

RESOLUTION NUMBER R- 295896

ADOPTED ON DEC 14 2001, 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 City, 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: Phase Funded Design and Construction Management Agreement; 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; Site Lease; Ballpark Facility Lease; Assignment Agreement; Indenture; Contract of Purchase; Declaration of Covenants, Conditions and Restrictions of Park at the Park Owners Association; Joint Use and Management Agreement; and Ballpark Cooperation Agreement; and

WHEREAS, it has become known to the City 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 City Council 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 City to so reaffirm; NOW,  
THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego as follows:

1. That all of the foregoing Recitals are true and correct and the City Council so finds and determines.

2. This City Council hereby declares that it continues to be in the best interest of the City to proceed in accordance with and in furtherance of and be bound by the MOU.

3. All actions of the City Council herefore taken (collectively, "Council 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 City, 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 Council 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 City Council is in furtherance of and implements the mandate of both the Ordinance and the MOU and thus is administrative and non-legislative in character.

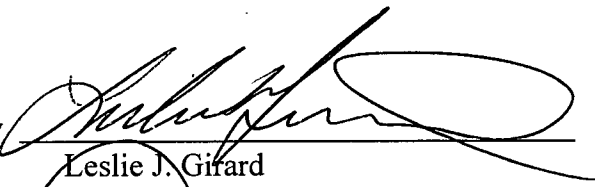
6. To the extent that actions taken hereunder authorize an action which may be deemed to modify the rights and obligation of the Parties as set forth in the MOU, the same are intended as such and do not individually or in the aggregate, materially: (1) decrease the rights or increase the obligations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

7. The City Manager 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 City Manager shall approve, upon the advice of the City Attorney of the City and consistent with this Resolution, such approval to be conclusively evidenced by the execution and delivery thereof by the City Manager.

8. The previous authority to the City Manager 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 City Manager by Resolution No. R-295763, is hereby modified to provide that such extensions agreed to by the City Manager not extend beyond March 31, 2002.

APPROVED: CASEY GWINN, City Attorney

By   
Leslie J. Girard  
Assistant City Attorney

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## REAFFIRMATION AGREEMENT

This Reaffirmation Agreement dated as of this \_\_\_ December, 2001 (the "Agreement") by and among the City of San Diego (the "City"), the Redevelopment Agency of the City of San Diego (the "Agency"), the Centre City Development Corporation ("CCDC") and Padres LP (the "Padres").

### WITNESSETH:

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 Padres L.P. (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 by 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 City, Agency and CCDC, in reliance thereon and in furtherance thereof has proceeded to negotiate, execute and deliver a series of agreements (collectively, the "Agreements"), including extensions of the MOU, pursuant to resolutions or ordinances heretofore adopted, including but not limited to: Phase Funded Design and construction Management Agreement; 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; Site Lease; Ballpark Facility Lease; Assignment Agreement; Indenture; Contract of Purchase; Declaration of Covenants, Conditions and Restrictions of Park at the Park Owners Association; Joint Use and Management Agreement; Disposition and Development Agreement for Sixth and L Street Hotel; Disposition and Development Agreement for Sixth and J Street Hotel and Ballpark Cooperation Agreement; and

WHEREAS, a Director of CCDC (the "Director") engaged in certain business transactions with the Padres; and

WHEREAS, a review of the nature and scope of such business transactions has been performed, and Padres have concurred as to the scope and duration of the activities between, on the one hand, the Director, or any enterprise in which the Director or any person in the Director's immediate family is a director, officer, partner, including limited partner, or shareholder and, on the other hand, the Padres, or any enterprise in which the Padres or any partner, officer or employee of the Padres owns an equity interest (each a "Padres Affiliate"), or with any partner,

director or officer of the Padres or of any Padre Affiliate; and

WHEREAS, 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, each of the respective relevant governing bodies of each of the Parties hereto has declared it to be in its best interest to proceed in accordance with the MOU and authorized the execution and delivery hereof; and

NOW, THEREFORE, the Parties hereto agree as follows:

1. In furtherance of the implementation of the Ordinance at the MOU, each of the parties hereto hereby reaffirms its intent to be bound by the MOU and the terms of each and every of the Agreements, and any amendment thereto, including, but not limited to those set forth in Appendix A hereto, from the intended effective time of the MOU and each Agreement and continuously since that time to the present and continuing hereafter. In addition, each of the Parties hereto ratifies each and every act or action taken or omitted by any of its officers, employees, agents, consultants, attorneys or others to effectuate the purposes of the Ordinance and the MOU and each of the Agreements. However, nothing herein is intended to or shall constitute a waiver of any rights which any party hereto has or may have against any other party



hereto, or otherwise under the MOU or any one or more of the Agreements. In addition, nothing herein is intended to or shall make any party hereto a party to any of the Agreements to which such party is not presently a signatory, nor shall any rights or obligations be created under any of the Agreements by or on behalf of any party hereto unless such party is a signatory to such Agreement. Finally, each of the Parties acknowledges and agrees that it has sought and relied upon the advice of its own counsel as to the effectiveness of the actions taken hereunder.

2. The Padres hereby represent and warrant to the other parties hereto that (a) it has reviewed the Report from the City Attorney dated December 13, 2001, regarding the matters described herein and (b) that the nature and scope of the business activities between the Director and the Padres, directly or indirectly, are accurately described in the Report, and that no other business relationship, direct or indirect, exists between, on the one hand, the Director or any related enterprise, and, on the other hand, the Padres or any Padres Affiliate. Padres understands that each of the City, the Agency and CCDC, their agents, consultants, lawyers and others will rely upon the commitments of the parties set forth herein in taking action seeking to reaffirm actions taken under or in furtherance and effectuation of the MOU or the Ordinance, and by execution hereof authorizes such reliance, and agrees that each of the foregoing is a third party beneficiary hereof.

3. All written notices to be given hereunder shall be given by first class mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:

City of San Diego  
202 C Street  
San Diego, California 92101  
Attention: City Manager

If to the Agency:

Redevelopment Agency of the City of San Diego  
202 C Street  
San Diego, California 92101  
Attention: Executive Director

If to the Company:

Centre City Development Corporation  
225 Broadway, Suite 1100  
San Diego, California 92101  
Attention: President

If to the Padres:

San Diego Padres, LLP  
8880 Rio Vista Drive, Suite 400  
San Diego, California 92108  
P.O. Box 122000  
San Diego, California 92112

Each of the parties hereto agrees to promptly give notice to each of the parties of any violations of the terms and conditions to this Agreement.

4. The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other parties hereto. This Agreement will inure to the benefit of and be binding upon the City, the Agency, CCDC and the Padres and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than persons, if any, controlling the Agency, CCDC or the Padres.

5. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California.

6. If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date and year first above written:

CITY OF SAN DIEGO

By \_\_\_\_\_  
Michael T. Uberuaga  
City Manager

REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Michael T. Uberuaga  
Executive Director

CENTRE CENTER DEVELOPMENT CORPORATION

By \_\_\_\_\_  
Peter Hall  
President

PADRES L.P.

By \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
CASEY GWINN, City Attorney

By \_\_\_\_\_  
Leslie J. Girard  
Assistant City Attorney

## APPENDIX A

1. Phase Funded Design and Construction Management Agreement
2. Security Agreement
3. Padres' Commitment Concerning Hotel Program
4. Memorandum of Agreement for the Extension of the Partial Use and Occupancy Agreement for Qualcomm Stadium
5. Ballpark Design Build Procurement Consultant Agreement
6. Guaranty Agreement Concerning Design Build Procurement Consultant Agreement
7. Ballpark and Redevelopment Project Implementation Agreement
8. First, Second, Third and Fourth Supplements to the Ballpark and Redevelopment Project Implementation Agreement
9. Second Ballpark and Redevelopment Project Implementation Agreement
10. Site Lease
11. Ballpark Facility Lease
12. Assignment Agreement
13. Indenture
14. Contract of Purchase
15. Declaration of Covenants, Conditions and Restrictions of Park at the Park Owners Association
16. Joint Use and Management Agreement
17. Disposition and Development Agreement for Sixth and L Street Hotel
18. Disposition and Development Agreement for Sixth and J Street Hotel
19. Ballpark Cooperation Agreement