

RESOLUTION NO. OB-14-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE TERMINATION OF THE OWNER PARTICIPATION AGREEMENT AND RELATED RESTRICTIVE COVENANTS WITH SHADOW MOUNTAIN CHURCH, INC., ITS SUCCESSOR AND/OR ASSIGNMENTS, GOVERNING THE LAND USE RESTRICTIONS FOR THE PROPERTY KNOWN AS EL CAJON TOWNE CENTER, LOCATED AT MAGNOLIA AVENUE BETWEEN PARK AVENUE AND WELLS AVENUE.

WHEREAS, on March 1, 1989, the former El Cajon Redevelopment Agency (the "Agency") entered into an Owner Participation Agreement ("OPA") with Hopkins Development Company, L.P. (the "Original Developer") for the development of that certain property located on the east side of Magnolia Avenue, between Wells Avenue and Park Avenue, more particularly described as Parcel 1 in the OPA ("Parcel 1"); and

WHEREAS, the OPA was subsequently modified by amendments to the OPA on August 16, 1989, November 15, 1993, March 21, 1995; and by Letter Agreement approved May 11, 1993, (collectively the "Agreement"); and

WHEREAS, Parcel 1 has changed ownership several times and a portion is now owned by Shadow Mountain Community Church, Inc., which is currently in escrow and is awaiting sale to Diamond Development, LLC ("New Developer"); and

WHEREAS, Section 401 of the Agreement provides, among other things, that the Original Developer and its successors and assignees devote Parcel 1 to commercial retail, and other accessory uses, as specified in the Redevelopment Plan, and that the covenant shall run with the land (the "Restrictive Covenant") indefinitely; and

WHEREAS, Section 401 of the Agreement further provides covenants prohibiting discrimination, and specifies language required to be included in all deeds and leases related to Parcel 1, in perpetuity (the "Nondiscrimination Covenant"); and

WHEREAS, New Developer and the County of San Diego Department of Health and Human Services ("HHSA") are seeking to lease a portion of Parcel 1 and have proposed use as administrative offices for HHSA programs including Child Welfare Services, Aging and Independent Services, Public Health Services, and East County Regional Mental Health Services, under Conditional Use Permit 2187 ("CUP 2187"), which is inconsistent with the Restrictive Covenant; and

WHEREAS, the requested use by HHSA requires a waiver of the provisions of the Agreement, which must be approved in writing by the appropriate authorities of the former Agency and the Developer; and

WHEREAS, CUP 2187 is set to be heard before the Planning Commission on November 4, 2013, and will be forwarded to the City Council for a final decision on December 10, 2013; and

WHEREAS, staff is recommending approval of CUP 2187, subject to conditions included in any such resolution presented to the Planning Commission for adoption thereof; and

WHEREAS, because the Restrictive Covenant limits the use of Parcel 1 in accordance with the OPA, it becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for anything other than retail commercial purposes; and

WHEREAS, for these reasons staff is recommending the Agreement be terminated with the New Developer, while retaining and reserving the Nondiscrimination Covenant for Parcel 1; and

WHEREAS, termination of the Agreement also meets Section 34181(e) of California Health and Safety Code, which requires that successor agencies "(d)etermine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated...."; and

WHEREAS, Section 34181(e) allows the parties to terminate such agreements if the Oversight Board finds that early termination is in the best interests of the taxing entities; and

WHEREAS, by terminating the OPA, the New Developer will have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized; and

WHEREAS, staff finds no reason to any longer maintain these land use restrictions, except for the Nondiscrimination Covenant.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference.
 - 2. Approval of the Termination Agreement of Owner Participation Agreement, related restrictive covenants and preparation of reasonable and required documentation is exempt from the California Environmental

Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.

3. The proposed terms would be in the best interests of the affected taxing entities and the public because it will allow the New Developer to have flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized.
- B. The Oversight Board hereby approves the Termination of Owner Participation Agreement and related restrictive covenants, substantially in the form as presented, ("Termination Documents") with Shadow Mountain Church, Inc., its successors and/or assigns, governing the land use restrictions for the property known as the El Cajon Towne Center, located at Magnolia Avenue between Park and Wells Avenue; provided, however, that the Termination Documents shall expressly reserve and retain the Nondiscrimination Covenants in perpetuity.
- C. The Oversight Board hereby approves execution of all reasonable and required documentation by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of the chief executive officer for the Successor Agency, necessary to formalize and complete the Termination Documents as outlined in this Resolution.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 20th day of November 2013, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS,
RANU, TURNER-EMERSON
NOES: NONE
ABSENT: NONE



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

DRAFT

TERMINATION OF OWNER PARTICIPATION AGREEMENT

This TERMINATION OF OWNER PARTICIPATION AGREEMENT (ATermination Agreement@) is entered into as of _____ (“Date of Agreement”) by and between the SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic (“Agency”), and SHADOW MOUNTAIN CHURCH, INC., a California nonprofit corporation, its successors and/or assignments (the “Owner@).

RECITALS

A. The Former El Cajon Community Redevelopment Agency, (the “Agency”), entered into an Owner Participation Agreement (“OPA”) dated March 1, 1998, with Hopkins Development Company L.P. (the “Original Developer”), for the development of that certain property located on the east side of Magnolia Avenue, between Wells Avenue and Park Avenue, more particularly described as Parcel 1 in the OPA (“Parcel 1”). The OPA was subsequently modified by amendments to the OPA on August 16, 1989, November 15, 1993, March 21, 1995; and by Letter Agreement approved May 11, 1993. Parcel 1 has changed ownership several times and a portion is now owned by Shadow Mountain Community Church, Inc., which is currently in escrow and is awaiting sale to Diamond Development, LLC (the “New Developer”).

B. Section 401 of the OPA provides, among other things, that the Original Developer and its successors and assignees devote Parcel 1 to commercial retail, and other accessory uses, as specified in the Redevelopment Plan, and that the covenant shall run with the land (the “Restrictive Covenant”) indefinitely. Section 401 of the OPA further provides covenants prohibiting discrimination and specifies language required to be included in all deeds and leases related to Parcel 1 in perpetuity (the “Nondiscrimination Covenant”).

C. New Developer and the County of San Diego Department of Health and Human Services (“HHSA”) are seeking to lease a portion of Parcel 1 and have proposed use as administrative offices for HHSA programs including Child Welfare Services, Aging and Independent Services, Public Health Services, and East County Regional Mental Health Services, under Conditional Use Permit 2187 (“CUP 2187”), which is inconsistent with the Restrictive Covenant. The requested use by HHSA requires a waiver of the provisions of the OPA, which must be approved in writing by the appropriate authorities of the former Agency and the Developer. CUP 2187 is set to be heard before the Planning Commission on November 4, 2013, and will be forwarded to the City Council for a final decision on December 10, 2013

D. Because the Restrictive Covenant limits the use of Parcel 1 in accordance with the OPA, it becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for anything other than retail commercial purposes. The New Developer desires to have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized.

E. Termination of the OPA also meets Section 34181(e) of California Health and Safety Code, which requires that successor agencies “(d)etermine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated....” Section 34181(e) allows the parties to terminate such agreements if the Oversight Board finds that early termination is in the best interests of the taxing entities.

F. For these reasons, the Owner now wishes to terminate the OPA with the Agency while retaining and reserving the Nondiscrimination Covenant for Parcel 1.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agency and Owner hereby agree as follows:

1. Termination of the OPA. Effective upon the Date of Agreement of this Termination Agreement, Agency and Owner hereby acknowledge and agree that the OPA shall be terminated and discharged, and shall be of no further force or effect, except retaining and reserving the Nondiscrimination Covenant for Parcel 1. Upon the effectiveness of the termination of the OPA as provided in the immediately preceding sentence, neither Agency nor Owner shall have any rights or obligations pursuant to the OPA, except those respecting reservation of the Nondiscrimination Covenant.

2. Mutual Releases. In consideration of the foregoing, Agency and Owner hereby irrevocably and unconditionally release, acquit, and forever discharge each other, and each of the other’s successors, predecessors, assigns, owners, stockholder, directors, officers, employees, agents, guarantors, representatives, attorneys, divisions, parent corporations, subsidiaries, affiliates, partners, joint venturers, unincorporated associates, trusts, trustors, trustees, beneficiaries, heirs, insurers, and affiliated persons or entities (which specifically includes, but is not limited to, with respect to the Agency, the former Agency, and the City of El Cajon, from any and all charges, complaints, claims, contracts, liabilities, duties, obligations, promises, agreements, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including attorney’s fees and court costs, anticipated or actual incurred, of any nature whatsoever, known or unknown, suspected or unsuspected, which Agency or Owner, or their successors and assigns, including the New Developer, or any related person or entitled as described above, now has, owns or holds, or claims to have, own or hold, or which said parties at any time heretofore had, owned or held, or claimed to have had, owned or held, against one another, or any of the other related persons or entities as described above, in any way arising out of or relating to the OPA, or to implementation of the OPA by either party.

3. Waiver of Civil Code Section 1542. Agency and Owner both understand and agree that the releases provided in Section 2 above extend to all claims of every kind of nature, whether known or unknown, suspected or unsuspected, arising out of, in connection with, or raised in relation to the OPA, or implementation of the OPA by Agency or Owner. It is expressly understood and agreed that Agency and Owner each hereby waives the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Agency: _____ Owner: _____

4. Counterparts. This Termination Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, this Termination Agreement has been executed by each party's respective duly authorized officers, as of the date first above written.

SUCCESSOR AGENCY:

**SUCCESSOR AGENCY TO THE FORMER
EL CAJON REDEVELOPMENT AGENCY,**
a public body, corporate and politic

, Mayor

ATTEST:

, Secretary

APPROVED AS TO FORM:

, Agency Counsel

OWNER:

SHADOW MOUNTAIN CHURCH, a California nonprofit
corporation

By: _____
, _____

By: _____
, _____