

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT ("ENA") is entered into as of June 2, 2003 ^{amjm} (the "Effective Date"), by and between the BARSTOW REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency") and BARWEST, L.L.C., a Michigan limited liability company (the "Developer") with reference to the following facts, which the parties agree are true and correct:

A. This ENA is subject to the provisions of the Redevelopment Plan, as amended, (the "Redevelopment Plan") for Redevelopment Area No. 1, Amendment 1 (the "Project Area") in the City of Barstow, California (the "City"). The Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein, and is a public record on file in the office of the City Clerk. The exact boundaries of the Project Area are specifically described in the Redevelopment Plan. /

B. The purpose of this ENA is to effectuate the Redevelopment Plan by providing an opportunity for the parties to negotiate regarding a Disposition and Development Agreement (the "Agreement") for the disposition of land by the Agency or the acquisition by Developer of privately owned land and for the establishment of exclusive rights of the Developer to develop a first-class, high-quality destination resort, including hotels, restaurants, hospitality services and a casino (consisting of Class III Indian casino gaming) within the City (the "Project") all as part of the Agency's and City's coordinated effort to maintain, improve and increase the amount of employment, recreation, transportation, and housing opportunities available to the residents of the Project Area and to improve the quality of life for the same residents. ←

NOW THEREFORE, in consideration for the foregoing and the mutual covenants and provisions herein set forth, the parties hereby agree as follows:

AGREEMENT

1. NEGOTIATION

1.1 Good Faith Negotiations

A. Agency (by and through its staff) and Developer agree, for the period set forth below, to negotiate with Developer exclusively in good faith toward an Agreement regarding the Project for presentation to the Board of the Agency for its approval, as required by law, the governing rules and regulations and the practices of the Agency. Agency agrees to negotiate with Developer exclusively with regard to the Project pursuant to the terms and conditions of this ENA. One of the goals of this ENA is to provide time to the parties in which to analyze and study the Project as it relates to its economic feasibility. The Agreement, if agreed to by the parties and executed, shall be the instrument governing the rights and obligations between the parties and will supersede this ENA. Developer acknowledges that the parties may not agree upon an Agreement regarding the Project and its location within the Project Area, and agrees that this ENA does not bind Agency to enter into an Agreement, or any other type of agreement, with

Developer. Developer further understands that, should the staff to the Agency recommend to the Agency that the Agency enter into an Agreement with Developer, Agency will be free to reject its staff's recommendation and not to enter into any agreement with Developer.

B. Developer hereby appoints and empowers Michael J. Malik, Sr. as its negotiator (the "Authorized Negotiator") having the authority of the Developer for the purposes of conducting this negotiation and implementing this ENA, and agrees that its Authorized Negotiator shall be available for meetings and communications with Agency at all reasonable times. Developer may from time to time, add to or change the name and identity of its Authorized Negotiator(s) by delivery to Agency of written notice of such change.

C. While this ENA is in effect, Developer—on behalf of itself and its principals, which the parties agree include, but not limited to Michael J. Malik, Sr., and Mirian Ilitch—agrees not to negotiate with any public agency other the Agency regarding the acquisition and/or development of any site for casino purposes within a Fifty (50) mile radius of the Project Area. ←

1.2 Period of Negotiations

Agency agrees to negotiate in good faith with Developer for the following time periods:

A. For a period of Three (3) months from the Effective Date (the "Initial Term"), the Agency shall exclusively negotiate with Developer relating to the Project and the location of any type of Indian casino gaming within the Project Area. The parties acknowledge that the Developer has not identified a specific site for the Project. During the Initial Term, Developer shall proceed with all due diligence to locate and identify alternate sites in cooperation and with the assistance of the Agency. If the Developer has not identified a specific site within the Initial Term, then this ENA shall automatically terminate unless the Executive Director of the Agency, in his sole and absolute discretion, agrees to extend the Initial Term. ←

B. If, on or before the end of the Initial Term, Developer has identified a specific site within the Project Area on which it wishes to locate the Project, then Agency agrees to exclusively negotiate with Developer for the location of the Project on that site for an additional six (6) month period starting from the end of the Initial Term (the "Extended Term").

