

RESOLUTION NUMBER R- 299725

ADOPTED ON OCT 04 2004

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, the City Council adopted Resolution No. R-292700, which authorized and directed the City Manager to execute certain Covenants, Conditions and Restrictions [CC&Rs] governing the relationship of the owners of the Ballpark and Outfield Park (the City and the Padres), and the owners of the parcels surrounding the Outfield Park (now known as East Village Square or EVS); and

WHEREAS, the CC&Rs were not executed at that time as the parties anticipated that changes would be required depending upon the final configuration of the Outfield Park and EVS; and

WHEREAS, the City, Agency and Padres subsequently negotiated for certain revisions to the program of redevelopment for EVS, as contemplated by Section XXXI of the MOU; and

WHEREAS, the City, Agency and Padres agreed to reconfigure the size of the Outfield Park from the footprint approved by Parcel Map 18855; eliminate proposed encroachments into the former public rights of way within EVS and the Outfield Park; limit the height of any building proposed to be developed in the "center field" parcel of EVS (Parcel 3 of Parcel Map 18855) and address the total square footage to be redeveloped as part of EVS and other issues related to the redevelopment of EVS; and

WHEREAS, on August 5, 2003, the City Council authorized and directed the City Manager to execute the Fourth Ballpark and Redevelopment Project Implementation Agreement which embodied the modifications to the Outfield Park and EVS as described above; and

WHEREAS, it is now timely and appropriate to modify the CC&Rs to be consistent with the revised program for the Outfield Park and EVS and to consider such further actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance, MOU, Implementation Agreement, Second Implementation Agreement, the Third Implementation Agreement and Fourth 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 set forth herein, or as previously set forth in the Implementation Agreement, Second Implementation Agreement, Third Implementation Agreement or Fourth 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,

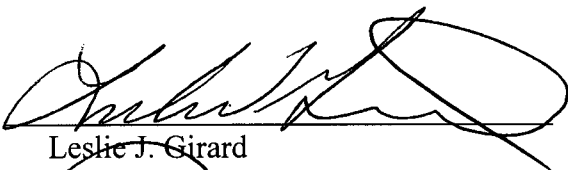
BE IT RESOLVED, by the Council of the City of San Diego, that the foregoing recitals are true and correct, and the City Council so finds and determines as being in the best interests of the City.

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 CC&Rs, attached hereto as Exhibit 1. When the CC&Rs are fully executed and recorded, it shall be kept on file in the Office of the City Clerk as Document No. RR- 299725

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, the Third Implementation Agreement or Fourth Implementation Agreement, consistent with the rights and obligations of the City pursuant to the Ordinance, MOU, Implementation Agreement, Second Implementation Agreement, Third Implementation Agreement, and Fourth Implementation Agreement, and their authorizing ordinances and resolutions.

APPROVED: CASEY GWINN, City Attorney

By



Leslie J. Girard
Assistant City Attorney

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