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12/06/2022

(R-2023-320)
COR. COPY

RESOLUTION NUMBER R- 314519

DATE OF FINAL PASSAGE DEC 09 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO MAKING CERTAIN DETERMINATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; APPROVING A LEASE TO SCP PARK SERVICES, LLC FOR PROPERTY ADJACENT TO THE HORTON PLAZA RETAIL CENTER (HORTON PLAZA URBAN PARK) AND VARIOUS OTHER ACTIONS RELATED TO THE PARCEL COMMONLY KNOWN AS HORTON PLAZA URBAN PARK IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; AND AUTHORIZING A WAIVER OF CERTAIN LEASE-RELATED REQUIREMENTS IN COUNCIL POLICY 700-10.

WHEREAS, Redevelopment Agency of the City of San Diego (Former RDA) and Horton Land LLC, Horton Plaza Venture LLC, and Horton Plaza, L.P. (Original Developer) 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) for the purpose of revitalizing the retail center and providing public plaza and open space components; and

WHEREAS, the OPA provided for, among other things, the design and development of capital improvements in the "Sales Parcel" (Plaza Improvements) and refurbishment and renovation of the "Park Property"; and

WHEREAS, the Sales Parcel and the Park Property are contiguous parcels located adjacent to the Horton Plaza Retail Center near the intersection of Broadway and Fourth Avenue in downtown San Diego, and they are collectively referred to as the "Horton Plaza Urban Park" in the OPA; and

WHEREAS, under 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 subsequent legislation, the Former RDA dissolved as of February 1, 2012, and the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), became responsible for fulfilling the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Former RDA, including all rights and obligations under the OPA; and

WHEREAS, by March 28, 2012, Horton Plaza, LLC (Developer) assumed all the Original Developer's right, title, and interest under the OPA; and

WHEREAS, in connection to the OPA, Horton Plaza Services, Inc., an affiliate entity of Developer (Horton Services), the Successor Agency, and the City of San Diego (City) entered into that certain Maintenance and Operations Agreement (Maintenance Agreement) and that certain Park/Plaza Property Event and Use Agreement (Programming Agreement) (collectively, the Park Agreements), both dated as of February 3, 2014, whereby Horton Services would provide for the long-term future maintenance, operation, and activation of the Horton Plaza Urban Park including the Plaza Improvements; and

WHEREAS, in accordance with the OPA, the Successor Agency acquired fee interest in the Sales Parcel from the Developer in 2014 then transferred the Sales Parcel with the newly constructed Plaza Improvements to the City in 2016; and

WHEREAS, on June 18, 2018, the Oversight Board for the Successor Agency approved that certain Assignment and Assumption of Documents Related to Horton Plaza effective as of August 1, 2018, whereby the Successor Agency assigned to the City all right, title, interest, and obligations relating to the OPA and related documents; and

WEREAS, the Developer transferred all of its right, title, and interest under the OPA and related documents to Stockdale Acquisitions, LLC (Stockdale) under that certain Sale, Purchase and Escrow Agreement dated as of April 3, 2018, then Stockdale assigned its interest to SCP Horton Owner 1, LLC, SCP Horton Owner 2, LLC, SCP Horton Owner 3, LLC, and SCP Horton Owner 4, LLC (collectively, SCP) by that certain Assignment and Assumption Agreement dated as of August 22, 2018; and

WHEREAS, Stockdale also assigned the Park Agreements to SCP by that separate Assignment and Assumption Agreement dated as of August 22, 2018, which SCP then assigned to its affiliate, SCP Park Services (Lessee); and

WHEREAS, the Park Agreements generally address Lessee's existing maintenance, operation, and activation obligations related to the Sales Parcel, the Park Property, and surrounding sidewalks (collectively, Plaza Property) for a 25-year period beginning in 2014 and valued at \$6,580,000, and include City's obligation to maintain a capital reserves account for certain capital repairs and replacements on the Plaza Property; and

WHEREAS, the City and SCP sought to convert the existing Horton Plaza Retail Center to a mixed-use technology office campus comprised of creative office space, retail, entertainment, and food and beverage uses to attract high tech companies Downtown, thereby providing a catalytic impact to Downtown and an economic engine to the Downtown commercial sector; and

WHEREAS, in order to effectuate these goals, the City and SCP entered into that certain First Implementation Agreement to Owner Participation Agreement, effective July 23, 2019 (First Implementation Agreement), authorizing the amendment of the OPA, Agreement Affecting Real Property, and Grant Deed to reduce the stated minimum square footage of gross

leasable area of retail uses (Land Use Restriction) from 600,000 to 300,000 square feet of gross leasable area of retail uses, and possible further reductions based on stated criteria, and to address other Developer obligations under the OPA to complete construction of certain Public Improvements and Bradley Redevelopment, as each is defined in the First Implementation Agreement; and

WHEREAS, in consideration for City's agreement to reduce the Land Use Restriction, valued at \$6,761,000 (Retail Reduction Value), SCP agreed to compensate the City in the form of public benefits valued at \$6,761,000, specifically by providing enhanced private security on the Plaza Property for five months and granting an 82-month extension to the Lyceum Theater Lease at the current rate of \$1 per year; and

WHEREAS, under the First Implementation Agreement, the City and SCP commenced exclusive negotiations for the proposed ground lease to SCP, or an entity under the control of SCP, for the Plaza Property that fully incorporates the terms of the Park Agreements; and

WHEREAS, having completed their exclusive negotiations, the City and SCP now propose a ground lease for only the Sales Parcel that fully incorporates the terms of the Park Agreements as they relate to the Sales Parcel (Ground Lease) and propose corresponding amendments to the existing Park Agreements to remove all rights and obligations relative to the Sales Parcel; and

WHEREAS, the purpose of the Ground Lease is to maximize activation of the Sales Parcel, control loitering and vandalism, and generally allow SCP or its affiliate to enhance, rehabilitate, lease, and maintain the Plaza Property for active commercial and community-serving activities that promote ongoing activation throughout the day (Project); and

WHEREAS, all of Lessee's existing obligations under the Maintenance Agreement relative to Plaza Property, excluding therefrom the Sales Parcel, will continue under the First Amendment to the Horton Plaza Urban Park Maintenance and Operations Agreement (Amended Maintenance Agreement), which removes Lessee's obligations relative to the Sales Parcel and retains Lessee's continuing obligations relative to the Park Property; and

WHEREAS, in order to effectuate the Project, the City and Lessee desire to enter into the Ground Lease for the Sales Parcel and the Amended Maintenance Agreement governing the Park Property, attached to the staff report accompanying this item at City Council (Staff Report) as Attachment B and Attachment C, respectively (collectively, Agreements); and

WHEREAS, SCP acquired from Horton that certain Guaranty of Maintenance and Operations Agreement with respect to Lessee's existing obligations under the Park Agreements, which shall remain in full force and effect as it relates to those obligations whether under the Park Agreements as amended or incorporated into the Ground Lease to Lessee; and

WHEREAS, Lessee seeks to rehabilitate, renovate, and enhance existing structures as identified in the Ground Lease and its exhibits (Renovations) and to maximize use and activation of the Sales Parcel as a community-serving and commercial space; and

WHEREAS, in consideration of Lessee completing the Renovations, which will cost at least \$5,000,000, Lessee will be eligible for rent credits equal to the actual cost of the completed Renovations; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the Sales Parcel is approximately \$15,345,441, comprised of \$180,000 in land value based on existing use restrictions imposed by the City and \$15,165,441 in improvements value based on the depreciated value of the existing urban park improvements; and

WHEREAS, the Ground Lease term is 25 years and, provided that Lessee has completed an additional \$4,000,000 in Renovations as required in the Ground Lease, one possible 17-year extension and two additional 10-year extensions to be exercised at Lessee's option, over which time the City will receive 50 percent of the net income (defined as gross revenue less operating expense as specifically described in the Ground Lease and exhibits) generated by Lessee; and

WHEREAS, rent credits for Lessee's completion of the Renovations will be credited against the City's 50 percent share until rent credits are exhausted, at which point the City anticipates receiving its share of the net cash flow on an annual basis; and

WHEREAS, the City and Lessee agree the Ground Lease will not include a minimum rent component and established percentage rates will not be adjusted during the Ground Lease term; 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, 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 included language in the Environmental Impact portion of the staff report explaining the consistency of the project with CEQA (Consistency Evaluation); and

WHEREAS, the Consistency Evaluation explains 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; 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 described by 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 Project, or to the circumstances under which the Project is to be undertaken, which will require important or major revisions in the Certified CEQA Documents; and
 - (b) No new information of substantial importance to the 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. Consistent with 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 approves the Agreements (i.e., the Ground Lease and the Amended Maintenance Agreement), including all attachments and exhibits to the Agreements.

7. The Mayor, or designee, is authorized and directed to sign the Agreements, including all attachments and exhibits requiring the City's signature, and all other documents necessary and appropriate to carry out and implement the Agreements or effectuate the purposes of this Resolution. A copy of the signed Ground Lease shall be placed on file with the Office of the City Clerk as Document No. RR- 314519-1. A copy of the signed Amended Maintenance Agreement shall be placed on file with the Office of the City Clerk as Document No. RR- 314519-2.

8. The Council waives application of the normal lease requirements under Council Policy 700-10 regarding a minimum rent component and periodic adjustment of percentage rates every 10 years to fair market rates.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Daphne Z. Skogen
Daphne Z. Skogen
Deputy City Attorney

DZS:hm
11/30/2022
12/05/2022 COR. COPY
Or.Dept: Econ Dev
Doc. No.: 3155723_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 12/9/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on DEC 06 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 DEC 09 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:

(Seal)

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

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- 314519