C. If, by the last day of the Extended Term, Developer has not signed and submitted an Agreement to the Agency, then this ENA shall automatically terminate, unless the Extended Term has been extended by the Executive Director in his sole and absolute discretion. Notwithstanding the foregoing, the Executive Director agrees to consider, in his sole and absolute discretion, whether to grant an extension if Developer has been proceeding in good faith and any delays have been outside the reasonable control of the Developer.

D. If an Agreement is so signed and submitted by Developer within the Extended Term or any extension thereof, then this ENA will be extended as necessary for forty-five (45) days from the date of such submittal (the "Consideration Period") to enable the Agency to determine, in its sole discretion, whether it desires to (1) enter into such Agreement, (2) take the actions necessary to authorize Agency to sign such Agreement, and (3) sign the Agreement, all if

the Agency desires to do so, without being in any way required to do so. If the Agency considers the Agreement, or whether to continue to negotiate with Developer, but fails to (i) approve either an Agreement or (ii) sign such Agreement, then this ENA shall automatically terminate at the end of the Consideration Period.

2. DEVELOPMENT OF THE SITE

The provisions of the Agreement shall require the Developer to develop a first-class, high-quality destination resort, including hotels, restaurants, hospitality services and a casino for Class III Indian gaming, containing a number of slot machines, table games and other gaming devices or games not to exceed the maximum to be allowed under an Indian Gaming Compact to be negotiated by and between the Tribal authorities under whose jurisdiction the casino shall be developed (the "Tribe") and the State of California. The Agreement shall specify a completion date for the Project expressed as a definite period of time following the obtaining of all necessary permits, licenses and approvals prerequisite to the commencement of construction from all federal, state and local authorities.

3. AGENCY REQUIREMENTS

In addition to the terms and conditions of this ENA, Agency may require and Developer will perform any and all actions necessary under the California Community Redevelopment Law, the California Environmental Quality Act, and any other laws or regulations affecting the Agency's use and redevelopment of the selected site for the Project ("Legal Requirements").

4. GENERAL PROVISIONS

The Agreement shall also contain other provisions negotiated by the parties, including but not limited to provisions regarding the following:

- A. Assurance of Developer's capacity to complete and operate the Project;
- B. Maintenance of the selected site and the Project;
- C. Management of the Project;
- D. Protection of Agency from liability;
- E. Sale restrictions pending completion with respect to any land not intended or required to be conveyed to the federal government into trust for the benefit of the Tribe;
- F. Protection of the Agency, City and surrounding communities from any adverse impacts of the construction or operation of the Project; and
- G. Other matters as Agency may deem necessary, subject, however to the understanding that the selected site for the casino (and none of the other amenities of the Project) shall be

conveyed to the United States Department of Interior, in perpetual trust for the Tribe, and the operation of the Project shall be subject to the provisions of the Compact, the relevant Tribal Gaming Ordinance and the National Indian Gaming Commission pursuant to the National Indian Gaming Regulatory Act.

5. **AUTHORITY OF STAFF**

Developer acknowledges and agrees that none of the staff of the Agency, the Agency's counsel or any member of the Agency Board, has authority to bind the Agency, and that the Agency will not be bound to any agreement nor to any course of action except after execution of the Agreement following a duly noticed public hearing, and that the final form of the Agreement may contain matters not contemplated by this ENA. Developer acknowledges and agrees that any agreement that may result from these negotiations must be submitted to the Agency Board (and, to the extent required by law, to the City Council of the City) for review and approval in accordance with law (especially, with reference to an Agreement, Section 33433 of the Health and Safety Code).

6. **DEVELOPER'S PRO FORMA, FINDINGS, STUDIES AND REPORTS**

No later than one hundred twenty (120) days from the Effective Date, to the extent there is sufficient information known with respect to the selected site and the likely provisions of the Compact that would make any estimates reasonable, Developer shall provide to Agency staff a detailed pro forma showing (i) Project costs, including, but not limited to, the estimated cost of financing, (ii) estimated Project revenues over the life of the Agreement, (iii) estimated economic impact of the Project and related development (iv) development revenues over the life of the Agreement, and (v) annual application of revenues to costs. The description of Project costs shall include information as to the product or service being paid for and the potential recipient, if known, of the funds. The pro forma shall include any other information requested by Agency staff. It is agreed that all such materials submitted shall be considered proprietary and confidential to the fullest extent allowed by state and federal law, and shall be covered by an appropriate confidentiality agreement to be executed by the parties (hereinafter sometimes referred to as the "Confidentiality Requirements"). It is the intention of Developer to consult with the Agency on at least a bi-weekly basis as to all developments with respect to the Project. The Developer acknowledges that it must submit the information required by this Section 6 before Agency will consider whether to approve the Agreement.

7. **DEVELOPER**

7.1 **Offices of Developer**

The principal office of Developer is located at 2211 Woodward Avenue, 10th Floor, Detroit, Michigan 48201.

7.2 Full Disclosure and Approval

At least Ninety (90) days prior to the Agency Board considering the approval of the Agreement, Developer shall make full disclosure to Agency of all principals, officers, stockholders, partners, joint ventures, employers and other associates of Developer who are participants or principals in the Project; and shall provide Agency with information concerning the experience, qualifications and capacity of Developer relevant to the undertaking of this Project. The Developer acknowledges that the Agency will consider the identities, backgrounds and reputations of such individuals and entities in making its decision whether to approve the Agreement.

8. FINANCIAL CAPACITY OF DEVELOPER

8.1 Financial Statement

The Agency acknowledges that the entity to be formed to develop the Project will have no operating history and thus no financial statement will be available. However, subject to the Confidentiality Requirements, Developer shall provide updated financial statements at such time as new statements become available.

8.2 Bank References

Subject to the Confidentiality Requirements, Developer shall provide Agency with bank references relevant to Developer and its principals' performance with respect to obtaining and servicing construction and/or permanent financing.

8.3 Full Disclosure

Subject to the Confidentiality Requirements, Developer will be required to make and maintain full disclosure to Agency of the methods of financing, the financing documents to be used for the development of the Project, the source of all capital, together with all information showing Developer's projections for the Project and the profits projected by the Developer, and shall make such information available to Agency during the course of the negotiations. As part of such full disclosure, Developer shall be required to demonstrate that it will be adequately capitalized to undertake the obligations of the proposed Agreement. In addition, the Agency may, in its sole and absolute discretion, require Developer to undertake community meetings and public information efforts as are reasonably necessary to ensure that the public may be informed and participate in the planning process for the Project.

9. OTHER REQUIREMENTS

The parties acknowledge that the Agency's Implementation Plan and other documents may have to be amended or implemented if the Agreement is ultimately approved and that the report and findings contained in Health & Safety Code section 33433 may have to be prepared, as well as the findings and documents referred to therein.

9.1 Assistance and Cooperation

The parties shall cooperate fully in providing one another with appropriate information and assistance.

9.2 Public Hearing

← If the negotiations hereunder culminate in an Agreement, such Agreement becomes effective only if and when such Agreement has been considered and approved by Agency after notice and a public hearing as required by California law.

(If)

10. MISCELLANEOUS

10.1 Real Estate Commission

Agency shall not be liable for any real estate commission and brokerage fees that may arise from this ENA or the Agreement. Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and Developer agrees to hold Agency harmless from any claim by any broker, agency or finder retained by Developer.

10.2 Notices

All notices under this ENA shall be in writing and shall be effective either a) when delivered in person to all of the recipients, including those designated to receive copies, at their addresses set forth below, or b) three (3) days after deposit in a sealed envelope in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, whichever is earlier:

All notices to Developer shall be sent to:

Michael J. Malik, Sr.
2211 Woodward Avenue 10th Floor
Detroit, Michigan 48201

With copies to:

William D. Serwer, Esq.
Ehrlich, Foley & Serwer, P.C.
280 West Maple
310 Wabeek Building
Birmingham, Michigan 48009:

All notices to Agency shall be sent to:

Barstow Redevelopment Agency
220 East Mountain View, Suite A
Barstow, California 92311-0288
Attn: Executive Director

With a copy to:

Michael G. Colantuono, Esq.
Colantuono, Levin & Rozell, APC
555 West 5th Street, 30th Floor
Los Angeles, CA 90013-1048

Such addresses may be changed by notice given in accordance with this section.

10.3 Date of this Agreement

The date of this ENA shall be the Effective Date, which shall be the date this ENA is signed by both the Developer and Agency.

10.4 Titles, Headings and Captions

The titles, headings and captions used in this ENA are for convenience only and shall not be construed to limit or extend the meaning of any part of this ENA

10.5 Non-binding Nature of ENA

By its execution of this ENA, Agency is not committing itself to or agreeing to undertake: (a) any disposition of land to the Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by Agency, City, or any agency or department thereof. This ENA does not constitute a disposition of property or exercise of control over property by Agency or City and does not require a public hearing. Execution of this ENA by Agency is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency and City as to any Disposition and Development Agreement and all proceedings and decisions in connection therewith.

10.6 Termination

The term of this Agreement shall be a period of Nine (9) months from the Effective Date, unless it is terminated sooner pursuant to the provisions of Section 1.2. If this ENA is extended beyond the Initial Term, the Agency may terminate this ENA prior to the end of the Extended Term if progress is not being made in negotiations hereunder to the Agency's reasonable satisfaction. In such event, Agency shall give thirty (30) days' written notice to Developer that specifies any dissatisfaction or lack of progress and Agency shall not terminate this Agreement if

Developer cures the deficiencies specified by Agency to the reasonable satisfaction of Agency within such 30-day period or, if the deficiency cannot reasonably be cured within 30 days, Agency shall not terminate this ENA so long as Developer commences to effect a cure within such 30 day period and thereafter for so long as Developer diligently pursues a cure. Notwithstanding any language in this Section 10.6 to this contrary, nothing in this Agreement shall be construed to require Agency to extend this ENA beyond the term of the Extended Term unless the Agency elects to do so in its sole and absolute discretion.

10.7 Press Releases

Developer agrees to discuss with the Executive Director of the Agency any press release or other Agency publicity regarding the subject matter of this ENA prior to disclosure in order to assure the public is provided accurate and consistent information by the Agency and Developer. City and Agency agree that no press release shall be made without Developer's prior approval, which may be withheld by Developer if Developer believes, in its sole discretion, that the disclosure could interfere with, hinder, delay or jeopardize Developer's investment in the Project. Developer acknowledges that Agency has, and will comply with, certain disclosure requirements pursuant to the provisions of the California Public Records Act, the Brown Act and other provisions of California law.

10.8 No Third-Party Beneficiary

This ENA is entered into for the benefit of City, Agency and Developer, and not for any other person. No other person shall have any rights, benefits or obligations with respect to, or under, this ENA, its execution, performance or non-performance.

10.9 Prohibition Against Assignment

Developer shall not assign this ENA without Agency's prior written consent, which shall not be unreasonably withheld. For example, a decision to withhold such consent shall be reasonable if Developer fails to demonstrate that its proposed assignee has the financial capacity to develop the Project. Any such assignment without such prior written consent shall be null and void and shall confer no rights on any third person.

10.10 Attorney Fees

In the event that an action is brought by a party to enforce the terms of this ENA against the other party, or if a party asserts the terms of this ENA in connection with the defense of an action brought by the other party, the prevailing party shall be entitled to any reasonable attorney fees and costs it has actually incurred in enforcing or resisting the enforcement of the terms of this ENA and any other reasonable attorney fees and costs it has actually incurred in prosecuting or defending such actions that would not have been incurred but for the breach of this ENA by the non-prevailing party.

