

RESOLUTION NO. 75085

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ ACCEPTING THE SUMMARY OF COSTS AND FINDINGS OF THE AMENDED SUMMARY 33433 REPORT AND THE ESTIMATED REUSE VALUATION FOR THE FOURTH AMENDMENT TO THE LEASE PURSUANT TO THE CALIFORNIA HEALTH AND SAFETY CODE SECTION 33433 FOR THE FOURTH AMENDMENT TO THE LEASE WITH CUPERTINO FLAMES, LLC DBA FLAMES EATERY & BAR, FOR GROUND FLOOR RETAIL SPACE AT 88 SOUTH FOURTH STREET; AUTHORIZING THE CITY CLERK TO EXECUTE THE FIRST AMENDED CERTIFICATE OF NON-DISTURBANCE AND ATTORNMENT DULY EXECUTED BY CUPERTINO FLAMES, AND MAKING CERTAIN FINDINGS

WHEREAS, the Redevelopment Agency of the City of San José ("Agency") is presently engaged in redevelopment activities in the Civic Plaza Redevelopment Project Area ("Project Area"); and

WHEREAS, on December 16, 2003, the Agency Board approved a lease with Century Flames, Inc., now Cupertino Flames, LLC ("Flames") for space in the Fourth Street Garage at 88 South Fourth Street for a Flames Coffee Shop ("Lease"), and the Lease was subsequently amended on December 14, 2004 and twice on June 27, 2006; and

WHEREAS, the proposed Fourth Amendment to Lease provides for an expansion of the current premises by approximately 5,005 square feet for a total square footage of approximately 11,555 square feet, the revision of the schedule and scope of the project, the waiver of a portion of the common area maintenance charges, the increase of the term to twenty years, and the augmentation of the Shell Improvement Allowance by \$260,000; and

WHEREAS, Community Redevelopment Law provides in Section 33433 that (1) before any property acquired, in whole or in part, with tax increment monies is sold or leased

for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the City Council, after a duly noticed public hearing of the City Council, and (2) the Agency shall make available for public inspection a copy of the proposed sale or lease and a summary which describes the financial aspects of the transaction; and

WHEREAS, a supplemental memorandum to the Summary Report and an Estimated Reuse Valuation have been prepared by Agency's consultant, Keyser Marston Associates, Inc., pursuant to Health & Safety Code Section 33433, that analyze the proposed Fourth Amendment's effect on the financial structure, costs, revenues, and other information required by Section 33433, and said report and copies of the proposed Fourth Amendment to Lease were made available to the public for inspection prior to the hearing, as required by Community Redevelopment Law; and

WHEREAS, the Section 33433 Summary Report concludes that the fair reuse value of the property is not less than the fair reuse value with the covenants, conditions and costs authorized by the Lease, and

WHEREAS, notice of a joint public hearing by the City Council and the Agency Board on the proposed Fourth Amendment to Lease has been duly published in accordance with the Community Redevelopment Law; and

WHEREAS, the joint public hearing of the Agency Board and the City Council was held on August 11, 2009; and

WHEREAS, the proposed Fourth Amendment to Lease will assist in the elimination of blight by addressing the Agency's goals of enlivening the streetscape, creating pedestrian linkages between City Hall, San José State University, adjacent residential neighborhoods and the historic Downtown retail area, and avoiding the aesthetic and

economic barrier created by large expanses of blank streetscape by tenanting a vacant retail space; and

WHEREAS, the proposed Fourth Amendment to Lease is consistent with the Project Area Implementation Plan's goal of increasing the community's economic base by encouraging investment in the Project Area.

WHEREAS, the City of San José and Cupertino Flames, given the expansion of the premises and associated changes to the terms of the lease, desire to amend the original Certificate of Non-Disturbance and Attornment Agreement ("Amended Certificate") said parties previously entered into, to reflect and apply to the expanded premises.

WHEREAS, the City desires to authorize the City Clerk to execute the Amended Certificate upon receipt of the Amended Certificate duly executed by Cupertino Flames.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

1. The summary of costs and findings of the Amended Summary 33433 Report and the Estimated Reuse Valuation pursuant to the California Health and Safety Code Section 33433 are accepted for the Fourth Amendment to the lease of approximately 11,555 square feet of ground floor retail space at 88 South Fourth Street to Cupertino Flames, LLC.
2. The consideration that the Agency will receive is not less than the fair reuse value at the use and with the covenants, conditions and development costs set forth in the Fourth Amendment to the Lease.

3. The lease of the property: (a) will assist in the elimination of blight by enlivening the streetscape and creating pedestrian linkages between San José State University, Civic Center, adjacent residential neighborhoods and the historic Downtown retail area; and (b) is consistent with the Implementation Plan for the Civic Plaza Redevelopment Project Area which encourages retail/entertainment activity and addresses the Agency's urban design goals of enlivening streetscapes, tenanting a vacant retail space and supporting a residential development project.

4. The City Council approves, and the City Clerk is authorized to execute, the First Amended Certificate of Non-Disturbance and Attornment ("Certificate") with Cupertino Flames, LLC, upon City's receipt of such Amended Certificate executed by Flames.

ADOPTED this 11th day of August, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk