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RESOLUTION NUMBER R- 300990

DATE OF FINAL PASSAGE AUG 4 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE NORTH PARK GATEWAY PROJECT (PROJECT) WITHIN THE NORTH PARK REDEVELOPMENT PROJECT AREA, THE DISPOSITION OF CERTAIN CITY-OWNED PROPERTY AT NOT LESS THAN ITS FAIR REUSE VALUE IN CONNECTION WITH THE PROJECT, AND THE BASIC CONCEPT DRAWINGS FOR THE PROJECT; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS AND THE APPROPRIATION AND EXPENDITURE OF FUNDS.

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 North Park Redevelopment Project (Redevelopment Plan); and

WHEREAS, the Agency has adopted the five-year Implementation Plan (Implementation Plan) covering the period of July 2009 through July 2014 for the North Park Redevelopment Project Area (Project Area); and

WHEREAS, among other things, the Implementation Plan provides for the implementation of certain activities necessary or appropriate to carry out the objectives of the Redevelopment Plan in accordance with California Health and Safety Code section 33490, which is part of the California Community Redevelopment Law (CRL), California Health and Safety Code sections 33000-34160; and

WHEREAS, in August 2010 the Agency acquired for redevelopment purposes the two-story vacant commercial property of approximately 15,600 square feet (Site) located at 3067 University Avenue within the Project Area;

WHEREAS, Agency staff has negotiated a Disposition and Development Agreement (DDA) with North Park Gateway, LLC, a California limited liability company (Developer), wherein the Developer has agreed to develop, construct and operate a mixed-use project comprised of a retail space of approximately 7,000 square feet on the ground level and six two-bedroom residential rental units with an open-air landscaped atrium on the second level (Project).

WHEREAS, the DDA contemplates the disposition of the Site to the Developer subject to certain long-term use restrictions set forth in the Grant Deed, which is included as Attachment No. 5 to the DDA; and

WHEREAS, the DDA provides that the Agency will provide financial assistance to Developer in the form of a loan in an amount not to exceed \$100,000 (Loan), to be applied towards construction of public improvements as part of the Project, subject to the terms of the DDA; and

WHEREAS, the source of the Loan will be tax increment funds from the Project Area; and

WHEREAS, repayment of the Loan will be secured by a deed of trust to be recorded against the Site, which will be recorded in a position junior to the deed of trust(s) securing repayment of the senior institutional loan for the Project; and

WHEREAS, on February 28, 2011 the Agency and the City of San Diego (City) entered into that certain Cooperation Agreement for Payment of Costs Associated with Certain

Redevelopment Agency Funded Projects by and between the City of San Diego and the Redevelopment Agency of the City of San Diego (Cooperation Agreement), a copy of which is on file with the Agency Secretary as Document No. D-04618, whereby the City agreed to carry out on the Agency's behalf the projects identified in the Cooperation Agreement's Exhibit 1- Schedule of Projects;

WHEREAS, the Project is included within Rows 228 and 237 of the Cooperation Agreement's Exhibit 1- Schedule of Projects;

WHEREAS, pursuant to a resolution passed on February 28, 2011, the City Council and Agency made determinations of benefit under California Health and Safety Code section 33445, authorizing the use of Agency funds for construction of publicly owned improvements within the Project Area; and

WHEREAS, on March 16, 2011, the Agency transferred to the City fee title ownership of the Site by recorded quitclaim deed;

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 Site.

WHEREAS, the City, the Agency and the Developer (collectively, the "Parties") now want to enter into the DDA; and

WHEREAS, it is the intent of the Parties that by executing the proposed DDA, they confirm that they are all parties to the DDA; and

WHEREAS, it is the intent of the Parties that all references to “Agency” in the DDA shall mean either Agency or the City, whichever of those two Parties is the fee title owner of the Site at the relevant time, as further clarified in the DDA; and

WHEREAS, it is the intent of the Parties that, as between the Agency or the City, the party that owns the fee title to the Site 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 DDA; and

WHEREAS, it is the intent of the Parties that, if the Agency’s prior transfer of the Site to the City is nullified, rescinded or invalidated for any reason, then fee title to the Site 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 Site shall be automatically reassigned to the Agency (or its applicable successor, which may include the City), as further clarified in the DDA; and

