

306881

RESOLUTION NUMBER R-

DATE OF FINAL PASSAGE JUN 22 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO (i) APPROVING AN OWNER PARTICIPATION AGREEMENT AMONG THE REDEVELOPMENT AGENCY, THE CITY OF SAN DIEGO, AND COMM22 HOUSING GP, LLC FOR THE COMM22 MIXED-USE, TRANSIT-ORIENTED AFFORDABLE HOUSING PROJECT (PROJECT) IN THE LOGAN HEIGHTS NEIGHBORHOOD, AND (ii) AUTHORIZING THE EXPENDITURE OF UP TO \$9,255,000 FROM THE LOW AND MODERATE INCOME HOUSING SET-ASIDE TAX INCREMENT FUNDS FROM THE SOUTHCREST AND GATEWAY CENTER WEST COMPONENTS OF THE SOUTHEASTERN SAN DIEGO MERGED PROJECT AREA, THE CENTRE CITY REDEVELOPMENT PROJECT AREA, AND THE HORTON PLAZA REDEVELOPMENT PROJECT AREA TO PROVIDE A LOAN FOR THE PROJECT.

WHEREAS, the Redevelopment Agency of the City of San Diego (Agency) is engaged in activities necessary to carry out and implement the Redevelopment Plans for the Southeastern San Diego Merged Project, the Centre City Redevelopment Project and the Horton Plaza Redevelopment Project (collectively, the Redevelopment Plans) in accordance with the California Community Redevelopment Law, set forth at California Health and Safety Code sections 33000-33855; and

WHEREAS, in order to carry out and implement the Redevelopment Plans, Southeastern Economic Development Corporation, Inc. (SEDC) and Centre City Development Corporation, Inc. (CCDC), acting on behalf of the Agency, have negotiated an Owner Participation Agreement (Agreement) among the Agency, the City of San Diego (City), and COMM22 Housing GP, LLC, a California limited liability company (Owner), wherein Owner intends to construct a mixed-use, transit-oriented affordable housing project commonly referred to as COMM22 (Project) on a four-acre site owned by the San Diego Unified School District and

located on the south side of Commercial Street between 21st Street and Harrison Avenue (Project Site); and

WHEREAS, the Project Site is not located within any redevelopment project area boundaries, but is located within the Dells Imperial Redevelopment Study Area administered by SEDC and within 1.7 miles and 1.4 miles of the Southcrest and Gateway Center West Component Areas, respectively, of the Southeastern San Diego Merged Project Area, as well as three blocks (approximately 260 yards) outside and east of the Centre City Redevelopment Project Area, and approximately one mile outside and southeast of the Horton Plaza Project Area; and

WHEREAS, the Project will be constructed in multiple phases and will include 130 family rental housing units (including 128 affordable units, of which 13 would be permanent supportive housing units, plus two manager's units with no affordability restrictions), 70 senior rental housing units (including 69 affordable units, plus one manager's unit with no affordability restrictions), a child care facility, community-serving commercial and retail space, market-rate live-work lofts/office space, 17 for-sale row homes, parking, and significant associated infrastructure improvements; and

WHEREAS, the Agreement provides that, upon completion of construction of the family rental housing units, Owner shall make the 128 affordable units available for occupancy by extremely low income, very low income and low income households for a period of fifty-five (55) years, as more specifically defined and provided for in the Agreement; and

WHEREAS, the Agreement contemplates that the Agency will provide financial assistance to Owner in the form of a loan in an amount not to exceed \$9,255,000 (Agency Loan), to be applied toward construction of the affordable family rental housing units of the Project,

subject to the terms of the Agreement, including a simple interest rate of three percent and repayment derived from the Project's residual receipts operating cash flow; and

WHEREAS, the source of the Agency Loan will be the 20 percent low and moderate income housing set-aside tax increment funds from the Southcrest Component Area (\$980,000) and the Gateway Center West Component Area (\$20,000), respectively, of the Southeastern San Diego Merged Project, the Centre City Redevelopment Project (\$5,255,000), and the Horton Plaza Redevelopment Project (\$3,000,000); and

WHEREAS, repayment of the Agency Loan will be secured by a deed of trust and related security instruments (collectively, Agency Security Instruments) to be recorded against the long-term leasehold interest in the affordable family housing portion of the Project Site to be owned by COMM22 Family Housing, L.P., a California limited partnership formed by Owner to develop and operate the affordable family housing component of the Project; and

WHEREAS, the Agency Security Instruments will be recorded in a position junior to the deed of trust(s) securing repayment of the senior institutional loan for the Project, which is estimated to consist of a construction loan of approximately \$25,367,000 during the construction financing period, followed by a permanent loan of approximately \$3,349,000 during the permanent financing period; and

WHEREAS, to allow some flexibility in coordinating the sources of financing for the Project, the Method of Financing (Attachment No. 3 to the Agreement) allows the Agency's Executive Director or designee (or the Mayor or designee, as appropriate) to grant an administrative approval of an increase in the senior institutional loan up to five percent of its current estimated amount, which could result in an increase of up to approximately \$1,268,350 during the construction financing period and up to approximately \$167,450 during the permanent

financing period in the amount by which the Agency Loan is subordinated to the senior institutional loan; and

WHEREAS, a portion of the Agency Loan, in an amount not to exceed \$1,950,000, will be disbursed to Owner as a predevelopment loan to cover Owner's costs related to the Project's lengthy predevelopment period, which started in 2006; and

WHEREAS, until the main closing of the Agency Loan, at which time the outstanding balance of the predevelopment loan amount will be incorporated into the overall Agency Loan, Owner's repayment of the predevelopment loan amount will be secured by Owner's assignment of drawings, plans and other documents related to permitting and construction of the Project, as well as a corporate guaranty executed by Bridge Housing Corporation, a California nonprofit corporation, to secure any amounts disbursed in excess of \$1,000,000; and

WHEREAS, the Agency's financial assistance toward the construction of the 128 affordable family housing units, together with the imposition of 55-year affordability covenant, will allow the Agency to count one-half of those affordable units toward satisfaction of the Agency's inclusionary affordable housing obligation for the contributing redevelopment project areas, in accordance with California Health and Safety Code section 33413(b)(2)(A)(ii); and

WHEREAS, in particular, the Project will result in the production of an aggregate total of 128 affordable family housing units to be occupied by extremely low income, very low income and low income households, and the Agency will count one-half (i.e., 64) of those affordable units toward satisfaction of the Agency's affordable housing obligation in the Centre City Redevelopment Project (52 units) and the Southcrest Component Area (10 units) and the Gateway Center West Component Area (two units), respectively, of the Southeastern San Diego Merged Project Area; and

WHEREAS, pursuant to resolutions adopted effective February 28, 2011, the Council and the Agency made determinations of benefit under California Health and Safety Code section 33334.2(g)(1), authorizing the use of 20 percent set-aside housing funds from the contributing redevelopment project areas toward the Project, located outside of those project areas, in connection with the approval of that certain Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects (Cooperation Agreement), a copy of which is on file with the City Clerk as Document No. RR-306632. The funding of the Project in this manner is identified on page 52, Row #287, page 62, Row #344, and page 63, Row #345 of Exhibit 1 to the Cooperation Agreement, entitled Schedule of Projects; and

WHEREAS, the Agreement also provides that, for the Agency's benefit, a covenant will be recorded on the senior rental housing units that will make 69 affordable units available for occupancy by extremely low income and very low income households for a period of fifty-five (55) years, as more specifically defined and provided for in the Agreement; and

WHEREAS, Owner's agreement to the imposition of 55-year affordability covenant against the affordable senior rental housing units will allow the Agency to count one-half of those affordable units (i.e., 34, rounded down) toward satisfaction of the Agency's inclusionary affordable housing obligation for the Centre City Redevelopment Project, in accordance with California Health and Safety Code section 33413(b)(2)(B); and

WHEREAS, the Agreement also provides that Owner shall use best efforts to complete construction of, and shall be subject to certain performance measures regarding all aspects of, the Project's senior rental housing, live-work lofts and for-sale housing components, as more specifically defined and provided for in the Agreement; and

WHEREAS, it is the intent of Owner, the Agency, and the City (collectively, Parties) that by executing the Agreement, the Parties confirm that they are all parties to the Agreement; and

WHEREAS, it is the intent of the Parties that, except as otherwise specified in the Agreement, all references to "Agency" in the Agreement shall mean either the Agency or the City, whichever of those two Parties is the holder of funds comprising the Agency Loan at the relevant time (or, as the case may be, whichever of those two Parties has disbursed to Owner the proceeds of the Agency Loan); and

WHEREAS, it is the intent of the Parties that, as between the Agency or the City, the Party that possesses the funds comprising the Agency Loan at the relevant time (or, as the case may be, whichever of those two Parties has disbursed to Owner the proceeds of the Agency Loan) shall be entitled to exercise all rights, and shall be required to fulfill all outstanding obligations, attributable to "Agency" under the Agreement; and

WHEREAS, it is the intent of the Parties that, if the Agency's prior transfer to the City of funds comprising the Agency Loan is nullified, rescinded or invalidated for any reason whatsoever, then it is expressly agreed that the obligation to disburse the Agency Loan shall be carried out by the Agency (or its applicable successor, which may include the City); and

WHEREAS, Owner has acknowledged and agreed that the City's intent is to fulfill its financial obligations under the Agreement through tax increment funds and/or associated bond proceeds made available by the Agency, and thus nothing in the Agreement shall require the City to expend or promise to expend monies from its general fund to satisfy all or any portion of the obligations set forth in the Agreement; and

WHEREAS, Owner has submitted to the Council and the Agency copies of the proposed Agreement in a form acceptable to Owner; and

WHEREAS, the respective Boards of Directors of SEDC and CCDC have reviewed and discussed the proposed Agreement, and have recommended that the Agency and the City approve the Agreement; and

WHEREAS, the Agency believes that the Project, the Agreement and the Agency Loan are in the best interests of the City and benefit the public health, safety, or general welfare of its residents, and are in accord with the public purpose and provisions of applicable state and local law and requirements; NOW, THEREFORE,

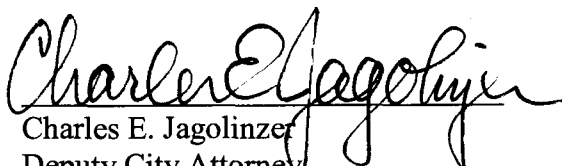
BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

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 received and heard all oral and written objections to the proposed Agreement, and that all such oral and written objections are overruled.
3. That the Council approves the Agreement and all exhibits attached thereto.
4. That the Mayor, or designee, is authorized, on behalf of the City, to execute the Agreement, including all attachments and exhibits thereto requiring the City's signature. A copy of the Agreement, when fully executed, shall be placed on file with the City Clerk as Document No. RR- 306881.
5. That the Mayor, or designee, is authorized, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Agreement, and to take any actions necessary and appropriate to administer the City's obligations, responsibilities and duties to be performed under the Agreement, including all attachments and exhibits thereto.

6. That the Agency Loan in an amount not to exceed \$9,255,000, and the provisions of the Agreement establishing the terms and conditions for the disbursement of the Agency Loan, are approved.

7. That the Council hereby authorizes the Chief Financial Officer, as delegated, to appropriate, encumber and expend funds from the 20 percent low and moderate income housing set-aside tax increment funds from the Southcrest Component Area (\$980,000) and the Gateway Center West Component Area (\$20,000), respectively, of the Southeastern San Diego Merged Project, the Centre City Redevelopment Project (\$5,255,000), and the Horton Plaza Redevelopment Project (\$3,000,000), so long as the aggregate amount of such expenditure does not exceed \$9,255,000 and is disbursed to Owner in the form of the Agency Loan and applied solely toward construction of the affordable family rental housing component of the Project, as described in the Agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Charles E. Jagolinzer
Deputy City Attorney

CEJ:nja
6/7/2011
Cert. No. 3000004254
Or.Dept:CCDC
R-2011-947
PL#2011-05670
Comp. RA-2011-135

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 6/21/11.

ELIZABETH S. MALAND
City Clerk

By Carolina J. Triguero
Deputy City Clerk

Approved: 6-22-11
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor