

RESOLUTION NO. OB-01-12

A RESOLUTION APPROVING A SECOND AMENDMENT TO
THE SOUTHWEST CORNER DISPOSITION AND
DEVELOPMENT AGREEMENT – PRIEST DEVELOPMENT –
AND REPAYMENT SCHEDULE

WHEREAS, the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency held a regularly scheduled meeting on July 18, 2012, at which time it considered a request to approve a second amendment to the Southwest Corner Disposition and Development Agreement – Priest Development and a repayment schedule; and

WHEREAS, Assembly Bill (AB) 1484 was signed by the Governor June 27, 2012 and became effective immediately thereafter, which amended sections of the California Health and Safety Code containing elements of California Redevelopment Law following the effectiveness of AB X1 26 (the “Dissolution Act”); and

WHEREAS, on June 26, 2012, in accordance with the Dissolution Act, the City Council, as Successor Agency, adopted Resolution No. 66-12 approving the proposed land use amendments and repayment schedule, subject to Oversight Board approval; and

WHEREAS, Section 34180 (a) of the California Health and Safety Code provides that Successor Agency actions to establish new payment terms for outstanding loans, are subject to Oversight Board review and approval and Section 34181 (e) of the California Health and Safety Code provides the Oversight Board may approve an amendment to an existing agreement between the former redevelopment agency and a private party, if it finds that the amendment would be in the best interests of the taxing entities.

WHEREAS, proposed amendments to the DDA will expand the number and types of businesses that can operate on the property, allowing for quicker occupancy of remaining vacant commercial spaces and new income stream to make payments owed.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

A. The Oversight Board finds that:

1. The recitals above are true and correct and have been incorporated herein by reference; and
2. The proposed DDA amendments and payment plan are exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed amendments will not cause a physical change to the environment either directly or

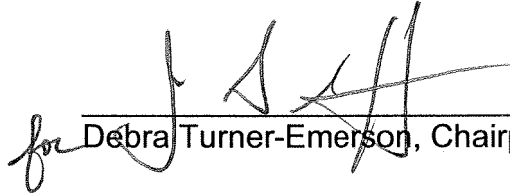
indirectly in that the buildings are already constructed and the proposed amendments will accommodate uses suitable for the existing commercial buildings.

3. The proposed amendments are in the best interests of the taxing entities.
- B. The Oversight Board hereby APPROVES the proposed second amendment to the Southwest Corner Disposition and Development Agreement – Priest Development to modify permitted and conditionally permitted uses on the property, consistent with applicable zoning and specific plans.
 - C. The Oversight Board hereby APPROVES a repayment schedule for \$50,193 in accounts receivable still owed under the Southwest Corner DDA, as follows: twelve equal monthly payments, with the first payment due on August 1, 2012, or the first day of the month following the effective date of this resolution, whichever is later.
 - D. The Oversight Board hereby AUTHORIZES the City Manager to execute all documents necessary to implement the approved DDA amendments and repayment schedule shown above.

[Remainder of this page intentionally left blank.]

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly scheduled meeting held this 18th day of July, 2012, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS,
RANU
NOES: NONE
ABSENT: TURNER-EMERSON



for Debra Turner-Emerson, Chairperson

ATTEST:



Melissa Ayres, Oversight Board Secretary

SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT is made and entered into effective the ____ day of June, 2012, by and between Promenade Square, LLC., a California limited liability company (the "Developer") as the successor in interest to Priest Development Corporation, and the City of El Cajon as the successor agency to the El Cajon Redevelopment Agency, (the "Successor Agency").

RECITALS

A. Priest Development Corporation, a California corporation ("PDC") and the El Cajon Redevelopment Agency (the "Agency") entered into that certain Disposition and Development Agreement dated November 14, 2001 (the "Agreement"), for the purpose of selling (by the Agency) and purchasing (by PDC) certain property in the city of El Cajon, county of San Diego, State of California (the "Subject Property"), as well as the development of the Subject Property into a mixed use project of twenty-eight (28) single family town houses and approximately 12,000 square feet of commercial/retail. Developer is the successor in interest to PDC under the Agreement and was the party who purchased the Subject Property from Agency.

B. The Agreement provides, among other things, for the Developer to open and operate a family-style dinner house restaurant on the Subject Property fully fixturized and stocked with inventory.

C. As a result of the downturn in economic conditions, the Developer was unable to meet its obligation to operate, fixturize or stock a family-style dinner house restaurant, and Developer and the Agency agreed to enter into that certain First Amendment to Disposition and Development Agreement (the "First Amendment") to allow Developer to lease a portion of the Subject Property to the operator of a family-style sit down restaurant, with the financial assistance of the Agency, thereby relieving Developer of development and operation covenants and allowing further Agency participation in the development of the Subject Property.

D. On February 1, 2012, subsequent to the approval of the First Amendment, and before the Agency could enter into an agreement to provide the contemplated financial assistance, the Agency was dissolved by operation of law as required by Assembly Bill 1X 26 ("AB 1X 26") and the California Supreme Court decision in *California Redevelopment Agency v. Matosantos*, upholding AB 1X 26; following the dissolution of the Agency the City became the successor agency to the Agency, as set forth in AB 1X 26 (the "Successor Agency"), and thereby is responsible for acting in place of the Agency.

E. The Developer has found that without the ability of a tenant to obtain financial assistance from the Agency, under Redevelopment Law, the contemplated use of the unoccupied portions of the Subject Property as a family-style sit down restaurant is no longer financially feasible, and the parties agree that the best utilization of the Subject Property, in order to end vacancies in the improvements and to encourage new investment in the downtown area, is to release the Developer from development restrictions in the use of the Subject Property, allowing the Subject Property to be developed consistent with the City's zoning ordinance and Specific Plan 182.

F. This Second Amendment to the Agreement (the "Second Amendment") is necessary to modify the DDA by revising the terms of the Agreement to allow the Developer to use the Subject Property in a manner consistent with the City's zoning ordinance and regulations, including any specific plans.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Section 3.8 of the Agreement is hereby amended to read as follows:

Section 3.8 Operating Covenant

By execution of this DDA, the Developer hereby covenants and agrees, by and for itself, its officers, directors, shareholders, members, agents, employees and assigns, and all persons claiming under or through them, that the Subject Property will be developed in accordance with the terms and conditions of this DDA, and shall be subject to all zoning ordinances, building codes, and local, state, federal laws, rules and regulations, applicable to the Subject Property from time to time.

Section 2. Attachment 5 to the Agreement is hereby terminated and of no further force and effect.

Section 3. Except as otherwise modified by this Second Amendment and the First Amendment, the Agreement shall remain in full force and effect.

Section 4. This Second Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

Section 5. This Second Amendment shall not be effective without the approval of the Oversight Board to the Successor Agency. Upon approval of the Oversight Board, and the complete execution by each of the parties, this Second Amendment shall be in full force and effect.

Section 6. Except as specifically provided herein, all terms shall have the same meaning as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment effective the date and year first above written.

CITY OF EL CAJON as SUCCESSOR AGENCY
to the EL CAJON REDEVELOPMENT AGENCY

By _____
Douglas Williford, City Manager

By _____
Kathie J. Rutledge, City Clerk

PROMENADE SQUARE, LLC,
a California limited liability company

By: _____
Daryl R. Priest, Manager

APPROVED AS TO FORM:

Fitch Law Firm, APC

By _____
Morgan L. Foley
City Attorney

By _____
Stephen J. Fitch
Attorneys for Promenade Square, LLC