

(R-2013-347)

RESOLUTION NUMBER R- 307933DATE OF FINAL PASSAGE DEC 18 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO, ACTING IN ITS CAPACITY AS THE BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, APPROVING AND AUTHORIZING THE EXECUTION OF THE PROPOSED FIRST AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT WITH COMM22 HOUSING GP, LLC AND COMM22 FAMILY HOUSING L.P., RELATED TO THE MIXED-USE MASTER DEVELOPMENT PROJECT TO BE LOCATED ALONG THE SOUTH SIDE OF COMMERCIAL STREET BETWEEN 21<sup>ST</sup> STREET AND HARRISON AVENUE IN LOGAN HEIGHTS.

WHEREAS, the Redevelopment Agency of the City of San Diego (Former RDA) dissolved as of February 1, 2012, in accordance with a deadline for elimination of all redevelopment agencies throughout California set forth in Assembly Bill x1 26 (AB 26), as modified by the California Supreme Court in a final opinion issued on December 29, 2011, in litigation designated as Case No. S194861; and

WHEREAS, upon the Former RDA's dissolution, the City of San Diego, solely in its capacity as the successor agency to the Former RDA (Successor Agency), became vested with all of the Former RDA's authority, rights, powers, duties, and obligations under the California Community Redevelopment Law and, by operation of law, received all assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, before the enactment of AB 26 in June 2011, the Former RDA and COMM22 Housing GP, LLC, a California limited liability company (Developer), executed an Owner Participation Agreement (OPA), a copy of which is on file with the City Clerk as Document No. D-04674, for development of a mixed-use, transit-oriented project, to be known as COMM22, located on a four-acre site along the south side of Commercial Street between 21<sup>st</sup> Street and Harrison Avenue in the Logan Heights neighborhood pursuant to Resolution No. R-04674 adopted effective June 22, 2011; and

WHEREAS, the site is owned by the San Diego Unified School District (SDUSD) and leased to the Developer; and

WHEREAS, in December 2011, the Developer assigned its OPA rights, obligations and duties to COMM22 Family Housing, L.P. (Family Developer), a California nonprofit public benefit corporation comprised of BRIDGE Housing Corporation (BRIDGE) and Metropolitan Area Advisory Committee on Anti-Poverty of San Diego, Inc. (MAAC Project) (hereinafter, collectively referred to as Developer); and

WHEREAS, under the OPA, the COMM22 master development was to consist of 130 family rental housing units (including 128 affordable units, of which 13 would be made available at an Affordable Rent and occupied by Extremely Low Income households (the Extremely Low Income 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, to assist in financing the Developer's completion of the affordable family rental housing units (Project), a component of the larger COMM22 master development, the OPA contemplates the Former RDA's issuance of a loan in an amount up to \$9,255,000 (Agency Loan), to be applied toward construction of the affordable family rental housing units, subject to the terms of the OPA; and

WHEREAS, the OPA requires the Developer, upon completion of the construction of the family rental housing units, to make the 128 affordable units available for occupancy by Extremely Low, Very Low and Low Income households for a period of fifty-five (55) years; and

WHEREAS, the Developer initially estimated that the total costs of the Project would be approximately \$52,734,402 during the construction financing period and approximately \$54,865,000 during the permanent financing period, but has recently indicated that the Project's direct and indirect development costs have increased by \$1,658,112 to \$54,392,514 during the construction financing period and \$1,606,866 to \$56,472,253 during the permanent financing period; and

WHEREAS, the Developer initially estimated that the total costs of the Project to be financed by a Senior Lender (as defined in the OPA) would be \$25,367,000 in the form of a Construction Loan during the construction period and \$3,349,000 in the form of a Permanent Loan during the permanent financing period, but due to the Project's increased direct and indirect development costs, the total costs to be financed by Senior Lender have now been revised to \$28,000,000 and \$3,590,682, respectively; and

WHEREAS, the OPA contemplates that the Agency Loan would be subordinate to the senior loan values identified in the OPA, and the Senior Lender has requested that the Agency

Loan will be subordinate to the increased amount of the Senior Lender's combined construction and permanent loans; and

WHEREAS, there is no proposed change to the Agency Loan amount of \$9,255,000; and

WHEREAS, the Senior Lender has further requested that in the event of foreclosure on the Leasehold by the Senior Lender, certain area median income (AMI) levels, established within the OPA as rental restrictions to target certain affordability levels for the residential units, be increased in order to more readily identify a replacement developer or owner to step into Developer's position; and

WHEREAS, the Developer and the Successor Agency now desire to enter into the First Amendment to the OPA (First Amendment) to amend the Project Budget to reflect the increase in Development Costs and to agree that the Agency Loan shall be subordinate to the Senior Loan (as defined in the OPA), which now includes the increased amount of Development Costs as further identified in the Amended Method of Financing and Amended Project Budget; and

WHEREAS, the Developer and Successor Agency now desire to enter the First Amendment to amend the Agreement Affecting Real Property (Including Rental Restrictions) and agree that the Extremely Low Income units shall automatically convert to Very Low Income units (as defined in the OPA) if the Senior Lender completes a foreclosure on the Leasehold, but that no change shall be applied to the units available for and restricted to Very Low Income households and Low Income households in a foreclosure scenario; and

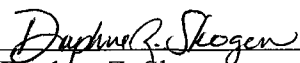
WHEREAS, the Successor Agency's approval of the First Amendment will not be deemed effective until the First Amendment has been approved by the Oversight Board for the Successor Agency and approved or deemed approved by the State Department of Finance in accordance with AB 26 and AB 1484; and

WHEREAS, the First Amendment will become binding on the City and will benefit the City at such time that the Former RDA's rights and obligations under the OPA, as amended, and the encumbered funds for the Project have been effectively assigned to the City, in its capacity as the successor housing entity under AB 26 and AB 1484; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, acting in its capacity as the board of the Successor Agency, as follows:

1. The First Amendment to the OPA and all attachments thereto are approved.
2. The Mayor or designee is authorized, on behalf of the Successor Agency, to execute the First Amendment. A copy of the First Amendment, when fully executed, shall be placed on file in the office of the City Clerk as Document No. RR- 307933.
3. The Mayor or designee is authorized, on behalf of the Successor Agency, to implement, administer, and execute all documents that are necessary and appropriate to effectuate the purposes of this Resolution and the OPA, as amended by the First Amendment.

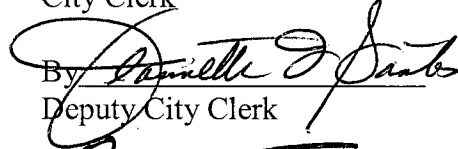
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Daphne Z. Skogen  
Deputy City Attorney

DZS:js  
11/19/2012  
Or.Dept: Civic San Diego  
Doc. No. 476669

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 04 2012

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 12/18/12  
(date)

  
BOB FILNER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
BOB FILNER, Mayor