

AGENCY RESOLUTION NO. 08-48

A RESOLUTION OF THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY BOARD TERMINATING THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND 12th & MACDONALD, LLC AND AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AN EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH THE OLSON COMPANY FOR A MIXED-USE PROJECT

WHEREAS, the Richmond Community Redevelopment Agency (the "Agency") entered into a Disposition and Development Agreement (the "DDA") with 12th & MACDONALD, LLC (the "Developer"), dated as of May 2, 2006, which DDA provides in part for the acquisition, sale and development of certain real property (the "Site") located generally in the vicinity of 12th Street and Macdonald Avenue, in the City of Richmond; and

WHEREAS, the Site consists of certain real property owned by the Agency, which was to be conveyed to the Developer (the "Agency Parcels"); a certain right-of-way parcel owned by the City of Richmond (the "City") which was to be acquired by the Agency and sold to the Developer (the "City Parcel"); and certain privately-owned parcels which the Agency agreed to use good faith efforts to acquire and sell to the Developer (the "Acquisition Parcels"); and

WHEREAS, in accordance with Section 113 of the DDA, the Developer delivered to the Agency a deposit in the amount of One Hundred Thousand Dollars (\$100,000) (the "Deposit"), as security for the performance of the Developer's obligations under the DDA; and

WHEREAS, Section 112 of the DDA provides that the Developer shall pay all the Agency's reasonable expenses directly incurred in carrying out its obligations under the DDA, including but not limited to third-party costs for appraisals, financial consultants, attorneys, acquisition and relocation consultants, construction verification services, and all costs associated with the acquisition of the Acquisition Parcels, including the cost of conducting Phase I and Phase II environmental audits attributable to the analysis of the Agency Parcels; and

WHEREAS, Section 112 of the DDA further provides that, in the event the Developer fails to pay any such costs or expenses, the Agency may use the Deposit, including any interest earned thereon, to pay such costs and expenses; and

WHEREAS, due to recent changes in the construction and financial markets and the resulting infeasibility of financing the development under the DDA, the Developer has been unable to obtain commitments for the construction and permanent financing necessary for the acquisition and development of the Site, and pursuant to a letter dated September 11, 2008, requested termination of the DDA and return of the Deposit; and

WHEREAS, following receipt of the Developer's termination letter, Agency staff provided to Developer documentation and evidence of the costs and expenses incurred by Agency under the DDA, including without limitation costs incurred by the Agency to acquire the Acquisition Parcels pursuant to the DDA, which costs were not paid for by the Developer, and

which costs exceed the amount of the Deposit, including interest thereon, held by the Agency pursuant to the DDA; and

WHEREAS, based on the documentation and evidence of the actual costs incurred by the Agency in carrying out its obligations under the DDA, and the Developer's obligation under the DDA to pay such costs, no amount of the Deposit remains to be returned to the Developer upon termination of the DDA; and

WHEREAS, the DDA provides that upon such termination, the parties shall have no further rights against or obligations to each other; and

WHEREAS, the Agency wishes to continue to pursue the redevelopment of the Site; and

WHEREAS, The Olson Company had previously responded to the Agency's Request for Proposals for the Site when AF Evans, Developer's principal, was selected;

NOW, THEREFORE, THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY BOARD DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Agency hereby agrees with Developer that it is in the best mutual interests of the parties to terminate the DDA. The DDA is hereby terminated, and shall have no further force or effect.

Section 2. The Agency hereby finds that, based on the documentation and evidence presented by Agency staff, a copy of which was also provided to Developer, the Deposit, including all interest thereon, delivered to the Agency pursuant to the DDA, was properly used to pay actual and authorized costs incurred by the Agency in carrying out its obligations under the DDA, and no amount of the Deposit remains to be returned to the Developer upon termination of the DDA. The Executive Director of the Agency is hereby authorized and directed to take any actions that are determined necessary to terminate the DDA, including notifying the Developer that the DDA has been terminated and that the Agency has determined that no portion of the Deposit remains to be returned to the Developer. The Executive Director shall send a certified copy of this resolution to Developer.

Section 3. The Agency hereby authorizes the Executive Director to negotiate and execute an Exclusive Right to Negotiate Agreement with The Olson Company for an initial period of 120 days, with the right to approve an extension of an additional 90 days. The purpose of the Exclusive Right to Negotiate Agreement is to negotiate the terms of a disposition and development agreement for a mixed-use project on the Site, which agreement would be brought to the Agency for final approval.

I certify that the foregoing Resolution was passed and adopted by the Richmond Community Redevelopment Agency Board at a meeting thereof held on **December 16, 2008**, by the following vote:

AYES: Boardmembers Bates, Butt, Lopez, Marquez, Sandhu, and Chairperson McLaughlin

NOES: None

ABSENT: Boardmembers Rogers and Viramontes

ABSTAIN: None

DIANE HOLMES
AGENCY CLERK

(SEAL)

Approved:

GAYLE McLAUGHLIN
Agency Chair

Approved as to Form:

RANDY RIDDLE
Agency Attorney