THE CUBIT PROPERTIES - NYQUIST NEGOTIATION

Confidential Information for Attorney for Cubit Properties, Ltd.

Your firm's new client, Cubic Properties, is a national shopping mall developer owned entirely by the Cubitszki family. Last week you were visited in your Satem office by Carmela Cubitszki, Cubit's Director of New Projects, who engaged your legal services on behalf of her company. Ms. Cubitszki told you that several months ago Cubit entered into preliminary discussions with Ozepia, Inc., a manufacturer and retailer of inexpensive Scandinavian home fumishings, to explore the development and leasing of a 250,000 square foot Ozepia store in the greater Salem area. (Salem, a city with a population of 300,000, is at the center of one of the fastest growing metropolitan areas in the eastem USA.) Given the enormous popularity of Ozepia stores, with such an anchor tenant Cubit feels that it can finance and develop a fabulously successful regional mall serving the burgeoning population of the Salem area.

Cubit knows that other shopping center developers have been courting Ozepia and that they, too, recognize that the Salem area is ripe for mall development.

Discussions with Ozepia have convinced Cubit that Ozepia will commit to the first largescale retail development in the area west of Salem. (Ozepia's keen interest in the Salem area is in large part due to the completion three years ago of Interstate Route 776 connecting Salem with cities to the west.) Therefore, Cubit's site acquisition personnel have diligently searched out appropriate development parcels.

Historically, the area to the west of Salem was primarily occupied by familyowned fruit farms. Since the 1950's, many of those farms have given way to urban sprawl, with housing subdivisions, low scale retail and industrial complexes, and office parks radically changing the predominantly agricultural character of the area. Cubit was only able to identify a few parcels that combined Route 776 access with the size and topography appropriate for development as a regional shopping mall.

The attached plan highlights the area targeted by Cubit as likely to be acceptable to Ozepia and shows the land parcels available for purchase. As you will note, to the north of Route 776 are two parcels, both identified as the "Nyquist Farm," owned by the descendants of Ezra Nyquist, an immigrant who came to the Salem area to farm in the early 1900s. Immediately to the south of Route 776 are three parcels still used as fruit tree farms individually owned by local farmers Ackeriy, Stamper and Ogden.

During her initial meeting in your office, Carmela Cubitszki revealed to you in confidence that Cubit has entered into binding purchase and sate agreements with the owners of the Ackerly, Stamper and Ogden Farms, and that it is irrevocably committed to that site for its Salem development. She explained to you that in making those purchases Cubit acted through straws in order to prevent knowledge of its interest in the area from driving up prices. Each of the agreements contains a secrecy clause, which Cubit had insisted on pending finalization of its deal with Ozepia. Therefore, no one except Ozepia knows that Cubit has property under agreement that will enable it to go forward with development of a regional mall.

Cubit has discovered (although Carmela refused to reveal how) that Ozepia has also engaged in discussions with at least one of Cubit's major competitors, Franchetti Development, about a Satem-area location. Cubit, Ms. Cubitszki explained, absolutely needs to block any move into the west Salem area by Franchetti. Cubit assumes that Franchetti's real estate people have done their homework and that Franchetti will attempt to purchase the Nyquist parcels north of Route 776. Cubit needs to trump Franchetti, or any other mall developer that might try to seduce Ozepia away from Cubit with a competing project in Ozepia's target area in Salem. In short, Ms. Cubitszki has made it crystal clear to you that the Nyquist properties need to be taken out of play.

Ms. Cubitszki explained why her company has decided to retain a Salem-area attomey to act on its behalf in discussions with Lowell and Leonora Nyquist, the brother and sister who jointly own the two "Nyquist Farm" parcels. Cubit figures that using a well-regarded local law firm will make the Nyquists more receptive and less suspicious of its intentions. The objective, Carmela explained, is to tie up the Nyquist properties and to keep Franchetti or any other developer from acquiring them for development purposes, but to buy them. In other words, your task is to try to secure an option on the Nyquist parcels that will preclude any Cubit competitor from advancing a development plan on them. To Cubit, it's well worth your substantial legal fee and paying the Nyquists some consideration for such an option in order to keep their property out of the hands of any other developer. Cubit figures that if it has a six month head start, it will be able to secure Ozepia's legal and financial commitment to its development on the three farm parcels south of Route 776 which it has under binding agreement.

Cubit guesses that the Nyquists may already have been approached by representatives of Franchetti Development, so she urged you to make contact with them as soon as possible. Ms. Cubitszki estimates that any developer would pay in the area of $2.75 to $3 million for both of the Nyquist parcels, or $2 to $2.25 million for Parcel A alone, which has sufficient area for a mall with a 250,000 square foot Ozepia store and an appropriate number of satellite retailers. You are authorized to commit to a price for the option itself of up to 10% of the "purchase price"; that is, of up to $300,000. Of course, a lower option payment would be a real feather in your cap. Cubit doesn't really care about the ultimate purchase price since it won't ever close on the purchase, although Cubit hopes that by "agreeing" to a higher purchase price, you will be able to put the Nyquist properties out of play for at least six, and preferably as many as nine, months. Remember, the Nyquists don't know that Cubit has already committed to develop its planned regional mall on property directly abutting Interstate 776 to the south.

Carmela made it clear that since Cubit has absolutely no intention of exercising any option to purchase the Nyquist parcels, it has no objection to your agreeing on its behalf to a higher purchase price as bait to get the Nyquists to agree to an option in order to keep their property off the market. You need to strike a balance between agreeing to pay such a high price for the purchase that the Nyquists will be suspicious about your client's ultimate interest, on the one hand, and trading off a higher purchase price for a lower up-front option cost, (which Cubit will actually have to pay), on the other. She suggests that you ask all the "due diligence" questions about the property that any serious buyer would: Is there clear title? What has the property been used for in the past? Should any neighborhood opposition to development or other similar problems be anticipated? etc. Try to sound as committed as possible to a purchase. Explain to the Nyquists' attomeyt however, the necessity of optioning the property for a period of 6-9 months in order to finalize Cubit's deal with Ozepia and obtain necessary financing. Remember, your job is to convince the Nyquists of your client's real desire to buy their property so that is kept out of the hands of Franchetti or any other developer hopefully at an option price to Cubit less than the $300,000 that you are authorized to commit to.

Two days ago, you called Lowell Nyquist and told him that you had a client who was interested in the Nyquist Farms. Mr. Nyquist expressed great interest, but said that he and Leonora were about to leave the country for a long-planned vacation. Accordingly, he suggested that his lawyer would call to arrange a meeting to discuss your client's proposal. You have received that call from the Nyquists' attomey, with whom you have never dealt in the past, and a meeting has been arranged for tomorrow. Prepare for that meeting.

