

RESOLUTION NO.

A RESOLUTION OF THE CITY OF DUARTE APPROVING AN AMENDMENT TO THE OWNER PARTICIPATION AND DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF DUARTE AND DUARTE-JACOBSEN FAMILY HOLDINGS I, LLC AND APPROVING THE USE OF AGENCY FUNDS FOR PAYMENT OF THE COST OF INSTALLING OF A TRAFFIC SIGNAL

WHEREAS, the Redevelopment Agency of the City of Duarte (“Agency”) is a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Health & Safety Code §33000 *et seq.*) (“CRL”); and

WHEREAS, by previous action duly and regularly taken, the City of Duarte (“City”) and the Agency adopted the Redevelopment Plan for the Duarte Merged Redevelopment Project as amended from time to time (“Redevelopment Plan”), which Redevelopment Plan delineates the Duarte Merged Redevelopment Project Area (“Project Area”); and

WHEREAS, the Agency and Duarte-Jacobsen Family Holdings I, LLC (“Developer”) are parties to that certain Owner Participation and Disposition and Development Agreement dated November 14, 2006, as amended and supplemented by that certain Addendum to Owner Participation and Disposition and Development Agreement dated November 14, 2006, that certain Second Addendum to Owner Participation and Disposition and Development Agreement dated June 26, 2007, that certain Third Addendum to Owner Participation and Disposition and Development Agreement dated September 6, 2007, that certain Fourth Addendum to Owner Participation Agreement dated September 9, 2008, that certain Implementation and Guaranty Agreement dated December 17, 2008, and that certain Amendment No. 1 to Implementation and Guaranty Agreement dated December 22, 2008 (collectively, the “Existing OP/DDA”), relating to that certain real property comprised of approximately 4.7 acres of land area located near the northeast corner of Mountain Avenue and Central Avenue within the Project Area (“Site”); and

WHEREAS, the Agency staff has negotiated a Fifth Addendum to Owner Participation and Disposition and Development Agreement (“Fifth Addendum”) by and between the Agency and Developer; and

WHEREAS, the Existing OP/DDA provides for the Agency to return to the Developer, during the 10 year period following the completion of the project and the opening of certain uses on the Site, a portion of the purchase price paid by the Developer to the Agency for the Site in the amount of \$3,017,232 (“Additional Purchase Price”); and

WHEREAS, the Fifth Addendum provides for Agency to assist Developer with the costs to construct that certain traffic signal on Mountain Avenue north of Central Avenue at the project entrance (“Traffic Signal”) by (a) paying to Developer the sum of \$50,000, and (b) advancing to Developer a portion of the Additional Purchase Price in the amount of \$100,000 that otherwise would have been returned to Developer in the second and third years following the completion of the project on the Site; and

WHEREAS, Health and Safety Code Section 33445 requires the Agency and City Council to make certain findings prior to Agency funding the development of publicly owned improvements; and

WHEREAS, an amendment to the Summary Report has been prepared for the Fifth Addendum and the Agency Board and the City Council held a joint public hearing on the proposed Fifth Addendum and the Agency’s expenditures thereunder, at which time the Agency Board and the City Council reviewed and evaluated all of the information, testimony and evidence presented during the public hearing.

NOW THEREFORE, the City Council of the City of Duarte hereby resolves as follows:

Section 1. The above Recitals are true and correct and incorporated herein and made a part hereof.

Section 2. The Fifth Addendum effectuates the purposes of the CRL and the Redevelopment Plan, is in the best interests and welfare of the City of Duarte, and is of benefit to the Project Area and the City of Duarte, in that the Fifth Addendum assists in the redevelopment of the project on the Site, which will encourage job and economic growth and generate new sales tax revenue to the City.

Section 3. The City approves the increased cost of the agreement to the Agency through the Agency's provision of the contribution to the Traffic Signal in the amount of \$50,000, which the City finds is a necessary cost for the project on the Site.

Section 4. The City makes the following findings under Health and Safety Code Section 33445 with regard to Agency's expenditure of funds under the Fifth Addendum for the construction of the Traffic Signal:

a. The Agency's contribution of funds toward the cost of the Traffic Signal is of benefit to the Project Area, in that the Traffic Signal will facilitate the flow of traffic in and out of the Site and the success of the new development on the Site is dependent upon the provision of adequate infrastructure.

b. No other reasonable means of financing this portion of the Traffic Signal are available to the community for the following reasons: (i) City monies are dedicated to critical police, fire, and other necessary expenditures, including other capital improvement projects; and (ii) the only practical means of paying for this portion of the Traffic Signal is to use Agency funding as there are insufficient non-Agency funds available for Project expenditures to meet the entire cost of the Traffic Signal.

c. The Agency's contribution will assist in the development of the Project and the elimination of the blighting conditions of depreciated or stagnant property values, impaired investments, inadequate public facilities, and business vacancies.

d. The Agency's payment is consistent with Agency's adopted Implementation Plan, in that addressing inadequate public improvements in and benefiting the Project Area is identified in the Implementation Plan.

e. The Agency's payment is necessary to effectuate the purposes of the Redevelopment Plan.

Section 5. The Fifth Addendum is consistent with the previously approved Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the project and no further environmental review is required for the Fifth Addendum.

Section 6. The Fifth Addendum, a copy of which is on file with the Secretary of the Agency, is hereby approved.

Section 7. The City consents to the authorization given by the Agency to (i) the Executive Director and Agency Counsel to make final modifications as may be necessary to finalize the Fifth Addendum, consistent with the substantive terms approved hereby, and (ii) the Agency Chairperson to sign the Fifth Addendum on behalf of the Agency, and (iii) the Executive Director to take such other and further actions as may be necessary and proper to carry out the terms of the Fifth Addendum and the purpose of this Resolution, including but not limited to signing such other and further documents.

PASSED, APPROVED, AND ADOPTED this 23rd day of June, 2009.

Mayor John Fasana

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 09-21 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 23rd day of June, 2009, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California