

RESOLUTION NUMBER R- 296812

ADOPTED ON JUL 16 2002

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [Ordinance] which authorized and directed the City to enter into a Memorandum of Understanding [MOU] with the San Diego Padres [Padres], the Redevelopment Agency of the City of San Diego [Agency], and the Centre City Development Corporation [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, the Agency, CCDC and Padres [collectively "Parties"]; and

WHEREAS, on January 31, 2000, in accordance with the implementation provisions of the MOU, the City Council authorized and directed the City Manager to execute the Ballpark and Redevelopment Project Implementation Agreement [First Implementation Agreement] which provided in part for the lease of certain real property, commonly known as the R7 and P1 parcels, by the Agency and City, respectively, to the Padres for the construction and operation of parking

garages; and

WHEREAS, the First Implementation Agreement was executed by all the Parties; and

WHEREAS, pursuant to the First Implementation Agreement, the land acquisition budget for the Ballpark Project was set at \$100 million, plus, if necessary, certain overruns in the land acquisition budget; and

WHEREAS, on November 20, 2001, in accordance with the implementation provisions of the MOU, the City Council authorized and directed the City Manager to execute the Second Ballpark and Redevelopment Project Implementation Agreement [Second Implementation Agreement] which further modified certain rights and obligations of the Parties; and

WHEREAS, the Second Implementation Agreement was executed by all the Parties; and

WHEREAS, the Parties have further determined the Padres will no longer lease from the Agency the R7 parcel, but will acquire and own the P1 parcel for the purpose of constructing and operating a parking garage; and

WHEREAS, it is therefore necessary and appropriate to reduce the land acquisition budget for the Ballpark Project by the estimated amount to acquire the P1 parcel; and

WHEREAS, the rights and obligations of the Parties and others with respect to the R7 parcel have been previously approved and set forth in the Second Implementation Agreement to the Disposition and Development Agreement for the Sixth and L Street (Omni) Hotel; and

WHEREAS, the MOU and related Ballpark Project agreements do not address the responsibilities of the Parties to pay for certain environmental mitigation costs as identified in the Environmental Impact Report for the Ballpark Project; and

WHEREAS, the Parties have reached agreement as to their respective responsibilities for such expenses; and

WHEREAS, it is now timely and appropriate to consider such further actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance, MOU, First Implementation Agreement and Second Implementation Agreement, consistent with the City's and Agency's obligations under California law, and the discretion lawfully vested in the City Council acting on behalf of the City; and

WHEREAS, nothing heretofore has occurred, nor is there any action herein, that modifies the \$225 million cap on the City's investment in the Project specified in Section XV of the MOU, or causes or obligates the City to spend any funds in excess of that amount; and

WHEREAS, modifications to the rights and obligations of the Parties as set forth in the MOU may be authorized without a vote of the City's electorate if such modifications do not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City; and

WHEREAS, to the extent that the rights and obligations of the Parties as set forth herein, or as previously set forth in the First Implementation Agreement, Second Implementation Agreement or any of their Supplements, are deemed to modify the rights and obligations of the Parties as set forth in the MOU, the same were intended as such, and the Parties agree that such actions did not, 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 revenue to the City; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the foregoing recitals are true and correct, and the City Council so finds and determines as being in the best interests of the City.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and

directed to execute for and on behalf of the City the Third Ballpark and Redevelopment Project Implementation Agreement [Third Implementation Agreement], attached hereto as Exhibit 1.

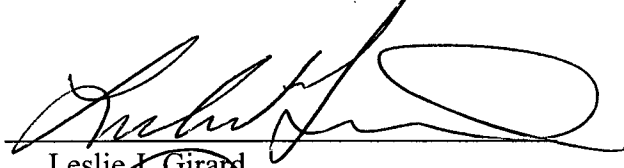
When that agreement is fully executed, it shall be kept on file in the Office of the City Clerk as

Document No. RR- **296812**.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and directed to monitor the area of Pershing Drive and Redwood Street, particularly during ballgames, to determine traffic impacts arising from the operation of the Ballpark; and is further directed to undertake any necessary mitigation measures including the installation of a traffic signal at the intersection of Pershing Drive and Redwood Street, such measures to be paid for using available Ballpark Project mitigation funds as authorized by Redevelopment Agency Resolution No. R- 03510

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and directed to take such other and further actions, and negotiate, prepare and execute such documents, as may be necessary or appropriate to implement the intent and purposes of this resolution, the Ordinance, the MOU, the First Implementation Agreement, the Second Implementation Agreement, or the Third Implementation Agreement, consistent with the rights and obligations of the City pursuant to the Ordinance, MOU, Implementation Agreement, Second Implementation Agreement, and Third Implementation Agreement, and their authorizing ordinances and resolutions.

APPROVED: CASEY GWINN, City Attorney

By 
Leslie J. Girard
Assistant City Attorney

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**THIRD BALLPARK AND REDEVELOPMENT
PROJECT IMPLEMENTATION AGREEMENT**

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [Ordinance] which authorized and directed the City to enter into a Memorandum of Understanding [MOU] with the San Diego Padres [Padres], the Redevelopment Agency of the City of San Diego [Agency], and the Centre City Development Corporation [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, the Agency, CCDC and Padres [collectively "Parties"]; and

WHEREAS, in early 2000, in accordance with the implementation provisions of the MOU, the Parties executed the Ballpark and Redevelopment Project Implementation Agreement [First Implementation Agreement] which provided in part for the lease of certain real property, commonly known as the R7 and P1 parcels, by the Agency and City, respectively, to the Padres for the construction and operation of parking garages; and

WHEREAS, pursuant to the First Implementation Agreement, the land acquisition budget for the Ballpark Project was set at \$100 million, plus, if necessary, responsibility for expenses in excess of \$100 million for land acquisition; and

WHEREAS, on November 30, 2001, in accordance with the implementation provisions of the MOU, the Parties executed the Second Ballpark and Redevelopment Project Implementation Agreement [Second Implementation Agreement] which further modified certain rights and obligations of the Parties; and

WHEREAS, the Parties have further determined that the Padres will no longer lease from the Agency the R7 parcel, but will acquire and own the P1 parcel for the purpose of constructing and operating a parking garage; and

WHEREAS, it is therefore necessary and appropriate to reduce the land acquisition budget for the Ballpark Project by the originally estimated and budgeted amount to acquire the P1 parcel; and

WHEREAS, the rights and obligations of the Parties and others with respect to the R7 parcel have been previously approved and set forth in the Second Implementation Agreement to the Disposition and Development Agreement for the Sixth and L Street Hotel [Omni DDA]; and

WHEREAS, the MOU and related Ballpark Project agreements do not address the responsibilities of the Parties to pay for certain environmental mitigation costs as identified in the Supplemental Environmental Impact Report for the Ballpark Project; and

WHEREAS, the Parties have reached agreement as to their respective responsibilities for such expenses; and

WHEREAS, it is now timely and appropriate to consider such further actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance, MOU, First Implementation Agreement and Second Implementation Agreement; and

WHEREAS, nothing heretofore has occurred, nor is there any action herein, that modifies the \$225 million cap on the City's investment in the Project specified in Section XV of the MOU, or causes or obligates the City to spend any funds in excess of that amount; and

WHEREAS, modifications to the rights and obligations of the Parties as set forth in the MOU may be authorized without a vote of the City's electorate if such modifications do not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City; and

WHEREAS, to the extent that the rights and obligations of the Parties as set forth herein, or as previously set forth in the First Implementation Agreement, Second Implementation Agreement or any of their Supplements, are deemed to modify the rights and obligations of the Parties as set forth in the MOU, the same were intended as such, and the Parties agree that such actions did not, 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 revenue to the City; NOW, THEREFORE,

The Parties agree as follows:

I Definitions.

In addition to any definitions set forth herein, capitalized terms have the same meaning as given to them in the MOU.

II Effective Date And Term.

This Agreement shall be effective upon execution by all the Parties, which date is _____, 2002, and shall be in effect for as long as the MOU is effective.

III P1 Parcel and Parking Garage.

Notwithstanding Part III of the First Implementation Agreement, the rights and obligations of the Parties solely with respect to the P1 parcel and parking garage shall be as follows:

A. Acquisition of P1. The Agency owns that approximately 10,000 square foot portion of the P1 Parcel described as Assessor's Parcel Number 535 125 12 [the Agency Parcel]. The Agency will use its powers of eminent domain to acquire the remainder of the P1 Parcel [the Private P1 Portion] from the third-party owners thereof. The Agency's obligation to commence acquisition of the Private P1 Portion by eminent domain shall be subject to Padres causing the deposit of funds with the Agency in an amount equal to the total acquisition costs of the Private P1 Portion, as reasonably determined by CCDC [the P1 Parcel Funds].

B. Subdivision of P1 Parcel. Upon the Agency's acquisition of the Private P1 Portion pursuant to paragraph III.A above, and upon completion of design of the P1 Garage Parcel (defined below) improvements, the Agency shall cause the subdivision of the P1 Parcel to create: (1) a parcel consisting of the minimum area required under applicable law to accommodate the parking garage that will be constructed by Padres, JMI Realty, Inc. {JMI Realty}, or other related entity pursuant to paragraph III.E below [the P1 Garage Parcel]; and (2) a parcel consisting of the balance of the P1 Parcel of sufficient buildable depth (a minimum of 20

feet) to permit the Agency to cause to be constructed apartments and retail development pursuant to paragraph III.E below [the Residential/Retail Parcel(s)].

C. Demolition/Remediation. The Agency will complete demolition of existing buildings and will be responsible for soil remediation in accordance with procedures in place regarding the Ballpark.

D. Transfer of P1 Garage Parcel. After completion of all of the actions set forth in paragraphs III.A, III.B and III.C above, the Agency shall transfer the P1 Garage Parcel to Padres/JMI Realty. If the reparcelized P1 Garage Parcel is from 50,000 to 52,000 sq. ft. in area, the purchase price will equal the Agency's All-In Costs for the Private P1 Portion; if the P1 Parking Garage Parcel is less than 50,000 sq. ft. in area, the purchase price will equal the product of the area of the P1 Garage Parcel and the Agency's All-In Costs for the Private P1 Portion, on a blended, per sq. ft. basis [collectively, P1 Garage Parcel Price]. The Agency shall deliver the excess of the P1 Parcel Funds (with interest earned thereon) over the P1 Garage Parcel Price, if any, to Padres/JMI Realty concurrently with the transfer of the P1 Garage Parcel. Title to the P1 Garage Parcel shall transfer to Padres/JMI Realty free and clear of all liens and encumbrances, except for any Disposition and Development Agreement (or similar agreement) between the Agency and Padres/JMI Realty. Costs incurred by the Agency in connection with the acquisition of the P1 Parcel will not be deemed a part of Ballpark Project land acquisition.

E. Construction on P1 Parcel.

1. Construction of all streetscape and public right-of-way improvements on the P1 Parcel shall be sequenced to accommodate construction of improvements on the P1 Parcel.

2. Upon Padres/JMI Realty's acquisition of the P1 Garage Parcel, Padres/JMI Realty shall construct a parking garage on the P1 Garage Parcel [the P1 Garage] with the number of parking spaces determined in accordance with paragraph III.F, below. The P1 Garage shall include a fire-rated wall to accommodate Type 5 residential construction wherever the P1 Garage abuts the Residential/Retail Improvements (defined below). The parties will exercise diligent and good faith efforts to agree upon a design for the P1 Garage that minimizes fire-rated wall construction and mechanical ventilation of parking areas.

3. The Agency shall cause the construction of apartments and/or ground-floor retail on the Residential/Retail Parcels [the Residential/Retail Improvements], at its sole cost and expense. All such design and construction shall be done in a cooperative and timely manner to accommodate Padres/JMI Realty's design, entitlement processing and construction schedule of the P1 Garage. Alternately, the Agency may request that Padres/JMI Realty design and construct the Residential/Retail Improvements for which Padres/JMI Realty will be paid a mutually acceptable development fee.

F. P1 Use.

1. The P1 Garage will contain at least 1,109 parking spaces including 109 parking spaces to serve the Residential/Retail Parcels. Padres/JMI Realty shall have the right to increase the total number of parking spaces subject to applicable law. Other than the requirements for the construction and maintenance of a parking garage, there shall be no restrictions on the use of the P1 Garage or on the rates charged for parking.

2. Padres/JMI Realty shall construct the number of parking spaces required for the Residential/Retail Parcels [the Residential/Retail Spaces] as determined in accordance with paragraph III.F.1. The Agency shall advance all of the costs to Padres/JMI Realty to pay for all of the design and construction costs of the Residential/Retail Spaces, in the time and manner and subject to the requirements of section 708 of the Omni DDA. Padres/JMI Realty shall grant the Agency an easement for the use and occupancy of the Residential/Retail Spaces in the time and manner and subject to the requirements of section 709 of the Omni DDA. The Residential/Retail Spaces are anticipated to be below grade and physically separated from the remaining portions of the P1 Garage and, subject to design necessities, shall be contiguous and in close proximity to the Residential/Retail Parcels. The Agency shall pay or cause to be paid all operating expenses attributable to the Residential/Retail Spaces. Padres/JMI Realty shall negotiate in good faith with the Agency to determine the method for allocating operating costs of the P1 Garage. Upon Padres/JMI Realty's request, the City/Agency shall grant to Padres/JMI Realty such easements over the Residential/Retail Parcels as are necessary to provide access from the P1 Garage to Tenth Avenue and J Street, in locations reasonably acceptable to Padres/JMI Realty.

IV R7 Parcel and Parking Garage.

Notwithstanding Part III of the First Implementation Agreement, the rights and obligations of the Parties solely with respect to the R7 Parcel and parking garage shall be as set forth in the Omni DDA.

V Land Acquisition Budget.

The Ballpark Project land acquisition budget shall be reduced from \$100 million to \$94 million (to account for the budgeted amount for P-1 land acquisition), and all related land acquisition funding obligations set forth in Part III of the First Implementation Agreement, and Part III of the Second Implementation Agreement shall be adjusted accordingly.

VI EIR Mitigation Costs.

1. Noise and Light. Padres/JMI Realty and the Agency will share equally in the cost of the following mitigation measures as described in the Mitigation, Monitoring and Reporting Program [MMRP] for the Ballpark Project EIR [SEIR] except that the Agency's liability shall not exceed \$3 million: 8.2-2, 8.3-1 and 9.2-1.

2. Traffic. Padres/JMI Realty shall pay one-half of the direct costs incurred in completing the following traffic improvements prior to the issuance of a certificate of occupancy for the Ballpark:

a. Restripe A Street from east of Tenth Avenue to Eleventh Avenue for the purpose of adding a new eastbound lane and restripe all approaches to the Harbor Drive/Park Boulevard intersection for the purpose of providing dual left-turn lanes on such approaches (MMRP mitigation measure 13.2-1); and

b. Signalize the intersection of 17th Street and Imperial Avenue; signalize the intersection of 17th and J Streets; and widen and restripe 17th Street, south of the southbound I-5 off-ramp to provide one left-turn lane, one left-turn/through lane, and two right-turn lanes (MMRP mitigation measure 13.2-2).

The cost of all traffic infrastructure improvements required by the following MMRP mitigation measures shall be the sole responsibility of the Agency: 13.1-2, 13.1-3, 13.1-4, 13.1-5, 13.1-6, 13.2-3 and 13.2-5.

VII Capital Expenditure Reserve Fund

The Padres will assume the City's obligation to fund annual contributions (\$250,000 per year) to the Capital Expenditure Reserve Fund described in section XXII.G of the MOU and section 8.6 of the Joint Use and Management Agreement. Any funds remaining in the Capital Expenditure Reserve Fund at the end of Padres' occupancy of the Ballpark shall be owned by the Padres.

VIII Continuation Of Rights And Obligations.

Nothing in this Third Implementation Agreement modifies the rights or obligations of the Parties as set forth in the MOU, First Implementation Agreement, Second Implementation Agreement, or any other Ballpark Project related agreements except as specifically set forth herein.

The terms of this Third Implementation Agreement modify certain of the rights and obligations of the Parties as set forth in the MOU, but the Parties agree that none of the modifications 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 revenue to the City. Except as specifically set forth herein, the rights and obligations of the Parties pursuant to the MOU, and all related agreements between the Parties, or any of them, remain unchanged.

PADRES L.P.

CITY OF SAN DIEGO

By: _____

Robert J. Vizas
Chief Executive Officer

By: _____

Michael T. Uberuaga
City Manager

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

CENTRE CITY DEVELOPMENT
CORPORATION

By: _____

Michael T. Uberuaga
Executive Director

By: _____

Peter Hall
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this ____ day
of November, 2001.

CASEY GWINN, City Attorney

By: _____

Leslie J. Girard
Assistant City Attorney