WHEREAS, in accordance with CRL section 33433, the Agency and the Council held a joint public hearing to consider the approval of the DDA and the Grant Deed on August 2, 2011, after publishing notice of the public hearing in accordance with CRL section 33433; and

WHEREAS, pursuant to CRL section 33433, Agency staff administered the preparation of a Summary Report pertaining to the sale of the Site, which is attached to the Staff Report for this action, and is incorporated fully into this resolution by this reference; and

WHEREAS, the Agency has made copies of the DDA, the Grant Deed, and the Summary Report available for public inspection and copying no later than the time of the first publication of the notice of 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 City under the DDA;
- (ii) The estimated value of the interest to be conveyed, determined at the highest and best use permitted under the Redevelopment Plan;
- (iii) The estimated value of the interested to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the DDA and the Grant Deed;
- (iv) The compensation to be paid to the City under the DDA;
- (v) An explanation of the difference between the compensation to be paid to the City under the DDA and the fair market value of the Site at the highest and best use consistent with the Redevelopment Plan; and
- (vi) An explanation of why the sale of the Site 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 CRL section 33433, the Council considered the information in the Summary Report and has made the findings required by CRL section 33433 with respect to the DDA and the Grant Deed; and

WHEREAS, the Council believes that the DDA and the Grant Deed are in the best interests of the Project Area, the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, the Site is presently vacant and the Project will not result in the displacement of any residents or businesses, such that neither a relocation plan nor a replacement housing plan will be required in connection with the Project; and

WHEREAS, the Council has considered any written evidence and/or testimony received in support of or in opposition to the DDA, the Grant Deed, the Summary Report, and the Basic Concept Drawings, as well as the entire record prepared by Agency and City staff; NOW, THEREFORE,

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

1. That the Council hereby finds and determines that all recitals set forth in this Resolution are true and correct and are fully incorporated herein by this reference.
2. That the Council received and heard any and all oral and written objections to the DDA, and that such oral and written objections are overruled.
3. That the Council has reviewed and approves the Summary Report.
4. That the Council finds and determines that the consideration to be received by the City for the sale of the Site is not less than fair reuse value at the use and with the covenants and conditions and development cots authorized by the DDA and the Grant Deed for, among other reasons, the reasons set forth in Sections IV and V of the Summary Report.

5. That the Council finds and determines that the sale of the Site will assist in the elimination of blight, for, among other reasons, the reasons set forth in Section VI of the Summary Report.

6. That the Council finds and determines that the proposed transactions are in the best interests of the 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 Project Area in accordance with the Redevelopment Plan and will further the public purposes of implementing the Redevelopment Plan and achieving the goals of the Redevelopment Plan.

7. 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.

8. That the DDA, and all exhibits attached thereto (including, without limitation, the Grant Deed), are hereby approved.

9. That the Mayor, or designee, is authorized to execute the DDA and all exhibits thereto requiring the City's signature; a copy of the DDA, when executed by the City shall be placed on file with the office of the City Clerk as Document No.: RR-306990

10. That the Council hereby approves the sale of the Site to the Developer in accordance with the DDA and the Grant Deed.


11. That the Mayor, or designee, is authorized to sign all documents necessary and appropriate to carry out and implement the DDA and this Resolution and to administer City's obligations, responsibilities and duties to be performed under the DDA and this Resolution.

12. That the Loan in an amount not to exceed \$100,000 is approved.

13. That the Chief Financial Officer, as delegated, is authorized to appropriate, encumber and expend an amount not to exceed \$100,000 in funds from the North Park Redevelopment Project Area (Fund # 400810), so long as the expenditure is disbursed to the Developer in the form of the Loan and applied solely toward construction of public improvements as described in the DDA, and provided that the Chief Financial Officer first certifies the funds are available.

14. That the Council hereby grants design review approval of the Project and specifically approves the Basic Concept Drawings for the Project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Debra J. Bevier
Deputy City Attorney

DJB:mm
7/21/2011
Or.Dept: Redev. Agency
PL#2011-06519
Companion RA: 2012-06

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 2 2011

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8.4.11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor