Project. The Project is part of the Broadway Mixed Use development (as further described in the attached Scope of Work [Attachment No. 2]) and consists of two distinct elements: (i) a YMCA-owned facility that will be available for health, recreation and education uses as may be determined by the Parties (the “YMCA Facilities”) and (ii) a Anaheim-owned facilities that will be available for community uses to be determined by the Parties (the “Anaheim Facilities”). As used herein, “Facilities” shall refer to both the YMCA Facilities and the Anaheim Facilities. The Parties anticipate that the Definitive Agreement will include a major milestone Schedule of Performance, subject to force majeure, for processing the YMCA Facilities through the entitlement process and land take-down. The Parties further anticipate that the Project entitlement process will include, but will not be limited to, a General Plan Amendment, conditional use permit(s), zoning reclassifications, and compliance with the California Environmental Quality Act.

Section 3. Scope of Development. The Project is composed of two elements:

A. YMCA Facilities

i. Proposed Development. The YMCA Facilities element contemplates the YMCA constructing facilities available for health, recreation and education uses on that portion of the Site conveyed to the YMCA.

ii. Disposition of Fee Interest in a Portion of the Site. The Parties will use reasonable good faith efforts to obtain approval and execution of a DDA in accordance with the California Community Redevelopment Law.
(Health & Safety Code §§33000 et seq.) providing for the conveyance by the Agency of a portion of the Site at fair market value. The conveyance shall be subject to the satisfaction of certain conditions precedent by YMCA, including, but not limited to, evidence of construction financing, evidence of equity financing, evidence of required insurance policies, and evidence of all project approvals necessary to commence construction.

B. **Anaheim Facilities**

i. **Development.** The Anaheim Facilities element contemplates the Agency constructing or causing to construct community use facilities that will be complementary to and consistent with the YMCA Facilities on the portion of the Site retained by the Agency.

ii. **Disposition of Agency’s Retained Interest in the Site.** The Agency may elect to transfer its retained interest in the Site to the City by way of a standard cooperation agreement in a form approved by the City Attorney/Agency Counsel.

C. **YMCA’s Required Evidence of Financing – Definitive Agreement Approval and Conveyance.** Agency’s approval of the Definitive Agreement will be conditioned upon the YMCA establishing that it has received pledges or other financing commitments equal to 30% of the estimated costs of the YMCA Facilities. Within six months of the effective date of the Definitive Agreement, YMCA shall establish that it has received pledges or other financing commitments equal to 60% of the estimated costs of the YMCA Facilities. As a condition precedent to the conveyance of a portion of the Site for the YMCA Facilities as contemplated herein, YMCA shall present a financing plan establishing that it has received pledges and other financing commitments sufficient to fully fund construction of the YMCA Facilities.

D. **Design Review.** YMCA acknowledges and agrees that design and architectural review by the Agency and its consultants will be required at each stage of the development of the YMCA Facilities and that sketches, plans, and ultimately working drawings, specifications and similar documents will be required to be submitted for review and approval pursuant to the Definitive Agreement. Such design materials shall be provided at the sole cost of YMCA.

E. **Acquisition Financing.** For purposes of the YMCA’s acquisition of a fee interest in a portion of the Site, the Agency proposes to consider providing market rate financing for the YMCA’s cost of acquisition. Such financing shall set forth a definitive interest rate, amortization schedule, and an early pay off provision. The Parties shall also consider a pre-determined offset to annual debt service based on quantifiable community services provided by the YMCA.

F. **Operations.** The Parties anticipate that the DDA will include an ancillary “Joint Use Agreement” regarding the operations and joint beneficial use of the YMCA Facilities and the Anaheim Facilities. Such Joint Use Agreement shall address responsibilities for operations, fee collection, costs, taxes, maintenance, repairs,
and offsets based on quantifiable community services provided by the YMCA. The Agency will consider reasonable assignment provisions so long as the proposed assignee’s mission, financial wherewithal and standing in the community is similar to that of the YMCA.

G. **Subdivisions of Land; Covenant.** The DDA shall provide that the Parties obtain the necessary Site subdivision to allow for the conveyance as contemplated herein. Such conveyance shall be subject to a long-term covenant that the land conveyed to the YMCA be used for purposes of operating YMCA facilities or similar operations available for community uses.

H. **Green Building Practices.** The Parties agree to explore the use of “green building” practices in the design and construction of the Facilities in order to reduce the environmental impacts of the development. YMCA will further review and analyze potential opportunities for assistance from the City’s Public Utilities Department with respect to such “green building” design and construction.

