

RESOLUTION NO. 114-2007

Adopted October 16, 2007

AUTHORIZING A FOURTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH FILLMORE DEVELOPMENT ASSOCIATES, A CALIFORNIA LIMITED LIABILITY COMPANY, TO EXTEND THE TERM OF THE COMMERCIAL GROUND LEASE, CHANGE THE REPAYMENT SCHEDULE FOR THE VALUE OF THE COMMERCIAL PARCEL, MODIFY THE DISTRIBUTION OF CONDOMINIUM SALES PROCEEDS, AND MAKE OTHER MINOR CHANGES, ALL RELATED TO THE MIXED-USE PROJECT ON AGENCY PARCEL 732-A; WESTERN ADDITION REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

1. On May 18, 2004, the Commission of the Redevelopment Agency of the City and County of San Francisco (the "Agency") by Resolution No. 56-2004 approved a Disposition and Development Agreement ("DDA") with Fillmore Development Associates, LLC, a California limited liability company ("FDA"), for the purchase and development of Agency Parcel 732-A located at the northeast corner of Fillmore and Eddy Streets (the "Site") in the Western Addition Redevelopment Project Area A-2.
2. The DDA documents the mutual promises, duties, obligations and responsibilities of the Agency and FDA regarding FDA's proposal to purchase, subdivide and develop the Site. The development proposal includes approximately 40,500 square feet of entertainment-related, retail/commercial uses, 80 for-sale condominium units (including 12 affordable units) with associated parking, and a 112-stall public parking garage (the "Project").
3. To develop this mixed-use project, the Site was subdivided into three parcels:
 - (i) An Agency-owned land parcel on which the underground public parking garage (the "Garage") has been built;
 - (ii) A commercial air rights parcel, above the land parcel, in which the commercial space for Yoshi's jazz club/restaurant and the "1300 on Fillmore" restaurant are located (the "Commercial Parcel"). The Agency also owns this parcel and is ground-leasing it to an affiliate of FDA for an initial term of 20 years (the "Commercial Ground Lease"). Once FDA's affiliate pays the Agency ground-lease payments totaling the value of the Commercial Parcel (about \$1.8 million), FDA's affiliate will own this parcel; and
 - (iii) A housing air rights parcel, above the jazz club and restaurants, in which 80 condominium units (including 12 affordable units) are located (the

“Housing Parcel”). FDA owns this parcel and is paying the Agency the value of the Housing Parcel (about \$4.7 million) from the condominium sales proceeds.

4. On April 5, 2005, the Commission, by Resolution No. 53-2005, approved a first amendment to the DDA (the “First Amendment”) which allowed FDA to defer repayment of a portion of its predevelopment loan and extended the deadline for the close of escrow on the construction financing.
5. On June 7, 2005, the Commission approved, by Resolution No. 89-2005, a second amendment to the DDA (the “Second Amendment”) which extended the deadline to close escrow on the construction financing, eliminated references to Parcel 725-C, and made other modifications.
6. On August 23, 2005, under the authority given to it under the Commission-approved DDA, the Agency entered into the Commercial Ground Lease with Fillmore Development Commercial, LLC, a California limited liability company (“FDC”), an affiliate of FDA, to lease the Commercial Parcel for a term of 20 years that begins at the end of an interim lease period established for the construction of the Project. The Lease is currently operating under the interim lease period.
7. On August 15, 2006, the Commission approved, by Resolution No. 116-2006, a third amendment to the DDA (the “Third Amendment”) which, among other things, (i) allowed the Agency to fund up to \$900,000 of the increased construction costs on the public parking garage, using a combination of FDA’s performance deposit and the remaining principal balance of the predevelopment loan, (ii) extinguished the predevelopment loan, and (iii) amended the priorities for distributing sales and permanent loan proceeds specified in the DDA.
8. Due to several factors, including unanticipated project cost increases, FDA has requested a number of changes to the DDA and the Commercial Ground Lease to allow it to admit a new investor with funds to cover additional tenant improvement costs at Yoshi’s jazz club and restaurant, among other things. If the Commission approves the proposed Fourth Amendment to the DDA, the terms related to the Commercial Ground Lease will also be amended. The proposed changes to the DDA and the Commercial Ground Lease are summarized below:
 - (i) Commercial Ground Lease term extension. FDA has asked the Agency to extend the initial term of the Commercial Ground Lease from 20 years to 35 years to enable it to admit a new investor with funds to cover additional Yoshi’s tenant improvement costs. The investor has asked for a longer lease term because, for investment purposes, the investor needs the lease term to be equivalent to a fee ownership structure;
 - (ii) Change in the timing of the repayment of the value of the Commercial Parcel. Currently, FDC, must pay down the value of the Commercial Parcel (\$1.82 million) to \$500,000 or less by the end of the 20-year lease

term. The remainder gets paid over the 10-year option period. Once FDC pays the Agency ground-lease payments totaling the value of the Commercial Parcel, FDC will own this parcel. In an effort to accommodate the needs of the new investor, the Agency has agreed to allow FDC to pay the full \$1.82 million (plus any accrued interest) by the end of the 35-year lease term. At that time, if the full value of the Commercial Parcel has not been paid, FDC will make a balloon payment or the Agency can, in its sole and absolute discretion, grant an extension to the lease term to give more time to FDC to pay the full value;

