

RESOLUTION NUMBER R- 308646

DATE OF FINAL PASSAGE DEC 24 2013

ITEM # 337
12/10/13

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE EXECUTION OF CERTAIN
REFINANCING AGREEMENTS FOR THE HORTON
FOURTH AVENUE APARTMENTS PROJECT.

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

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 on January 4, 2013; and

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

WHEREAS, Horton Fourth Avenue, LLC (Borrower) is the owner of the Horton Fourth Avenue Apartments Project (Property), which consists of sixty-six (66) apartments and approximately 4,800 square feet of street-level retail space; and

WHEREAS, for the purpose of increasing the supply of affordable housing in the City, the Former RDA entered into certain agreements with Borrower's predecessor-in-interest in the Property; and

WHEREAS, the Former RDA provided a loan to Borrower in the amount of \$2,736,745 (Original Loan) secured by a Subordinated Deed of Trust at an interest rate of six and one half percent (6.5%), and the City as Successor Housing Entity has assumed the Former RDA's rights and obligations under the Original Loan; and

WHEREAS, the Original Loan is subordinate to the \$3.65 million loan issued by a senior lender (Original Senior Loan); and

WHEREAS, the Original Senior Loan matured on November 1, 2013 and the Borrower is currently in the process of refinancing the Original Senior Loan with a new primary loan in the approximate principal amount of \$5.4 million and for a new term of twenty-five (25) years (New Senior Loan); and

WHEREAS, the Borrower will use the proceeds of such New Senior Loan first to pay off the existing Original Senior Loan, second to pay the closing costs of the New Senior Loan, and third to pay the City amounts outstanding under the Original Loan; and

WHEREAS, the Borrower and City will also extend the term of the Original Loan for twenty-five (25) years and additionally pay down approximately \$1.5 million in interest, convert the remaining accrued interest into principal, and reduce the interest to three percent (3.0%) (New Loan), as described in the Amended and Restated Promissory Note, included as Attachment A to Staff Report No. CSD-13-19, and secured by the Amended and Restated Subordinated Deed of Trust, included as Attachment B to Staff Report No. CSD-13-19; and

WHEREAS, as required under Code section 34176(g), the City will deposit all payments received by the Borrower under the New Loan into the Low and Moderate Income Housing Asset Fund, to be used for affordable housing purposes in accordance with the Redevelopment Law; and

WHEREAS, the existing affordability covenants on the Property will further be extended by an additional twenty-five (25) years, until December 15, 2074, which is the same term as the New Loan, and will be in a senior position to the New Senior Loan, as described in the Amended and Restated Agreement Affecting Real Property, included as Attachment C to Staff Report No. CSD-13-19; and

WHEREAS, all references in the authorized action items of this Resolution to the “Mayor” are intended to refer to the elected Mayor or the Council President (during the period of vacancy in the Office of the Mayor), as may be applicable upon the occurrence of each authorized action item; NOW, THEREFORE,

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

1. The Mayor or designee is authorized and directed to execute the following agreements:

a. Amended and Restated Promissory Note Secured by Subordinated Deed of Trust to the City of San Diego on file with the Office of the City Clerk as Document No. RR- 308646-1; and

b. Amended and Restated Subordinated Deed of Trust with Assignment of Rents on file with the Office of the City Clerk as Document No. RR- 308646-2; and

c. Amended and Restated Agreement Affecting Real Property on file with the Office of the City Clerk as Document No. RR- 308646-3 and

d. Subordination Agreement by and between the City, Horton Fourth Avenue, LLC and RGA Reinsurance Company on file with the Office of the City Clerk as Document No. RR- 308646-4; and

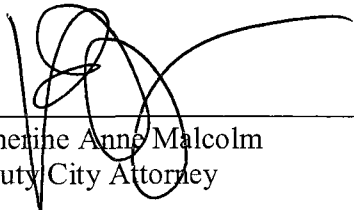
2. The Administration Agreement by and between the City, Horton Fourth Avenue, LLC and the San Diego Housing Commission is approved as to form and content deemed acceptable by Mayor or designee and City Attorney Office.

3. The Mayor or designee is authorized to execute all documents and to take all actions as may be necessary to implement the above-referenced agreements.

4. The City Comptroller is authorized and directed to accept, on the City behalf, all payments received under the Amended and Restated Promissory Note and to deposit such payments in the Low and Moderate Income Housing Asset Fund.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

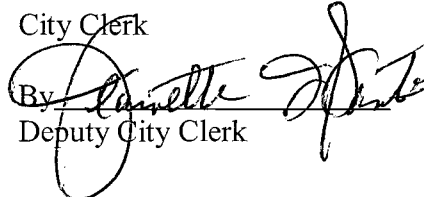


Katherine Anne Malcolm
Deputy City Attorney

KAM:als
11/22/13
Or.Dept: Civic San Diego
Doc.No. 675277

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 10 2013

ELIZABETH S. MALAND
City Clerk

By 

Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on DEC 10 2013, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|-----------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Sherri Lightner | <input type="checkbox"/> | <input checked="" 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 DEC 24 2013.

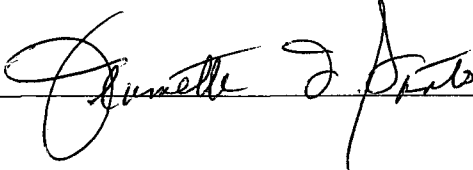
(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

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