**Section 4. Labor Laws.** YMCA agrees, and the DDA shall reflect, that the YMCA is obligated to comply with all labor laws with respect to the YMCA Facilities and that any liability for failing to comply with such labor laws will be the sole responsibility of YMCA.

**Section 5. Parking.** The Parties acknowledge that the entitlement process will include a comprehensive analysis of the parking requirements. In connection with the negotiation of the Definitive Agreement, the Parties will also negotiate the licensing of parking spaces within the 235 Center Street parking structure for use by patrons and employees of YMCA. The number of licensed spaces shall be based on the parking analysis consistent with the entitlements for the YMCA Facilities and YMCA shall also contribute its pro-rata share of operating and maintenance costs associated with the 235 Center Street parking structure.

**Section 6. Development Approach.** The YMCA shall, consistent with the Definitive Agreement, work cooperatively with Anaheim to obtain all necessary entitlements and insure that appropriate infrastructure and streetscape improvements are constructed for the YMCA Facilities.

**Section 7. Schedule.** The Parties agree to use reasonable good faith efforts to complete the entitlement and approval process as set forth in the Preliminary Schedule (Attachment No. 3). The Preliminary Schedule is subject to revision from time to time as mutually agreed upon in writing between the YMCA and the Executive Director, and the Executive Director is authorized to make such revisions as she deems reasonably necessary.

**Section 8. Environmental Indemnification.** The Parties agree to cooperate in securing Phase I and Phase II (if necessary) environmental reports on the Site. The YMCA agrees to commence investigations within ninety (90) days of the execution of this ENA. Based on the completed Phase I and Phase II environmental reports, the Parties will, in good faith, negotiate mutually acceptable environmental indemnities.

**Section 9. Conditions to Entry Upon the Site.** Prior to the commencement of the Definitive Agreement, YMCA shall only enter the Site after executing a Right of Entry Agreement in a form approved by the City Attorney/Agency Counsel.
Section 10. Notices. Any notices, requests or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this Section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:

If to Agency: Agency Secretary
Anaheim Redevelopment Agency
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
FAX No. (714) 765-4105

With copies to: Elisa Stipkovich, Executive Director
Anaheim Redevelopment Agency
201 S. Anaheim Boulevard, 10th Floor
Anaheim, California 92805
FAX No. (714) 765-4630

John E. Woodhead, Assistant City Attorney
City of Anaheim
200 S. Anaheim Boulevard, 3rd Floor
Anaheim, California 92805
FAX No. (714) 765-4630

If to YMCA: Anaheim Family YMCA
240 S. Euclid Street
Anaheim, California 92802
Attention: Paul Andresen
FAX No. (714) 635-8151

Section 11. Governing Law. This ENA shall be governed by the laws of the State of California. Any legal action brought under this ENA must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 12. Attorneys’ Fees. In the event of a dispute between the Parties with respect to the terms or conditions of this ENA, the prevailing party shall be entitled to collect from the other its reasonable attorneys’ fees as established by the judge or arbitrator presiding over such dispute.

Section 13. Interpretation. This ENA shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

Section 14. Real estate commissions. Each of the Parties represents and warrants to the other Parties that no real estate commission, broker fees, or finder fees which may accrue by means of the acquisition of an interest in the Site is due to any person, firm or entity except as set forth above; each party agrees to indemnify and hold the other Parties harmless with respect to
any judgment, damages, legal fees, court costs, and any and all liabilities of any nature
whatsoever arising from a breach of such representation.

Section 15.  Additional Amendments. No modification, rescission, waiver, release or
amendment of any provision of this ENA shall be made except by a written agreement executed
by all of the Parties.

Section 16.  Counterparts. This ENA may be executed in any number of counterparts, each
of which shall constitute an original, but all of which, when taken together, shall constitute one
and the same instrument.

Section 17.  Effective Date. The ENA shall take effect immediately upon the execution of
this ENA by the Agency’s Executive Director.
IN WITNESS WHEREOF, the Parties hereto have executed this ENA on the respective dates set forth below.

“YMCA”

ANAHEIM FAMILY YMCA,
a California non-profit corporation

Dated: ______________  By: _____________________________

“AGENCY”

ANAHEIM REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: ______________  By: _____________________________

ELISA STIPKOVICH,
Executive Director

ATTEST:

LINDA N. ANDAL, CITY CLERK/AGENCY SECRETARY

By: ______________
LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: _____________________________
JOHN E. WOODHEAD IV
Assistant City Attorney
ATTACHMENT NO. 1
PRELIMINARY SITE PLAN
ATTACHMENT NO. 2

SCOPE OF WORK

As part of the Broadway Mixed Project the parties involved will caused the construction of the following components on the 4.31 acre site controlled by the Anaheim Redevelopment Agency and the City of Anaheim:

YMCA:

The YMCA shall construct an approximately 30,000 s.f. YMCA two-story facility to include a multi-purpose rooms, an activity center, areas for designated athletics and other related space. In addition, an aquatic center will be developed to accommodate swimming lanes, children’s splash zone, and area for water aerobics or other therapeutic activity. The aquatic facility will also include changing areas and storage/equipment rooms.

Boys and Girls Club/APAL:

The Boys and Girls Club and Brookfield Homes shall construct an approximately 29,000 s.f. Boy and Girls Club facility to include class room space, gym, art center, community room and other related space. The Boys and Girls Club facility shall include office space for the Anaheim Police Activities League.

Brookfield Homes:

Brookfield Homes shall construct approximately 80 to 100 homes on the southeast portion of the site. The units shall include on-site parking and amenities. The Agency shall approve the site plan, floor plans and elevations associated with the residential component of the project by Brookfield Homes.
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<thead>
<tr>
<th>No.</th>
<th>Provision/Description</th>
<th>Schedule/Timing</th>
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<tbody>
<tr>
<td>1.</td>
<td>Negotiating Period. Both the YMCA and the Agency agree to negotiate diligently for a</td>
<td>Commencing upon the effective date of the Exclusive Negotiating Agreement.</td>
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<td>one hundred and eighty (180) day period.</td>
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<td>2.</td>
<td>Extension of Negotiating Period. Should both parties be in agreement, the negotiating</td>
<td>Both parties must agree in writing no later than five (5) days prior to the expiration of the</td>
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<td>period may be extended for up to two (2) additional periods of thirty (30) days each.</td>
<td>Negotiating Agreement.</td>
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<td>3.</td>
<td>Design Submittal. The YMCA shall submit to the Agency concept architectural drawings,</td>
<td>No later than ninety (90) days after the execution of the Exclusive Negotiation Agreement.</td>
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<td>including a site plan, elevations plans and floor plans.</td>
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<td>4.</td>
<td>Scope of Public Improvements. Agency to determine scope of public improvements and</td>
<td>No later than one hundred fifty (150) days after the execution of the Exclusive Negotiating Agreement.</td>
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<td>costs.</td>
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<td>5.</td>
<td>Building Area. Both the YMCA and the Agency will agree on the square footage and</td>
<td>No later than one hundred twenty (120) days after the execution of the Exclusive Negotiation Period.</td>
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<td>building footprint of the YMCA facilities.</td>
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<td>6.</td>
<td>Agency to provide and both parties to agree upon value of the land to be conveyed to</td>
<td>No later than the approval of the DDA.</td>
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<td>YMCA.</td>
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<td>7.</td>
<td>Service Schedule. YMCA shall submit to the Agency a list of in-kind services in lieu</td>
<td>No later than one hundred fifty (150) days after the execution of the Exclusive Negotiating Agreement.</td>
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<td>of land payment for the site to be conveyed to the YMCA by the Agency.</td>
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<td>8.</td>
<td>Financing Plan. YMCA shall provide the Agency with a list potential fundraising and</td>
<td>No later than one hundred fifty (150) days after the execution of the Exclusive</td>
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<td>milestones for obtaining project contributions.</td>
<td>Negotiation Agreement.</td>
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<td>9.</td>
<td>Agency approval of Schedule of Service and Financing Plan.</td>
<td>No later than one hundred seventy (170) days after the execution of the Exclusive</td>
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<td>Negotiating Agreement.</td>
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<td>10.</td>
<td>Land Use Entitlements. The Agency shall initiate the process for the land use</td>
<td>No later than one hundred eighty (180) days after the execution of the Exclusive</td>
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<td>entitlements required for the Project.</td>
<td>Negotiating Agreement.</td>
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<td>11.</td>
<td>33433 Report. Agency to prepare 33433 Report as required by State Law.</td>
<td>No later than one hundred and eighty (180) days after the execution of the Exclusive</td>
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<td>Negotiating Agreement.</td>
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<td>12.</td>
<td>DDA. A Disposition and Development Agreement shall be drafted, reviewed and</td>
<td>No later than one hundred eighty (180) days plus agreed extension days after the</td>
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<td>approved by both the YMCA and the Agency.</td>
<td>expiration of the Exclusive Negotiating Agreement.</td>
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