

# 4036  
2/7/22

(R-2022-239 REV.)

RESOLUTION NUMBER R- 313886

DATE OF FINAL PASSAGE FEB 23 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A 50-YEAR GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND ORCHARD II ASSOCIATES FOR APPROXIMATELY 5.573 ACRES OF REAL PROPERTY LOCATED AT 3840 SPORTS ARENA BOULEVARD FOR THE ORCHARD II APARTMENT PROJECT, AND MAKING A RELATED FINDING THAT THE GROUND LEASE SERVES A VALID PUBLIC PURPOSE.

WHEREAS, the City of San Diego (City) owns approximately 5.573 acres of real property located at 3840 Sports Arena Boulevard, San Diego, California (Property); and

WHEREAS, since 1981, the City has leased the Property to Orchard II Associates, a California general partnership (Lessee), under a lease on file with the San Diego City Clerk as Document No. 252575-2 (Current Lease), for the construction and operation of 288 senior citizen residential rental units, commonly known as Orchard II Apartments; and

WHEREAS, the Current Lease is for a 55-year term expiring February 29, 2036; and

WHEREAS, the City and Lessee now propose entering into that certain Percentage Ground Lease (New Lease), a copy of which is included in the docket materials accompanying this Resolution; and

WHEREAS, the New Lease will have a 50-year term, commencing the first day of the calendar month after the parties sign the New Lease, and will supersede the Current Lease; and

WHEREAS, the New Lease includes the following requirements: (a) Lessee will invest a minimum of \$5,300,000 to complete various improvements at the Property, consisting of interior and exterior upgrades as further described in the Renovation Plan attached as Exhibit C to the New Lease; (b) the rent payable by Lessee to the City will be the greater of percentage rent or minimum rent, with the initial percentage rent equal to 7.25 percent of all gross income

generated from the Property and the initial minimum rent equal to \$14,857 per month; (c) the amount of percentage rent will be adjusted every ten years, and the amount of minimum rent will be adjusted every five years, as further described in Section 3.2 of the New Lease; and (d) Lessee will be responsible for all maintenance, utilities, and insurance for the Property throughout the term of the New Lease; and

WHEREAS, the Current Lease requires 20 percent of the residential units on the Property (58 units) to be made available for rent and occupied by households whose aggregate gross annual income does not exceed 80 percent of local area median income, and the New Lease requires an additional 10 percent of the residential units on the Property (29 units), for an aggregate total of 87 units, to be subject to the same affordable rent restrictions; and

WHEREAS, the San Diego Housing Commission will annually monitor Lessee's compliance with the affordable rent restrictions affecting the Property, and the affordable units will be made available on a priority basis to households holding a voucher through the Section 8 Housing Choice Voucher Program; and

WHEREAS, Paragraph S on page 15 of Council Policy 700-10 (Paragraph S) provides that, when the City grants a lease extension during the last 20 percent of the remaining lease term, the City shall receive compensation from the lessee equal to the change in present value attributable to the City's deferral of its reversionary interest in the leasehold improvements; and

WHEREAS, the Current Lease is not in the last 20 percent of the remaining term, so Paragraph S does not apply to the New Lease transaction; and

WHEREAS, in addition to the City receiving adequate consideration in the New Lease transaction, the Council will make a finding in this Resolution that the New Lease serves a valid public purpose by continuing the effectiveness of the existing affordable rent restrictions

governing 20 percent of the residential units (58 units) on the Property and imposing affordable rent restrictions with respect to an additional 10 percent of the residential units (29 units) on the Property, all of which restrictions will apply for the 50-year term of the New Lease; and

WHEREAS, the market value of the fee interest of the Property in a vacant condition, as determined by an independent fee appraiser and confirmed by qualified City staff, is \$34,300,000 as of August 5, 2021; and

WHEREAS, as amended by Assembly Bill 1486 effective January 1, 2020, the Surplus Land Act (SLA), California Government Code sections 54220-54234, is generally intended to make a local agency's surplus land (i.e., land not needed for the local agency's use) available for potential acquisition by affordable housing sponsors or other local public entities; and

WHEREAS, in April 2021, the California Department of Housing and Community Development (HCD) issued the final SLA Guidelines to assist with implementation of the SLA, as amended by Assembly Bill 1486; and

WHEREAS, Section 102(h) of the SLA Guidelines states HCD's view that the SLA process applies to lease transactions, except for (1) any lease of land on which no development or demolition will occur and (2) any lease which has a term that is less than five years, including any extensions, amendments, or options; and

WHEREAS, HCD has confirmed that, under clause (1) above, the SLA process does not apply to lease transactions that involve renovation or rehabilitation activities, with no demolition or consolidation of existing residential units; and

WHEREAS, the New Lease involves renovations and upgrades to the existing facilities on the Property and will not result in the demolition or consolidation of any existing residential units, and therefore, the New Lease is not subject to the SLA process; NOW, THEREFORE,

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

1. The Council finds that the New Lease serves the valid public purpose of continuing the effectiveness of the existing affordable rent restrictions governing 20 percent of the residential units (58 units) on the Property and imposing affordable rent restrictions with respect to an additional 10 percent of the residential units (29 units) on the Property, all of which restrictions will apply for the 50-year term of the New Lease.

2. The Council approves the New Lease, for the term of 50 years, conditioned upon a provision being added to the Renovation Plan attached to the New Lease requiring the Lessee to install a new solar photovoltaic system serving the residential and other uses at the Property.

3. The Mayor or designee is authorized and directed, on the City's behalf, to sign the New Lease. A copy of the New Lease, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. RR- 313886.

4. The Mayor or designee is authorized, on the City's behalf, to sign all additional documents necessary to implement the terms and conditions of the New Lease.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Kevin Reisch  
Kevin Reisch  
Senior Chief Deputy City Attorney

KJR:jdf  
1/25/2022  
2/7/2022 REV.  
Or.Dept: Real Estate Assets  
Doc. No.: 2854432\_2  
Companion to R-2022-240

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego at this meeting of FEB 07 2022.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 2/23/22  
(date)

  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on FEB 07 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 FEB 23 2022.

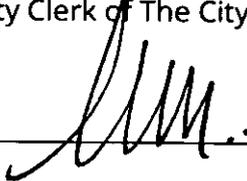
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

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

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

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