



REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER R- 04601

DATE OF FINAL PASSAGE JAN 24 2011

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO TERMINATING THE OWNER  
PARTICIPATION AGREEMENT FOR FAIRMOUNT 26 BY  
AND BETWEEN THE REDEVELOPMENT AGENCY AND  
FAIRMOUNT 26, L.P.

WHEREAS, the Redevelopment Agency of the City of San Diego (Agency) is engaged in activities necessary to carry out and implement the City Heights Redevelopment Plan for the City Heights Redevelopment Project Area (Project Area), adopted by the City Council of the City of San Diego pursuant to Ordinance O-17768 on May 11, 1992; and

WHEREAS, the Owner Participation Agreement effective August 7, 2009 (OPA) was entered into by and between the Agency and Fairmount 26, L.P., a California limited partnership (Owner), a copy of which is on file in the office of the secretary to the Agency as Document No. D-04430/R-04430A, wherein Owner proposed to develop a mixed-use project including 26 residential apartment units of affordable housing and associated parking spaces and 4,100 square feet of commercial space to be used for retail, office and commercial uses (Project) on certain real property located at 3332-3406 Fairmount Avenue, San Diego, California (Property) in the Project Area; and

WHEREAS, the OPA Attachment No. 3 Method of Financing, Paragraph 7 Conditions Precedent to Closing for the Benefit of the Agency, provides that the Owner shall have obtained approval of all financing described in the Method of Financing; and

WHEREAS, the OPA Attachment No. 5 Schedule of Performance, Section II, Financing Commitments Paragraph 1, provides that the Owner shall apply for and obtain a California Tax Credit Allocation Committee (TCAC) allocation of Low Income Housing Tax Credits for the Project and that either party may terminate the OPA if Owner has not been awarded tax credits in or before the second 2010 TCAC application cycle in accordance with the OPA; and

WHEREAS, Owner has informed Agency staff that Owner was not successful in the second 2010 application round for the award of tax credits by the TCAC for the development of the Project; and

WHEREAS, Owner ultimately determined that the Project is no longer financially feasible and the Project is unable to be developed as proposed in the OPA and the related Method of Financing and Schedule of Performance attachments; and in support of this, Owner sent a letter to the Agency dated November 23, 2010 whereby the Owner stated the Project was not financially viable and that the Owner was terminating participation in the Project; and

WHEREAS, on November 19, 2010, Agency sent written notification to Owner of the intention to terminate the OPA; and

WHEREAS, pursuant to the OPA Section 508 Termination of Either Party, the Agency may terminate the OPA in the event of a failure of any condition precedent to the occurrence of the real estate closing for the Project (Closing) as set forth in the Method of Financing; and

WHEREAS, pursuant to the OPA Section 510 Termination by Agency, the Agency has the right, prior to Closing, to terminate the OPA, by providing written notice to the Owner of failure to submit to Agency the evidence of financing or failure to satisfy any other condition precedent to the occurrence of the Closing as provided in the Method of Financing within the time established in the Schedule of Performance; and

WHEREAS, in light of the failure of Owner to meet the financing requirements, as a condition precedent to the Closing of the Project, the Agency desires to terminate the OPA for development of the Project and believes that termination of the OPA is in the best interests of the City and the health, safety, morals and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local law and requirements; NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego as follows:

1. That the Agency terminates the OPA and the OPA has no further force and effect, except as to those provisions that survive as expressly set forth in the OPA.
2. That the Agency and Owner are released from any and all rights, obligations, duties or agreements contained in the OPA, except as to those provisions that survive as expressly set forth in the OPA.
3. That the Agency authorize the Agency Executive Director or designee, to implement, adhere to, and administer and execute all other documents on behalf of the Agency that are necessary and appropriate to carry out and implement the purposes set forth in this Resolution according to its terms, and to administer the Agency's obligations, responsibilities and duties to be performed thereunder.

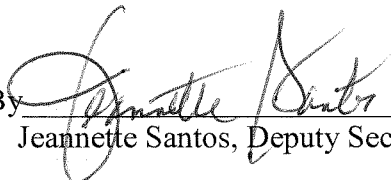
APPROVED: JAN I. GOLDSMITH, General Counsel

By Monique R. Tayyab  
Monique R. Tayyab  
Deputy General Counsel

MRT:hm  
12/10/10  
Or. Dept:Redev.Agency  
RA-2011-58  
PL# 2010-0310

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the City of San Diego, at this meeting of JAN 11 2011.

REDEVELOPMENT AGENCY

By   
Jeannette Santos, Deputy Secretary

Approved: 1.24.11  
(date)

  
JERRY SANDERS, Executive Director

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Executive Director

Passed by the Redevelopment Agency of The City of San Diego on JAN 11 2011, by the following vote:

Agency Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

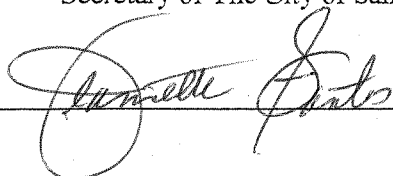
Date of final passage JAN 24 2011

AUTHENTICATED BY:

JERRY SANDERS  
Executive Director of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
Secretary of The City of San Diego, California.

By , Deputy

Office of the Redevelopment Agency, San Diego, California

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