

RESOLUTION NUMBER R- 312473
DATE OF FINAL PASSAGE MAY 22 2019

ITEM# 206
5/20/19

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANDIEGO MAKING CERTAIN ENVIRONMENTAL FINDINGS AND DETERMINATIONS AND APPROVING A FIRST IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT, SECOND AGREEMENT TO AMEND PROVISIONS OF GRANT DEED, A RESTATED AND AMENDED AGREEMENT AFFECTING REAL PROPERTY, AND VARIOUS OTHER ACTIONS RELATED TO THE EXISTING HORTON PLAZA RETAIL CENTER IN THE HORTON PLAZA 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

WHEREAS, the Former RDA and Horton Land LLC, Horton Plaza Venture LLC, and Horton Plaza, L.P. entered into that certain Owner Participation Agreement for the project commonly known as the "Horton Plaza Retail Center" dated January 19, 2011 and filed with the Office of the Former RDA on January 21, 2011 as Document Number D-04599a (OPA); 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; and

WHEREAS, at the time of the Former RDA's dissolution, the City, in its capacity as the successor agency to the Former RDA (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 the OPA; and

WHEREAS, on June 15, 2018, the Oversight Board for the Successor Agency approved that certain Assignment and Assumption of Documents Related to Horton Plaza, whereby the Successor Agency assigned to the City all rights, title, interest, and obligations relating to the OPA, the Agreement Affecting Real Property (AARP), and the Agreement to Amend Provisions of Grant Deed; and

WHEREAS, Horton Plaza, L.P. assigned its interests in the OPA to Horton Plaza, LLC (Horton), pursuant to that certain Assignment and Assumption Agreement dated as of October 31, 2011; and

WHEREAS, on or about March 28, 2012, Westfield America Limited Partnership, the owner of Horton Land, LLC, and Horton Plaza Venture, LLC, caused each said entity to convey its respective interest under the OPA to Horton; and

WHEREAS, Horton then transferred all of its right, title, and interest under the OPA to Stockdale Acquisitions, LLC (Stockdale), and then Stockdale assigned the OPA to SCP Horton Owner 1, LLC, SCP Horton Owner 2, LLC, SCP Horton Owner 3, LLC, and SCP Horton Owner 4, LLC (Developer); and

WHEREAS, Developer assigned the Horton Plaza Urban Park Maintenance and Operations Agreement and the Park/Plaza Property Event and Use Agreement (Park Agreements) to SCP Park Services, LLC, an affiliate of Developer and Stockdale; and

WHEREAS, the City and Developer desire that Developer convert the existing Horton Plaza Retail Center to a mixed-use technology office campus (Project) in order to serve as one of San Diego's leading creative office campuses and attract high tech companies Downtown,

thereby providing a catalytic impact to Downtown and an economic engine to the Downtown commercial sector; and

WHEREAS, the current OPA, Grant Deed, and AARP restrict the permitted uses at the Property to include a minimum square footage of gross leasable area of retail uses (Land Use Restriction); and

WHEREAS, the current Land Use Restriction is 600,000 square feet of gross leasable area of retail uses, but the City and Developer desire to amend the OPA, Grant Deed, and AARP to reduce the retail uses to a minimum of 300,000 square feet of gross leasable area as more particularly described in the First Implementation Agreement to the OPA; and

WHEREAS, the Land Use Restriction may be further reduced to a minimum of 200,000 square feet of gross leasable area of retail uses, should Developer, prior to December 31, 2024, sign a lease for a minimum of 100,000 square feet of gross leasable area with a single office tenant for a minimum term of five years; and

WHEREAS, in consideration for City's agreement to reduce the Land Use Restriction, valued at \$6,761,000 (Retail Reduction Value), Developer will compensate the City in the form of public benefits valued at \$6,761,000; and

