

RESOLUTION NUMBER R- 311807

DATE OF FINAL PASSAGE JUN 14 2018

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, APPROVING CERTAIN ACTIONS REGARDING THE FIRST AMENDMENT TO THE PURCHASE AGREEMENT FOR THE SUCCESSOR AGENCY'S SALE OF THE WORLD TRADE CENTER PARKING GARAGE SITE LOCATED AT 1245 FIFTH AVENUE IN DOWNTOWN SAN DIEGO.

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, pursuant to Resolution R-307238 adopted by the City Council effective January 12, 2012, the City, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), elected to serve as the successor agency to the Former RDA, and the City also elected to serve as housing successor to the Former RDA in order to retain housing assets and assume housing responsibilities; and

WHEREAS, at the time of 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 operations in accordance with AB 26, enacted on June 28, 2011, Assembly Bill 1484, enacted on June 27, 2012, and subsequent related legislation (collectively, the Dissolution Laws); and

WHEREAS, the Oversight Board was formed pursuant to California Health and Safety Code (Code) section 34179 to oversee certain actions and decisions of the Successor Agency under the Dissolution Laws; and

WHEREAS, the San Diego County Auditor-Controller, the State Controller, and the State Department of Finance (DOF) also possess certain rights and obligations under the Dissolution Laws with respect to the Successor Agency's administration of winding down the Former RDA's operations; and

WHEREAS, in late 2015, the Oversight Board and the DOF approved the Amended and Restated Long-Range Property Management Plan (LRPMP), which governs the Successor Agency's disposition of its non-housing real property assets, in accordance with Code section 34191.5(c); and

WHEREAS, among other things, the LRPMP requires the Successor Agency to liquidate several real property assets (Liquidation Sites), which will result in the local taxing entities, such as the City, the County of San Diego, local school districts, and local special districts, receiving a pro rata distribution of the net sale proceeds in the same proportion as their share of general property tax revenues; and

WHEREAS, the Successor Agency's sale of the Liquidation Sites is subject to the LRPMP and the Dissolution Laws, not the City's normal regulations for the sale of real property assets, such as San Diego Municipal Code section 22.0902 or Council Policy 700-10; and

WHEREAS, based on a competitive selection process approved by the Oversight Board, Civic San Diego retained the firm of Jones Lang LaSalle (JLL), a commercial real estate brokerage, to represent the Successor Agency's interests in facilitating the sale of each Liquidation Site, and JLL will receive a brokerage commission with respect to the consummated sale of each Liquidation Site; and

WHEREAS, one of the Liquidation Sites currently owned by the Successor Agency is that certain real property commonly known as the World Trade Center parking garage, located at 1245 Fifth Avenue (Property); and

WHEREAS, based on approvals by both the Successor Agency's governing board (i.e., the City Council) and the Oversight Board, the Successor Agency and Metropolitan / SDPB Fifth Avenue, LLC, a California limited liability company (Buyer), entered into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated June 29, 2017 (Purchase Agreement), included as Attachment C to Staff Report CSD-18-07 (Staff Report); and

WHEREAS, the Purchase Agreement contemplated that Buyer would purchase the Property for a purchase price of \$6,300,000, contingent upon Buyer's satisfactory completion of its due diligence investigation of the Property; and

WHEREAS, in accordance with the Purchase Agreement, Buyer conducted extensive due diligence of the Property and discovered that the scope of renovations that will be required to bring the existing building at the Property into compliance with the current applicable building codes and regulations and into a safe and operable condition as a parking garage will exceed the

scope of renovations that Buyer could have reasonably anticipated at the inception of the due diligence period under the Purchase Agreement; and

WHEREAS, to address the physical condition of the Property and other matters that Buyer discovered during the due diligence period, Civic San Diego, acting on behalf of the Successor Agency, and Buyer have negotiated the proposed First Amendment to Real Property Purchase and Sale Agreement and Joint Escrow Instructions (First Amendment), included as Attachment B to the Staff Report, with respect to the Property; and

WHEREAS, the First Amendment modifies the Purchase Agreement to, among other things: (a) establish an escrow account upon the closing of Buyer's acquisition of the Property (Closing), holding back \$1,800,000 from the Successor Agency's purchase price proceeds to reimburse Buyer for its actual costs to complete improvements at the Property exceeding the scope of renovations that Buyer could have reasonably anticipated at the inception of the due diligence period (Improvement Work); (b) require Buyer to make an additional earnest money deposit of \$500,000 (in addition to the earnest money deposit of \$250,000 already made under the Purchase Agreement), causing the total earnest money deposit to be \$750,000; (c) confirm that the Closing will be contingent upon the issuance of a building permit or a "permit ready letter" by the City's Development Services Department within a specified time frame related to Buyer's completion of renovations needed to allow occupancy and operation of the Property as a parking garage; and (d) further confirm that the Closing will be contingent upon delivery of an appropriate document signed by the Successor Agency, with a consent signed by the City's Building Official, removing a 2011 restrictive covenant recorded against the Property; and

WHEREAS, to the extent that the amount of \$1,800,000 held back in the escrow account upon the Closing is later used to reimburse Buyer for its actual costs of the Improvement Work, the purchase price for the Property will be effectively reduced below \$6,300,000; and

WHEREAS, the Oversight Board must approve the First Amendment before it becomes effective, and under Code section 34191.5(f), the Oversight Board's decision will become effective immediately, without any need for review by the DOF; 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 Council approves the First Amendment to the Purchase Agreement.

2. The Mayor, or designee, is authorized and directed to sign the First Amendment, including all attachments and exhibits requiring the Successor Agency's signature. A copy of the First Amendment, when fully signed, shall be placed on file with the City Clerk as Document No. RR- 311807.

3. The Mayor, or designee, is authorized and directed, on the Successor Agency's behalf, to sign all documents and take all actions necessary and appropriate to carry out and implement the Purchase Agreement, as amended by the First Amendment.

APPROVED: MARA W. ELLIOTT, City Attorney

By: Kevin Reisch  
Kevin Reisch  
Senior Chief Deputy City Attorney

KJR:jdf  
05/31/18  
Or.Dept: Civic San Diego  
Doc. No.: 1762625

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 12 2018.

ELIZABETH S. MALAND  
City Clerk

By Linda Dravin  
Deputy City Clerk

Approved: 6/14/18  
(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 JUN 12 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<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"/>
Chris Ward	<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"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 14 2018.

(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 Linda Irwin, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 311807