

RESOLUTION NUMBER R- 308242

DATE OF FINAL PASSAGE JUN 18 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO
MAKING CERTAIN FINDINGS AND DETERMINATIONS, AND
APPROVING VARIOUS ACTIONS, RELATED TO THE PROPOSED
ATMOSPHERE AFFORDABLE HOUSING PROJECT WITHIN THE
CENTRE CITY REDEVELOPMENT PROJECT AREA

WHEREAS, from its formation in 1958 until its elimination on February 1, 2012, the Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City), and there are presently fourteen such project areas; and

WHEREAS, the 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, before the Former RDA's dissolution, the City Council adopted Resolution No. R-307238 effective January 12, 2012, designating the City to serve as the successor agency to the Former RDA (Successor Agency) pursuant to California Health and Safety Code (Code) section 34173(d)(1), and further designating the City to serve as the Successor Housing Entity to the Former RDA (Successor Housing Entity) for purposes of performing the Former RDA's housing functions pursuant to Code section 34176(a)(1); and

WHEREAS, upon the Former RDA's dissolution on February 1, 2012, the Successor Agency became vested with all of the Former RDA's authority, rights, powers, duties, and obligations under the California Community Redevelopment Law (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 winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, and Assembly Bill 1484 (AB 1484), enacted on June 27, 2012; and

WHEREAS, pursuant to Code section 34181(c), the seven-member Oversight Board directed the Successor Agency to transfer the Former RDA's affordable housing assets (Housing Assets) to the City as Successor Housing Entity, and the California Department of Finance (DOF) approved the Oversight Board's decision; and

WHEREAS, the Successor Agency transferred the Housing Assets to the Successor Housing Entity on or about January 28, 2013; and

WHEREAS, pursuant to Code section 34176(d), the Successor Housing Entity has created a new, separate fund, known as the Low and Moderate Income Housing Asset Fund (Housing Asset Fund), for purposes of depositing any encumbered funds related to the Housing Assets and retaining any revenues generated from the Housing Assets in the future; and

WHEREAS, Code section 34176(d) requires all monies in the Housing Asset Fund to be used in accordance with applicable housing-related provisions of the Redevelopment Law; and

WHEREAS, Civic San Diego (Civic SD) administers affordable housing projects and implements housing functions on behalf of the Successor Housing Entity pursuant to a written consultant agreement, as amended; and

WHEREAS, Civic SD, acting on behalf of the City, has negotiated a Disposition and Development Agreement included as Attachment E to Staff Report No. CSD-13-08 (Agreement) with Wakeland Atmosphere, L.P., a California limited partnership, and Wakeland Atmosphere

II, L.P., a California limited partnership (collectively, Developer), wherein Developer has agreed to construct a 205-unit multi-family housing project (Project) on an approximately 32,000 square-foot site owned by the City as Successor Housing Entity and generally located on the partial block bounded by Ash and Beech streets and Fourth and Fifth avenues in the Cortez neighborhood of the Centre City Redevelopment Project Area (Property); and

WHEREAS, the Agreement requires the Developer to operate the Project, upon completion of construction, as rental housing that is affordable to very low-income households, low-income households, and moderate-income households, as more specifically defined and provided for in the Agreement; and

WHEREAS, pursuant to Resolution No. R-04001 adopted effective March 14, 2006, the Former RDA, acting as the designated “lead agency” for purposes of the California Environmental Quality Act (CEQA), has previously certified the Final Environmental Impact Report for the San Diego Downtown Community Plan, Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (2006 Final EIR), on file with the City Clerk as Document No. D-04001a; and

WHEREAS, the Former RDA also certified subsequent addenda to the 2006 Final EIR effective August 3, 2007 (Resolution No. R-04193), April 21, 2010 (Resolution Nos. R-04508 and R-04510), and August 3, 2010 (Resolution No. R-04544) (collectively, Addenda); and

WHEREAS, Civic SD, on behalf of the City, has administered the preparation of the Downtown Final Environmental Impact Report (FEIR) Consistency Evaluation for the Atmosphere Project dated April 10, 2013 (Consistency Evaluation), which is included as Attachment G to the Staff Report, in accordance with CEQA and state and local guidelines adopted pursuant thereto; and

WHEREAS, the Consistency Evaluation sets forth findings that the Project is within the scope of the development program analyzed in the 2006 Final EIR and the Addenda, and will not result in new or increased environmental effects compared to what already has been evaluated under such CEQA documents; and

