

RESOLUTION NO. 115-2007

Adopted October 16, 2007

CONSENTING TO A PARTIAL ASSIGNMENT OF THE COMMERCIAL GROUND LEASE FROM FILLMORE DEVELOPMENT COMMERCIAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO SN FILLMORE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, RELATED TO THE COMMERCIAL SPACE IN 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 period 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 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. These requested changes to the DDA and Commercial Ground Lease are being considered by the Commission concurrently with this Resolution in Resolution No. 114-2007. However, one of the requested changes, a consent to a partial assignment of the Commercial Ground Lease, requires the Commission to consider the assignment pursuant to Commercial Ground Lease Section 16.01.
9. FDA (and FDA's affiliate, FDC) 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"), to enable it to admit SN Fillmore as a new investor of additional funds to complete the tenant improvements for the Yoshi's commercial space. SN Fillmore will have less than a 50% ownership interest. The two LLCs have entered (or will be entering) into a Tenancy-in-Common ("TIC") for the purposes of this transaction.

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. The proposed consent to a partial assignment of the Commercial Ground Lease is categorically exempt pursuant to Section 15301 of the California Environmental Quality Act ("CEQA") Guidelines. 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 consent to a partial assignment of the Commercial Ground Lease, which consent will only be effective if the TIC is executed by FDC and SN Fillmore.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to consent to a partial assignment of the Commercial Ground Lease from Fillmore Development Commercial, LLC, a California limited liability company, to SN Fillmore, LLC, a California limited liability company, which consent will only be effective if the TIC is executed by FDC and SN Fillmore, related to the commercial space in 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.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel