

RA Item #
5-40
SPRA met
11/23/09

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER R- 04464

DATE OF FINAL PASSAGE DEC 04 2009

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING THE FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT [DDA] ENTERED INTO ON OR ABOUT MAY 22, 2008 BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND CEDAR GATEWAY, L.P. AND THE ACCOMPANYING ATTACHMENTS FOR THE CEDAR GATEWAY PROJECT LOCATED IN THE CORTEZ REDEVELOPMENT DISTRICT OF THE EXPANSION SUB AREA OF THE CENTRE CITY REDEVELOPMENT PROJECT AREA.

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Centre City Redevelopment Project Area [Project Area]; and

WHEREAS, the Centre City Development Corporation [Corporation] is authorized to administer, on behalf of the Agency, the Project Area; and

WHEREAS, in order to carry out and implement the objectives of the Redevelopment Plan for the Project Area, the Agency entered into that certain Disposition and Development Agreement [DDA] with Cedar Gateway, L.P. [Developer] on or about May 22, 2008, a copy of the DDA is on file in the office of the secretary to the Agency as Document No. D-04271a / R-04271; and

WHEREAS, the DDA governs the acquisition of real property and the development of the Cedar Gateway Project which incorporates a 65-unit affordable housing project, 4,342 square feet of ground-floor retail space, and a subterranean parking garage, located on the north side of

Cedar Street, between Fifth and Sixth Avenues in the Cortez Redevelopment District of the Expansion Sub Area of the Project Area; and

WHEREAS, in accordance with the DDA, the Agency, in May of 2008, acquired the site on which the Cedar Gateway Project will be developed for a purchase price of \$5,267,000 [Project Site] and acquired the adjacent site for a purchase price of \$1,093,000 which will be separately developed pursuant to future requests for proposals by the Agency; and

WHEREAS, pursuant to the DDA, the Agency has agreed to ground lease the Project Site to the Developer for 65 years, with an option to extend for an additional 25 years, and to assist the Developer with financing a portion of the development costs of the housing portion of the Project by providing a residual receipts loan to the Developer in an amount not to exceed \$3,661,000 from the Agency's 20% Low and Moderate Income Housing Set-Aside Funds payable from the Project Area, and to purchase from the Developer one-level of public parking to service the adjacent Agency-owned property for \$1,400,000 from the Agency's non-housing tax increment funds; and

WHEREAS, due to the changing conditions of the economy and the shortage of capital in the financial market, certain financial commitments made to the Developer for development of the Cedar Gateway Project were severely impacted and, as a result, the Developer has sought alternative sources of financing which impose underwriting criteria different than that contemplated by the DDA; and

WHEREAS, in light of the above, the Agency and the Developer desire to amend the DDA and its Attachments pursuant to the terms and conditions of the First Amendment to the DDA and the accompanying Attachments which, in summary, accomplish the following: (1) replace 9% tax credit financing with a loan from the California Tax Credit Allocation Committee

pursuant to the Tax Credit Assistance Program derived from the American Recovery and Reinvestment Act; (2) revise the amounts financed by the California Department of Housing and Community Development and the California Department of Mental Health and California Housing Finance Agency; (3) provide the Developer with the option to retain ownership of, and to lease, the ground-floor retail spaces to be fully financed by the construction/permanent lender Citicorp USA, Inc.; (4) allow for a reduction in the Agency's residual receipts loan in the event the Developer obtains AHP financing; (5) allow for a Cal Reuse Remediation Grant to cover remediation costs; (6) consider rental income during the lease-up period as a permanent source of funding, (7) revise the ground lease term from 65 years to 70 years and the option to extend the lease term from 25 years to 20 years; (8) allow for a transitional operating reserve for the project; (9) increase the allowed developer fee and the deferred developer fee; (10) reduce the purchase price to the Agency for the public parking garage to \$1,344,000; (11) allow for subordination of the Agency's residual receipts loan to the loans of senior lenders as required; (12) allow for subordination of the Agency's affordability covenants to the MHP Regulatory Agreement only as required by State regulations; (13) reduce the number of required parking stalls; (14) revise the deadlines set forth in the Schedule of Performance; and (15) allow for an increase in the maximum level of affordability of the rental units in the event of a foreclosure; and

WHEREAS, on October 21, 2009, the Board of Directors of the Corporation reviewed and discussed the proposed First Amendment to the DDA and accompanying Attachments and voted unanimously to recommend to the Agency that the Agency enter into the First Amendment to the DDA; and

WHEREAS, the Agency has duly considered the recommendation of the Corporation and all terms and conditions of the proposed First Amendment to the DDA and accompanying

Attachments and determines that the revisions contained therein are in the best interest of the Project Area, the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, pursuant to Resolution No. R-04001 effective March 14, 2006, the Agency, acting as the designated “lead agency” for purposes of the California Environmental Quality Act [CEQA], certified the Final Environmental Impact Report for the San Diego Downtown Community Plan, the Centre City Planned District Ordinance and the Tenth Amendment to the Redevelopment Plan for the Project Area [2006 Final EIR], a copy of which is on file in the office of the Agency secretary as Document No. D-04001a; and

WHEREAS, pursuant to Resolution No. R-301265 effective March 14, 2006, the Council for the City of San Diego [Council], acting as a “responsible agency” for purposes of CEQA, reviewed and considered the information contained in the 2006 Final EIR; and

WHEREAS, pursuant to Resolution No. R-04193 effective August 3, 2007, the Agency reviewed and considered the Addendum to the 2006 Final EIR in connection with the Eleventh Amendment to the Redevelopment Plan [2007 Addendum], related to certain amendments to the San Diego Downtown Community Plan, the Centre City Planned District Ordinance, the Marina Planned District Ordinance, and the Mitigation, Monitoring and Reporting Program of the 2006 Final EIR; and

WHEREAS, pursuant to Resolution No. R-302931 effective August 3, 2007, the Council reviewed and considered the information contained in the 2007 Addendum; and

WHEREAS, the Corporation, on behalf of the Agency, prepared a Secondary Study for the Cedar Gateway Project dated April 2008 [Secondary Study], in accordance with Section 502.1 of the “Procedures for Implementation of the California Environmental Quality Act and

the State CEQA Guidelines” [Agency CEQA Procedures] adopted by the Agency in June of 1990, a copy of which is on file with office of the Agency secretary as Document No. 1748; and

WHEREAS, the Agency considered any and all written evidence and/or testimony received in support of or in opposition to the DDA, the Ground Lease, the Agency loans, the Basic Concept Drawings, and the Secondary Study, as well as the entire record prepared by Agency, City, and Corporation staff; and

WHEREAS, pursuant to Resolution No. R-04274 and Resolution No. R-303696 both effective May 19, 2008, the Agency and the Council, respectively, made the required findings pursuant to Section 507 of the Agency CEQA Procedures, and determined that, consistent with the analysis contained in the Secondary Study, the environmental effects of the Cedar Gateway Project were adequately addressed in the 2006 Final EIR and the 2007 Addendum, and that the Cedar Gateway Project is within the scope of the development program described therein; and

WHEREAS, the First Amendment to the Disposition and Development Agreement [DDA] entered into with Cedar Gateway, L.P. [Developer], together with accompanying Attachments, do not implicate any new environmental impacts that are not already addressed in the 2006 Final EIR and the 2007 Addendum, as analyzed in the Secondary Study, and previously considered by the Agency pursuant to Resolution No. R-04274; NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego [Agency], as follows:

1. That the Agency hereby approves the First Amendment to the Disposition and Development Agreement [DDA] entered into with Cedar Gateway, L.P. [Developer], and the accompanying Attachments; a copy of the First Amendment to the DDA, after execution by all

parties, together with the accompanying Attachments, shall be placed on file in the office of the Agency secretary as Document No. D- 04464

2. That the Executive Director of the Agency, or designee, is hereby authorized for and on behalf of the Agency, to execute the First Amendment to the DDA and all other documents necessary and appropriate to carry out and implement the First Amendment to the DDA according to its terms, and to administer the Agency's obligations, responsibilities, and duties to be performed thereunder.

APPROVED: JAN I. GOLDSMITH, General Counsel

By Kendall D. Berkey
Kendall D. Berkey
Deputy General Counsel

KDB:nda
11/04/09
Or.Dept: CCDC
RA-2010-28
MMS#8703

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the City of San Diego, at this meeting of NOV 23 2009.

REDEVELOPMENT AGENCY

By Jeannette Santos
Jeannette Santos, Deputy Secretary

Approved: 12-4-09
(date)

Jerry Sanders
JERRY SANDERS, Executive Director

Vetoed: _____
(date)

JERRY SANDERS, Executive Director

Passed by the Redevelopment Agency of The City of San Diego on NOV 23 2009, by the following vote:

Agency Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 04 2009

AUTHENTICATED BY:

JERRY SANDERS
Executive Director of The City of San Diego, California.

ELIZABETH S. MALAND
Secretary of The City of San Diego, California.

(Seal)

By *Gamette Pinto*, Deputy

Office of the Redevelopment Agency, San Diego, California

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