

RESOLUTION NO. OB-03-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE TERMINATION OF THE DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED RESTRICTIVE COVENANTS WITH SMITH'S FOOD & DRUG CENTERS, INC., ITS SUCCESSOR AND/OR ASSIGNMENTS, GOVERNING THE LAND USE RESTRICTIONS FOR THE PROPERTY KNOWN AS THE CORNERS PROJECT, MORE PARTICULARLY DESCRIBED IN EXHIBIT "C", AND APPROVING EXECUTION BY THE EXECUTIVE DIRECTOR, AND SUCH PERSONS DESIGNATED BY THE EXECUTIVE DIRECTOR, OF ANY DOCUMENTS NECESSARY FOR THE TERMINATION OF THE DISPOSITION AND DEVELOPMENT AGREEMENT

WHEREAS, on December 16, 1992, the former El Cajon Redevelopment Agency (the "Agency") entered into an Disposition and Development Agreement ("DDA-I") with Smith's/OliverMcMillan El Cajon J.V. ("Developer") and Smith's Food & Drug Centers, Inc. ("Buyer") for the sale and development of that certain property known as the "The Corners Project", more particularly described in Exhibit "C" (the "Property"); and

WHEREAS, the DDA was amended on December 19, 1995, to address the remaining partially developed Smith's parcels ("DDA"), including conveyance of a parcel to the Agency (now known as the NW Corner Project); and

WHEREAS, the purchase price of the Property of \$2,955,509 was paid through close of escrow in 1996, and no financial assistance remains due to the Agency or the Developer; and

WHEREAS, development of the project is fully complete and only land use conditions remain a part of the DDA, which can be addressed through the Zoning Code; and

WHEREAS, because several sections of the DDA, attachments and Amendments limits the types of uses that are allowed on the Property (the "Restrictive Covenants"), they becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for purposes that would normally be approved under the current Zoning Code; and

WHEREAS, Section 401 of the DDA is mandated by Health and Safety Code Sections 33435 and 33436 which require covenants prohibiting discrimination and segregation, and specifies language required to be included in all deeds and leases related to the Property, in perpetuity (the "Nondiscrimination Covenant"); and

WHEREAS, Sections 305 and 210 of the DDA further provides covenants indemnifying the Developer against any and all liabilities, losses, claims, demands, or

orders in connection with: (a) the existence of any hazardous waste or toxic substances as defined or regulated by federal and state law ("Hazardous Waste") on or about the Project Site; (b) any past or current violations not remediated and then existing as to any Hazardous Waste; and (c) the removal of any Hazardous Waste, which was then known or thereafter discovered to exist on the subject Property as of the date of transfer of the Project Site to Buyer (the "Hazardous Waste Covenant"); and

WHEREAS, for these reasons staff is recommending the DDA be terminated with the Developer, its successors and/or assigns, while retaining and reserving the Nondiscrimination and Hazardous Waste Covenants for the Property; and

WHEREAS, termination of the DDA complies with the provisions of Section 34181(e) of the 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 DDA, the Developer, its successors and/or assigns, will have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of the Property 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 and Hazardous Waste Covenants.

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 are the findings of the Oversight Board as if incorporated herein by this reference.
 2. Approval of the Termination Agreement of Disposition and Development 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 Developer, its successors and/or assigns, to have flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of the Property and neighboring properties much sooner than is presently realized.

- B. The Oversight Board hereby approves the Termination of Disposition and Development Agreement and all related restrictive covenants, substantially in the form as presented in Exhibit "C-1" (the "Termination Documents") with Smith's Food & Drug Centers, Inc., its successors and/or assigns, governing the land use restrictions for the property known as The Corners Project, more particularly described in Exhibit "C"; provided, however, that the Termination Documents shall expressly reserve and retain those covenants and restrictions contained in Section 401 (Nondiscrimination Covenant) and Sections 305 and 210 (Hazardous Waste Covenant) in perpetuity.
- C. The Oversight Board hereby approves the 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 15th day of January 2014, by the following vote to wit:

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



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

TERMINATION OF DISPOSITION AND DEVELOPMENT AGREEMENT

This TERMINATION OF DISPOSITION AND DEVELOPMENT AGREEMENT ("Termination 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 SMITH'S FOOD & DRUG CENTERS, a Delaware Corporation, its successors and/or assignments (the "Developer").

RECITALS

A. The Former El Cajon Community Redevelopment Agency, (the "Former Agency"), entered into an Disposition and Development Agreement ("DDA-1") dated December 16, 1992, with Smith's/OliverMcMillan El Cajon J.V. (the "Original Developer") and Smith's Food & Drug Centers, Inc. ("Developer"), for the development of that certain property known as the The Corners Project, more particularly described in Exhibit "C" (the "Site"). The Disposition and Development Agreement was amended on December 19, 1995, to address the remaining partially developed Smith's parcels ("DDA"), including conveyance of a parcel to the Agency (now known as the NW Corner Project).

B. Section 101 of the DDA provides, among other things, that the Original Developer and its successors and assignees devote the Site as a retail shopping center, including a food and drug store facility or other retail operation operated by Smith's or Smith's subsidiary or successor, 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 DDA further provides covenants prohibiting discrimination and specifies language required to be included in all deeds and leases related to the Site in perpetuity (the "Nondiscrimination Covenant").

C. Section 305 of the DDA and Section 210 of DDA-1 further provides covenants indemnifying the Original Developer against any and all liabilities, losses, claims, demands, or orders in connection with: (a) the existence of any hazardous waste or toxic substances as defined or regulated by federal and state law ("Hazardous Waste") on or about the Site; (b) any past or current violations unremediated and currently existing as to any Hazardous Waste; and (c) the removal of any Hazardous Waste now known, which was then known or thereafter discovered to exist on the subject Property as of the date of transfer of the Site to Smith's (the "Hazardous Waste Covenant").

D. Because the Restrictive Covenant limits the use of the Site in accordance with the DDA, 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 for properties sold for commercial development. In the case for properties sold for residential development, rental of the units in order to meet financial obligations is prohibited and could therefore jeopardize the viability of completion of the project. Termination of the DDA would provide the Developer the flexibility to market the commercial properties to a greater number of possible tenants, which could result in an increased valuation of the Site and neighboring properties much sooner than is presently realized.

E. Termination of the DDA 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 Developer now wishes to terminate the DDA with the Agency while retaining and reserving the Nondiscrimination Covenant and the Hazardous Waste Covenant for the Site.

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 Developer hereby agree as follows:

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

2. Mutual Releases. In consideration of the foregoing, Agency and Developer 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 Developer, or their successors and assigns, including the Original 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 DDA, or to implementation of the DDA by either party.

3. Waiver of Civil Code Section 1542. Agency and Developer 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 DDA, or implementation of the DDA by Agency or Developer. It is expressly

understood and agreed that Agency and Developer 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: _____ Developer: _____

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

Douglas Williford, Executive Director

ATTEST:

Belinda Hawley, Secretary

APPROVED AS TO FORM:

Morgan Foley, Agency Counsel

