LAW GROUP brown

600 B Street, Ste. 1650
San Diego, CA 92101
619.330.1700 ph
619.330.1701 fax
www.brownlawsd.com

April 6, 2007

Carolyn Y. Smith
President
Southeastern Economic Development Corporation
4393 Imperial Avenue, Suite 200
San Diego, California 92113

Via Facsimile & U.S. Mail

Re: Proposed Exclusive Negotiating Agreement between the Redevelopment Agency of the City of San Diego ("Agency") and E. Smith & Company ("Developer") for the development of Hilltop/Euclid Site, City of San Diego ("ENA")

Dear Ms. Smith:

Thank you for your letter of March 29. My understanding is that the ENA executed by Mr. Jarrett and submitted to the SEDC in November 2006 ("2006 ENA") was to be superseded by a new ENA. This is supported by the fact that on February 22, 2007, you sent Mr. Jarrett a letter with execution copies of a new ENA based on a telephone conference you had with Mr. Jarrett and Agency Special Counsel Royce K. Jones.

The reason Mr. Jarrett retained counsel is to negotiate an ENA that adequately represents the terms of the proposed transaction. Specifically, Mr. Jarrett proposes that instead of developing the site with approximately one hundred and twenty (120) low and very low income multifamily residential units, the Developer build residential for-sale town homes, some of which could be deemed affordable based on the Agency's willingness to subsidize those units.

Another issue that needs to be resolved promptly are the amendments to the Southeast San Diego Community Plan, the Southeast Planned District Ordinance and/or the Redevelopment Plan (collectively, the "Plans"), which must be adopted in order to put in place realistic milestones for the Developer. The amended Plans should also provide the Developer with the flexibility to develop the site for retail or mixed use purposes.

Of concern in placing the deposit with the SEDC by April 6, as you suggest in your letter, are Paragraphs 12(b) and 12(c) of the ENA. Paragraph 12(b) provides that if the Developer terminates the ENA for failure to obtain the requisite amendments to the

Plans, the Developer will only be refunded $20,000 of his $50,000 deposit. This condition is unacceptable to the Developer as he would be forced to forfeit $30,000 for circumstances that are completely outside his control. This condition should only apply if the Developer breaches the ENA or materially interferes with the process of obtaining the amendments to the Plans.

Paragraph 12(c) provides that the Agency is entitled to retain the Developer's entire deposit plus damages (provided the Developer fails to cure in 5 days based on notice from the Agency) if the Developer fails to negotiate the Disposition and Development Agreement in good faith "as a court of competent jurisdiction determines." The concept of negotiating in "good faith" should be specifically defined in the ENA to avoid the Agency's subjective interpretation of the Developer's negotiating strategy, or worse, to have to spend valuable time and resources to have a court decide the issue. If the Developer's entire $50,000 risks being forfeited to the Agency, clear parameters must be stipulated in the ENA so the Developer is able to avoid negotiating in a manner that may be deemed by the Agency to be in bad faith.

Provided we can resolve the issues set forth herein, the Developer will be in a position to deliver his good faith deposit to the SEDC. Please contact me at your earliest convenience to discuss (619) 330-1703.

Very truly yours,

Janice P. Brown
BROWN LAW GROUP