

RESOLUTION NUMBER R- 305467
DATE OF FINAL PASSAGE DEC 08 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASES AND ASSOCIATED ACTIONS IN CONNECTION WITH CLAIMS ASSERTED RELATING TO THE AGREEMENT FOR PROCESSING A REDEVELOPMENT PLAN AND LAND USE ENTITLEMENTS AND THE CASH DEPOSITORY AGREEMENT ENTERED INTO BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND THE SAN DIEGO STATE UNIVERSITY FOUNDATION.

WHEREAS, on or about December 3, 1991, San Diego State University Foundation [Foundation] and the Redevelopment Agency of the City of San Diego [Agency] entered into an Agreement for Processing a Redevelopment Plan and Land Use Entitlements [1991 Agreement] pertaining to the proposed redevelopment of the area in the City of San Diego [City] designated as the "Site" on the map attached to the 1991 Agreement as Exhibit "A" [Project Area], which Agreement provided for certain deposits and other payments to be made by the Foundation in connection with the proposed redevelopment plan, and, under the circumstances specified therein, reimbursement by the Agency to the Foundation of such amounts [Foundation Reimbursement]; and

WHEREAS, on or about March 3, 2005, the Foundation and the Agency entered into a Cash Depository Agreement [CDA] with reference to that certain parcel of property located at 5840-5846 Hardy Avenue in the City of San Diego, California [Property] and, pursuant to the CDA, the Foundation provided funds to cover the costs associated with the acquisition of the Property; and

WHEREAS, the CDA provided that, in the event a Paseo Project Disposition and Development Agreement was not signed by the Foundation and the Agency on or before January

1, 2006, and that Agency, on or before September 1, 2007, had not disposed of the Property to a third party, the Foundation had the right of first offer to purchase the Property at a cost equal to the fair market value of the Property less the amounts advanced by the Foundation for the Agency's purchase of the Property [Foundation Right of First Offer]; and

WHEREAS, on or about March 10, 2008, the Foundation provided to the Agency written notice of exercise of the Foundation Right of First Offer; and

WHEREAS, on or about July 1, 2008, the Agency provided written notice to the Foundation alleging that the Foundation was in breach of both the 1991 Agreement and the CDA and that the Agency had no obligation: (i) to the Foundation with respect to the Foundation Right of First Offer; or (ii) to pay to the Foundation any Foundation Reimbursement pursuant to the 1991 Agreement; and

WHEREAS, on or about September 5, 2008, the Foundation caused to be filed against the Agency a complaint [Complaint] in San Diego County Superior Court, Case No. 37-2008-00091165-CU-BC-CTL wherein the Foundation alleged causes of action against the Agency for specific performance with respect to the Foundation Right of First Offer and declaratory relief [Action], and, thereafter, on or about February 26, 2009, the Agency and the City filed a cross-complaint which, as subsequently amended [Second Amended Cross-Complaint], alleges several causes of action against both the Foundation and the Board of Trustees of California State University [CSU]; and

WHEREAS, on or about June 24, 2009, the Foundation filed an administrative claim against the Agency for the Foundation Reimbursement in an amount estimated to be, including principal and interest, in excess of \$3,400,000 [Reimbursement Claim] and, on or about August 13, 2009, the Agency rejected the Reimbursement Claim; and

WHEREAS, representatives of the Agency, City, Foundation and CSU each agree that it is in each party's best interest to settle certain claims made in the Complaint, Action, and Second Amended Cross-Complaint in connection with the 1991 Agreement and the CDA and that the Agency and Foundation terminate the 1991 Agreement and the CDA; and

WHEREAS, as proposed in the Settlement Agreement and Mutual Release and subject to releases and waivers of claims by the Agency, City, Foundation and CSU, the Agency and Foundation each agree to voluntarily terminate the 1991 Agreement and the CDA upon the transfer of Property, and the Agency further agrees to transfer fee title of the Property to the Foundation by Grant Deed, to assign all leases of the Property to the Foundation pursuant to a recordable Assignment of Leases, to pay half (1/2) of all costs and fees associated with the closing on the transfer of fee title of the Property to the Foundation, and to pay a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to the Foundation as settlement of claims before June 30, 2010, or alternatively to pay a total amount of \$750,000 plus simple interest as calculated in the Settlement Agreement to the Foundation as settlement of claims from and after June 30, 2010 but before June 30, 2012; and

WHEREAS, in accordance with the California Community Redevelopment Law, including California Health and Safety Code Section 33431, the Agency duly conducted a public hearing on March 1, 2005, for the purpose of considering the approval of the CDA and the proposed transfer of the Property to the Foundation; NOW, THEREFORE,

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

1. That the Council approves the Settlement Agreement and Mutual Releases [Settlement Agreement] effective October 12, 2009 by and among San Diego State University Foundation [Foundation], Redevelopment Agency of the City of San Diego [Agency], City of

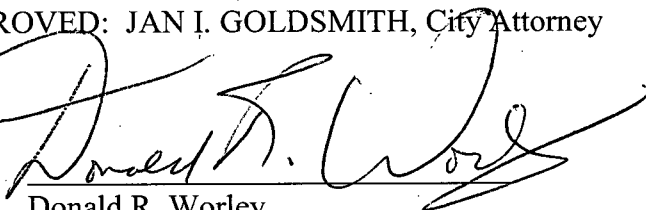
San Diego [City], and Board of Trustees of the California State University [CSU], thereby terminating the Cash Depository Agreement [CDA] and the Agreement for Processing a Redevelopment Plan and Land Use Entitlements [1991 Agreement], previously entered into by and between the Agency and the Foundation, upon the Agency's transfer of the Property to the Foundation.

2. That the Council authorizes the Mayor or designee to execute the Settlement Agreement; a copy of which, when executed by the City, shall be placed on file in the office of the City Clerk as Document No. R-305467.

3. That the Council authorizes the Mayor or designee, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Settlement Agreement and this Resolution and to administer the City's obligations, responsibilities and duties to be performed thereunder.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Donald R. Worley
Assistant City Attorney

DRW:nda
11/20/09
Or.Dept:Redev.Agency
R-2010-391
MMS#7230
Comp. RA-2010-43

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 07 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12-8-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor