

RESOLUTION NUMBER R- 306484

DATE OF FINAL PASSAGE DEC 14 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SECOND AMENDMENT TO THE PARK MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO, PINNACLE BAYSIDE DEVELOPMENT US L.P. AND THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO FOR THE PROPOSED PARK TO BE LOCATED AT ISLAND AVENUE AND 14TH, 15TH AND J STREETS WITHIN THE CITY OF SAN DIEGO.

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] and Pinnacle International Development, Inc., a California corporation (the Developer’s predecessor-in-interest) [Developer], have theretofore entered into that certain Owner Participation Agreement dated October 12, 2005, as amended by that certain First Implementation Agreement dated August 7, 2006 and that certain Second Implementation Agreement dated May 2, 2007 [the Owner Participation Agreement, the First Implementation Agreement and the Second Implementation Agreement are collectively referred to herein as the “OPA”]; and

WHEREAS, the OPA provides for the construction of a neighborhood public park and private high-rise residential and commercial development on the 120,000 square foot “super block” bounded by Island Avenue and 14th, 15th, and J Streets in the City of San Diego [Site]; and

WHEREAS, the neighborhood public park to be constructed shall lie within a perpetual park easement created by that certain Park Easement Deed recorded on October 31, 2005, as Document Number 2005-0945166, as amended by that certain First Amendment to the Park Easement Deed recorded on October 9, 2006, as Document No. 2006-0716404, that will provide

public access, measure approximately 57,000 square feet (1.3 acres) in size [Park Easement], and among other things feature large turf areas, a playground and tot lot, boulders and rolling topography, shade trees and trellises, benches and seat walls, intimate garden areas, public art, and other on-site and off-site improvements as defined in the OPA Scope of Development [Park Improvements]; and

WHEREAS, the OPA provides for the Park Improvements to be designed and constructed by Developer as a public park at no cost to the City of San Diego [City] and provides that the Developer and its successors are responsible for maintenance, repair and replacement of the Park Improvements in perpetuity at no cost to the City; and

WHEREAS, to provide for the perpetual maintenance, repair, and replacement of the Park Improvements, the Developer and the City entered into that certain Park Maintenance Agreement recorded on October 31, 2005, as Document Number 2005-0945167 among the records of the County Recorder of the County of San Diego, as amended by that certain First Amendment to Park Maintenance Agreement recorded on October 9, 2006, as Document No. 2006-0716405 [collectively, the "Park Maintenance Agreement"]; and

WHEREAS, due to market conditions that were unfavorable for high density residential and commercial development, the Developer did not start construction of the private high-rise residential and commercial development and Park Improvements by October 2008 as required by the OPA in order to develop private parking beneath any portion of the Park Easement; and

WHEREAS, at the Developer's request, the Agency and Developer intend to amend the OPA through a Third Implementation Agreement that would require the Developer to construct the neighborhood park in advance of the private high rise residential and commercial development [Stand-Alone Park] in exchange for providing the Developer an opportunity to elect

within seven years after the development of the Stand-Alone Park to develop private parking beneath a portion of the Park Easement so long as the Developer delivers its written decision to construct any or all of the remaining private residential high rise and commercial development on the Site; and

WHEREAS, the Third Implementation Agreement provides that if the Developer develops the private parking beneath a portion of the Park Easement thereby demolishing a portion of the Stand-Alone Park, the Developer must fully restore the public park [Final Restored Park]; and

WHEREAS, in order to conform the Park Maintenance Agreement to the provisions of the OPA (as amended by the Third Implementation Agreement), a Second Amendment to the Park Maintenance Agreement [Second Amendment] is necessary; and

WHEREAS, pursuant to the terms and conditions of the Second Amendment, the Agency is made a party to the Park Maintenance Agreement, which document shall be amended to reflect that (1) the Agency shall retain ownership of the Park Easement and the Park Improvements during the period of time that the Stand-Alone Park is in place; and, (2) ownership of the Park Easement and the Park Improvements shall be transferred to the City upon the first to occur of the following: (i) construction of the Final Restored Park is completed; or (ii) seven (7) years after completion of the Stand-Alone Park, provided that the Developer did not make the Private Improvements Construction Election as included in the Third Implementation Agreement before the end of such seven (7)-year period; and


WHEREAS, the Developer has submitted to the City copies of the proposed Second Amendment in a form desired by the City, Agency and Developer; NOW, THEREFORE,

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

1. That the Second Amendment enclosed as Attachment E to the Centre City Development Corporation [CCDC] Report No. CCDC -10-50 and CCDC-10-17, a copy of which shall be maintained on file in the Office of the City Clerk as Document No. RR- 306484, is hereby approved.

2. That the Mayor of the City of San Diego, or designee, is hereby authorized for and on behalf of the City to execute the Second Amendment and take all other action necessary and appropriate to carry out and implement the Second Amendment according to its terms, and to administer the City's obligations, responsibilities and duties to be performed under the Second Amendment.

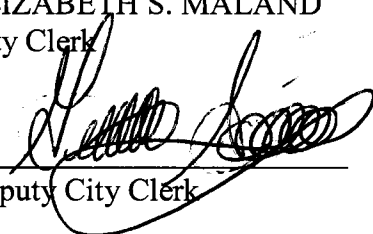
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Kenneth R. So
Deputy City Attorney

KRS:mm
11/15/2010
Or.Dept: Park & Rec.
R-2011-497
Prolaw# 2010-03812
Companion to: RA-2011-29

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 07 2010.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12-14-10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor