

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NO. 03419

ADOPTED ON DECEMBER 14, 2001

WHEREAS, on November 3, 1998, the electorate of the City of San Diego (the “City”) approved Ordinance No. O-18613 (the “Ordinance”) which authorized and directed the City to enter into a Memorandum of Understanding (the “MOU”) with the San Diego Padres (the “Padres”), the Redevelopment Agency of the City of San Diego (the “Agency”), and the Centre City Development Corporation (the “CCDC”) Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project within the Centre City East (East Village) Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project; and

WHEREAS, the Ordinance provided that it was the intent of the electorate that the Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance; and

WHEREAS, the MOU has been executed on behalf the City (by the City Manager pursuant to the Ordinance), the Agency, CCDC and Padres (collectively, the “Parties”); and

WHEREAS, subsequent to the execution of the MOU by the Parties, the Agency, in reliance thereon and in furtherance thereof executed and delivered a series of agreements and amendments to agreements, including extensions of the MOU (the “Listed Agreements”), including but not limited to the following: Ballpark Design Build Procurement Consultant

Agreement; Guaranty Agreement Concerning Design Build Procurement Consultant Agreement; Ballpark and Redevelopment Project Implementation Agreement; First, Second, Third and Fourth Supplements to the Ballpark and Redevelopment Project Implementation Agreement; Second Ballpark and Redevelopment Project Implementation Agreement; Ballpark Cooperation Agreement; Disposition and Development Agreement for Sixth and L Street Hotel; and Disposition and Development Agreement for Sixth and J Street Hotel; and

WHEREAS, it has become known to the Agency that one Director of CCDC (the “Director”) has engaged in certain purchase transactions with the Padres; and

WHEREAS, a review of the nature and scope of such business activities has been conducted; and

WHEREAS, in a Report dated December 13, 2001 (the “Report”), the staff of the City has advised that the Director has informed the Padres by letter dated December 12, 2001, that from and after the date thereof neither the Director nor any related enterprise will directly or indirectly engage in any business activity with the Padres or any related Padres’ business enterprise, and by return letter dated December 13, 2001, the Padres have concurred in representations and understandings set forth in the Director’s letter of December 12, 2001, and made its own representations that neither Padres nor any related Padres’ business enterprise will directly or indirectly engage in any business activity with the Director or any related enterprise; and

WHEREAS, the General Counsel of CCDC has advised the Board of Directors of CCDC that, based upon information previously provided and now contained in the Report, the Director’s activities described therein did not violate certain California conflict of interest laws, and that it is her view that the actions set forth below to reaffirm actions heretofore taken in furtherance of the MOU and the Ordinance, if undertaken by CCDC, would be curative of any alleged or perceived conflict, and the City Attorney of the City of San Diego and General

Counsel to the Agency concur in that view as to the City and Agency; and

WHEREAS, since execution of the MOU, actions have been authorized by this Board to be taken under the MOU, or in furtherance thereof, or in reliance thereon, including extensions of the MOU, and to the extent that the same have modified the rights and obligations of any of the Parties under the MOU, none of such actions (1) decreased the rights or increased the obligations of the City under the MOU, (2) increased the financial commitments of the City, or (3) decreased revenue to the City; and

WHEREAS, it is proposed that each of the parties to the MOU reaffirm its intent to be bound by the MOU and acts or actions taken thereunder, or in furtherance thereof, or in reliance thereon; and

WHEREAS, it is deemed in the best interests of the Agency to so reaffirm; NOW,  
THEREFORE,

BE IT RESOLVED, by the Board as follows:

1. That all of the foregoing Recitals are true and correct and the Board so finds and determines.
2. The Board hereby declares that it continues to be in the best interest of the Agency to proceed in accordance with and in furtherance of and be bound by the MOU.
3. All actions of the Board herefore taken (collectively, "Board Actions"), which were implemented by and/or authorized under MOU, or in furtherance or effectuation thereof or in reliance thereon, and pursuant to which agreements, or amendments to agreements, between two or more of the parties to the MOU were authorized, including but not limited to the Listed Agreements, to the maximum extent required and allowed by law are hereby ratified so as to reaffirm their efficacy from their respective times of adoption or approval and to effectuate their continuous efficacy now and hereafter.
4. All acts or actions taken by or on behalf of the Agency, by its employees, agents,

representatives or others, under or in furtherance or effectuation of the MOU or in reliance thereon, or in furtherance or effectuation of Board Actions or in reliance thereon, to the maximum extent required and allowed by law, are hereby reaffirmed so as to declare their continuous efficacy since the respective times of such acts or actions and the continuing efficacy now and hereafter.

5. This action of the Board is in furtherance of and implements the mandate of both the Ordinance and the MOU and thus is administrative and non-legislative in character.

6. To the extent that actions taken hereunder authorize an action which may be deemed to modify the rights and obligation of the Parties as set forth in the MOU, the same are intended as such and do not individually or in the aggregate, materially: (1) decrease the rights or increase the obligations of the City, (2) increase the financial commitments of the City, or (3) decrease revenues of the City.

7. The Executive Director is hereby authorized and directed to take any such further actions, and negotiate, prepare and execute any such documents as may be necessary or appropriate to implement the intent and purposes of this Resolution, consistent with the rights and obligations of the City pursuant to the MOU and all documents executed and delivered in reliance thereon, including a Reaffirmation Agreement among the Parties, substantially in the form as set forth in Exhibit 1 attached hereto, but with such changes therein as the Executive Director shall approve, upon the advice of the General Counsel of the Agency and consistent with this Resolution, such approval to be conclusively evidenced by the execution and delivery thereof by the Executive Director.

8. The previous authority to the Executive Director to execute such other and further extension of the MOU as may be necessary to allow the bond transaction for the Project to close, conveyed to the Executive Director by Resolution No. R-03408, is hereby modified to provide that such extensions agreed to by the Executive Director not extend beyond March 31, 2002.

APPROVED: CASEY GWINN, General Counsel

By

Leslie J. Girard

Deputy General Counsel

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