

106733

RESOLUTION NUMBER R-

APR 01 2011

DATE OF FINAL PASSAGE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FIRST AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND MONARCH SCHOOL PROJECT PROVIDING FOR A GROUND LEASE OF A FACILITY WITH AN OPTION TO PURCHASE, THE ACQUISITION OF MONARCH'S EXISTING FACILITY BY THE AGENCY, AND LEASEBACK OF MONARCH'S EXISTING FACILITY, WHICH TOGETHER ALLOW FOR THE MOVE AND TRANSFER OF OPERATIONS OF A SCHOOL FOR DISADVANTAGED CHILDREN FROM 808 WEST CEDAR STREET TO 1625 NEWTON AVENUE IN THE EAST VILLAGE REDEVELOPMENT DISTRICT OF THE EXPANSION SUB AREA OF THE CENTRE CITY REDEVELOPMENT PROJECT.

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 (Redevelopment Plan); and

WHEREAS the Agency has adopted an Implementation Plan for the Centre City Redevelopment Project (Implementation Plan) in accordance with California Health and Safety Code section 33490, which is part of the California Community Redevelopment Law, California Health and Safety Code section 33000 et seq.; and

WHEREAS, to carry out and implement the Redevelopment Plan, the Agency and Monarch School Project, a California nonprofit corporation (Developer), entered into that certain Amended and Restated Disposition and Development Agreement dated and filed December 9, 2010, as Agency Document No. D-04585 (Amended Agreement), which provides for the move and transfer of operations of the school facility for disadvantaged children from 808 West Cedar

Street (Cedar Property) to 1625 Newton Avenue (Newton Property) into an existing building that Developer will purchase, maintain and rehabilitate to provide a larger school facility for disadvantaged children as more specifically defined and provided for in the Amended Agreement; and

WHEREAS, the Amended Agreement further provides for the Agency to lease the Newton Property land to Developer, and provides Developer with an option to purchase the land within five years after the commencement of the ground lease (Ground Lease); and

WHEREAS, the fair market value of the Newton Property land is \$6,000,000 as appraised by William B. Anderson, MAI, of Anderson & Brabant, Inc.; and

WHEREAS the Amended Agreement and the Ground Lease provide for Monarch to purchase the existing building and improvements on the Newton Property and to maintain and rehabilitate the building and improvements located on the Newton Property as more specifically defined and provided for in the Amended Agreement and the Basic Concept/Schematic Drawings included within Attachment No. 4 to the Amended Agreement; and

WHEREAS, the Amended Agreement provides that the Agency would re-acquire the fee interest in the Cedar Property from Developer, subject to the terms of the Amended Agreement and the Acquisition Agreement, which is Attachment No. 8 to the Amended Agreement; and

WHEREAS, the Amended Agreement provides that following the Agency's acquisition of the fee interest in Cedar Property, Developer would lease back the Cedar Property from the Agency, subject to the terms of the Amended Agreement and the Leaseback of the Cedar Property, which is Attachment No. 10 to the Amended Agreement; and

WHEREAS, on or about March 16, 2011, the Agency transferred to The City of San Diego (City) fee title ownership of the Newton Property by recorded quitclaim deed; and

WHEREAS, through an assignment agreement executed in connection with the property transfer, the Agency assigned to the City, and the City assumed, all of the Agency's rights, title, interest and obligation under all assets, agreements, contracts, permits and entitlements, and other documents relating directly or indirectly to the use, management, repair, maintenance, development and operation of the Newton Property, including the Amended Agreement; and

WHEREAS, the Agency and Developer now want to enter into a First Amendment to the Amended Agreement that changes the terms of the Amended Agreement as follows: (i) a reduction in the purchase price of the Newton Property land (from \$3,000,000 to \$2,000,000) should Monarch exercise its Ground Lease option to purchase the Newton Property land within the first five (5) years of the Ground Lease; (ii) incident to the reduction in the purchase price for the Newton Property land, a proportional increase in the credit due the Agency under the terms of the Ground Lease from \$3,000,000 to \$4,000,000. The credit would accrue to the Agency in the event of a change in circumstances for Developer as specified in the Amended Agreement, and the Agency consents to a property sale by Developer; (iii) an increase in the purchase price of the Cedar Property (from \$1,250,000 to \$2,042,150) to reflect the current fair market value of the Cedar Property, less estimated remediation costs; the sale proceeds paid by the Agency must be utilized by Developer to assist in funding the rehabilitation of the Newton Property; (iv) a reduction in the annual base rent for the Newton Property (from \$300,000 to \$160,000) in connection with the Ground Lease; (v) a notation that Developer has provided evidence that the San Diego County Superintendent of Schools requires Developer to obtain permits for the rehabilitation of the Newton Property from the California Division of the State Architect (DSA); (vi) revisions to the Schedule of Performance, which is Attachment No. 5 to the Amended Agreement, based upon the First Amendment terms and additional time needed for the DSA's

review of the rehabilitation project; and (vii) clean-up items remaining from the drafting and execution of the Amended Agreement; and