WHEREAS, the Agreement contemplates that the City will issue to Developer (or its affiliate) a forgivable, residual receipts loan in an amount not to exceed \$11,600,000 (City Loan) to be derived from the following pre-2011 housing bond proceeds (collectively, Bond Proceeds): (i) \$5,623,183 from Centre City Redevelopment Project Area Tax Allocation Bonds, Series 2008A, Fund No. 200586; (ii) \$276,817 from Horton Plaza Redevelopment Project Area Subordinated Tax Allocation Bonds, Series 2003A, Fund No. 200572; (iii) \$3,700,000 from Housing Set Aside Tax Allocation Bonds, Series 2010A, affiliated with the Crossroads Redevelopment Project Area, Fund No. 200635; and (iv) \$2,000,000 from Housing Set Aside Tax Allocation Bonds, Series 2010A, affiliated with the Naval Training Center Redevelopment Project Area, Fund No. 200635; and

WHEREAS, the City Loan shall include the City Predevelopment Loan in the amount of \$1,125,000 as set forth and provided for in the Agreement; and

WHEREAS, pursuant to Code section 34176(g), commitments for expenditure of the Bond Proceeds are valid and binding only when they are included in an approved Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, the City's obligations to provide the City Predevelopment Loan and the City Loan are contingent on approval by the DOF of the expenditures for the City Predevelopment Loan and the City Loan in the applicable ROPS, and Developer shall not be entitled to any loan

disbursements from the City unless and until the DOF has approved such disbursements on the ROPS for the period during which each applicable disbursement is to be made; and

WHEREAS, repayment of the City Loan from residual receipts of the Project's operation will be secured by a deed of trust and related security instruments to be recorded in the City's favor (collectively, Security Instruments) against the leasehold interest held by Developer; and

WHEREAS, the 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 \$50,162,000 during the construction financing period, followed by a permanent loan of approximately \$13,687,000 during the permanent financing period; and

WHEREAS, to allow some flexibility in coordinating the sources of financing for the Project, the Agreement allows the Mayor or designee to grant an administrative approval of an increase in the amount by which the City Loan is subordinated to the senior institutional loan up to 10 percent of the current estimated amount of the senior institutional loan; and

WHEREAS, the Project will involve the production of 202 affordable housing units (Affordable Units), which shall be subject to 55-year affordability covenants; and

WHEREAS, the Agreement provides for the City's ground leasing of the Property to the Developer for seventy years, with an option that may be exercised by Developer to extend the leasehold estate for an additional twenty years (collectively, Lease Term), subject to the terms of the Agreement and the proposed Ground Lease between the City and the Developer (Ground Lease), which is Attachment No. 18 to the Agreement; and

WHEREAS, in accordance with Code section 33433, the City Council held a public hearing to consider the approval of the Agreement and the Ground Lease on JUN 04, 2013, after publishing notice of the public hearing in accordance with Code section 33433; and

WHEREAS, pursuant to Code section 33433, Civic SD administered the preparation of the "Summary Pertaining to the Proposed Conveyance of Certain Real Property Interest within the Project Area" dated May 2013 (Summary Report), which is included as Attachment D to the Staff Report, and is incorporated fully into this Resolution by this reference; and

WHEREAS, the City has made copies of the Agreement, the Ground Lease, 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 cost of the Agreement and the Ground Lease to the City, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City, plus the expected interest on any loans or bonds to finance the Agreement and the Ground Lease; and

(ii) The estimated value of the interest to be leased, determined at the highest and best uses permitted under the Redevelopment Plan for the Centre City Redevelopment Project, as amended (Redevelopment Plan); and

(iii) The estimated value of the interest to be leased, determined at the use and with the conditions, covenants, and development costs required by the Agreement and the Ground Lease; and

(iv) The present value of the lease payments which the Developer will be required to make during the Lease Term along with an explanation as to why the rental amount is less than the fair market value of the interest to be leased, determined at the highest and best use consistent with the Redevelopment Plan; and

(v) An explanation of why leasing of the Property in accordance with the Agreement and the Ground Lease 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 Code section 33433, the Council considered the information in the Summary Report; and

WHEREAS, the City Council believes that the Agreement and the Ground Lease are in the best interests of 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 City Council has considered any written evidence and/or testimony received in support of or in opposition to the Agreement and the Ground Lease, as well as the entire record prepared by City and Civic SD staff; and

WHEREAS, in accordance with the Agreement, Developer has submitted to the City, and the City has reviewed, the Basic Concept Drawings pertaining to the Project, which plans are included as Attachment F to the Staff Report; NOW, THEREFORE,

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

1. 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. Consistent with the analysis contained in the Consistency Evaluation, the environmental effects of the Project were adequately addressed in the 2006 Final EIR and the Addenda, and the Project is within the scope of the development program described therein.