10.11 Enforcement

A. This ENA shall in all respects be interpreted, enforced, and governed under the laws of the State of California. The parties agree that any action to enforce this Agreement shall be filed and maintained in the California Superior Court, County of San Bernardino and Developer and its principals named herein hereby concede the existence of personal jurisdiction and consent to the jurisdiction of that Court for this purpose.

B. The parties agree that money damages would be an inadequate remedy for any breach of this Agreement, and agree that this Agreement may be enforced by a preliminary or permanent, mandatory or prohibitory, injunction, by a decree of specific performance, or other such order or decree of a court of competent jurisdiction. The agreed remedies set forth herein shall not be construed to limit or derogate from any legal or equitable remedy authorized by applicable law.

10.12 Entire Agreement

This ENA represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to the development of the Project. This ENA may not be amended except in writing certified by the signatures of the parties hereunder.

[CONTINUED ON NEXT PAGE]

JUL-25-2003 15:00 FROM:BLM BARSTOW
00/21/0060 10.01 0100001006760 252 6099 TO:6192567177
MARK ISDELUKZANKP. 9/12
PAGE 10**CONFIDENTIAL****13. BINDING EFFECT: ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and their permitted assigns. No Party may transfer, assign or encumber its rights, duties or interest hereunder in whole or in part without the prior express written permission of the other Party.

14. COMPLETENESS

This Agreement is complete with regard to its subject matter. Any changes must be in writing, approved by both Parties and authenticated by a notary public, consular officer or any other internationally recognized form of authentication.

15. TERM

The term of this Agreement is for five (5) years from the date of execution and may be extended upon exercise of an option for an additional two- (2) year. HDSS shall notify CRCIT and LCBI at least one (1) year prior to the exercise of the option.

It shall encompass subsequent Agreements of similar and like transactions as contained in this Agreement

Any Party may terminate this Agreement without cause, and without liability to any other Party, upon thirty- (30) days written notice, if a "Force Majeure" event excusing nonperformance hereunder continues for a consecutive thirty (30) day period.

If any party defaults in the performance of any material provisions of this Agreement or if HDSS is unable to obtain the requisite financing, then the Non-defaulting Party may give notice to the other Party that if the default is not cured or financing not obtained within thirty- (30) days this Agreement will terminate. If the non-defaulting Party gives such notice and the default is not cured during such 30-day period, then this Agreement automatically shall terminate upon written notice by the non-defaulting Party to the defaulting Party.

The termination of this Agreement shall not in any way operate to impair or destroy any of the rights or remedies of any Party, or to relieve any Party of its obligations to comply with any of the provisions of this Agreement, which shall have accrued prior to the effective date of termination, including but not limited to any contracts or other business agreements executed between the Parties and any other group or governmental agency. The Parties agree that remedies for breach of this Agreement may be in equity by injunctive relief or specific performance, since damages for certain breaches may be inadequate remedy, as well as for damages and any other relief available, whether in that law or equity.

IN WITNESS WHEREOF, Agency and Developer have executed this ENA as of the Effective Date set out above.

BARSTOW REDEVELOPMENT AGENCY, a public body, corporate and politic

By: *Lance Milanez*
Lance Milanez, President

Date: 06-03-03

Attest: *JoAnne V. Cousino*
JoAnne V. Cousino,
Secretary

Date: 06-03-03

APPROVED AS TO FORM:

By: *[Signature]*
Michael G. Colantuono
Agency Counsel

Date: 6/2/03

BARWEST, L.L.C., a Michigan limited liability company

BY: BARWEST MANAGER, INC.,
a Michigan corporation, Manager



By: *Michael J. Malik*
Michael J. Malik, Sr.
President

Date: 1-6-03