

ORDINANCE NUMBER O- 21533 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 13 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND BOSA
DEVELOPMENT CALIFORNIA II, INC.

WHEREAS, BOSA DEVELOPMENT CALIFORNIA II, INC. (Bosa) is the owner or equitable owner of that certain real property located at the northeast corner of Pacific Highway and Broadway (Subject Property) consisting of approximately 1.4 acres within the Downtown Community Plan (DCP) area; and

WHEREAS, the Subject Property is legally described as: Parcel A: Parcel 1 of parcel Map No. 18898 filed in the Office of the County Recorder of San Diego County on February 1, 2002 as instrument no. 2002-0088451 of Official Records. Together with that portion of Pacific Highway (formerly Atlantic Street) and the North Half of Broadway (formerly Spring Street) adjoining the above described land, as said streets are dedicated to public use, which upon closing would revert, by operation of law, to the above described land. Excepting therefrom: All right, title, and interest in and to all water rights, coal, oil, gas and other hydrocarbons, geothermal resources, precious metals ores, base metal ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to Science or Industry, now known to exist or hereafter discovered upon, within or underlying the surface of said land regardless of the depth below the surface at which any such substance may be found; however, Grantor, or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the first 500 feet of the subsurface of the property in connection therewith. Parcel B: (APN: 533-471-09-00) Those certain non-exclusive cross street and perimeter easements created by and defined in

Amended and Restated Agreement Granting Street Cross-Easements and Covenants for Maintenance and Repair, recorded August 5, 2002 as instrument no. 2002-0659797 of Official Records. Excepting therefrom any portion of said easement lying within Parcel A described above; and

WHEREAS, the City, Bosa, and the Irvine Company LLC (Irvine) entered into a Development Agreement dated November 16, 2012, adopted by the San Diego City Council (City Council) on October 24, 2012 by San Diego Ordinance O-20214, and recorded in the Office of the County Recorder of San Diego County, California, as Document No. 2012-0791444 on December 17, 2012 for the development of certain property within the Columbia neighborhood of the DCP area located at the 1.4-acre site at the northeast corner of Pacific Highway and Broadway, the 1.4-acre site at the southeast corner of Pacific Highway and Broadway, and the 1.1-acre site at the southwest corner of Kettner Boulevard and Ash Street; and

WHEREAS, the City, Bosa, and Irvine entered into an Amended Development Agreement dated March 8, 2016, adopted by the City Council on February 22, 2016 by San Diego Ordinance O-20612, and recorded in the Office of the County Recorder of San Diego County, California, as Document No. 2016-0175458, on April 15, 2016; and

WHEREAS, the Development Agreement recorded on December 17, 2012, as amended, will expire by its terms on December 17, 2022; and

WHEREAS, the Subject Property is the last remaining undeveloped parcel of the Development Agreement recorded on December 17, 2012; and

WHEREAS, the City and Bosa desire to enter into this Development Agreement relating to the Subject Property in conformance with the provisions of the Government Code in order to achieve the development of private land uses, together with the provision of public services, public uses, and urban infrastructure, all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, the City of San Diego (City), a Charter City, is authorized pursuant to California Government Code (Government Code) section 65864 *et. seq.* and San Diego Municipal Code (SDMC or Municipal Code) section 124.0104 *et seq.* to enter into binding development agreements with person(s) having legal or equitable interest(s) in real property for the development of such property in order to establish certainty in the development process; and

WHEREAS, the City will further enter into this Development Agreement pursuant to its Charter and self-rule powers and Municipal Code section 124.0101 *et. seq.*; and

WHEREAS, pursuant to the terms of the Development Agreement, Bosa will provide substantial public improvements and benefits to the City including, but not limited to: (i) the construction of a widened pedestrian path at least 12-feet wide along the rail corridor on the eastern frontage of the Subject Property that is compatible with the pathways to the north and includes a pedestrian arcade, building canopy projects, or other pedestrian coverings that complement the adjoining developments; and (ii) provide a publicly accessible work of public art within the 50-foot Broadway setback area, reviewed by the Commission of Arts and Culture prior to the issuance of a construction permit for the Subject Property; and

WHEREAS, in consideration of the public improvements and benefits to be provided by Bosa pursuant to the Development Agreement and in order to strengthen the public planning process and reduce the economic costs of development, by the Development Agreement, the City intends to give Bosa assurance that Bosa can proceed with the development of the Subject Property by the terms of the Development Agreement; and

WHEREAS, on April 21, 2022, the Planning Commission of the City of San Diego, after giving notice pursuant to Government Code section 65090 *et. seq.* and Municipal Code section 112.0301 *et. seq.*, held a public hearing on the Development Agreement and voted to recommend approval of the Development Agreement to the City Council; and

WHEREAS, under City Charter section 280(a)(2), this Ordinance is not subject to veto by the Mayor because the matter requires the City Council to act as quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the City Council was required by law to consider evidence as the hearing and to make legal finding based on evidence presented; and

WHEREAS, on SEP 13 2022, the City Council, after giving notice pursuant to Government Code section 65090 *et. seq.* and Municipal Code section 112.0301 *et. seq.*, held a public hearing on the Development Agreement, wherein testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the City Council finds the Development Agreement is consistent with the General Plan and the DCP to the extent required by law, as well as all other applicable policies and regulations of the City of San Diego; and

WHEREAS, the City Council has considered the Development Agreement, exhibits, and written documents contained in the file for this project on record in the City of San Diego, and has considered the oral presentations given at the public hearing and determined the content of the Development Agreement to be complete and correct; NOW THEREFORE,

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

Section 1. The City Council finds and determines the fact stated above to be true.

Section 2. The City Council further finds with respect to the Agreement that:

A. The Development Agreement is consistent with the applicable land use plans, Local Coastal Program, and the Land Development Code.

The Development Agreement is consistent with the applicable land use plans, Local Coastal Plan, the DCP, and the Centre City Planned District Ordinance (CCPDO). Specifically, the Development Agreement would contribute to an intense Downtown by allowing the construction of a dense residential project with ground floor commercial uses, providing a mix of uses and an active street level that is central to not only fostering vibrant neighborhoods, but also to curtailing regional sprawl, while adding residential dwelling units to curtail the regional housing crisis. An increase in residential population will contribute to Downtown's vitality, improve economic conditions, and allow people to live close to work, transit, and culture. The Development Agreement would also contribute to the development of the Columbia neighborhood as a mixed-use district with an energetic waterfront that serves local needs and has a regional draw, relating to both the San Diego Bay and Civic/Core district. Further, the Development Agreement would continue to provide for protection of public shoreline access and views through the maintenance of view corridors, consistent with the Local Coastal Program, which is implemented through the DCP and CCPDO.

B. The Development Agreement will provide significant public benefits in proportion to the rights granted under the Development Agreement.

The Development Agreement would provide significant public benefits in proportion to the rights granted under the Development Agreement. Specifically, the Development Agreement would require improvements to the railway corridor along the eastern frontage of the Subject Property, including the widening of the sidewalk to at least 12 feet and installation of enhancements such as pedestrian coverings, arcades, and canopies, as well as provide a publicly accessible work of public art within the 50-foot Broadway setback area at a location that serves as a high-visibility gateway into Downtown. The proposed public benefit of the Development Agreement is in proportion to the rights granted under the Development Agreement.

C. The significant public benefits will be in excess of what can be obtained under existing policies and regulations, and otherwise could not reasonably be derived or provided except through the Development Agreement.

The policies and regulations of the CCPDO would otherwise apply to this property, subject to the provisions set forth in the existing Development Agreement prior to its expiration. The CCPDO does not contain provisions that require public benefits achieved through the Development Agreement. The improvements along the rail corridor along the Subject Property's eastern frontage ensure proper public access through the Subject Property along the rail corridor and connectivity to adjoining sites with a design that is both compatible with the neighboring properties and pedestrian-friendly, which would not have been a requirement under existing policies and regulations. The installation of a work of public art will advance the goals and policies of the DCP by contributing to the creation of meaningful, memorable, and delightful spaces in Downtown and strengthening the Downtown's sense of arts and culture. The location of the work of public art in the 50-foot Broadway setback will create a landmark for one of the primary gateways into Downtown at Pacific Highway and Broadway, near the waterfront. A significant work of public art provided for in the Development Agreement would not be required under existing policies and regulations, as only non-residential projects with a valuation of \$5,000,000 are subject to the public art requirement of the current code. The public benefits provided by the Development Agreement are in excess of what would otherwise be required under existing policies and regulations.

Section 3. The City Council approves the Development Agreement with BOSA DEVELOPMENT CALIFORNIA II, INC, a copy of which is on file in the Office of the City Clerk as Document No. OO- 21533, and authorizes and directs the City Manager, or his or her designee, to execute the Development Agreement in the name of the City and to sign all documents necessary and appropriate to carry out and implement the Development Agreement, and to administer the City's obligations, responsibilities, and duties to be performed under the Development Agreement.

Section 4. The City Clerk is directed to record the Agreement and this Ordinance with the County Recorder of San Diego County within ten days after the execution of the Agreement.

Section 5. The Development Agreement for the Subject Property recorded with the County Recorder of San Diego County as Document No. 2012-0791444 on December 17, 2012 and Document No. 2016-0175458 on April 15, 2016 is rescinded.

Section 6. That a full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 7. That this Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Section 8. That no building permits for development inconsistent with the provisions of this Ordinance shall be issued unless a deemed complete application therefore was made prior to the date of adoption of this Ordinance.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Lauren N. Hendrickson
Lauren N. Hendrickson
Deputy City Attorney

LNH:cm
July 6, 2022
Or.Dept: DSD
Doc. No. 3023667

Passed by the Council of The City of San Diego on SEP 13 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 13 2022.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

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

By *[Signature]*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 26 2022, and on SEP 13 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

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

By *[Signature]*, Deputy

Office of the City Clerk, San Diego, California

21533

Ordinance Number O-_____