3. The Council adopts the following findings and determinations, as set forth at page 5 of the Consistency Evaluation, with respect to the environmental effects of the Project:

(a) No substantial changes are proposed in the Centre City Redevelopment Project, or with respect to the circumstances under which the Centre City Redevelopment Project is to be undertaken as a result of the Project, which will require important or major revisions in the 2006 Final EIR or the Addenda; and

(b) No new information or substantial importance to the Centre City Redevelopment Project has become available, which was not known or could not have been known at the time the 2006 Final EIR was certified as complete, and which shows that the Project will have any significant effects not discussed previously in the 2006 Final EIR or the Addenda, or that any significant effects previously examined will be substantially more severe than shown in the 2006 Final EIR or the Addenda, or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects on the environment; and

(c) No negative declaration, subsequent environmental impact report, or supplement or further addendum to the 2006 Final EIR is necessary or required; and

(d) The development of the Project will have no significant effect on the environment, except as identified and considered in the 2006 Final EIR and the Addenda, and no new or additional project-specific mitigation measures are required in connection with development of the Project; and

(e) The Project would not have any new effects that were not adequately covered in the 2006 Final EIR or the Addenda, and therefore, the Project is within the scope of the development program approved under the 2006 Final EIR and the Addenda.

4. Pursuant to CEQA Guidelines sections 15162 and 15168, the Council determines that no further environmental documentation is required to address the potential environmental effects of the Project.

5. The Mitigation Monitoring and Reporting Program derived from the 2006 Final EIR, tailored specifically for the Project, and attached to the Consistency Evaluation, is hereby approved and adopted.

6. The City Clerk, or designee, is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

7. The Council has received and heard any and all oral and written objections relating to the proposed Agreement and the proposed Ground Lease, and all such oral and written objections are overruled.

8. The Council finds and determines that the consideration to be received by the City for the ground leasing of the Property for the Lease Term is not less than fair reuse value at the use and with covenants and conditions and development costs authorized by the Agreement and the Ground Lease for, among other reasons, the reasons set forth in the Summary Report.

9. The Council finds and determines that the ground leasing of the Property for the Lease Term and the development of the Property in accordance with the Agreement and the Ground Lease will assist in providing housing for very-low income, low-income or moderate-income persons, for, among other reasons, the reasons set forth in the Summary Report.

10. The Council approves the ground leasing of the Property to the Developer for the Lease Term and the development of the Property, in accordance with the Agreement and the Ground Lease.

11. The Council approves the Agreement, including all attachments and exhibits thereto.

12. Contingent upon the Comptroller first issuing a certificate stating that the funds are available, the Council authorizes the Chief Financial Officer, as delegated, to encumber and expend an amount not to exceed \$11,600,000 of the Bond Proceeds to provide the City Predevelopment Loan and the City Loan for the Project as authorized pursuant to the applicable approved ROPS, which amount is itemized as follows: (i) \$5,623,183 from the Centre City Redevelopment Project Area Tax Allocation Bonds Series 2008A, Fund No. 200586; (ii) \$276,817 from the Horton Plaza Project Area Subordinated Tax Allocation Bonds, Series 2003C, Fund No. 200572; (iii) \$3,700,000 from the Housing Set Aside Tax Allocation Bonds Series 2010A affiliated with the Crossroads Project Area, Fund No. 200635; and (iv) \$2,000,000 from the Housing Set Aside Tax Allocation Bonds Series 2010A affiliated with the NTC Project Area, Fund No. 200635.

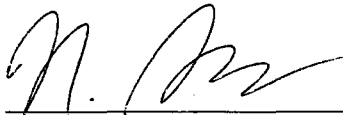
13. The Mayor, or designee, is authorized and directed to execute the Agreement, including all attachments and exhibits thereto requiring the City's signature. A copy of the Agreement, when fully executed, shall be placed on file with the City Clerk as Document No. RR- 308242.

14. The Mayor, or designee, is authorized and directed to sign all documents necessary and appropriate to carry out and implement the Agreement and to administer the City's

obligations, responsibilities, and duties to be performed under the Agreement, including all attachments and exhibits thereto.

15. The Council grants design review approval of the Project and specifically approves the Basic Concept Drawings for the Project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Nathan Slegers
Deputy City Attorney

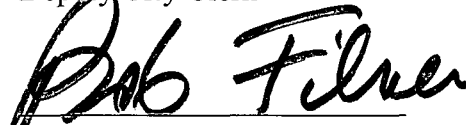
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Or.Dept: Civic San Diego
Doc. No. 567310

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 04 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6/18/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

Passed by the Council of The City of San Diego on JUN 04 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 18 2013

AUTHENTICATED BY: BOB FILNER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 308242