WHEREAS, those public benefits will take the form of enhanced private security over the Plaza Property, as defined in the OPA, for five months and an 82-month extension to the Lyceum Theater Lease at the current rate of \$1 per year; and

WHEREAS, in order to effectuate the reduction in the Land Use Restriction, the City and Developer desire to enter into the First Implementation Agreement to the OPA, the Restated and Amended Agreement Affecting Real Property, and the Second Agreement to Amend Provisions

of Grant Deed attached to the staff report accompanying this item at City Council (Staff Report) as Attachment A, Attachment B, and Attachment C, respectively (Agreements); and

WHEREAS, consistent with the California Environmental Quality Act (CEQA), the environmental impacts of development within the San Diego Downtown Community Plan area have been evaluated in 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 (Downtown FEIR), certified by the Former RDA and the City Council on March 14, 2016 (Resolutions R-04001 and R-301265, respectively), and subsequent addenda to the Downtown FEIR certified by the Former RDA on July 31, 2007 (Former RDA Resolution R-04193), April 21, 2010 (Former RDA Resolution R-04510), and August 3, 2010 (Former RDA Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and

WHEREAS, certain environmental effects related to development projects in the San Diego Downtown Community Plan area also have been evaluated in the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561); and in the Final Environmental Impact Report for the City's Climate Action Plan (CAP FEIR), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the addendum to the CAP FEIR certified by the City Council on July 12, 2016 (City Council Resolution R-310595); and

WHEREAS, the Downtown FEIR, the CAP FEIR, and the related environmental documents described above (collectively, Certified CEQA Documents) are the most recent and comprehensive environmental documents pertaining to the Project, and the Downtown FEIR and

the CAP FEIR are Program Environmental Impact Reports (Program EIRs) prepared in accordance with CEQA Guidelines section 15168; and

WHEREAS, the City has administered preparation of the CEQA Consistency Evaluation for the Project (Consistency Evaluation), in accordance with CEQA and related state and local guidelines, and a copy of the Consistency Evaluation is included in the Staff Report and is incorporated fully into this Resolution; and

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

WHEREAS, in accordance with California Health and Safety Code section 33433(a)(1), the City Council held a public hearing on May 20, 2019, to consider the approval of the Agreements after publishing notice of the public hearing as specified in California Government Code section 6066; and

WHEREAS, in accordance with California Health and Safety Code section 33433(a)(2), a consultant retained by the City prepared a "Summary Report" dated May 2019 related to the Agreements (Summary Report), and a copy of the Summary Report is included as Attachment F to the Staff Report and incorporated fully into this Resolution; and

WHEREAS, the City has made copies of the Agreements, the Summary Report, and the Consistency Evaluation available for public inspection and copying no later than the time of the first publication of the notice of the public hearing; and

WHEREAS, pursuant to California Health and Safety Code section 33433, the City Council has considered the information in the Summary Report, which contains a summary describing and specifying all of the following:

- (i) The cost of the Agreements to the City; and
- (ii) Estimated value of the interests to be conveyed at the highest and best use permitted under the Redevelopment Plan for the Horton Plaza Redevelopment Project Area, as amended (Redevelopment Plan); and
- (iii) Estimated value of the interests to be conveyed at the use and with the conditions, covenants, and development costs required by the Agreements; and
- (iv) The present value of the compensation which Developer will be required to pay to the City under the Agreements; and
- (v) An explanation of the difference, if any, between the compensation to be paid to the City by the proposed transaction and the fair market value of the interests to be conveyed at the highest and best use consistent with the Redevelopment Plan; and
- (vi) An explanation of why the conveyance of the interests in accordance with the Agreements will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation; and

WHEREAS, the City Council believes that the Agreements are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accordance 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 Agreements, as well as the entire record prepared

by City and Civic San Diego staff related to the matters addressed in this Resolution; 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 in this Resolution.

2. Consistent with the analysis contained in the Consistency Evaluation, the environmental effects of the Project were adequately addressed in the Certified CEQA Documents, and the Project is within the scope of the development program described therein.

3. The Council adopts the following findings, as set forth in the Consistency Evaluation, with respect to the environmental effects of the Project:

(a) No substantial changes are proposed in the Horton Plaza Redevelopment Project, or with respect to the circumstances under which the Horton Plaza Redevelopment Project is to be undertaken as a result of the Project, which will require important or major revisions in the Certified CEQA Documents; and

(b) No new information of substantial importance to the Horton Plaza Redevelopment Project has become available, which was not known or could not have been known at the time the Certified CEQA Documents were certified as complete, and which shows that the Project will have any significant effects not discussed previously in the Certified CEQA Documents, or that any significant effects previously examined will be substantially more severe than shown in the Certified CEQA Documents, 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 Downtown FEIR or the CAP FEIR 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 Certified CEQA Documents, and no new or additional project-specific mitigation measures are required in connection with development of the Project; and

(e) The Project will not have any new effects that were not adequately covered in the Certified CEQA Documents, and therefore, the Project is within the scope of the development program approved under the Certified CEQA Documents.

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 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.

6. The Council has received and heard any and all oral and written objections relating to the proposed Agreements, and all such oral and written objections are overruled.

7. The Council finds that the consideration to be received by the City under the Agreements is not less than fair reuse value (which is equal to the fair market value at its highest and best use) at the use and with the covenants, conditions, and development costs required by the Agreements.

8. The Council finds that the Agreements will assist in the elimination of blight in the Horton Plaza Redevelopment Project Area and is consistent with the Redevelopment Plan and the most recent five-year implementation plan adopted pursuant to Code section 33490.

9. The Council approves the Agreements and all attachments and exhibits to the Agreements, subject to the following changes: (a) amending the definition of "Effective Date" to "...the date when Developer has secured construction financing and has repaid its existing mortgage loan and mezzanine financing, or the date when signed by the parties and approved by the San Diego City Attorney, whichever is later (the "Effective Date")"; (b) amending the definition of "Commencement Date" on the first entry of the Schedule of Performance to "Commencing within 30 days of the Effective Date of the First Implementation Agreement to the OPA ("Commencement Date")"; and (c) including the additional language in the First Implementation Agreement, "Section 405 of the Owner Participation Agreement (OPA) will be amended to confirm that Stockdale's indemnity obligation in the City's favor will extend to any claim by an existing tenant that the approval and signature of the First Implementation Agreement to the OPA is or will give rise to a breach or violation of any current lease provision between Stockdale and the tenant."

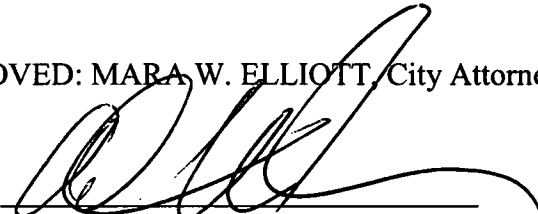
10. The Mayor, or designee, is authorized and directed to sign the Agreement, including all attachments and exhibits requiring the City's signature. A copy of the signed Agreement shall be placed on file with the Office of the City Clerk as Document No. RR- 312473.

11. The Mayor, or designee, is authorized and directed to sign all documents necessary and appropriate to carry out and implement the Agreements, including but not limited to amendments to the Park Agreements as envisioned by Section 6 of the First Implementation

Agreement to the OPA, and to administer the City's obligations, responsibilities, and duties to be performed under the Agreements, including all attachments and exhibits.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Adam R. Wander
Deputy City Attorney

ARW:jdf:als
05/07/19
05/22/19 Rev. Copy
Or.Dept: Planning
Doc. No.: 2001839_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 20 2019.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/22/19
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 20 2019, 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"/>
Jennifer Campbell	<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"/>
Monica Montgomery	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 22 2019

(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.

(Seal)

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

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 312473