

(RA-95-15)
REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO
RESOLUTION NO. 2415
ADOPTED ON AUGUST 9, 1994

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING THE PROPOSED PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS WHICH PROVIDE FOR THE PURCHASE OF CERTAIN PROPERTY IN THE CENTRE CITY REDEVELOPMENT PROJECT AREA FROM DAVID ENGEL, AS TRUSTEE U/T/D DATED MAY 20, 1992, AND THE FINANCING OF SUCH PURCHASE BY THE ISSUANCE OF AN OBLIGATION THE INTEREST ON WHICH WILL BE TAX EXEMPT, AND AUTHORIZING THE EXECUTIVE DIRECTOR OF THE AGENCY OR DESIGNEE TO TAKE SUCH ACTIONS AND EXECUTE SUCH INSTRUMENTS AND DOCUMENTS AS MAY BE NECESSARY FOR THE INTEREST PAYMENTS ON THE PROMISSORY NOTE TO BE TAX EXEMPT.

WHEREAS, the Redevelopment Agency of The City of San Diego (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Centre City Redevelopment Project (the "Project"); and

WHEREAS, in order to carry out and implement the Redevelopment Plan, the Agency proposes to acquire certain real property (the "Property") in the Project area from David Engel, as Trustee u/t/d dated May 20, 1992 (the "Seller") for the purpose of (1) using a portion of the Property (the "Southerly Parcel") as part of the King Promenade, and (2) leasing and selling the remaining portion of the Property (the "Northerly Parcel") to the Children's Museum, a California nonprofit public benefit corporation (the "Museum") pursuant to the terms and provisions of a certain Disposition Agreement (the "Disposition Agreement") for use as a children's museum and other uses, as described in the Agreement; and

WHEREAS, the Purchase Agreement provides for a means of financing

the purchase of the Property that includes (1) a cash payment of \$450,000 at the close of escrow, and (2) the issuance by the Agency of a promissory note to Seller (the "Note") in the principal amount of \$4,800,000, evidencing the obligation of the Agency to make monthly payments to the Seller of interest only at the rate of 6% per annum (the "Interest Payments"), with all principal and interest due and payable in ten (10) years, secured by a deed of trust that will initially encumber the entire Property, but, following the reconveyance of the Southerly Parcel immediately following the close of escrow as provided in the Purchase Agreement, encumbering only the Northerly Parcel (the "Deed of Trust"); and

WHEREAS, the Seller and the Agency intend the Agency to take such actions as may be necessary so that the Interest Payments will be excluded from gross income for purposes of federal income taxes under the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Seller has submitted to the Agency and the Council of The City of San Diego copies of the proposed Purchase Agreement in a form desired by the Seller; and

WHEREAS, Centre City Development Corporation, Inc., has reviewed and discussed the proposed Purchase Agreement, and has recommended that the City Council approve and the Agency enter into the Purchase Agreement; and

WHEREAS, the Agency and the City Council held a point public hearing on the proposed purchase and financing of such Property pursuant to the Purchase Agreement; having duly published notice of such public hearing and made copies of the proposed Purchase Agreement and other reports and documents available for public inspection and comment; and

WHEREAS, the Council has duly considered all terms and conditions of the proposed purchase and financing of the Property and believes that the purchase and financing of the Property pursuant to the proposed Purchase Agreement is in the best interests of 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; NOW, THEREFORE,

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

1. That the Agency recognizes that it has received and heard all oral and written objections to the proposed Purchase Agreement, to the proposed purchase and financing of the Property pursuant to the proposed Purchase Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.

2. As the agency responsible for carrying out the Redevelopment Plan for the Centre City Redevelopment Project, the Agency has determined that the proposed purchase and financing of the Property under the Purchase Agreement is of a class of projects which have been determined not to have a significant effect on the environment and which

are therefore categorically exempt from the provisions of the California Environmental Quality Act.

3. That the Agency hereby approves the Purchase Agreement, and the purchase and financing of the Property as provided in the Purchase Agreement, including the issuance of the Note as provided therein.

4. That the Executive Director of the Agency, or designee, is hereby authorized, to execute the Purchase Agreement on behalf of the Agency, provided that the City Council has first approved the Agreement. A copy of the Purchase Agreement, when executed by the Agency, shall be placed on file in the office of the Secretary to the Agency as Document No. 2166.

5. That the Executive Director of the Agency, or designee, is hereby authorized, on behalf of the Agency, to execute the Note and all other documents and instruments necessary and appropriate to carry out and implement the Purchase Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement, including, without limiting the generality of the foregoing, such certificates, opinions, documents and instruments, including a tax regulatory agreement in the form recommended by bond counsel, as may be necessary to assure that, for Federal income tax purposes, interest paid on the Note shall not be included in the gross income of the holder of the Note, and that the Note will not become an "arbitrage bond" within the meaning of the Internal Revenue Code.

6. That the Executive Director of the Agency, or designee, is hereby authorized, on behalf of the Agency, to make such amendments or modifications to the Purchase Agreement, the Note and any document or instrument executed in connection with the Disposition Agreement with the Museum, to assure that, for Federal income tax purposes, interest paid on the Note shall not be included in the gross income of the holder of the Note.

7. That the Agency currently has an agreement for bond counsel services with the law firms of Robinson & Pearman and Gray, Cary, Ware & Friedenrich. The Agency hereby approves Robinson & Pearman and Gray, Cary, Ware & Friedenrich (hereinafter referred to as "Co-Bond Counsel") to provide bond counsel services in connection with the issuance by the Agency of the Note, which serves shall include, among others, assuring that, for Federal income tax purposes, interest paid by the Agency on the Note shall not be included in the gross income of the holder of the Note. The Agency intends that all fees and expenses billed to the Agency by Co-Bond Counsel will be paid for by Seller.

APPROVED: JOHN W. WITT, General Counsel

By

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