

RESOLUTION NO. OB-17-52

A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SADBERRY-PALM AVENUE LLC REGARDING DEVELOPMENT OF THE HOTEL COMPONENT OF THE BREAKWATER - 9TH AND PALM AVENUE DEVELOPMENT PROJECT, AND (II) APPROVING OTHER RELATED ACTIONS

WHEREAS, the Imperial Beach Redevelopment Agency (the "Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach (the "City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law"); and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012 electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, AB 26 has since been amended by various assembly and senate bills enacted and signed by the Governor. AB 26 as amended is hereinafter referred to as the "Dissolution Law"; and

WHEREAS, H&S Code Section 34179 of the Dissolution Law establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to H&S Code Section 34179 of the Dissolution Law. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of the Dissolution Law; and

WHEREAS, the Successor Agency and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") entered into that certain Purchase and Sale Agreement dated January 29, 2014 ("Original Purchase Agreement"), which was approved by the Oversight Board by Resolution No. 13-27 on October 9, 2013 and the California Department of Finance (the "Department of Finance") by letter dated January 21, 2014. The Original Purchase Agreement has been amended, in accordance with its terms and Oversight Board Resolution No. 13-27, by certain Letter Agreements entered into by and between the Successor Agency and Purchaser dated July 28, 2014, July 27, 2015, and March 17, 2017 (collectively, the "Letter Agreements"), and by that certain First Amendment to Purchase and Sale Agreement dated January 12, 2016. The Original Purchase Agreement together with the Letter Agreements and First Amendment to Purchase and Sale Agreement shall collectively be referred to as the "Purchase Agreement"; and

WHEREAS, the Purchase Agreement provides for the Successor Agency's sale of a 4.75-acre site ("Site") located at the southwestern corner of 9th Street and Palm Avenue in the City of Imperial Beach to Purchaser and Purchaser's development of the Site with the "Project", defined and described in detail in the Purchase Agreement and generally comprised of (i) a "town center" of new construction to be built in two phases, Phase 1 and Phase 2, combining retail with commercial space in a pedestrian-friendly environment and related improvements, and (ii) certain off-site public improvements; and

WHEREAS, pursuant to the Purchase Agreement, the "Phase 1 Closing" (as defined in the Purchase Agreement) occurred on April 14, 2016 and the Successor Agency conveyed to Purchaser fee title to the Site and the Purchase Price amount of \$213,000 in cash was remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Law; and

WHEREAS, Phase 1 of the Project, known as the Breakwater Town Center, had its grand opening in October 2017; and

WHEREAS, Purchaser has requested that the Successor Agency consider amending the Purchase Agreement and related documents to change the type of development required for Phase 2 to a hotel use (rather than a retail use) subject to the following (i) that the City approves the applicable permits, plans and changes in entitlements to allow for the development of a hotel use ("Hotel Component") and (ii) that Purchaser processes to completion and records a revised map consolidating the two remaining undeveloped parcels (i.e. Lots 5 and 6) of the Site into a single legal parcel, to be known as the "Phase 2 Parcel"; and

WHEREAS, the Successor Agency and Purchaser have negotiated a proposed Second Amendment to the Purchase Agreement ("Second Amendment") to modify certain terms and provisions of the Purchase Agreement and certain documents attached to the Purchase Agreement or recorded against the Site to allow for the development of the Hotel Component on the Phase 2 Parcel if, and provided that, the City approves the applicable permits, plans and changes in entitlements to allow for the Hotel Component on the Phase 2 Parcel and Purchaser processes to completion and records the revised map consolidating the two remaining undeveloped parcels of the Site into the Phase 2 Parcel; and

WHEREAS, the proposed Second Amendment provides that the modifications to the Purchase Agreement permitting the Hotel Component shall only become effective upon the

satisfaction of all of the following: (i) Successor Agency has received two (2) counterpart originals of the Second Amendment signed by the authorized representative(s) of Purchaser; (ii) the Second Amendment has been approved by the City Council of the City and the Board of Directors of Successor Agency and has been executed by the Executive Director of Successor Agency; (iii) the Second Amendment has been approved by the Oversight Board; (iv) the Department of Finance has approved the Oversight Board's action approving the Second Amendment or the Department of Finance has failed to request review of such action of the Oversight Board within the timeframes set forth in H&S Code Section 34179(h) of the Dissolution Law or the Department of Finance has provided in writing its election not to review such action of the Oversight Board; (v) the City has approved all applicable permits, plans and changes in entitlements to allow for the development of the Hotel Component on the Phase 2 Parcel; (vi) Purchaser processes to completion and records the revised map consolidating the two remaining undeveloped parcels of the Site into the Phase 2 Parcel; and (vii) no challenge, appeal, claim, lawsuit, or similar action related to the approval of the Second Amendment and/or the adoption or approval of permits, plans and/or changes in entitlements to allow for the development of the Hotel Component on the Phase 2 Parcel has been timely filed, or, if timely filed, any such challenge, appeal, claim, lawsuit, or other action has been finally resolved as determined by the Executive Director of Successor Agency and the City Manager of the City in their sole discretion; and

WHEREAS, on April 21, 2015, the former Deputy Director of the Successor Agency corresponded by email with the Manager of the Local Government Unit at the Department of Finance advising the Department of Finance that Purchaser was considering changing Phase 2 to a hotel use and requesting authorization from the Department of Finance to proceed with the proposed change in the project description and land use without additional approval by the Department of Finance. The Department of Finance responded by email on the same date stating "[b]ased on the description outlined below, Finance does not need to be involved in approving the proposed project description and land use changes for the Breakwater Town Center Project. Finance believes the proposed changes would not alter your ability to dispose of properties in accordance with your approved Long Range Property Management Plan, or any other Finance approvals"; and

WHEREAS, as required by H&S Code Section 33433 of the California Redevelopment Law, and in connection with the consideration by the City and Successor Agency of the Original Purchase Agreement, the Successor Agency caused the preparation of a summary by Keyser Marston Associates ("Summary Report") which contained all of the information statutorily required by Section 33433 pertaining to, among other matters, the cost of the Original Purchase Agreement to the Successor Agency and the estimated value of the property interest to be conveyed to Purchaser. In connection with the approval by the City and Successor Agency of the Original Purchase Agreement, the City and Successor Agency made certain findings related thereto based, in part, on information contained in the Summary Report, including a finding that the consideration to be received by the Successor Agency for the sale of the Site as described in the Purchase Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Site; and

WHEREAS, in connection with the proposed Second Amendment, Keyser Marston Associates prepared a Memorandum entitled "Assessment of Impact on Fair Re-Use Value Breakwater – 9th and Palm Avenue Project" ("KMA Memo"), which is an independent review of the proposed Second Amendment and presents KMA's assessment of the potential financial impact of the proposed Second Amendment, if any, on the previously documented fair re-use

value for the Phase 2 portion of the Site. The KMA Memo concludes that "the proposed change in land use as a result of the Second Amendment will not increase the fair re-use value of the Phase II Site. In fact, the KMA financial pro forma analysis indicates that the proposed hotel use generates a negative fair re-use value"; and

WHEREAS, on December 6, 2017, the City and the Successor Agency duly considered and approved the proposed Second Amendment by Resolution No. 2017-7873 and Resolution No. SA-17-60, respectively; and

WHEREAS, the Breakwater commercial/retail development and Palm Avenue/SR-75 realignment was subject to review under the California Environmental Quality Act (CEQA) and complies with the requirements of CEQA as a Mitigated Negative Declaration (MND). A MND was prepared for the Project and routed for public review from November 7, 2011 to December 7, 2011 and submitted to the State Clearinghouse (SCH #2011111018) for agency review. The MND was approved by the City Council of the City on December 14, 2011. An addendum to the MND is proposed subject to CEQA Guidelines Section 15164 for the proposed hotel. Section 15164(b) of the CEQA Guidelines states: "An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred." Based on the Initial Study and Addendum for the Breakwater MND prepared by Dudek, an environmental services consulting firm, none of the conditions described in the CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR or negative declaration would occur for the proposed hotel. The proposed hotel would not cause new significant impacts or substantial increase in the severity of impacts compared to the issues originally identified in the MND and the original mitigation measures identified in the MND would still be implemented. The City Council of the City considered and approved the Addendum to the MND prior to consideration of the matters proposed by this Resolution. This activity proposed by this Resolution has been determined to be adequately addressed in the MND and Addendum to the MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or Project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The Oversight Board determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board recognizes that it has received and heard all oral and written objections, if any, to the proposed Second Amendment, and that all such oral and written objections, if any, are hereby overruled.
- Section 3.** The Oversight Board approves the proposed Second Amendment and all of the terms and provisions of the Second Amendment and all attachments and exhibits attached thereto.

- Section 4.** The Oversight Board authorizes and directs the Executive Director, or designee, of the Successor Agency to execute the Second Amendment and all documents, instruments, and agreements required by and for the implementation of the Second Amendment including, without limitation, all attachments to the Second Amendment on behalf of the Successor Agency, subject to the approval as to form by the Executive Director of the Successor Agency and its legal counsel.
- Section 5.** The Oversight Board authorizes and directs the Executive Director, or designee, of the Successor Agency (i) to make such amendments, changes or revisions to the Second Amendment or to any attachment, document, instrument, or agreement required by and for the implementation of the Second Amendment on behalf of the Successor Agency, as approved by the Executive Director of the Successor Agency and its legal counsel, (ii) to execute such other documents and take such other actions as are necessary or desirable and appropriate to carry out and implement the purposes of the Second Amendment and to effectuate the intent of this Resolution on behalf of the Successor Agency and the Oversight Board, including, without limitation, approving extensions of deadlines set forth in the Second Amendment and the Schedule of Performance attached thereto, and approving implementation agreements, as determined necessary by the Executive Director, or designee, of the Successor Agency to effectuate the purposes of the Second Amendment as amended, and (iii) to administer the Successor Agency's obligations, responsibilities and duties to be performed under the Second Amendment and all documents, instruments, and agreements required by and for the implementation of the Second Amendment on behalf of the Successor Agency.
- Section 6.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that its Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 7.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Oversight Board of any constitutional, legal or equitable rights that the Oversight Board and/or the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of the Dissolution Law, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Law, and any and all related legal and factual issues, and the Oversight Board expressly reserves any and all rights, privileges, and defenses available under law and equity.

Section 8. This Resolution shall take effect upon the date of its adoption and is subject to review by the Department of Finance in accordance with H&S Code Section 34179(h) of the Dissolution Law.

PASSED, APPROVED, AND ADOPTED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 13th day of December 2017, by the following roll call vote:

AYES: BOARD MEMBERS: YANDA, SAADAT, KAMINSKI, WINTER, FOLTZ
NOES: BOARD MEMBERS: NONE
ABSENT: BOARD MEMBERS: YANDA, KING, KERL


MAYDA WINTER,
CHAIRPERSON

ATTEST:


SUNEM CARBALLO,
ASSISTANT SECRETARY