- (iii) Partial assignment of the Commercial Ground Lease. FDA has asked the Agency to consent to a partial assignment of the Commercial Ground Lease from FDC to SN Fillmore LLC, a California limited liability company ("SN Fillmore"), which is investing additional funds into the Yoshi's commercial space for completion of the tenant improvements. SN Fillmore will have less than a 50% ownership interest. The two LLCs have entered into a Tenancy-in-Common ("TIC") for the purposes of this transaction. The consent to a partial assignment is being considered by the Commission concurrently with this Resolution in Resolution No. 115-2007, and pursuant to the standards for assignment in DDA Section 6.02 and Commercial Ground Lease Section 16.01; and
- (iv) Change in the distribution of the condominium sales proceeds. FDA has asked the Agency (along with the other lenders on the Project) to allow it to use \$1,037,000 in condominium sales proceeds to pay off some outstanding garage construction costs and additional project soft costs, before the Agency and the other lenders are fully paid.

Requested revisions pursuant to Items i, ii and iii above will only become effective if the TIC is executed by FDC and SN Fillmore. If the TIC is not executed, the existing terms of the DDA and Commercial Ground Lease as related to these terms will remain in effect.

- 9. In addition, the Agency has asked FDA for two additional changes to the distribution of condominium sales proceeds so that it can pay some unanticipated Agency costs associated with the public parking garage. These additional changes, which are both subject to the Commission's approval of an interim garage operating agreement (explained in further detail below), are described below:

- (i) Accrued charges on the public parking garage. According to the Agency's agreements with FDA, the Agency -- as owner of the public parking garage -- is required to pay common area maintenance ("CAM") charges and lease payments on the garage equipment that have accrued during the six-month period beginning in May 2007 when the Project received its temporary certificate of occupancy. This accrued amount is estimated to be no more than \$103,772. The Agency has asked FDA if it could pay this amount from the condominium sales proceeds (as a deduction in the

amount owed the Agency for the value of the Housing Parcel). Future charges would be paid out of garage revenues, with the garage set to open in late October/early November.

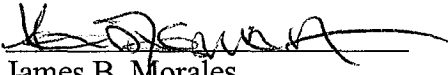
- (ii) FDA's fee to manage the garage operator for three years. Agency staff is currently working on a limited-term garage management plan whereby FDA would hire an operator to manage the garage for three years until a long-term management plan can be arranged. This interim plan will be brought to the Commission for its consideration at the November 6, 2007 meeting. However, one element of this interim plan must be included in the proposed Fourth Amendment to the DDA. Agency staff is requesting (and FDA has agreed) to pay FDA its fee to manage its contract with the parking garage operator from the condominium sales proceeds (as a deduction in the amount owed the Agency for the value of the Housing Parcel). This fee is \$60,000, or \$20,000 a year for three years.
- 10. The DDA was approved by the Commission based on a Mitigated Negative Declaration that the Commission adopted, also on May 18, 2004, in Resolution No. 55-2004. In Resolution No. 56-2004, the Commission determined that the mixed-use development project on the Site would not have a significant effect on the environment.
 - 11. Agency approval of the proposed Fourth Amendment to the DDA and the partial assignment of the Commercial Ground Lease would authorize the: (1) extension of the ground lease term, whereby the initial term of the Commercial Ground Lease would be changed from 20 years to 35 years; (2) change in the timing of the repayment of the value of the Commercial Parcel; (3) partial assignment of the Commercial Ground Lease; and (4) change in the distribution of the condominium sales proceeds. The proposed changes in the leasing of the existing facility (#1 and #3 above) are categorically exempt pursuant to Section 15301 of the California Environmental Quality Act ("CEQA") Guidelines. Other proposed changes pertain to how the Agency administers its agreements (#2 and #4 above) and would not constitute a project, pursuant to CEQA Guidelines Section 15378(b)(5). The proposed changes will not result in a significant physical effect on the environment. Completion and operation of the development project will contribute to the revitalization of the area.
 - 12. Staff recommends the approval of the proposed Fourth Amendment to the DDA.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to enter into a Fourth Amendment to the Disposition and Development Agreement, and amendments to related ancillary documents, with Fillmore Development Associates, a California limited liability company, to extend the term of the Commercial Ground Lease (subject to the execution of the TIC Agreement between FDC and SN Fillmore, LLC, a California limited liability

company ("SN Fillmore")), change the repayment schedule for the value of the Commercial Parcel (subject to the execution of the TIC Agreement between FDC and SN Fillmore), modify the distribution of condominium sales proceeds, and make other minor changes, all related to the mixed-use project on Agency Parcel 732-A in the Western Addition Redevelopment Project Area A-2, substantially in the form lodged with the Agency General Counsel, and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel