

RESOLUTION NO. 2023-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND AUTHORIZED OFFICERS TO EXECUTE, ON BEHALF OF THE CITY, A TERMINATION OF THE GROUND LEASE BETWEEN THE CITY AND TRANSFORM OPERATING STORES LLC AND TO EXECUTE, ON BEHALF OF THE CITY, A GROUND LEASE BETWEEN THE CITY AND COSTCO WHOLESALE CORPORATION, AND DECLARING THE SUBJECT PROPERTY AS EXEMPT SURPLUS PROPERTY

WHEREAS, this Resolution is being adopted for the purpose of authorizing the Mayor, the City Manager, a Deputy City Manager and/or the Real Property Manager and others as permitted by law ("Authorized Officers") to execute such documents as may be required to terminate a ground lease between the City of Escondido ("City") and Transform Operating Stores LLC ("Transformco"), a Delaware limited liability company, at the former Sears site at 210 East Via Rancho Parkway; and

WHEREAS, this Resolution is being adopted for the purpose of authorizing the Authorized Officers and each of them, on behalf of the City, to execute such documents as may be required to enter into a new lease at the same location with Costco Wholesale Corporation, a Washington corporation ("Costco"); and

WHEREAS, the City Council has considered the proposal, the staff report, attachments and exhibits to the Staff Report and any public comment; and

WHEREAS, there currently exists a ground lease between the City and Transformco as successor-in-interest to Sears, Roebuck and Co. ("Sears") dated November 26, 1986, by and between City and Sears, and as amended and renewed thereafter and as affected by that certain Assignment and Assumption of Lease dated May 13, 2019 between Transformco and Sears ("Transformco Lease"); and

WHEREAS, Transformco has agreed to enter into a Termination of Lease Agreement (“Termination Agreement”) with the City whereby Transformco agrees to terminate the Transformco Lease and surrender the premises to the City and City agrees to accept and recover possession of the premises thereby terminating all obligations between them; and

WHEREAS, City has negotiated the terms of a Ground Lease with Costco (“Costco Lease”) for the use of the former Sears site at 210 East Via Rancho Parkway for a period of twenty (20) years and thereafter, Costco shall have seven (7) successive options to extend the term of that Costco Lease for additional periods of five years each, and cumulatively not more than fifty-five (55) years; and

WHEREAS, the City Council hereby finds and determines that the Costco Lease authorized by this Resolution is justified for the purpose of attracting the necessary capital investments required to achieve the public’s best interests and promote a successful regional asset, as it also did via Resolution No. 2022-94 on June 27, 2022; and

WHEREAS, the City Council hereby further finds and determines that the Costco Lease for the terms specified will provide certainty to the tenant, thus enabling and encouraging additional investment in the North County Mall Property which will produce increased sales tax revenues for the City, which funds can be used for the benefit of the residents of the City; and

WHEREAS, the City Council hereby further finds and determines that the specific legislative action related to leases of City property taken by this Resolution involves only the approval of a ground lease with a new entity, Costco, for a period of not more than fifty-five (55) years and, as a result, no further notices, hearings or competitive bidding are required under State law or the Escondido Municipal Code; and

WHEREAS, the lease provided for herein require the lessee to make application for all required permits, approvals, and authorizations (“Project Approvals”) from various government and permitting agencies including without limitation, environmental approvals pursuant to applicable law, and no action taken herein shall be deemed to constitute, and does not in fact constitute, any approval, agreement, obligation, permission, promise, warranty or representation that any such Project Approvals will be forthcoming by the City Council or City’s Planning Commission and, the City Council and City’s Planning Commission shall have the sole, complete, absolute and unqualified right to approve, reject in whole or in part, or modify any Project Approvals applications before the reviewing bodies as required by applicable law, and will in fact provide such independent review, and lessee further agrees that no Project Approvals are deemed to be issued or obtained, and no rights to the leases herein shall be enjoyed, until the period of time for any interested party to contest or appeal any such issuance has passed after the issuance of a final and nonappealable order, decision or judgment confirming the issuance of relevant and required Project Approvals; and

WHEREAS, the City Council hereby further finds and determines that the subject property of the Costco Lease is Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G) and Proposition A passed by the voters on June 5, 1979, approving and requiring this entire North County Mall Property, of which the Costco leasehold is a part, to be used for “the planned development of a retail center” and thereby constituting a valid legal restriction not imposed by the City making housing prohibited.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California as follows:

1. That the above recitations are true.

2. That the Mayor and all Authorized Officers are hereby authorized to execute, subject to final negotiation and approval as to form by the City Attorney, certain documents and others as may be required to implement the intent of this City Council action, including the forms of which are attached to this Resolution as Exhibits “A” and “B”, and as identified as follows:

Exhibit “A” – Transformco Termination Agreement

Exhibit “B” – A Ground Lease between the City of Escondido and Costco Wholesale Corporation

3. That no actions, permissions, approvals or rights are issued or granted to Costco for the construction of any improvements unless and until Costco has been issued or obtained all Project Approvals as described herein and referred to in the attached Exhibits and no approvals are deemed given and no rights to the leases herein shall be enjoyed, until the period of time for any interested party to contest or appeal any such issuance has passed after the issuance of a final and nonappealable order, decision or judgment confirming the issuance of relevant and required Project Approvals.

4. That the subject property of the Costco Lease is Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G).