

RESOLUTION NUMBER R- 306545
DATE OF FINAL PASSAGE JAN 16 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO (i) APPROVING THE TERMINATION OF PAYMENT OBLIGATIONS OF THE DEVELOPER AND THE AMENDMENT OF CERTAIN COVENANTS AND RESTRICTIONS RELATED TO THE AMOUNT AND TYPE OF USES PERMITTED AT THE HORTON PLAZA RETAIL CENTER AT NOT LESS THAN ITS FAIR REUSE VALUE IN CONNECTION WITH THE PROPOSED OWNER PARTICIPATION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND HORTON LAND, LLC, HORTON PLAZA VENTURE LLC AND HORTON PLAZA L.P. FOR THE DEVELOPMENT OF AN URBAN PUBLIC PLAZA, INCLUDING THE REHABILITATION OF THE EXISTING HISTORIC PLAZA PARK LOCATED IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; AND (ii) MAKING CERTAIN FINDINGS WITH RESPECT TO THE TERMINATION OF PAYMENT OBLIGATIONS AND THE RELEASE OF COVENANTS AND RESTRICTIONS, IN ACCORDANCE WITH CALIFORNIA HEALTH AND SAFETY CODE SECTION 33433.

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 Horton Plaza Redevelopment Project (Redevelopment Plan) for the Horton Plaza Redevelopment Project Area (Project Area) in accordance with the California Community Redevelopment Law (California Health and Safety Code section 33000 et. seq.); and

WHEREAS, the Centre City Development Corporation, Inc. (Corporation), acting on behalf of the Agency, has negotiated an Owner Participation Agreement (OPA) with Horton Land, LLC, a Delaware limited liability company, Horton Plaza Venture LLC, a Delaware limited liability company, and Horton Plaza L.P., a Delaware limited partnership (collectively, Developer), wherein the Developer has agreed to prepare and transfer for consideration to the

Agency an approximate 37,000 square-foot site (Sales Parcel) for the development and construction by the Agency of an urban public plaza (Public Plaza), including the rehabilitation of the existing historic Horton Plaza Park (collectively, with the Public Plaza shall be referred to as Plaza Improvements). As further consideration under the OPA, Developer has agreed to, among other things (i) maintain, operate and program the Plaza Improvements, as applicable, for a period of twenty-five (25) years; (ii) revitalize a portion of the Horton Plaza Retail Center (Parcel S-2); (iii) construct certain public improvements located in the E Street and Broadway Circle area and along Fourth Avenue in San Diego, California; and (iv) make certain financial contributions to benefit the Balboa Theater, the Lyceum Theater and the operation of a proposed permanent homeless shelter in San Diego, California; and

WHEREAS, the Agency and Developer are parties to a certain Payment Agreement dated October 18, 1982, as amended (Payment Agreement) obligating Developer to make annual payments to the Agency representing the additional purchase price, if any, for land sold by the Agency to the Developer upon which the Horton Plaza Retail Center (Retail Center) was developed and constructed by the Developer and its predecessors-in-interest pursuant to a certain Disposition and Development Agreement dated November 2, 1981, as amended (DDA). The potential payments to the Agency under the Payment Agreement through 2036 are estimated to total \$35.1 million on a present value basis. The proposed OPA provides for the prepayment in full of this revenue stream through the transfer of the Sales Parcel and completion of the other Developer obligations as required by the OPA; and

WHEREAS, following the transfer of the Sales Parcel, a proposed Termination Agreement reflecting the termination of the Payment Agreement would be entered into by and between the Developer and the Agency (Termination Agreement), which is Attachment No. 4 to

the proposed OPA, whereby no further payments would be due from the Payment Agreement;
and

WHEREAS, concurrent with the execution of the proposed OPA, a proposed Cooperation Agreement would be entered into by and between the City of San Diego (City) and the Agency (Cooperation Agreement), which is Attachment No. 5 to the proposed OPA, to provide for the design and construction of the Public Plaza by the Corporation, on behalf of the Agency; and

WHEREAS, at the close of escrow, a proposed Maintenance and Operations Agreement would be entered into by and between the Developer and the Agency (Maintenance Agreement), which is Attachment No. 9 to the proposed OPA, to provide for the maintenance and operations of the Plaza Improvements by the Developer for a period of twenty-five (25) years. Upon completion of the Public Plaza by the Agency, the Maintenance Agreement would be assigned from the Agency to the City in accordance with the aforementioned Cooperation Agreement; and

