



REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER R- 04599

DATE OF FINAL PASSAGE JAN 16 2011

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (i) APPROVING AND AUTHORIZING THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO AND EXECUTE THE PROPOSED OWNER PARTICIPATION AGREEMENT WITH HORTON LAND, LLC, HORTON PLAZA VENTURE LLC AND HORTON PLAZA L.P. FOR THE SALE OF CERTAIN LAND FOR DEVELOPMENT OF AN URBAN PUBLIC PLAZA, INCLUDING THE REHABILITATION OF THE EXISTING HISTORIC PLAZA PARK LOCATED IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; (ii) AUTHORIZING ACCEPTANCE FROM HORTON LAND, LLC, HORTON PLAZA VENTURE LLC AND HORTON PLAZA L.P. OF AN APPROXIMATE 37,000 SQUARE FOOT SITE LOCATED IN THE PROPOSED URBAN PUBLIC PLAZA IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; (iii) AUTHORIZING THE TRANSFER TO THE CITY OF SAN DIEGO OF AN APPROXIMATE 37,000 SQUARE FOOT SITE LOCATED IN THE URBAN PUBLIC PLAZA IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA FOLLOWING THE REHABILITATION SET FORTH IN THE PROPOSED OWNER PARTICIPATION AGREEMENT; (iv) MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATED THERETO IN ACCORDANCE WITH CALIFORNIA HEALTH AND SAFETY CODE SECTION 33433; (v) APPROVING BASIC CONCEPT AND SCHEMATIC DRAWINGS; (vi) AUTHORIZING THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE TO SELECT A DESIGN CONSULTANT FOR THE DESIGN AND DEVELOPMENT OF PLANS RELATED TO THE URBAN PUBLIC PLAZA LOCATED IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; (vii) AUTHORIZING THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO AND EXECUTE THE DESIGN CONSULTING AGREEMENT WITH THE SELECTED DESIGN CONSULTANT; (viii) APPROVING AND AUTHORIZING THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO

AND EXECUTE OTHER AGREEMENTS AND DOCUMENTS
RELATED TO THE AFOREMENTIONED PROPOSED
OWNER PARTICIPATION AGREEMENT; AND (ix)
APPROVING ALL OTHER ACTIONS TO IMPLEMENT THE
OPA.

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 Horton Plaza Redevelopment Project (Redevelopment Plan) for the Horton Plaza Redevelopment Project Area (Project Area) in accordance with the California Community Redevelopment Law (California Health and Safety Code section 33000 et. seq.); and

WHEREAS, the Centre City Development Corporation, Inc. (Corporation), acting on behalf of the Agency, has negotiated an Owner Participation Agreement (OPA) with Horton Land, LLC, a Delaware limited liability company, Horton Plaza Venture LLC, a Delaware limited liability company, and Horton Plaza L.P., a Delaware limited partnership (collectively, Developer), wherein the Developer has agreed to prepare and transfer for consideration to the Agency an approximate 37,000 square-foot site (Sales Parcel) for the development and construction by the Agency of an urban public plaza (Public Plaza), including the rehabilitation of the existing historic Horton Plaza Park (collectively, with the Public Plaza shall be referred to as Plaza Improvements). As further consideration under the OPA, Developer has agreed to, among other things (i) maintain, operate and program the Plaza Improvements, as applicable, for a period of twenty-five (25) years; (ii) revitalize a portion of the Horton Plaza Retail Center (Parcel S-2); (iii) construct certain public improvements located in the E Street and Broadway Circle area and along Fourth Avenue in San Diego, California; and (iv) make certain financial contributions to benefit the Balboa Theater, the Lyceum Theater and the operation of a proposed permanent homeless shelter in San Diego, California; and

WHEREAS, the Agency and Developer are parties to a certain Payment Agreement dated October 18, 1982, as amended (Payment Agreement) obligating Developer to make annual payments to the Agency representing the additional purchase price, if any, for land sold by the Agency to the Developer upon which the Horton Plaza Retail Center (Retail Center) was developed and constructed by the Developer and its predecessors-in-interest pursuant to a certain Disposition and Development Agreement dated November 2, 1981, as amended (DDA). The potential payments to the Agency under the Payment Agreement through 2036 are estimated to total \$35.1 million on a present value basis. The proposed OPA provides for the prepayment in full of this revenue stream through the transfer of the Sales Parcel and completion of the other Developer obligations as required by the OPA; and

WHEREAS, following the transfer of the Sales Parcel, a proposed Termination Agreement reflecting the termination of the Payment Agreement would be entered into by and between the Developer and the Agency (Termination Agreement), which is Attachment No. 4 to the proposed OPA, whereby no further payments would be due from the Payment Agreement; and

WHEREAS, concurrent with execution of the proposed OPA, a proposed Cooperation Agreement, would be entered into by and between the City of San Diego (City) and the Agency (Cooperation Agreement), which is Attachment No. 5 to the proposed OPA, to provide for the design and construction of the Public Plaza by the Corporation, on behalf of the Agency; and

WHEREAS, at the close of escrow, a proposed Maintenance and Operations Agreement would be entered into by and between the Developer and the Agency (Maintenance Agreement), which is Attachment No. 9 to the proposed OPA, to provide for the maintenance and operations of the Plaza Improvements by the Developer for a period of twenty-five (25) years. Upon

completion of the Public Plaza by the Agency, the Maintenance Agreement would be assigned from the Agency to the City in accordance with the aforementioned Cooperation Agreement; and

WHEREAS, at the close of escrow, a proposed Programming Agreement would be entered into by and between the Developer and the Agency (Programming Agreement), which is Attachment No. 10 to the OPA, to provide for programming of the Public Plaza by the Developer for a period of twenty-five (25) years. Upon completion of the Public Plaza by the Agency, the Programming Agreement would be assigned from the Agency to the City in accordance with the aforementioned Cooperation Agreement; and

WHEREAS, the DDA and related implementing documents provide that the Retail Center contain not less 700,000 square feet nor more than 900,000 square feet of gross leaseable retail area including four major department stores, an open mall and plaza, mall stores and other retail commercial stores providing commercial-retail goods and services not connected to the mall and parking facilities. The proposed OPA would amend the use restrictions on the Retail Center, including Parcel S-2, such that there contain not less than 600,000 square feet of gross leaseable retail area with approximately 2,100 parking spaces until August 9, 2036; and

WHEREAS, the proposed OPA requires that the Agency contribute not less than \$8,000,000 towards the development and construction of the Plaza Improvements as well as depositing \$150,000, on or before the end of Fiscal Year 2015 and on the next four anniversary dates thereof ending on or before the end of Fiscal Year 2019, for a total of \$750,000 into a reserve account for anticipated capital repairs and replacement costs. Upon completion of the Plaza Improvements, the Agency would convey fee title to the Sales Parcel to the City pursuant to the aforementioned Cooperation Agreement; and

WHEREAS, because the proposed OPA will revise certain assumptions of the parties made in connection with the DDA, the Corporation caused the preparation of the "Summary Report Pertaining to the Proposed Conveyance of Certain Real Property Interests Within the Redevelopment Project Area" dated November 2010 (Summary Report), pursuant to California Health and Safety Code section 33433, and this Summary Report is attached to CCDC Report No. CCDC-10-101, dated 7/11/11, 2010 (Staff Report) as Exhibit C, and is incorporated fully into this Resolution by this reference; and

WHEREAS, the Agency and the City Council of the City of San Diego (Council) held a joint public hearing to consider the approval of the proposed OPA and related actions, after publishing notice of the public hearing in accordance with California Health and Safety Code section 33433; and

WHEREAS, the Agency provided copies of the OPA and the Summary Report available for public inspection and copying at the time of the first publication of the notice of the public hearing; and

WHEREAS, the Summary Report contains a summary which describes and specifies all of the following:

