

## RESOLUTION NO. OB-13-28

### A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE AMENDED LONG RANGE PROPERTY MANAGEMENT PLAN PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34191.5

**WHEREAS**, the Imperial Beach Redevelopment Agency (“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) (“Redevelopment Law”); and

**WHEREAS**, Assembly Bill No. X1 26 (2011-2012 1<sup>st</sup> 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) (“Part 1.8”) 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, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (“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**, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 (“AB 1484”, Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies, including the preparation of a Long Range Property Management Plan (“LRPMP”); and

**WHEREAS**, on September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 (“AB 1585”), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the “Dissolution Act”); and

**WHEREAS**, H&S Code Section 34179 of the Dissolution Act 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 Act. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, pursuant to H&S Code Section 34191.5(a) of the Dissolution Act, upon the issuance of the Finding of Completion to the Successor Agency, a Community Redevelopment Property Trust Fund ("Trust") will be established to serve as the repository of certain real properties of the former Redevelopment Agency that are identified in the Due Diligence Reviews ("DDRs") by H&S Code Section 34179.5(c)(5)(C) of the Dissolution Act (i.e. Procedure 7 of the DOF's Guidelines for the DD Rs). The Trust shall be administered by the Successor Agency; and

**WHEREAS**, pursuant to H&S Code Section 34191.5(b) of the Dissolution Act, once the California Department of Finance ("DOF") issues a Finding of Completion to the Successor Agency, the Successor Agency shall prepare a LRPMP that addresses the disposition and use of certain real properties of the former Redevelopment Agency. The LRPMP shall be submitted to the Oversight Board and the DOF for approval no later than 6 months following the issuance of the Finding of Completion to the Successor Agency; and

**WHEREAS**, pursuant to H&S Code Section 34191.4(a) of the Dissolution Act, upon the approval of the LRPMP by the DOF, all real property and interests in real property identified in the DD Rs by H&S Code Section 34179.5(c)(5)(C) of the Dissolution Act shall be transferred to the Trust, unless such a property is subject to the requirements of any existing enforceable obligation; and

**WHEREAS**, H&S Code Section 34191.5(c) of the Dissolution Act requires that the LRPMP (1) include an inventory of all properties in the Trust, which inventory shall consist of specific information relating to each such property including, without limitation, the date of and purpose for acquisition, value of property, applicable zoning, any property revenues and contractual requirements for disposition of same, history of environmental issues and any related studies and remediation efforts, potential for transit-oriented development and advancement of planning objectives of the Successor Agency, and history of previous development proposals and activity; and (2) address the use or disposition of all properties in the Trust, including (i) the retention of such property for governmental use pursuant to H&S Code Section 34181(a) of the Dissolution Act, (ii) the retention of such property for future development, (iii) the sale of such property, or (iv) the use of such property to fulfill an enforceable obligation; and

**WHEREAS**, on April 12, 2013, the Successor Agency received its Finding of Completion. However, before receiving the Finding of Completion, the Successor Agency prepared the original LRPMP ("Original LRPMP") and submitted it to the Successor Agency, Oversight Board, and DOF for approval in February 2013; and

**WHEREAS**, in accordance with the Dissolution Act, the Original LRPMP included three (3) real properties ("Properties") previously owned by the former Redevelopment Agency and now owned in fee by the Successor Agency. These properties are described as: (1) 741-849 Palm Avenue; (2) 735 Palm Avenue; and (3) 800 Seacoast Drive, all of which are located in the City of Imperial Beach. The first two properties are referred to herein as the "Palm Ave. Properties" and the third property is referred to herein as the "Seacoast Inn Property"; and

**WHEREAS**, after issuance of the Finding of Completion to the Successor Agency and review of the Original LRPMP, the DOF issued a letter to the Successor Agency dated July 30,

2013, stating that the DOF did not approve the Original LRPMP because of the manner in which the Successor Agency proposed to dispose of the Palm Ave. Properties. The DOF had no comment in its July 30, 2013 letter on the Original LRPMP's discussion of the Seacoast Inn Property. The DOF further stated that it was returning the Original LRPMP to the Oversight Board for reconsideration; and

**WHEREAS**, in light of the DOF's July 30, 2013 letter and its determination not approving the Original LRPMP, the Successor Agency has prepared the proposed amended LRPMP ("Amended LRPMP") for consideration by the Successor Agency, the Oversight Board and the DOF; and

**WHEREAS**, on October 2, 2013, the Successor Agency approved the proposed Amended LRPMP. The proposed Amended LRPMP, as approved by the Successor Agency, is attached as Attachment No. 2 to the Staff Report prepared for this Agenda Item, and is presented to the Oversight Board for review and approval; and

**WHEREAS**, the Amended LRPMP includes the Properties originally included in the Original LRPMP; namely, the Palm Ave. Properties and the Seacoast Inn Property. Each of these Properties were identified in the Non-Housing DDR by H&S Code Section 34179.5(c)(5)(C) of the Dissolution Act (i.e. Procedure 7 of the DOF's Guidelines for the DDRs). No real property assets were identified in the Housing DDR by H&S Code Section 34179.5(c)(5)(C) of the Dissolution Act (i.e. Procedure 7 of the DOF's Guidelines for the DDRs); and

**WHEREAS**, for each of the Properties, the Amended LRPMP includes all of the information required by H&S Code Section 34191.5(c) of the Dissolution Act and their respective use and disposition are in accordance with the Dissolution Act; and

**WHEREAS**, pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the two Palm Ave. Properties are proposed to be sold by the Successor Agency to Sudberry-Palm Avenue LLC ("Sudberry"), a private third party developer, pursuant to a proposed Purchase and Sale Agreement ("Purchase Agreement"); and

**WHEREAS**, the proposed Purchase Agreement was approved by the Successor Agency at its meeting conducted on October 2, 2013 prior to the Successor Agency's approval of the Amended LRPMP. Further, the proposed Purchase Agreement will have been considered for approval by the Oversight Board at the same meeting but prior to the Oversight Board's consideration of the proposed Amended LRPMP. The proposed Purchase Agreement will likewise be submitted to the DOF for review concurrently with the proposed Amended LRPMP if approved by the Oversight Board; and

**WHEREAS**, in accordance with the appraised value of the Palm Ave. Properties (in addition to certain City public rights-of-way to be vacated by the City) (collectively, the "Site"), as set forth in the appraisal dated September 10, 2013, attached to the Amended LRPMP, and pursuant to Section 201 of the proposed Purchase Agreement, the "Purchase Price" (the monetary consideration payable to the Successor Agency by Sudberry as the Purchaser) for the Site includes the following two components: (a) the payment of the sum of \$213,000, in cash, at the Close of Escrow; and (b) payment of the Participation Component in accordance with the proposed Payment Agreement (attached to the proposed Purchase Agreement), equal to one and one-half percent (1.5%) of the gross sales price from the first arm's-length sale of each Parcel or Parcels of the Site (or any portion thereof) by Purchaser in any number of transactions which is completed within the first Fifty-Five (55) years from the Effective Date of the Purchase Agreement, if any; and

**WHEREAS**, the anticipated sale proceeds from the Successor Agency's sale of the Palm Ave. Properties (in addition to certain City public rights-of-way to be vacated by the City) to Sudberry as the Purchaser pursuant to the proposed Purchase Agreement in the amount of \$213,000 will be remitted after the Close of Escrow 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 Act. In addition, any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price, pursuant to a qualifying sale in accordance with the proposed Payment Agreement, will likewise be 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 Act; and

**WHEREAS**, pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the Seacoast Inn Property is being used to fulfill an enforceable obligation (including completion of the current development of a full-service beachfront hotel and appurtenant parking facilities (the "Hotel Project")) pursuant to a development agreement and a ground lease between the Redevelopment Agency and a third party developer/lessee, Seacoast Inn, L.P., a California limited partnership ("Seacoast Inn"); and

**WHEREAS**, the Seacoast Inn Property is the subject of that certain Disposition and Development Agreement ("DDA") dated December 16, 2010, and entered into by and between the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership. The DDA was subsequently assigned by Imperial Coast, L.P. to its successor and related entity Seacoast Inn. Pursuant to the DDA, the Seacoast Inn Property has been ground leased to Seacoast Inn for one dollar (\$1.00) per year pursuant to the terms of a Fifty-Five (55) year term Ground Lease ("Ground Lease") dated March 15, 2011, and entered into by and between the Redevelopment Agency and Seacoast Inn. In accordance with both the DDA and the Ground Lease, Seacoast Inn has the option to purchase fee title of the Seacoast Inn Property from the Successor Agency for one dollar (\$1.00) after certain conditions precedent are fully and completely met. The DDA and the Ground Lease each constitute an enforceable obligation of the former Redevelopment Agency and now the Successor Agency pursuant to the Dissolution Act; and

**WHEREAS**, pursuant to H&S Code Section 34180(j) of the Dissolution Act, the Successor Agency submitted a copy of the proposed Amended LRPMP to the San Diego County Administrative Officer, the San Diego County Auditor-Controller, and the DOF at the same time that the Successor Agency submitted it to the Oversight Board for approval; and

**WHEREAS**, pursuant to H&S Code Section 34191.3 of the Dissolution Act, once the Amended LRPMP is approved by the DOF, the Amended LRPMP shall govern, and supersede all other provisions of the Dissolution Act relating to, the disposition and use of the Properties; and

**WHEREAS**, the activity proposed for approval by this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

**WHEREAS**, the activity proposed for approval by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines. In this regard, the projects associated with the Properties identified in the Amended LRPMP, along with their respective contractual agreements, have been reviewed and analyzed pursuant to CEQA and their required environmental documents have been prepared, circulated and approved/certified by the appropriate lead agency; and

**WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have been met.

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

- Section 1.** The Oversight Board hereby determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby approves the Amended Long Range Property Management Plan (“Amended LRPMP”), substantially in the form attached as Attachment No. 2 to the Staff Report prepared for this Agenda Item.
- Section 3.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to remit 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 Act the proceeds of the Purchase Price that are received by the Successor Agency from the Successor Agency’s sale of the Palm Ave. Properties (in addition to certain City public rights-of-way to be vacated by the City) to Purchaser pursuant to the proposed Purchase and Sale Agreement including (i) the cash in the amount of \$213,000 to be received by the Successor Agency at the Close of Escrow and (ii) any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price, pursuant to a qualifying sale in accordance with the proposed Payment Agreement.
- Section 4.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to: (i) submit the Amended LRPMP, as approved by the Oversight Board, to the California Department of Finance (“DOF”) electronically in PDF format and to the San Diego County Auditor-Controller; (ii) post a copy of the Amended LRPMP, as approved by the Oversight Board, on the Successor Agency’s internet website; (iii) revise the Amended LRPMP and make such changes and amendments as necessary, before official submittal of the Amended LRPMP to the DOF, in order to complete the Amended LRPMP in the manner provided by the DOF and to conform the Amended LRPMP to the form or format as prescribed by the DOF; (iv) make non-substantive changes and amendments to the Amended LRPMP deemed necessary and as approved by the Executive Director of the Successor Agency and its legal counsel; and (v) take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency and the Oversight Board.
- Section 5.** The Oversight Board determines that the activity approved by this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.

**Section 6.** The adoption of this Resolution is not intended to and shall not constitute a waiver of any constitutional, legal or equitable rights that 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 Act, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.

**Section 7.** 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 8.** This Resolution shall take effect upon the date of its adoption and is subject to review by the DOF in accordance with H&S Code Section 34191.5(b) of the Dissolution Act.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 9<sup>th</sup> day of October 2013, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>	<b>YANDA, WEST, SAADAT, FERNANDEZ, WINTER, HENTSCHE, FOLTZ</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>	<b>NONE</b>

*/s/*  
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**MAYDA C. WINTER**  
**CHAIRPERSON**

**ATTEST:**

*/s/*  
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**JACQUELINE M. HALD, MMC**  
**SECRETARY**