

RESOLUTION NUMBER R- 310201

DATE OF FINAL PASSAGE JAN 28 2016

A RESOLUTION OF THE 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, AUTHORIZING THE TERMINATION OF THE REHABILITATION LOAN AGREEMENT AND THE EXCLUSIVE USE RESTRICTIONS WITH REGARDS TO THE SUSHI SPACE LOCATED IN THE CARNATION BUILDING.

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, in 1996, the Former RDA made a loan to Carnation, LLC, a California limited liability company, in the principal amount of \$536,000 (Rehab Loan) pursuant to a Rehabilitation Loan Agreement by and between Carnation and the Former RDA and for the purpose of rehabilitating a portion of the Carnation Building for use as a cultural arts and performance center (Loan Agreement); and

WHEREAS, the Rehab Loan was evidenced by a promissory note in the amount of \$536,000 (Original Note) and secured by a Deed of Trust (Original Deed of Trust); and

WHEREAS, in connection with the Rehab Loan, Carnation and the Former RDA entered into that certain Agreement Affecting Real Property dated February 20, 1997 and recorded February 21, 1997 as Document No. 1997-0078778 in the Official Records (Original AARP); and

WHEREAS, the Original AARP required that a 6,050 square foot portion of the Carnation Building (Sushi Space) be leased to Sushi Performance and Visual Art (Sushi, Inc.), or to a substitute non-profit cultural arts use, at below-market rent until February 20, 2027; and

WHEREAS, Carnation entered into a commercial lease with Sushi, Inc. relating to the Sushi Space, which included an “Addendum to Commercial Lease Agreement” for the benefit of the Former RDA (Lease); and

WHEREAS, in August 2003, Carnation, with Former RDA approval, sold the Carnation Building to ICON LLC (ICON), for the construction of a mixed-use development consisting of the historic rehabilitation of the Carnation Building, 320 condominium units, and approximately 18,000 square feet of commercial space; and

WHEREAS, pursuant to an Assignment and Assumption Agreement dated August 5, 2003 by and among the Former RDA, Carnation, and ICON, ICON assumed all obligations of Carnation under the Loan Agreement, the Original Note, the Original Deed of Trust, the Original AARP, and the Lease; and

WHEREAS, pursuant to that certain Agreement Regarding Carnation Block Condominiums by and between the Former RDA and ICON date October 6, 2003 and that certain First Amendment to Agreement Regarding Carnation Block Condominiums by and between the Former RDA and ICON dated September 26, 2006, the Original Note was cancelled and replaced with a letter of credit in the amount of \$536,000 (Letter of Credit), the Original Deed of Trust was reconveyed, and the lien of the Original AARP was released and extinguished; and

WHEREAS, in December 2008, ICON and the Former RDA replaced the Letter of Credit with a new promissory note for \$536,000 dated December 10, 2008 (Replacement Note), secured by a deed of trust dated December 10, 2008 and recorded on December 31, 2008 as Document No. 2008-0660765 (Replacement Deed of Trust), and entered into that certain Agreement Affecting Real Property dated December 10, 2008 and recorded on December 31, 2008 as Document No. 2008-0660764 (Replacement AARP), limiting use of the Sushi Space to be leased to Sushi, Inc. or a substitute cultural arts use until May 19, 2031; and

WHEREAS, in December 2008, the Former RDA also consented to the sale of the Sushi Space to First Commercial Real Estate Financing (FCREF) and the assignment of ICON's rights, interests, and obligations under the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease to FCREF pursuant to that certain Assignment and Assumption Agreement dated December 23, 2008 and recorded December 31, 2008 as Document No. 2008-0660767 in the Official Records; and

WHEREAS, in May 2011, Sushi, Inc. defaulted on the Lease and in June 2011, had vacated the Sushi Space with \$222,659 of obligations in default; and

WHEREAS, as required under the Agency Documents, FCREF notified the Former RDA of the default and the Former RDA declined to cure the default; 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

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, including all authority, rights, powers, duties, and obligations under the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease; and

WHEREAS, pursuant to the Replacement AARP and the Lease, upon an uncured default by Sushi, Inc., FCREF may lease the Sushi Space to another entity for purposes other than exclusive use as a cultural arts and performance center (Alternative User); and

WHEREAS, pursuant to the Replacement AARP and the Lease, in the event FCREF leases the Sushi Space to an Alternative User, FCREF shall pay to the City the Excess Rent, defined as eighty percent (80%) of the differential between the gross rent that Sushi, Inc. was to pay and the gross rent from the Alternative User; and

WHEREAS, FCREF indicates that it does not have the resources to fund leasing commissions and tenant improvements for tenants in the Sushi Space and that FCREF's efforts to lease the Sushi Space to other entities have been unsuccessful; and

WHEREAS, FCREF now desires to pay to the City \$1,021,000 (Payout Amount) in exchange for the termination, reconveyance, and/or removal of the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, Assembly Bill 1484 (AB 1484), enacted on June 27, 2012, and subsequent legislation; and

WHEREAS, pursuant to Code section 34181(e), the Oversight Board directed the may approve any amendments to or early termination of any contracts, agreements, or other arrangements of the Former RDA if the Oversight Board finds that amendments or early termination would be in the best interests of the local taxing entities; and

WHEREAS, Keyser Marston Associates, Inc. (KMA) prepared a financial analysis of the proposed city pay out, solving for the estimated loan prepayment amount to the City based on inputs and assumptions reflecting KMA's independent market research (KMA Analysis); and

WHEREAS, the KMA Analysis cash flow projection results support the reasonableness of the FCREF's offer of \$1,021,000; and

WHEREAS, the proceeds from the city pay out would be considered to be "cash on hand" and would therefore increase the amount of RPTTF held by San Diego County Assessor's Office by \$1,021,000, net of any costs associated with the closing of the transaction, for the purpose of distribution to the taxing entities; NOW, THEREFORE,

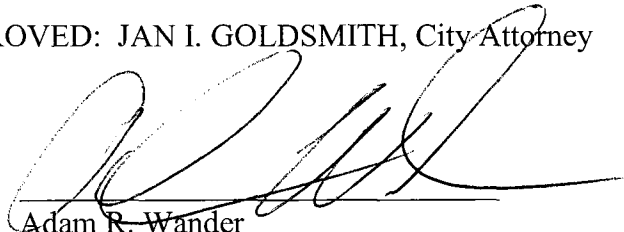
BE IT RESOLVED, by the City Council of the City of San Diego, acting in its capacity as the board of the Successor Agency to the Redevelopment Agency of the city of San Diego, as follows:

1. The Mayor, or designee, is authorized and directed to execute the Termination of Loan Agreement on file in the Office of the City Clerk as Document No. RR-310201 .

2. The Mayor, or designee, is authorized and directed to execute all documents or instruments necessary and appropriate to carry out and implement the Termination of Loan Agreement and is further authorized to do any and all acts and things necessary to carry out, perform, implement, and consummate the termination, reconveyance, and/or removal of the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Adam R. Wander
Deputy City Attorney

ARW:mm
12/22/2015
Or.Dept: Civic San Diego
Doc. No. 1193406

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 12 2016.

ELIZABETH S. MALAND
City Clerk

By *Haye Beach*
Deputy City Clerk

Approved: *1/12/16*
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JAN 12 2016, 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 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"/>
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 type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 28 2016.

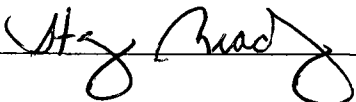
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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

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