

RESOLUTION NUMBER 301888

DATE OF FINAL PASSAGE SEP 19 2006

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE SALE OF CITY-OWNED LAND AT 13TH & BROADWAY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO.

WHEREAS, the City of San Diego is the owner in fee of an approximately 19,000 square foot parcel of land located at 1320 Broadway in San Diego [Property]; and

WHEREAS, the Property was acquired in March 1989, pursuant to Resolution No. R-273091, using the City's Water Capital Outlay Fund; and

WHEREAS, the Centre City Development Corporation [CCDC] desires to develop the Property pursuant to the terms of a Real Estate Purchase and Sale Agreement, in the form attached to this Resolution, with a mixed use project that would include a new fire station and an affordable housing component; and

WHEREAS, the Valuation Division of the City's Real Estate Assets Department reviewed and approved an adjusted appraised value of \$6,380,000 for the Property; and

WHEREAS, the City desires to sell the Property to the Redevelopment Agency of the City of San Diego pursuant to provisions of San Diego Municipal Code section 22.0907 which permit the sale of real property belonging to the City of San Diego to a public agency; and

WHEREAS, the proposed transfer is fair and equitable and in the public interest; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that:

1. The Council finds that the City-owned parcel of land located at 1320 Broadway in San Diego, APN 534-205-08 [Property], is required for a public purpose.

2. The Council deems the sale of the Property to the Redevelopment Agency of the City of San Diego to be fair and equitable and in the public interest.

3. The Mayor is authorized and empowered to execute, for and on behalf of the City of San Diego, a Real Estate Purchase and Sale Agreement, in the form attached to this Resolution, a copy of which is on file in the office of the City Clerk as Document

No. RR- 301888 - 1

4. The Mayor is authorized and empowered to execute, for and on behalf of the City of San Diego, a grant deed conveying the Property to the Redevelopment Agency of the City of San Diego, a copy of which grant deed is on file in the Office of the City Clerk as Document


No. RR- 301888 - 2

5. The Mayor is authorized to make any non-material changes to the grant deed and the Real Estate Purchase and Sale Agreement, as necessary.

6. The City Auditor is authorized to accept \$6,380,000 and deposit \$3,113,433.41 into Water Department Fund No. 41500, Revenue Account No. 78870 and \$3,266,566.59 into General Capital Outlay Fund 302453; such amounts being subject to modification at the close of escrow to reflect additional interest charges.

7. The Council requests that the Independent Budget Analyst review the Council's policy regarding the placement of proceeds from the sale of City-owned property in the Reserve Fund and report her findings to the Council.

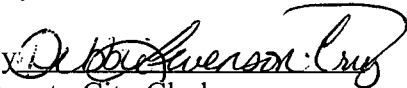
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Brock Ladewig
Chief Deputy City Attorney

BL:bl
06/16/06
09/14/06.Rev.
Or.Dept:READ
R-2007-123.Revised
MMS#3276

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 12 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 9-19-06
(Date)


JERRY SANDERS, Mayor

Vetoed: _____
(Date)

JERRY SANDERS, Mayor

REAL ESTATE PURCHASE AND SALE AGREEMENT

[13th Street and Broadway (APN 534-205-08)]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("SELLER"), and THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California ("PURCHASER"), to be effective upon execution of the parties, final passage of a resolution by the San Diego City Council authorizing this Agreement, and approval by the San Diego City Attorney ("Effective Date"), as follows:

1. **Purchase and Sale; Property.** Under the terms and conditions of this Agreement, SELLER shall sell and convey to PURCHASER, and PURCHASER shall purchase from SELLER the real property ("Property") consisting of approximately 19,000 square feet located at 13th Street and Broadway in the City of San Diego, County of San Diego, State of California, described as Lots 1 to 8, inclusive, according to Map No. 211 filed in the Office of the San Diego County Recorder on June 8, 1886, together with all rights and appurtenances pertaining to the land, and as more particularly described in Exhibit A, attached hereto.
2. **Purchase Price.** The purchase price of the Property ("Purchase Price") shall be the appraised value of the fee simple interest in the Property, which is Six Million Six Hundred Fifty Thousand Dollars (\$6,650,000), less a credit (the "Purchase Price Credit") of Two Hundred Fifty Thousand Dollars (\$250,000) for the estimated cost to clean up "Hazardous Substances" (as defined in Section 12(b), below) on the Property as provided by this Agreement (see Section 12(b), below), less a \$20,000 credit (the "Demolition Cost Credit") for the estimated cost to remove existing structures and encroachments for a Purchase Price of Six Million Three Hundred and Eighty Thousand Dollars (\$6,380,000), payable at the closing of the transaction contemplated by this Agreement (the "Closing").
3. **Open Escrow.** PURCHASER shall open escrow with LandAmerica Commonwealth (the "Title Company") within three (3) business days after the Effective Date.
4. **Closing.** The Closing shall be held at the offices of the Title Company on or before a date (the "Closing Date") that is mutually satisfactory to both the PURCHASER and the SELLER, but in no event later than ninety (90) calendar days after the Effective Date.
 - a. At the Closing, PURCHASER shall execute (where applicable) and deliver to the Title Company for delivery to SELLER, or procure the delivery to SELLER the Purchase Price and any other instruments and documents reasonably required by SELLER or the Title Company to evidence the authority of the PURCHASER and to consummate the transactions contemplated by this Agreement. The Purchase Price shall be immediately paid to SELLER.

DOCUMENT NO. RR-301888-1

FILED SEP 12 2006 Page 1

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

RR-301888

- b. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, SELLER shall not be responsible for any increase in ad valorem taxes resulting from improvements to the Property made by PURCHASER after the Closing Date.
5. **Public Purpose Use.** PURCHASER warrants to SELLER that the Property shall only be used for a "public purpose" as defined by California Community Redevelopment Law (California Health and Safety Code Sections 33000, et seq.). PURCHASER'S warranty hereunder shall survive the Closing.
6. **Survey.** Prior to the Closing, PURCHASER, at PURCHASER'S sole expense, may conduct a current survey of the Property. SELLER shall continue in possession of the Property until the Closing, and shall maintain the Property in its present condition.
7. **Title.** At the Closing, SELLER shall convey good and indefeasible fee simple title to the Property to PURCHASER or PURCHASER'S nominee by a "Grant Deed" in the form attached hereto as EXHIBIT B (the "Grant Deed"), subject to zoning and building laws and ordinances, and acts done or suffered by PURCHASER, or claims made by, through, or under PURCHASER.
8. **Escrow Costs.** PURCHASER shall pay all costs of escrow, including without limitation title insurance policy costs, recording fees, escrow fees, and any other fees associated with the escrow.
9. **Title Insurance.** PURCHASER shall pay the standard premium for SELLER'S title insurance.
10. **No Leasing by SELLER.** SELLER represents and warrants that as of the Effective Date, there are no leases of all or any portion of the Property. SELLER shall not enter into any new leases with respect to the Property after the Effective Date.
11. **Loss or Damages to Property or Improvements.** Loss or damage to the Property occurring prior to the Closing shall be at SELLER'S risk. In the event of loss or damage to the Property prior to the Closing, SELLER shall take all actions necessary to prevent or eliminate a condition of danger or nuisance. Use of insurance proceeds for this purpose is at the discretion of SELLER. However, SELLER has no obligation to provide any insurance coverage for the Property after the Closing.

12. Acceptance of Environmental Conditions.

- a. PURCHASER acknowledges that it is purchasing the Property on an “as-is” basis with no representations or warranties of any kind, expressed or implied, either oral or written, made by SELLER or any agent or representative of SELLER with respect to any structural or physical condition of the Property, or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Property. SELLER has made and makes no warranty or representation regarding the fitness of the Property, or any portion of the Property, as to any particular use, quality or merchantability. To the best of its actual knowledge, without any duty of inquiry or investigation, SELLER shall disclose to PURCHASER any findings of the Property and its operations. SELLER shall not be liable or bound in any manner by any warranties, either expressed or implied, guarantees, promises, statements, representations or information pertaining to the Property made or furnished by any real estate agent, broker, employee, servant or other person representing or purporting to represent SELLER.
- b. PURCHASER has conducted an environmental investigation of the Property and, as consideration for the Purchase Price Credit, PURCHASER shall assume all obligations and responsibilities with respect to any future investigation or remediation that may be necessary at the Property due to the existence of Hazardous Substances. “Hazardous Substances” shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California’s list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated into this Agreement. PURCHASER shall protect, defend, indemnify, and hold SELLER, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with environmental liabilities related to Hazardous Substances on the Property, including without limitation costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies, and all costs and expenses of investigating and defending against same, including without limitation attorney fees and costs. SELLER may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If SELLER chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PURCHASER shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- c. PURCHASER shall comply with any and all laws, regulations, and/or orders in effect or which may be promulgated with respect to the discharge and/or removal of any Hazardous Substances, to pay or cause other parties to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any Hazardous Substances. If any Hazardous Substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then PURCHASER shall cause the remediation and/or removal of the Hazardous Substances to be completed to achieve compliance with law. PURCHASER shall be solely responsible for all remediation and removal expenses.
- d. PURCHASER shall not knowingly use the Property or allow the Property to be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances, except in accordance with law.
- e. PURCHASER shall pay all costs of compliance with all applicable governmental requirements in the removal of any asbestos and lead-based paint, to the extent that these costs are not paid by the Federal Government.

13. Warranties, Representations and Covenants of SELLER. SELLER hereby represents and warrants to PURCHASER that:

- a. To the best of SELLER'S knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign;
- b. Prior to the Closing, SELLER will not alter the physical condition of the Property, and shall maintain the Property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the Property;
- c. Prior to the Closing, SELLER shall not do anything to impair title to any of the Property;
- d. To the best of SELLER'S knowledge, all utilities, including gas, electricity, water, sewage and telephone, are available to the Property and all such items are in good working order;
- e. To the best of SELLER'S knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with or breach any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which the Property may be bound; and

- f. Prior to the Closing, SELLER shall, upon learning of any fact or condition which would cause any of the warranties and representations in this section to not be true as of the Closing, immediately notify PURCHASER of such fact or condition.

- 14. Existing Structures and Encroachments.** SELLER and PURCHASER acknowledge that there are structures on the Property ("Existing Structures"), as well as buildings and structures that encroach on the Property from adjacent parcels ("Encroachments"), that will need to be removed prior to PURCHASER'S redevelopment of the Property. Prior to the Closing, SELLER shall take all steps necessary to inform the owners of the Encroachments that their encroachment is not accepted by SELLER and that the Encroachments must be removed within the next three (3) years following the Effective Date. PURCHASER agrees that the Encroachments do not need to be removed prior to the Closing. PURCHASER shall cause the demolition and removal of the Existing Structures and the Encroachments at the time the Property is redeveloped, which is expected to occur within three (3) years after the Closing. PURCHASER shall pay all costs incurred to effect the demolition and removal of the Existing Structures and the Encroachments.
- 15. Release.** With the exception of any claims that may arise associated with sections 10 (No Leasing by SELLER), 11 (Loss or Damages to Property or Improvements), 13 (Warranties, Representations and Covenants of SELLER), and 14 (Existing Encroachments) of this Agreement, and claims arising from SELLER'S fraud or intentional misrepresentation, effective from and after the Closing, PURCHASER, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges SELLER, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which PURCHASER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property, or the condition of the Property, including without limitation, any and all known or unknown claims resulting from the alleged acts or omissions of SELLER, its elected officials, officers, representatives, agents or employees.

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16. **Section 1542 Waiver.** PURCHASER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise associated with Section 10 (No Leasing by SELLER), Section 11 (Loss or Damages to Property or Improvements), Section 13 (Warranties, Representations and Covenants of SELLER), and Section 14 (Existing Encroachments) of this Agreement, and matters arising from SELLER'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against SELLER arising from this Agreement, the Property, or the condition of the Property and which exist as of the Effective Date but of which PURCHASER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect PURCHASER'S decision to enter into this Agreement. PURCHASER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

WAIVED BY: THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California

BY: _____
Name: _____
Title: _____

17. **No Real Estate Commission.** PURCHASER and SELLER represent, warrant and agree that no real estate commission, finder's fee or broker's fee has been or will be incurred in connection with the sale of the Property. The rights and obligations of PURCHASER and SELLER pursuant to this section shall survive the Closing or termination of this Agreement.

18. **Default and Remedies.**

a. **SELLER'S Default; PURCHASER'S Remedies.** If SELLER defaults on its obligations under this Agreement prior to the Closing, PURCHASER may, at its sole option and as its exclusive remedy for such default either (i) terminate this Agreement by written notice to SELLER and the Title Company, or (ii) if SELLER'S default results from its failure to transfer possession and title to the Property to PURCHASER at the Closing, seek and enforce specific performance of this Agreement. If

SELLER defaults on its obligations under this Agreement after the Closing, PURCHASER may seek and enforce any remedy available therefore at law or in equity

b. PURCHASER'S Default; SELLER'S Remedies. If PURCHASER defaults on its obligations under this Agreement, SELLER may terminate this Agreement by written notice delivered to PURCHASER and the Title Company, and/or seek and enforce any other remedy available therefore at law or in equity.

19. **Limited Liability.** SELLER'S liability for damages resulting from or under this Agreement shall be limited to either the Property or to the Purchase Price received by SELLER, and without resort to any other assets of SELLER.
20. **Time of Essence.** Time is of the essence to the performance of each obligation under this Agreement
21. **Interpretation.** This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and are in no way intended to interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly, in good faith and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California.
22. **Amendments.** The terms and provisions of this Agreement shall only be amended pursuant to a written instrument signed by both the SELLER and the PURCHASER.
23. **Successors and Assigns.** The provisions of this Agreement shall inure to and bind the successors and assigns of the parties, except for a bona fide purchaser, not affiliated in any way with PURCHASER.
24. **Assignment.** This Agreement may not be assigned in whole or in part by PURCHASER without SELLER'S prior written consent.
25. **Attorney Fees.** In any action or proceeding to enforce a right or obligation of this Agreement, or of any disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement, or in any way arising from this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs paid or incurred in good faith. The "prevailing party" for the purposes of this Agreement, shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

26. **Notices.** Each notice, waiver, demand, request or other communication required or permitted by this Agreement shall be in writing and deemed to have been properly given, served and received: (a) if delivered by messenger, when delivered; (b) if mailed, on the third (3rd) business day after deposit in the United States mail, certified or registered, postage prepaid, return receipt requested; (c) telexed, telegraphed or telecopied, six (6) hours after being dispatched if such sixth hour falls on a business day within the hours of 8:00 a.m. through 6:00 p.m. of the time in effect at the place of receipt, or at 8:00 a.m. on the next business day thereafter if such sixth hour is later than 6:00 p.m.; or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the parties to be notified as follows:

SELLER: Director, Real Estate Assets Department
THE CITY OF SAN DIEGO
202 C Street, Ninth Floor
San Diego, CA 92101

With a copy to:

Office of the City Attorney
THE CITY OF SAN DIEGO
1200 Third Avenue, Suite 1100, MS 59
San Diego, CA 92101

PURCHASER: Jim Waring, Assistant Executive Director
REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
600 B Street, Suite 400
San Diego, CA 92101

With a copy to:

General Counsel
REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
1200 Third Avenue, Suite 1100, MS 59
San Diego, CA 92101

27. **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor or designee, that such authority is valid.

28. **Entire Agreement.** This Agreement represents the entire agreement between the parties for the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

SELLER:

Date: _____

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: _____

Name: _____

Title: _____

PURCHASER:

Date: _____

THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO, a public body corporate
and politic of the State of California

BY: _____

Name: _____

Title: _____

SAN DIEGO CITY COUNCIL AUTHORIZING RESOLUTION NO. R- _____

DATE OF FINAL PASSAGE: _____

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

_____, Deputy City Attorney

EXHIBIT A: LEGAL DESCRIPTION AND PARCEL MAP OF PROPERTY
EXHIBIT B: FORM OF GRANT DEED

R- 301888

SEP 12 2006

Passed by the Council of The City of San Diego on _____, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SEP 19 2006

Date of final passage _____

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Cepeda*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number *P* 301888