- (i) The costs to be incurred by the Agency under the proposed OPA;
- (ii) The estimated value of the interests to be conveyed by the Agency to the Developer pursuant to the proposed OPA determined at the highest and best use permitted under the Redevelopment Plan;
- (iii) The estimated value of the interests to be conveyed at the proposed use and with the conditions, covenants, and development costs pursuant to the proposed OPA;
- (iv) The compensation to be paid to the Agency pursuant to the proposed transaction;

(v) An explanation of the difference, if any, between the compensation to be paid to the Agency under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and

(vi) An explanation of why the development of the proposed Public Plaza will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation; and

WHEREAS, pursuant to California Health and Safety Code section 33433, the Council considered the information in the Summary Report and has made the findings required by California Health and Safety Code section 33433 with respect to the OPA; and

WHEREAS, pursuant to California Health and Safety Code section 33421, the Agency may cause, provide or undertake or make provision with other agencies for the installation, or construction of streets, parks and other public improvements necessary for carrying out in the Project Area the Redevelopment Plan; and

WHEREAS, in accordance with the proposed OPA, the Developer has submitted to the Agency, and the Agency has reviewed, the Basic Concept and Schematic Drawings pertaining to the following Developer Work of Improvement (as defined in the OPA) which are attached to the Staff Report as Exhibit B (collectively, Basic Concept and Schematic Drawings) and generally to include:

- (i) Demolish, repair and modify the northern terminus of the red viaduct with the north façade of the Retail Center;
- (ii) Make certain improvements on Parcel S-2; and
- (iii) Repair and complete the south and east facades of the Bradley Building; and

WHEREAS, following the approval of the Basic Concept and Schematic Drawings, the Agency, by and through the Corporation, proposes to select a design consultant (Design Consultant) to design and develop plans and drawings for the Plaza Improvements and thereafter enter into an agreement with said Design Consultant to render such design services (Design Consultant Agreement) in accordance with the proposed OPA; and

WHEREAS, pursuant to Article II, Section 1 of the Bylaws of the Agency, the City Attorney of San Diego (City Attorney) acts as General Counsel for the Agency; and

WHEREAS, effective March 1, 2007, by Resolution Number R-04124, the Agency authorized an Agreement for Legal Service (Legal Service Agreement) with Kane, Ballmer & Berkman (Special Counsel) in which Special Counsel agrees to render legal services to the Agency under the direction of the City Attorney on an "as needed" basis; and

WHEREAS, the City Attorney has determined that the City Attorney's Office has insufficient personnel to handle this matter and that the service of Special Counsel are therefore needed; and

WHEREAS, Special Counsel has drafted the proposed OPA and all related and referenced documents in this Resolution and has approved the proposed OPA and all related and referenced documents in this Resolution as to form and legality; and

WHEREAS, based on Special Counsel's legal review and approval of such contract, the City Attorney, acting as General Counsel, has drafted this Resolution; and

WHEREAS, the Agency has considered any written evidence and/or testimony received in support of or in opposition to the proposed OPA and the Basic Concept and Schematic Drawings, as well as the entire record prepared by Agency and City staff; and

WHEREAS, after having duly considered the actions described above, the Agency believes that the proposed OPA and all related agreements, including, but not limited to, the Termination Agreement, Cooperation Agreement, Maintenance Agreement and Programming Agreement, the approval of the Basic Concept and Schematic Drawings, the selection of a Design Consultant, the Design Consultant Agreement are in the best interests of the Project Area, the City and the safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; NOW, THEREFORE,

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

1. That the Agency has reviewed and approves the Summary Report.
2. That the Agency finds and determines that the compensation to be paid to the Agency under the proposed transaction is not less than fair reuse value at the use and with covenants and conditions and development costs authorized by the OPA for, among other reasons, the reasons set forth in Sections IV, V and VI of the Summary Report.
3. That the Agency finds and determines that the OPA will assist in the elimination of blight for, among other reasons, the reasons set forth in Sections IV and VII of the Summary Report.
4. That the Agency has reviewed and approves the OPA, together with all Attachments thereto.
5. That the Agency's Executive Director, or designee, is authorized, on behalf of the Agency, to enter into and execute the OPA and all Attachments thereto when appropriate, including the Termination Agreement (Attachment No. 4), Cooperation Agreement (Attachment

No. 5), Assignment and Assumption Agreement (Attachment No. 6), Maintenance and Operations Agreement (Attachment No. 9), Programming Agreement (Attachment No. 10), Agreement Affecting Real Property (Attachment No. 12), Amendment to Grant Deed Restrictions (Attachment No. 13), Release of Construction Covenants (Attachment No. 14), Amendment to Grant of Easement (Attachment No. 15), and Sales Parcel Grant Deed (Attachment No. 16). A copy of the OPA, when executed by the Agency, shall be placed on file in the office of the Agency Secretary as Document No. D- 04599a.

6. That the Agency's Executive Director, or designee, is authorized, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the OPA, together with the Attachments, and to administer the Agency's obligations, responsibilities and duties to be performed under the OPA, together with its Attachments.

7. That the Agency approves the Basic Concept and Schematic Drawings; a copy of which shall be placed on file in the office of the Agency Secretary as Document No. D- 04599b.

8. That the Corporation is authorized, on behalf of the Agency, to select a Design Consultant and thereafter enter into a Design Consultant Agreement in accordance with the OPA.

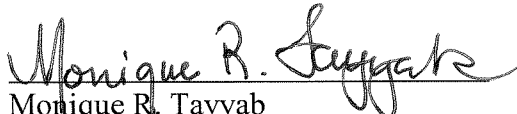
9. That the Agency, upon satisfaction of certain conditions precedent, agrees to accept fee title of certain real property known as the Sales Parcel from the Developer by Grant Deed, in substantially the form of the Sales Parcel Grant Deed attached to the OPA as Attachment No. 16, and thereafter, upon completion of the Plaza Improvements, agrees to transfer title of the Sales Parcel to the City by Grant Deed in accordance with the terms of the OPA and the Cooperation Agreement attached to the OPA as Attachment No. 5.

10. That the Agency hereby finds and determines that all recitals set forth in this Resolution are true and correct and fully incorporated herein by this reference.

11. That the Agency authorizes the Executive Director, or designee, to implement, adhere to, and administer and execute all documents on behalf of the Agency that are necessary and appropriate to carry out and implement the purposes set forth in this Resolution 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


Monique R. Tayyab
Deputy General Counsel

MRT:hm

12/28/10

01/05/11 COR.COPY

Or.Dept: CCDC

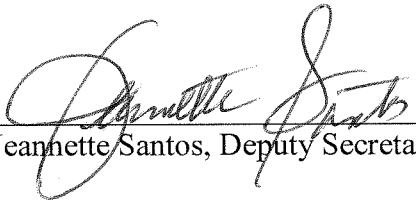
RA-2011-61

PL#2010-01468

Comp. R-2011-584

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the City of San Diego, at its meeting of JAN 11 2011.

REDEVELOPMENT AGENCY

By 
Jeannette Santos, Deputy Secretary

Approved: 1-16-11
(date)


JERRY SANDERS, Executive Director

Vetoed: _____
(date)

JERRY SANDERS, Executive Director

Passed by the Redevelopment Agency of The City of San Diego on JAN 11 2011, 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 checked="" type="checkbox"/> | <input type="checkbox"/> | <input 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"/> |
| Lorie Zapf | <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"/> |
| David Alvarez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage JAN 16 2011

AUTHENTICATED BY:

JERRY SANDERS

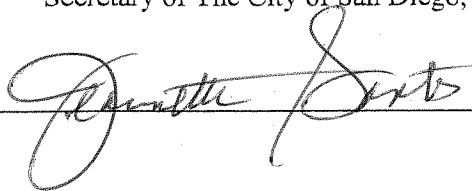
Executive Director of The City of San Diego, California.

ELIZABETH S. MALAND

Secretary of The City of San Diego, California.

(Seal)

By



, Deputy

Office of the Redevelopment Agency, San Diego, California

Resolution Number R- 04599