



Pub. Hearing
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SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

November 1, 1982

Redevelopment Agency of the
City of Sacramento
Sacramento, California

CITY MANAGER'S OFFICE
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Honorable Members in Session:

SUBJECT: Assignment of Contract, Latcher Building,
Old Sacramento, Parcel No. 95

SUMMARY

Mr William Finger and Mr. Sam J. Byerley, the present Redevelopers of record, for the reconstruction of the Latcher Building, Old Sacramento, Parcel No. 95, have failed to close escrow and are in default for nonperformance per the terms and conditions of the contract for Sale of Land for Private Redevelopment. The Executive Director has processed the notice of default and commenced termination of the contract. The Redeveloper has proposed to cure the default by an assignment of the Contract. Assignment is recommended.

BACKGROUND

On August 19, 1975, the Agency entered into a Contract for Sale of Land for Private Redevelopment with Mr. William Finger and Mr. Sam J. Byerley for the reconstruction of the Latcher Building, Old Sacramento, Parcel No. 95. Subsequently on June 20, 1978, the schedule of performance of the original agreement was amended requiring approval of final plans, evidence of financing and the close of escrow and purchase of the property to be accomplished by December 19, 1978. After numerous required changes, corrections, a variance hearing and resolution of a sewer connection problem with the City, final plans were approved on March 31, 1981 with escrow to close on June 18, 1981. However, resolution of a property line question and a lot line adjustment was required before a corrected and new legal description of the property could be obtained and recorded. The property line was resolved and the lot line adjustment was approved on January 28, 1982 and finalized on March 1, 1982. The Redevelopers were notified that escrow was to close by March 21, 1982. This date was extended to April 9, 1982.

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY
CITY OF SACRAMENTO

11-9-82
All Districts

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On April 6, 1982, Mr. Sam Byerley informed Agency staff that he no longer was a partner with Mr. Finger in the project and that he has unilaterally assigned his interest over to Mr. Finger without approval of the Agency as required by the terms of the Redevelopers Contract. Mr. Finger met with Agency staff on April 29, 1982, to discuss this assignment and close of escrow or the Agency termination of the Contract. Subsequently Mr. Finger indicated that he would formally request an extension of time and would outline the necessity for same. By letter dated June 17, 1982 Mr. Finger was notified that Agency is prepared to recommend an extension of time for the close of escrow and start of construction only upon the following conditions:

1. That the purchase price of the property shall be adjusted upward to reflect the current fair market value to be determined by a qualified appraiser selected by the Agency and to be paid by the Redeveloper.
2. Execution by the Redeveloper of a voluntary rescission agreement which will be placed into escrow to be returned to the Agency for execution if escrow fails to close within one hundred and twenty (120) days. (This agreement will terminate the Land Disposition Agreement at the end of the one hundred and twenty (120) day period without further declaration of default or the provision of any additional period for cure and supersedes any remedies previously set forth in the Land Disposition Agreement and Amendment to same).
3. The payment to the Agency of an option extension fee of Fifty Dollars (\$50.00) per day for each additional day of the extension period, or a total of Six Thousand Dollars (\$6,000.00) for the one hundred and twenty (120) day period.

Mr. Finger was afforded until July 1, 1982, to make an affirmative reply. Having received no response from Mr. Finger, at its July 13, 1982 meeting, the Planning/Community Development Committee of the Commission was informed that staff has processed the notice of default and commenced termination of the Contract and of the condition that provided the Redeveloper thirty (30) days for cure of the default. Subsequently, Mr Finger has proposed to cure the default by an assignment of the contract to Mr. E.A. Voorhees, Pacific Properties, the owner of the adjacent property.

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Mr. Voorhees proposes to construct the Latcher Building as an addition to his existing building. The economics involved in this redevelopment project are such that for Mr. Finger to proceed, his return is negative and the long term projection too marginal. The most feasible and expeditious way to see the Latcher Building reconstructed and returned to the tax role will be through an assignment to Mr. Voorhees and the construction of the Latcher Building as an addition of Mr. Voorhees building. He will be able to utilize his existing elevator, stairways and restrooms to satisfy code requirement and thus will realize total rentability of all floor area constructed in the Latcher Building.

By letter dated September 30, 1982, Mr. Voorhees has stated that "it is extremely important that the Agency clearly understand that any Developer other than the owner of the adjacent parcel (himself) would have great difficulty identifying this Redevelopment Project as an economic opportunity". An assignment predicated upon the stated conditions for an extension of time related to the present Redeveloper closing escrow has been proposed to Mr. Voorhees. Mr. Voorhees has replied that "my study of the economics involved in this project indicate that reimbursement of Mr. Finger's actual architectural costs and the purchase of the land at its presently stated value per the contract is the maximum cost allowed for these items if the redevelopment is to be initiated on a moderately sound basis". He has indicated that the project will not be economically feasible if: 1) the land price is increased, and 2) if the assignment cannot be made immediately and construction commenced within (5) months.

At its September 20, 1982 meeting, the Commission directed staff to negotiate an assignment between Mr. Finger and Mr. Voorhees and discussed waiving the staff's recommendation for an increase in the purchase price and/or an option fee depending upon economic feasibility and if necessary to obtain an assignment. However, the assignment of this contract at the existing contract purchase price will not be consistent with the most recent assignments of Agency-owned property. The advantages of an assignment to Mr. Voorhees over a termination of Mr. Finger's contract and readvertisement for a Redeveloper are:

1. Mr. Voorhees proposed to commence construction within five (5) months by purchasing and utilizing Mr. Finger's approved Final Plans.
2. The property will return to the tax role and be assessed at its redeveloped value in approximately one year.
3. The Agency will not incur the cost of readvertisement and marketing of the parcel.

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The major disadvantage is that Mr. Voorhees is not agreeable to paying an increased purchase price, thus the Agency will be writing down the land from its market value if an assignment to Mr. Voorhees is made.

Should the Agency elect not to assign the contract but to terminate the contract instead and readvertise for a new Redeveloper, the new Redeveloper will require approximately one year for the development of plans, plan approvals, and financing. Permits and construction will add approximately a second year before the property is assessed. Some time could be saved by acquiring Mr. Finger's plans. However, Mr. Finger has expressed a reluctance to sell his approved plans to another Redeveloper or the Agency should the assignment not be approved. He would instead consider litigation against the Agency. Of concern is the fact that the Agency has recently readvertised for a second time within a year another Old Sacramento parcel, Lord's Restaurant and Magnolia Saloon - Parcels Nos. 19-20, of comparable size but at what is considered a better location with more positive aspects for development and has on both occasions received no proposals for development.

The Agency may elect to assign the contract or to terminate the contract per Section 703, Terms and Conditions, Part II, covering termination by Agency prior to conveyance by reason that Mr. Byerley has assigned his interest to Mr. Finger and the Redevelopers have failed to pay the purchase price and to take title to the property and start construction.

FINANCIAL DATA

The purchase price for the property to be conveyed per the August 19, 1975 contract is Five Thousand Five Hundred and Twelve Dollars (\$5,512,000). The current value of the property based upon recent appraisals of other Old Sacramento parcels would be approximately Twelve to Fifteen Thousand Dollars (\$12,000-\$15,000).

Assuming a construction cost of approximately Two Hundred Thousand Dollars (\$200,000) and a one percent (1%) assessment, the estimated property tax would be Two Thousand Dollars (\$2,000). (The in-lieu of tax payment allocated to this property is Sixty-Two Dollars and Forty Six Cents (\$62.46) for a one-year period.) Should the assignment not be approved and the current Redeveloper is terminated, the property would be advertised for redevelopment based upon a price to be established by appraisal. From recent experience, an advertisement of the parcel, dependent upon frequency and extent of advertisement will cost approximately Four Thousand Dollars (\$4,000).

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On a comparison basis of a two (2) year development schedule per readvertisement versus a one (1) year schedule via the proposed assignment, the economics are projected to be as follows:

	<u>Readvertisement</u>	<u>Assignment</u>
Purchase Price	\$15,000 (maximum)	\$ 5,512
Tax Income/Loss	<u>-4,000</u> (2 year)	<u>+ 2,000</u> (1 year)
	\$11,000	\$ 7,512
Advertisement Cost	<u>-4,000</u>	<u>None</u>
	\$ 7,000	\$ 7,512

There appears to be no significant loss to the Agency resulting from an assignment nor no gain for readvertisement. The potential of not receiving any proposals for development could result in additional loss of property, business and sales tax revenue for a longer period then the two years compared. Agency staff has in the past consistently recommended assignment agreements with conditions of increase in land value to reflect current market, a voluntary rescission agreement and option fees. In this particular case the economics noted above and the configuration of the site and its development potential warrant an exception to the normal staff position.

VOTE AND RECOMMENDATION OF COMMISSION

At its regular meeting of October 18, 1982, the Sacramento Housing and Redevelopment Commission adopted a motion recommending adoption of the attached resolution. The votes were as follows:

AYES: Angelides, Dickinson, Knepprath, Luevano, A. Miller,
B. Miller, Teramoto

NOES: None

ABSENT: Fisher, Walton

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RECOMMENDATION

The staff recommends the adoption of the attached resolution by which the Executive Director is authorized to assign the subject contract per the existing terms of the contract.

Respectfully submitted,

William H. Edgar

WILLIAM H. EDGAR
Executive Director

TRANSMITTAL TO COUNCIL:

Walter J. Slipe
WALTER J. SLIPE
City Manager

Contact Person Ted Leonard

29-4-8B

RESOLUTION NO. 82-052

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
ON DATE OF

November 9, 1982

APPROVING ASSIGNMENT OF INTEREST AND AUTHORIZING EXECUTION OF ASSIGNMENT AGREEMENT AND AMENDMENT TO CONTRACT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT LATCHER BUILDING, OLD SACRAMENTO PARCEL 95

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY
CITY OF SACRAMENTO

NOV 9 1982

WHEREAS, the Agency entered into a Contract for Sale of Land for Private Redevelopment dated August 19, 1975 with William Finger and Sam J. Byerley, providing for the purchase and development of Parcel No. 95 in the Old Sacramento Historic Area, Redevelopment Project No. 3; and

WHEREAS, the Redeveloper has advised the Agency that in order to facilitate the development of the site and the construction of the improvements thereon, it desires to assign its rights and obligations with respect thereto to EDWARD A. VOORHEES COMPANY, INC., a California corporation; and

WHEREAS, an "Assignment Agreement and Amendment to Contract for Sale of Land for Private Redevelopment" and a Redeveloper's Statement for Public Disclosure have been filed with the Agency by the proposed Assignee and have been available for public examination at the offices of the Agency for fourteen (14) days after public notice thereof; and

WHEREAS, the Agency has determined on the basis of the information submitted to it that the proposed Assignee has the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken by the Redeveloper with respect to the site, and finds that the terms and conditions of the proposed assignment will facilitate the prompt development of the site and construction of the improvements thereon; and

WHEREAS, a public hearing on said assignment was duly held on November 9, 1982 by the Agency after notice as required by Section 33431 of the Health and Safety Code of the State of California; and

WHEREAS, no one appeared at said public hearing to contest or otherwise object to the Agency approving said assignment and entering into said Assignment Agreement and Amendment

to Contract for Sale of Land for Private Redevelopment.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

Section 1. The Redevelopment Agency finds that the EDWARD A. VOORHEES COMPANY, INC., a California corporation, is an acceptable Redeveloper, and the Agency hereby consents to and approves the assignment of the interests of William Finger and Sam J. Byerley, in Old Sacramento Parcel No. 95, to the EDWARD A. VOORHEES COMPANY, a California corporation.

Section 2. The Chairman and Secretary are authorized to execute an Assignment Agreement and Amendment to Contract for Sale of Land for Private Redevelopment with William Finger and Sam J. Byerley (Assignor) and Edward A. Voorhees Company, Inc., a California corporation (Assignee), together with such other documents indicating the Agency's consent as required by law.

CHAIRMAN

ATTEST:

SECRETARY

ASSIGNMENT AGREEMENT
AND AMENDMENT TO CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT

THIS ASSIGNMENT AGREEMENT AND AMENDMENT, made and entered into this _____ day of _____, 1982, by and among WILLIAM FINGER and SAM J. BYERLEY (hereinafter called the "Assignor"), and EDWARD A. VOORHEES COMPANY, INC., a California corporation (hereinafter called the "Assignee"), and the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic (hereinafter called the "Agency").

WITNESSETH:

WHEREAS, Assignor and Agency are parties to a certain Contract for Sale of Land for Private Redevelopment dated August 19, 1975, and an Agreement to Participate in Property Owners Association dated August 19, 1975 (hereinafter referred to collectively as the "Contract of Sale"); and

WHEREAS, pursuant to said Contract of Sale, Agency has agreed to sell and Assignor has agreed to purchase and improve Parcel No. 95 in the Old Sacramento Historic Area (hereinafter referred to as the "Property"), subject to conditions, covenants and restrictions set forth therein, including the controls and restrictions of the Redevelopment Plan for the Capitol Mall Extension, Project No. 3, and the Declaration of Restrictions referred to in said Contract of Sale; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to acquire the rights and obligations of the Assignor with respect to the Property upon the terms and conditions stated herein and in said Contract of Sale; and

WHEREAS, Assignee has submitted to the Agency evidence satisfactory to the Agency that Assignee has the financial resources and equity capital to obtain mortgage commitments necessary to purchase the Property, construct the Improvements thereon, and otherwise carry out Assignor's obligations under said Contract with respect to the Property; and

WHEREAS, the Agency deems that this assignment will advance the objectives of the Agency; and

WHEREAS, because of this assignment, it has become necessary to make certain modifications to said Contract of Sale.

NOW, THEREFORE, IT IS AGREED:

1. (a) For the sum of SIXTEEN THOUSAND and NO/100 DOLLARS (\$16,000.00), which sum does not exceed Assignor's costs to date in connection with the above-mentioned Contract of Sale, and as evidenced by Affidavit dated _____, prepared by _____, Certified Public Accountants, and the agreements of Assignor, Assignee and Agency herein contained, Assignor does hereby sell, assign, transfer, grant and convey to Assignee all of its right under said Contract of Sale. Whenever the term "Redeveloper" appears in this Assignment Agreement or Amendment, or in any other document relating to the Property, it shall include and refer to Assignee hereunder.

(b) It is understood and agreed that such sum of SIXTEEN THOUSAND and NO/100 DOLLARS (\$16,000.00) shall be paid to Assignor by Assignee on or before _____

2. Assignee, for itself and its successors and assigns, assumes and agrees expressly for the benefit of the Redevelopment Agency of the City of Sacramento, and except as modified by this Assignment Agreement and Amendment, to comply with, perform and execute all of the covenants and obligations of Assignor contained in said Contract of Sale, and to be subject to all of the conditions and restrictions to which the Assignor is subject thereunder. It is the intention of the parties hereto that, except only in the manner and to the extent specifically provided otherwise in this Assignment Agreement and Amendment, or in the Contract of Sale, that this assignment and transfer of Assignor's interest in said Contract of Sale, shall in no way operate, legally or practicably, to deprive or limit Agency of or with respect to any rights, remedies or controls provided in or resulting from said Contract of Sale, and the construction of the Improvements thereunder that the Agency would have had, had this assignment not been made.

3. (a) As a material inducement to the Agency to consent to this assignment, Assignee covenants and agrees that it will construct the Improvements in accordance with the Contract of Sale and the requirements of the Redevelopment Plan for the Capitol Mall Extension, Project No. 3.

(b) Subject to all the terms, covenants and conditions of the Contract of Sale which are not inconsistent with this Assignment Agreement and Amendment, the Agency will convey the Property to the Assignee, upon the payment in full by the Assignee, which payment the Assignee hereby agrees to make, of a Purchase Price in the amount set forth in the Contract of Sale.

4. Agency hereby acknowledges that Assignee is an acceptable Redeveloper and Agency expressly consents to this assignment.

5. Assignee has, prior to the execution of the Assignment Agreement and Amendment, delivered to the Agency a good faith deposit in form satisfactory to the Agency in the amount set forth in the Contract of Sale.

6. The parties hereby agree that the Contract of Sale dated August 19, 1975, shall be amended as follows:

(a) The designation of the Redeveloper contained in the Contract for Sale of Land for Private Redevelopment dated August 19, 1975 and in the Agreement to Participate in Property Owners Association dated August 19, 1975, shall be amended to read as follows:

"EDWARD A. VOORHEES COMPANY, INC.
1111 Second Street
Sacramento, California 95814".

(b) Subsection (e) of Section 5 shall be amended by deleting the date "December 31, 1975", appearing on line 3 of said Section, and inserting in lieu thereof: "January 10, 1983".

(c) Exhibit "B" entitled "Legal Description of the Property" is hereby deleted. Substituted in lieu thereof is a new Exhibit "B" entitled "Legal Description of the Property, As Amended". Said amended Exhibit "B" is attached hereto and by this reference made a part hereof.

(d) Exhibit "E" entitled "Schedule of Performances" is hereby deleted. Substituted in lieu thereof is a new Exhibit "E" entitled "Amended Schedule of Performances". Said amended Exhibit "E" is attached hereto and by this reference made a part hereof.

7. Except as modified by this Assignment Agreement and Amendment, all other terms and conditions of the Contract of Sale dated August 19, 1975, shall remain in full force and effect.

8. Assignee hereby acknowledges receipt of the following agreements and documents:

(a) Redevelopment Plan for the Capitol Mall Extension, Project No. 3, adopted by the City Council of the City of Sacramento by Ordinance No. 2208, Fourth Series, on June 16, 1960, as amended of record;

(b) The Declaration of Restrictions for the Old Sacramento Historic Area dated August 30, 1971 and recorded on August 30, 1971 in Book 71-08-30 of Official Records of Sacramento County, at page 322;

(c) Copy of Contract for Sale of Land for Private Redevelopment dated August 19, 1975, executed by Agency and Assignor;

(d) Terms and Conditions, Part II of Contract for Sale of Land for Private Redevelopment (Form HUD 6209B, 9-69), recorded on June 16, 1970 in Book 70-06-16 of Official Records of Sacramento County, beginning at page 203; and

(e) Copy of Agreement to Participate in Property Owners Association dated August 19, 1975, executed by Agency and Assignor.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement and Amendment as of the date first above written.

ASSIGNOR: WILLIAM FINGER and SAM J. BYERLEY

By _____

By _____

ASSIGNEE: EDWARD A. VOORHEES COMPANY, INC.,
a California corporation

By _____

AGENCY: REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO

By _____ Chairman

APPROVED AS TO FORM:

Agency Counsel

By _____ Secretary

EXHIBIT "B"

LEGAL DESCRIPTION OF THE PROPERTY, AS AMENDED

All that certain real property situate in the City of Sacramento, State of California, and being all of Parcel 1 and a portion of Parcel 2 as said parcels are shown on the Parcel Map filed in Book 51 of Parcel Maps at page 15, Sacramento County Records; said real property being more particularly described as follows:

Beginning at the most westerly corner of said Parcel 1; thence from said point of beginning along the northwesterly line of said Parcel 1 and the northwesterly line of said Parcel 2 North 18° 26' 00" East 24.32 feet to a point thereon; thence leaving last said line South 71° 34' 00" East 60.12 feet to a point on the southeasterly line of said Parcel 2; thence along last said line and the southeasterly line of said Parcel 1 from a tangent that bears South 25° 09' 30" West along the arch of a curve to the right having a radius of 1,484 feet and a central angle of 0° 56' 46", an arc distance of 24.50 feet to the most southerly corner of said Parcel 1; thence along the southwesterly line of said Parcel 1 North 71° 34' 39" West 57.05 feet to the point of beginning and containing 0.033 acres of land, more or less.

EXHIBIT "E"

AMENDED SCHEDULE OF PERFORMANCES

- | | |
|--|---|
| 1. Redeveloper shall submit Evidence of Financing to the Agency. | Within two (2) months of the date of execution of the Assignment Agreement and Amendment, but in no event later than January 10, 1983. |
| 2. Agency shall approve or disapprove Redeveloper's Evidence of Financing. | Within three (3) months of the date of execution of the Assignment Agreement and Amendment, but in no event later than February 10, 1983. |
| 3. Redeveloper shall complete the purchase of the Property. | Within four (4) months of the date of execution of the Assignment Agreement and Amendment, but in no event later than March 14, 1983. |
| 4. Redeveloper shall commence construction of the Improvements. | Within five (5) months of the date of execution of the Assignment Agreement and Amendment, but in no event later than April 14, 1983. |
| 5. Redeveloper shall complete construction of the Improvements. | Within twelve (12) months after the commencement of construction, but in no event later than April 16, 1984. |

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this _____ day of _____, 19____, before me,
_____, a Notary Public in and for said County and
State, personally appeared _____

_____,
personally known to me (proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is (are) subscribed to this instrument, and
acknowledged that he (she)(they) executed it.

WITNESS my hand and official seal.

Notary Public in and for said County
and State.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this _____ day of _____, 19____, before me,
_____, a Notary Public in and for said County and State,
personally appeared _____

_____, personally known to me (proved to me
on the basis of satisfactory evidence) to be the person(s) who executed the
within instrument as _____ of
_____ EDWARD A. VOORHEES, COMPANY, INC., _____ the corporation
therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Notary Public in and for said County
and State.

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this _____ day of _____, 19____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the person who executed this instrument as _____ of the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, and acknowledged to me that the Redevelopment Agency of the City of Sacramento executed it.

WITNESS my hand and official seal.

Notary Public in and for said County and State.

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this _____ day of _____, 19____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the person who executed this instrument as _____ of the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, and acknowledged to me that the Redevelopment Agency of the City of Sacramento executed it.

WITNESS my hand and official seal.

Notary Public in and for said County and State.