WHEREAS, at the close of escrow, a proposed Programming Agreement would be entered into by and between the Developer and the Agency (Programming Agreement), which is Attachment No. 10 to the OPA, to provide for programming of the Public Plaza by the Developer for a period of twenty-five (25) years. Upon completion of the Public Plaza by the Agency, the Programming Agreement would be assigned from the Agency to the City in accordance with the aforementioned Cooperation Agreement; and

WHEREAS, the DDA and related implementing documents provide that the Retail Center contain not less 700,000 square feet nor more than 900,000 square feet of gross leaseable retail area including four major department stores, an open mall and plaza, mall stores and other retail commercial stores providing commercial-retail goods and services not connected to the

mall and parking facilities. The proposed OPA would amend the use restrictions on the Retail Center, including Parcel S-2, such that there contain not less than 600,000 square feet of gross leaseable retail area with approximately 2,100 parking spaces until August 9, 2036; and

WHEREAS, the proposed OPA requires the Agency to contribute not less than \$8,000,000 towards the development and construction of the Plaza Improvements as well as to deposit \$150,000 on or before the end of Fiscal Year 2015 and on the next four anniversary dates thereof ending on or before the end of Fiscal Year 2019 for a total of \$750,000 into a reserve account for anticipated capital repairs and replacement costs. Upon completion of the Plaza Improvements, the Agency would convey fee title to the Sales Parcel to the City pursuant to the aforementioned Cooperation Agreement; and

WHEREAS, because the proposed OPA will revise certain assumptions of the parties made in connection with the DDA, the Corporation caused the preparation of the "Summary Report Pertaining to the Proposed Conveyance of Certain Real Property Interests Within the Redevelopment Project Area" dated November 2010 (Summary Report) pursuant to California Health and Safety Code section 33433; this Summary Report is incorporated fully into this Resolution by this reference; and

WHEREAS, the Agency and the City Council of the City of San Diego (City Council) held a joint public hearing to consider the approval of the proposed OPA and related actions, after publishing notice of the public hearing in accordance with Health and Safety Code section 33433; and

WHEREAS, the Agency made copies of the OPA and the Summary Report available for public inspection and copying at the time of the first publication of the notice of the public hearing; and

WHEREAS, the Summary Report contains a summary which describes and specifies all of the following:

- (i) The costs to be incurred by the Agency under the proposed OPA;
- (ii) The estimated value of the interests to be conveyed by the Agency to the Developer pursuant to the proposed OPA determined at the highest and best use permitted under the Redevelopment Plan;
- (iii) The estimated value of the interests to be conveyed at the proposed use and with the conditions, covenants, and development costs pursuant to the proposed OPA;
- (iv) The consideration to be paid to the Agency pursuant to the proposed transaction;
- (v) An explanation of the difference, if any, between the compensation to be paid to the Agency under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and
- (vi) An explanation of why the development of the proposed Public Plaza will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation; and


WHEREAS, pursuant to California Health and Safety Code section 33433, the City Council has considered the information contained in the Summary Report; and

WHEREAS, after having duly considered the actions described above, the City Council believes that the proposed OPA and all related agreements, including, but not limited to, the Termination Agreement, Cooperation Agreement, Maintenance Agreement and Programming Agreement are in the best interests of the Project Area, the City and the safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; NOW, THEREFORE,

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

1. That the Council finds and determines that all recitals set forth in this Resolution are true and correct and fully incorporated herein by this reference.
2. That the Council has reviewed and approves the Summary Report.
3. That the Council finds and determines that the consideration to be paid to the Agency under the proposed transaction is not less than fair reuse value at the use and with covenants and conditions and development costs authorized by the OPA for, among other reasons, the reasons set forth in Sections IV, V and VI of the Summary Report.
4. That the Council finds and determines that the OPA will assist in the elimination of blight for, among other reasons, the reasons set forth in Sections IV and VII of the Summary Report.
5. That the Council approves and consents to the Agency entering into the OPA.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:nja
12/20/10
Or.Dept: CCDC
R-2011-584
PL#2010-01468
Comp. R-2011-581
RA-2011-61

I hereby certify that the foregoing Resolution was passed by the City Council of the City of San Diego, at this meeting of JAN 11 2011.

ELIZABETH S. MALAND
City Clerk

By *Mary Zuma*
Deputy City Clerk

Approved: 1-16-11
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor