

RESOLUTION NUMBER R- 309546

DATE OF FINAL PASSAGE MAR 11 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING VARIOUS ACTIONS RELATED TO
THE MAYBERRY TOWNHOMES AFFORDABLE HOUSING
REHABILITATION 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 *California Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231 (2011); 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 housing successor to the Former RDA (Housing Successor) 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 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, enacted on June 27, 2012, and subsequent legislation; 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 Housing Successor, and the California Department of Finance approved the Oversight Board's decision; and

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

WHEREAS, Mayberry Townhomes, LP (Existing Borrower) is the current owner of the Mayberry Townhomes Apartments Project (Property), which consists of seventy (70) apartments located within the Southeastern San Diego Merged Redevelopment Project Area; and

WHEREAS, for the purpose of increasing the supply of affordable housing in the City, the Former RDA entered into certain agreements with Existing Borrower with respect to the Property; and

WHEREAS, the Former RDA provided a loan to Existing Borrower in the amount of \$799,956.80 (Refinance Loan) for the refinancing of a market-rate loan for the Property, secured by a subordinated deed of trust, at an interest rate of three percent (3%), payable through equal monthly principal and interest payments during a fifty-five (55) year term; and

WHEREAS, the Former RDA also provided Existing Borrower a loan in the amount of \$799,370.00 (Rehabilitation Loan) for a prior rehabilitation of the Property, secured by a subordinated deed of trust, at an interest rate of three percent (3%), payable through residual receipts generated from the Property during a fifty-five (55) year term; and

WHEREAS, the City as Housing Successor has assumed the Former RDA's rights and obligations under the Refinance Loan and the Rehabilitation Loan; and

WHEREAS, Mountain View Housing Associates, LP (New Borrower) has acquired a contractual right to acquire fee title ownership of the Property from Existing Borrower; and

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

WHEREAS, Civic SD, acting on behalf of the City, has negotiated the Loan Modification Agreement included as Attachment A to Staff Report No. CSD-15-04 (Agreement) with New Borrower, wherein New Borrower has agreed to (i) complete a substantial rehabilitation of the 70-unit multi-family housing project (Project) on the Property, (ii) assume all of Existing Borrower's obligations related to the Refinance Loan and the Rehabilitation Loan, (iii) pay all accrued interest on the Refinance Loan and the Rehabilitation Loan, and (iv) extend the existing affordability covenants on the Property to fifty-five (55) years from the date of the completion of the rehabilitation during which time the residential units, with the exception of one manager's unit, shall be made available as rental housing affordable to Very Low Income, Low Income, and Moderate Income households, as defined and provided for in the Agreement; and

WHEREAS, the Agreement provides that upon New Borrower's satisfaction of certain conditions precedent, the Refinance Loan will be modified to a residual receipts loan, at the long-term annual interest rate published monthly by the Internal Revenue Service in accordance with section 1274(d) of the Internal Revenue Code, with no principal or interest payments due except through residual receipts generated at the Property, and the term for the Refinance Loan will be extended to fifty-five (55) years from the date of completion of the rehabilitation work

(Modified Loan), as described in the Amended and Restated Promissory Note Secured by Deed of Trust included as Attachment No. 2 to the Agreement; and

WHEREAS, the New Borrower will use the proceeds of a new senior loan secured by the Property (New Senior Loan) first to pay off the existing senior loan upon the Property made to Existing Borrower, second to pay the closing costs of the New Senior Loan, and third to make a lump sum payment to the City for all accrued interest outstanding under the Refinance Loan and the Rehabilitation Loan; and

WHEREAS, the New Senior Loan will be financed with tax-exempt multi-family housing mortgage revenue bonds and issued by an institutional lender (Senior Lender) requiring that the New Senior Loan have a superior lien position to the City's affordability covenants contained in the Second Amendment to Agreement Affecting Real Property, included as Attachment No. 3 to the Agreement; and

WHEREAS, Civic SD staff has presented information in Staff Report No. CSD-15-04 showing that an economically feasible alternative method of financing the Borrower's acquisition and rehabilitation of the Property on substantially comparable terms and conditions, but without subordination, is not reasonably available and that the City will, as a condition precedent to its issuance of the Modified Loan, obtain written commitments from the Senior Lender reasonably designed to protect the City's investment in the Property in the event of default of the Senior Loan in accordance with Code section 33334.14(a)(4); and

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

WHEREAS, repayment of the Modified Loan from residual receipts of the Project's operation will be secured by a deed of trust and related security instruments recorded in the City's favor against the Property; NOW, THEREFORE,

BE IT RESOLVED, by the 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. The Council approves the Agreement, including all attachments and exhibits thereto.
3. 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- 309546.
4. 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.
5. The City Comptroller is authorized and directed to accept, on the City behalf, all payments received under the Agreement and the Amended and Restated Promissory Note and to deposit such payments in the Low and Moderate Income Housing Asset Fund.
6. The Council finds, consistent with Code section 33334.14(a)(4), that an economically feasible alternative method of financing, refinancing, or assisting the Project on

substantially comparable terms and conditions as the New Senior Loan, but without subordination, is not reasonably available.


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Michael T. Reid
Deputy City Attorney


MTR:meb
2/24/2015
Or.Dept: Civic SD
Doc. No.: 961226

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 10 2015

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3/11/15
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAR 10 2015, 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"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>
Chris Cate	<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 checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 11 2015

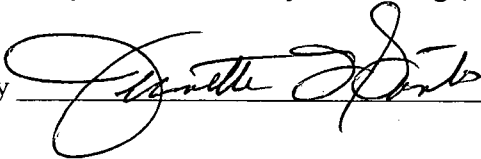
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 309546