WHEREAS, Developer has submitted to the Agency and the City Council of the City of San Diego (Council) copies of the proposed First Amendment in a form acceptable to Developer; and

WHEREAS, it is the intent of Developer, the Agency, and the City (collectively, the “Parties”) that by executing the proposed First Amendment, the Parties confirm that they are all parties to the Amended Agreement, as amended by the First Amendment; and

WHEREAS, it is the intent of the Parties that, except as otherwise specified in the proposed First Amendment, all references to “Agency” in the Amended Agreement, as amended by the proposed First Amendment, shall mean either the Agency or the City, whichever of those two Parties is the fee title owner of the Newton Property at the relevant time, as further clarified in the proposed First Amendment; and

WHEREAS, it is the intent of the Parties that, as between the Agency or the City, the Party that owns fee title to the Newton Property at the relevant time shall be entitled to exercise all rights, and shall be required to fulfill all outstanding obligations, attributable to “Agency” under the Amended Agreement, as amended by the proposed First Amendment; and

WHEREAS, it is the intent of the Parties that, if the Agency’s prior transfer of the Newton Property to the City is nullified, rescinded or invalidated for any reason whatsoever, then fee title to the Newton Property shall automatically re-vest in the Agency (or its applicable successor, which may include the City), and all assets, agreements, contracts, permits and entitlements, and other documents previously assigned from the Agency to the City related to the Newton Property shall automatically be re-assigned to the Agency (or its applicable successor, which may include the City), as further clarified in the proposed First Amendment; and

WHEREAS, the Board of Directors of the Centre City Development Corporation, Inc. (CCDC), has reviewed and discussed the proposed First Amendment, and has recommended that the Agency approve the First Amendment; and

WHEREAS, the Agency and Council held a joint public hearing to consider the approval of the First Amendment on March 29, 2011 (after the matter was continued from March 22, 2001), in Council Chambers of the City Administration Building, at 202 "C" Street, 12th floor, San Diego, California 92101, after publishing notice of the public hearing in accordance with California Health and Safety Code section 33433 and Government Code section 6066; and

WHEREAS, pursuant to California Health and Safety Code section 33433, and prior to the transfer of the Newton Property from the Agency to the City, the Agency prepared a summary report (Summary Report) affixed to the staff report as Attachment E and on file in the office of the Agency Secretary, and made copies of the Amended Agreement, with all attachments, the First Amendment and the Summary Report available for public inspection and copying no later than 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 Agency's cost of the Amended Agreement and First Amendment, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the Agency, plus the expected interest on any loans or bonds to finance the Amended Agreement and First Amendment; (ii) the estimated value of the interests to be leased and potentially conveyed, determined at the highest and best uses permitted under the Redevelopment Plan; (iii) the estimated value of the interests to be leased and potentially conveyed, determined at the use and with the conditions, covenants, and development costs required by the Amended Agreement and First Amendment; (iv) the present value of the lease payments and potential purchase price which Developer will be required to pay the Agency

during the term of the Ground Lease with an option to purchase the Newton Property, along with an explanation as to why the amount is less than the fair market value of the interest to be leased and potentially conveyed, determined at the highest and best use consistent with the Redevelopment Plan; and (v) an explanation of why the Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement and First Amendment 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 the California Health and Safety Code section 33433, Council considered the information in the Summary Report; and

WHEREAS, City staff has reviewed the proposed transaction and recommends it to be in the best interests of the Centre City Redevelopment Project Area and the City, and benefits the public health, safety, or general welfare because it promotes municipal and other public purposes of benefitting the Centre City Redevelopment Project in accordance or consistent with the Redevelopment Plan for the Centre City Redevelopment Project and to accomplish the public purposes of implementing the Redevelopment Plan and achieving the goals and purposes of that Redevelopment Plan; and

WHEREAS, the Council, acting as a “responsible agency” for purposes of California Environmental Quality Act (CEQA) has previously reviewed and considered information contained in the Final Environmental Impact Report (FEIR) for the Redevelopment Plan on March 14, 2006 (Resolution R-04001), and subsequent addenda to the FEIR certified by the Agency on August 3, 2007 (Agency Resolution R-04193) and April 21, 2010 (Agency Resolutions R-04508 and R-04510), in compliance with CEQA; and

WHEREAS, prior to the Council's review and approval of the Amended Agreement, CCDC, on behalf of the Agency, caused the preparation of the Environmental Secondary Study (ESS) dated October 2010 in accordance with CEQA and state and local guidelines adopted pursuant thereto, which concludes, among other things, that: (i) the environmental impacts of the proposed project were adequately addressed in the FEIR, (ii) the proposed project is within the scope of the development program described in the FEIR, and (iii) no further environmental documentation is required under CEQA; and

WHEREAS, the terms of the proposed First Amendment are consistent with the project reviewed within the ESS; NOW, THEREFORE,

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

1. That the foregoing recitals are true and correct and incorporated herein in full by this reference.
2. That the Council received and heard any and all oral and written objections to the First Amendment, and that such oral and written objections are overruled.
3. That the Council finds and determines that the consideration to be received by the Agency or the City under the terms of the Amended Agreement and First Amendment, including without limitation the Ground Lease with option to purchase, is not less than fair reuse value at the use and with covenants and conditions and development costs authorized by the Amended Agreement and First Amendment for, among other reasons, the reasons set forth in Sections IV, V and VII of the Summary Report.
4. That the Council finds and determines that the implementation of the Amended Agreement, the First Amendment and the Ground Lease will assist in the elimination of blight for, among other reasons, the reasons set forth in Section VII of the Summary Report.

5. That the Council finds and determines that the ground leasing of the Newton Property in accordance with the Amended Agreement, the First Amendment and the Ground Lease and the rehabilitation of the building and improvements on the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement, the First Amendment, and the Acquisition Agreement and Leaseback for the Cedar Property, is consistent with Section III of the Implementation Plan adopted pursuant to California Health and Safety Code Section 33490, which specifically provides for the elimination of blight as a goal of the Implementation Plan.

6. That the Council finds and determines that the proposed transactions are in the best interests of the Centre City Redevelopment Project Area and the City, and benefit the public health, safety, or general welfare because they promote municipal and other public purposes of benefitting the Centre City Redevelopment Project in accordance or consistent with the Redevelopment Plan for the Centre City Redevelopment Project and will further the public purposes of implementing the Redevelopment Plan and achieving the goals and purposes of that Redevelopment Plan.

7. That the Council approves the leasing of the Newton Property land in accordance with the Amended Agreement, the First Amendment and the Ground Lease and the rehabilitation of the building and improvements on the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement, the First Amendment, and the Acquisition Agreement and Leaseback for the Cedar Property.

8. That in making the findings and recommendations herein, the Council has considered all testimony presented at the noticed public hearing, all written evidence presented, and the entire record prepared by Agency and City staff.

9. That the First Amendment is approved.

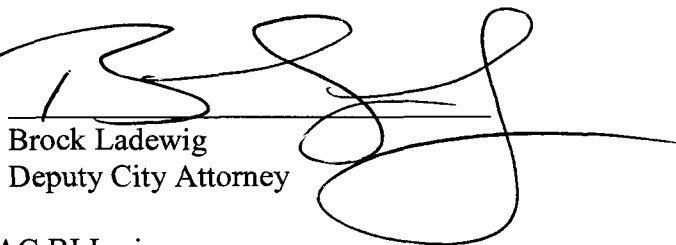
10. That the Mayor or his designee is authorized to execute and deliver the First Amendment, including all implementing documents, and to take all further actions necessary and appropriate, and deemed by the Mayor or his designee to be in the best interests of the City, to implement the First Amendment in conjunction with the conditions set forth in the Amended Agreement as amended by the First Amendment.

11. That the Chief Financial Officer, as delegated, is authorized to appropriate, encumber and expend tax increment funds derived from the Centre City Redevelopment Project in the amount of \$2,042,150 in accordance with the Amended Agreement as amended by the First Amendment, as necessary to accomplish the acquisition of the Cedar Property.

12. That the Chief Financial Officer, as delegated, is authorized to appropriate, encumber and expend tax increment funds derived from the Centre City Redevelopment Project in the amount of \$6,418,350, as necessary to substitute 80% non-housing tax increment funds in the place of 20% set-aside housing funds related to the acquisition of the Newton Property and associated administrative costs.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Brock Ladewig
Deputy City Attorney

CEJ:EAC:BLL:nja:mm
3/8/2011
3/25/2011 Cor. Copy
Or.Dept:Redev.Agency
R-2011-773
PL#2010-01852
Comp. RA-2011-113

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 29 2011 .

ELIZABETH S. MALAND
City Clerk

By *Mary Sumaya*
Deputy City Clerk

Approved: 4-1-11
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor