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MEET

(R-2006-219)
(REV. COPY)

RESOLUTION NUMBER R- 300952

ADOPTED ON OCT 18 2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SALE OF CERTAIN PROPERTY GENERALLY LOCATED TO THE IMMEDIATE SOUTH OF THE INTERSECTION OF PARK BOULEVARD AND THE 12TH AVENUE TROLLEY RIGHT OF WAY (EAST OF PETCO PARK) IN THE CENTRE CITY REDEVELOPMENT PROJECT AREA [AGENCY SALES PARCEL] TO BALLPARK VILLAGE LLC; AND DIRECTING CERTAIN REVISIONS TO THE OWNER PARTICIPATION AGREEMENT AS DESCRIBED HEREIN; AND APPROVING THE OWNER PARTICIPATION AGREEMENT, THE MASTER PLAN AND THE AFFORDABLE HOUSING AGREEMENT PERTAINING TO PARCELS C AND D (INCLUDING THE AGENCY SALES PARCEL) AS REVISED HEREIN; AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH SALE.

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 Centre City Redevelopment Project [Project]; and

WHEREAS, in order to carry out and implement such Redevelopment Plan the Agency proposes to enter into an Owner Participation Agreement [OPA] with Ballpark Village LLC, a Delaware limited liability company [Participant], regarding the redevelopment of certain property within the Project Area known as Parcel C and Parcel D [Site]. Parcel C is bounded by 12th Avenue on the east, Imperial Avenue to the south and Park Boulevard on the northwest. Parcel D is bounded by Imperial Avenue to the north, 11th Avenue to the east, Park Boulevard to the west and the trolley tracks and rail yards to the south. Parcel C and Parcel D would be developed as a mixed use development of a variety of land uses including residential, office,

commercial retail and/or hotel and service uses, parking, and other uses, including a required affordable housing component to be developed by Participant in accordance with a proposed Affordable Housing Agreement by and between Agency, Participant and the San Diego Housing Commission; and

WHEREAS, pursuant to the terms and conditions of the proposed OPA, the Agency proposes to sell to the Participant that portion of the Site described in the OPA as the Agency Sales Parcel (generally located to the immediate south of the intersection of Park Boulevard and the 12th Avenue trolley right of way); and

WHEREAS, all development on the Site is proposed to be governed by a Master Plan specifying development standards and controls for the Site; and

WHEREAS, the Participant has submitted to the Agency and the City Council of the City of San Diego [City Council] copies of said proposed OPA including the proposed Master Plan and proposed Affordable Housing Agreement in a form desired by the Participant; and

WHEREAS, Centre City Development Corporation, Inc., has reviewed and discussed said proposed OPA and said proposed Master Plan and said proposed Affordable Housing Agreement, and has recommended that the City Council approve and the Agency enter into the OPA with Participant and that the City Council approve a variance to the City's Inclusionary Housing Ordinance pursuant to section 142.1304(c) of the Ordinance in the form of the Affordable Housing Agreement and that the Agency enter into the Affordable Housing Agreement with Participant and the San Diego Housing Commission; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, sections 33000, et seq.) the Agency and the City Council held a joint

public hearing on the proposed sale of the Agency Sales Parcel pursuant to such OPA, having duly published notice of such public hearing and made copies of the proposed OPA and other reports and documents available for public inspection and comment; and

WHEREAS, the City Council has duly considered all terms and conditions of the proposed sale of real property and believes that the development of the real property pursuant to the proposed OPA 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; and

WHEREAS, the Planning Commission, in a public hearing on August 25, 2005, having duly noticed such public hearing, has recommended to the City Council the approval of findings for a variance to the City's Inclusionary Housing Ordinance in accordance with section 142.1304(c) of the Ordinance (Municipal Code section 142.1301 et seq.) in connection with the development of the Site by Participant in accordance with the Affordable Housing Agreement [Variance]; and

WHEREAS, the San Diego Housing Commission, in a public meeting on August 26, 2005, has recommended the City Council's approval of deviations from the City's Inclusionary Housing Ordinance in the form of the Affordable Housing Agreement and authorized its President and Chief Executive Officer to execute the Affordable Housing Agreement; and

WHEREAS, the San Diego Housing Commission, in a public meeting on October 5, 2005, determined that either and both the Affordable Housing Agreement and the "Ballpark Village Rental Housing Project Requirements," attached hereto as Attachment A, meet the requirements of the City's Inclusionary Housing Ordinance; and

WHEREAS, the City Council, in a concurrent public hearing, having duly noticed such public hearing, has granted the Variance pursuant to section 142.1304(c) of the Inclusionary Housing Ordinance, and based thereon the City Council has determined that, with respect to the City's Inclusionary Housing Ordinance, the requirements set forth in the OPA and the Affordable Housing Agreement may govern the Site's compliance with the Inclusionary Housing Ordinance; and

WHEREAS, the City Council has duly considered the Master Plan which specifies the development standards and controls governing the Site pursuant to the terms and conditions of the OPA; NOW, THEREFORE,

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

1. That the City Council recognizes that it has received and heard all oral and written objections to the proposed Owner Participation Agreement including the Master Plan and Affordable Housing Agreement and to the proposed sale of the real property pursuant to the proposed OPA, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.
2. That the City Council hereby finds and determines that the sale of the real property pursuant to the proposed OPA will assist in the elimination of blight within the Project area, and is consistent with the Implementation Plan for the Centre City Redevelopment Project adopted pursuant to section 33490 of the California Community Redevelopment Law.
3. That the City Council hereby finds and determines that the consideration to be paid by the Participant for the sale of the real property as described in the OPA is not less than

the fair market price and fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale.

4. That the sale of the Agency Sales Parcel, the OPA which establishes the terms and conditions for the sale of the Agency Sales Parcel and development of the Site, the Master Plan specifying the development standards and controls governing the Site (Attachment No. 9 of the OPA), and the Affordable Housing Agreement specifying the terms and conditions for the development of affordable housing on the Site and the Project's compliance with the City's Inclusionary Housing Ordinance (Attachment No. 10 of the OPA) are hereby approved, with the following direction that the OPA, the Master Plan and the Affordable Housing Agreement be revised prior to execution by the Participant and the Executive Director of the Agency to provide:

- a. That the Participant shall provide no less than 35,000 gross square feet (rather than 100,000 gross square feet) of Affordable For-Sale Housing on the Site;
- b. That the Participant shall provide Affordable For-Rent Housing off-site as provided by Attachment A, "Ballpark Village Rental Housing Project Requirements," attached hereto, and that such Attachment A shall become Attachment No. 11 to the OPA; and
- c. That the Participant's compliance with the on-site and off-site Affordable Housing requirements as described above shall relieve Participant of the payment of In-Lieu Fees which otherwise would have been required by the City's Inclusionary Housing Ordinance. In no event shall the payment of In-Lieu Fees relieve Participant of its obligations to satisfy the on-site and off-site Affordable Housing requirements as described above; and

- d. Further, that the following constitutes a Condition of Approval of the Ballpark Village Project to be developed on the Site:

Disclosure Condition: The Ballpark Village Project proponent, or any subsequent seller of residential units within the Ballpark Village Project, shall provide a disclosure to all initial purchasers of residential units within the Ballpark Village Project notifying them that the property is located in the vicinity of railroad, marine terminal and other industrial uses and that the property could be exposed to noise, vibration, fumes, particulate matters (dust), odors, or other similar impacts from these uses. This disclosure shall be substantially in the form attached hereto as Attachment B, or otherwise acceptable to the City and Redevelopment Agency. This disclosure shall also be included within the Ballpark Village Project's Covenants, Conditions and Restrictions (CC&Rs) and the State Department of Real Estate public report known as the "white paper."

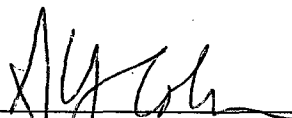
5. That the City Council hereby authorizes the City Clerk to deliver a copy of this Resolution to the Executive Director of the Agency. A copy of the OPA, when executed by the Agency, shall be placed on file in the office of the City Clerk as Document No.

RR 300952⁻¹. A copy of the Affordable Housing Agreement, when executed by the Agency, shall be placed on file in the office of the City Clerk as Document No. RR 300952⁻².

6. That the City Manager, or his designee, is hereby authorized, on behalf of the City Council, to sign all documents necessary and appropriate to carry out and implement the OPA, the Master Plan and the Affordable Housing Agreement and to administer the City's obligations, responsibilities and duties to be performed under said OPA, the Master Plan and Affordable Housing Agreement.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Susan Y. Cola
Deputy City Attorney

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Attachment A

Ballpark Village Rental Housing Project Requirements

Ballpark Village LLC ("BPV") shall cause the construction of a rental housing development (the "Affordable Project") on an off-site location (or locations) within the Centre City community planning area.

The following conditions, as recommended by the Board of the San Diego Housing Commission and consistent with the requirements of the Inclusionary Housing Ordinance (the "Ordinance"), shall be met in the Affordable Project to be constructed by BPV.

Within 90 days of approval of the Owner Participation Agreement, BPV shall submit the following items to the staff of the San Diego Housing Commission (SDHC) and the Centre City Development Corporation (CCDC):

1. Title information and plat maps for the proposed location (or locations) of the Affordable Project;
2. Basic conceptual design for the building or buildings that comprise the Affordable Project, including without limitation, parking layout, ingress and egress, open space, and any required first-floor retail configuration;
3. Development budget and financing plan (including operating pro-formas) for the Affordable Project;
4. Proposed mix of studio, one-, two-, and three-bedroom units.

CCDC and SDHC shall review the information provided by BPV in order to make an initial determination whether:

1. the Affordable Project as proposed complies with the Ordinance and the Centre City Planned District Ordinance;
2. the proposed Affordable Project is financially feasible;
3. the proposed Affordable Project meets all necessary site, design, and livability standards for affordable housing; and
4. there is a reasonable likelihood that the Affordable Project could comply with the requirements of the California Environmental Quality Act as implemented by the Redevelopment Agency and the City of San Diego.

Within 60 days after receipt of CCDC's and SDHC's affirmative initial determination as provided above, and authorization to proceed, BPV shall submit a Centre City Development Permit application (or applications) for the Affordable Project together with updates to the development budget, financing plan, operating proformas and other documentation as required in connection therewith. CCDC and SDHC shall review BPV's submission (or submissions) to determine whether: (i) the Affordable Project as described by such submission complies with the Ordinance; (ii) the Affordable Project is

financially feasible; (iii) the Affordable Project complies with the Centre City Planned District Ordinance, subject to the conditions of approval of the Permit; and (iv) the Affordable Project complies with the requirements of the California Environmental Quality Act as it is implemented by the Redevelopment Agency and the City of San Diego. The Centre City Development Permit or Permits shall be approved or disapproved by the Redevelopment Agency.

The Affordable Project shall meet the following criteria:

- Prior to the issuance of the first building permit for the Ballpark Village project, BPV shall assure the timely construction and occupancy of the Affordable Project by posting a performance bond (or other similar security) equal to the total development cost of the Affordable Project and executing agreements satisfactory to the President and CEO of the Housing Commission.
- The Ballpark Village project shall satisfy its requirement under the Inclusionary Housing Ordinance by providing housing units instead of paying an in-lieu fee.
- The Affordable Housing Project shall provide a sufficient number of units such that, when added together with the number of units provided on-site in accordance with Attachment No. 10 of the Agreement, the total number of affordable units provided by the Participant on-site and off-site shall not be less than 10% of the total number of units developed on the Site or 150 units (whichever is greater). The Affordable Housing Project shall be affordable at no more than 65% AMI for 55 years. It is further anticipated that a certain percentage of units shall be significantly below 65% AMI in order to compete for state and federal financing sources.
- The Affordable Project may compete for all federal and state housing funds (to include tax credits, housing revenue bonds, MHP, AHP), but locally controlled funds (including but not restricted to HOME, housing trust fund, inclusionary in-lieu fees, Redevelopment set aside funds) shall not be used to develop the affordable units.
- The mix of bedroom sizes shall be comparable to the market rate project.
- Any off-site location(s) shall demonstrate financial feasibility and receive all appropriate environmental and development approvals.
- The timing of the construction and occupancy of the Affordable Project shall include the following timetable:
 - A. Issuance of building permits for the Affordable Project shall occur upon the earlier of: (i) the issuance of building permits for the construction of the 750th market rate dwelling unit (number of units which represents 50% of the market rate units for the Ballpark Village project); or (ii) within eighteen (18) months of the issuance of the first building permit for a market-rate unit within the Ballpark Village project;
 - B. Completion of construction of the Affordable Project shall occur upon the earlier of: (i) twenty-four (24) months after the issuance of building permits for the Affordable Project; or (ii) the date which is three and one-half years after the earliest date described in paragraph A above;

- C. The issuance of building permits for the 1,125th market rate unit (number of units which represents 75% of the market rate units for the Ballpark Village project) shall not occur until the completion of the Affordable Project is authorized by the City (i.e. a certificate of occupancy has been received).
- D. Occupancy of the Affordable Project by persons meeting the requirements of the Ordinance and the SDHC shall occur not later than one hundred eighty (180) days after the completion of construction as determined in paragraph B above.

These requirements shall be implemented through an affordable housing agreement (and other necessary legal documents) with SDHC's usual and customary contents for a rental housing project in a form and format acceptable to the President and CEO of the SDHC and its general counsel.

ATTACHMENT B

Homeowner Disclosure – Marine Terminal and Rail Facilities

The Tenth Avenue Marine Terminal and BNSF Railway Company rail yard are located and operate in the general vicinity of Ballpark Village. The marine terminal is the site of bulk and breakbulk loading and unloading activities conducted by tenants of the Port of San Diego. Other operations at the terminal include trucking, storage and maintenance activities. The railroad operates trains 24 hours every day. In the future, activities at the terminal and railroad may intensify or may be expanded to include other activities not currently conducted or contemplated. The present and future operations of the terminal and railroad may create significant adverse impacts affecting purchasers, tenants and occupants of Ballpark Village. Those impacts include inconvenience, noise, and interference with the comfortable use and enjoyment of the homes in Ballpark Village. Specifically, there may be noise from operation of equipment, lights and illumination, fumes and odors, dust and debris, vibration, sun blockage and traffic. One potential effect of these impacts may be a diminution in the quality of life for those residing in Ballpark Village and a reduction of the value of homes built there.