RESOLUTION NO. 47-2008

Adopted May 20, 2008

AUTHORIZING A FIFTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH FILLMORE DEVELOPMENT ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO MODIFY THE DISTRIBUTION OF CONDOMINIUM SALES PROCEEDS OWED TO THE AGENCY, INCLUDING ALLOWING FOR THE REPAYMENT OF A PORTION OF THIS AMOUNT ($1,185,328) PURSUANT TO THE COMMERCIAL GROUND LEASE, ALL ASSOCIATED WITH THE MIXED-USE DEVELOPMENT ON AGENCY PARCEL 732-A; WESTERN ADDITION REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

1. In May 2004, the Commission approved a Disposition and Development Agreement (the "DDA") with Fillmore Development Associates ("FDA") for the purchase and development of Agency Parcel 732-A (the "Site") in the Western Addition Redevelopment Project Area A-2 (the "Project Area"). The DDA has been amended four times. The project includes a Yoshi's jazz club and restaurant, a second restaurant/music lounge called "1300 on Fillmore," 80 for-sale condominium units, and a public parking garage (the "Project"). The Project was completed in November 2007 and has since become fully operational.

2. The Project includes a housing air rights parcel (the "Housing Parcel"), which includes 80 condominium units, including 12 affordable units. FDA owns this parcel and is paying the Redevelopment Agency of the City and County of San Francisco (the "Agency") the value of the Housing Parcel from the condominium sales proceeds, according to a distribution schedule outlined in the DDA. Under the existing DDA, this value is about $4.7 million.

3. Due to the nationwide turmoil in the residential mortgage market, the pace of condominium sales at the Project slowed dramatically starting in the fall of 2007. As a result, FDA's debt-carrying costs increased significantly, leaving less than expected condominium sales proceeds available to distribute to the Agency and FDA after the commercial lenders are repaid.

4. To ease this cash flow problem, FDA has requested a number of changes to the distribution of the $4.7 million in condominium sales proceeds owed to the Agency, which are proposed under the fifth amendment to the DDA (the "Fifth Amendment"). Most significantly, FDA has requested that the Agency defer repayment of about $1.2 million of this $4.7 million amount. In exchange, Agency staff negotiated an accelerated payback of (1) the amount owed the Agency from the condominium sales proceeds, (2) the amount owed the Agency under the commercial ground lease, and (3) the amount owed the Agency under

the one of the commercial tenant's tenant improvement loan agreements. In addition, the Agency will receive enough money from the condominium sales proceeds to pay for the immediate programmatic priorities in the Project Area, such as streetscape repairs.

5. The proposed revised distribution of the Agency's $4.7 million condominium sales proceeds, as proposed under the Fifth Amendment, is outlined in Attachment A to this Resolution.

6. The main differences between the distribution of condominium sales proceeds outlined in the chart in Attachment A and the distribution approved by the Commission on October 16, 2007 as a Fourth Amendment to the DDA are the following:

   - The amount available for distribution to the Agency and FDA has fallen since the September 2007 estimate from about $15.9 million to about $7.5 million, due to protracted debt-carrying costs caused by the slowdown in condominium sales.

   - About $1.2 million of the $4.7 million amount owed to the Agency for the value of the Housing Parcel would be deferred because it would be repaid from the commercial ground lease (instead of from condominium sales proceeds) which has a much slower repayment schedule. This transfer of funds to the commercial ground lease is more fully discussed below.

   - The Agency will get repaid the balance of the value of the Housing Parcel ($3.5 million) much faster because the Agency is no longer splitting the condominium sales proceeds 50%-50% with FDA as condominium units are sold. FDA has about 16 condominiums left to be sold, and is selling them at about four per month. Assuming that trend continues, the Agency should get repaid the $3.5 million in about six months under the accelerated distribution schedule proposed under the Fifth Amendment.

7. The Agency owns the commercial air rights parcel, located above the Agency-owned public parking garage, in which the Project's commercial space is located (the "Commercial Parcel"). The Agency is ground-leasing the Commercial Parcel to an affiliate of FDA for an initial term of 35 years. Once FDA's affiliate pays the Agency ground-lease payments totaling the value of the Commercial Parcel (about $1.8 million under the existing DDA), FDA's affiliate will own this parcel. FDA must pay the full amount owed over the 35-year term of the ground lease, and make a balloon payment at the end of the term if the full amount has not been paid.

8. Under the existing ground lease, FDA's payments to the Agency are as follows: (i) payments are optional during the first five years of the ground lease term; then (ii) beginning in Year 6, payments are 50% of the net rental income FDA earns from the two commercial spaces it leases to two commercial tenants.

9. Under the proposed Fifth Amendment, about $1.2 million of the $4.7 million that the Agency was to receive from condominium sales proceeds will be transferred to the commercial ground lease, which has a much slower repayment schedule. As such, the total amount that FDA will owe the Agency under the commercial ground lease will be about $3 million over the 35-year term of the ground lease.

10. In exchange, FDA agreed to accelerate the repayment schedule by increasing the percentage of net rental income going to the Agency to 75% starting in Year 11 of the ground lease. Based on updated financial projections from FDA, the Agency should be repaid the $3 million in 18 years under the accelerated repayment schedule proposed under the Fifth Amendment.

11. Agency authorization of the proposed Fifth Amendment with FDA to (1) change the source of funds for the repayment of a portion of the deferred housing value and (2) revise the priorities for distributing condominium sales proceeds to accommodate project cash flow, would not constitute a project, pursuant to the California Environmental Quality Act Guidelines Section 15378(b)(5).

12. Agency staff recommends approval of the Fifth Amendment with FDA as described herein.

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 Fifth Amendment to the Disposition and Development Agreement with Fillmore Development Associates, LLC, a California limited liability company, to modify the distribution of condominium sales proceeds owed to the Agency, including allowing for the repayment of a portion of this amount ($1,185,328) pursuant to the Commercial Ground Lease, all associated with the mixed-use development 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

ATTACHMENT "A"

Condominium sales proceeds (May 2008 Estimate)	$54,227,519
Cost of selling the condos (i.e., escrow costs, taxes, upgrades, etc.)	($5,460,096)
NEBF – Partial repayment of construction loan	($34,504,223)
Outstanding Project costs per FDA's request	($1,037,000)
Estimated additional NEBF interest and marketing costs	($375,000)
NEBF – Balance of construction loan	($5,397,059)
Total – Priority Payments	$46,773,378
Amount available for distribution between Agency and FDA	**$7,454,141**
100% to FDA for deferred overhead	($225,000)
100% to FDA for accrued Project costs	($400,000)
100% to Agency to pay its outstanding common area maintenance charges on the Agency's public parking garage	($103,772)
100% to Agency to pay for Project Area programmatic priorities	($1,900,000)
100% to Agency to pay fee for garage manager for two years	($40,000)
100% to FDA for deferred developer fee	($500,000)
100% to Agency to replenish the $1.5 million in additional loan funds given to two commercial tenants in the Project from the Muni Substation budget	($1,500,000)
Remaining balance to FDA to pay equity investors and meet other pressing financial obligations	$2,785,369
Summary of payments to Agency	
To pay garage's outstanding common area maintenance charges	$103,772
To pay for Project Area programmatic priorities	$1,900,000
To pay fee for garage manager for two years	$40,000
To replenish funds loaned to two commercial tenants	$1,500,000
Subtotal – to be paid from condominium sales proceeds	**$3,543,772**
Amount to be paid from commercial ground lease (discussed below)	$1,185,328
Total amount due the Agency for value of Housing Parcel	$4,729,100
Summary of payments to FDA	
To pay deferred overhead	$225,000
To pay deferred developer fee	$500,000
To pay equity investors and meet other pressing financial obligations	$2,785,369
Total – to be paid from condominium sales proceeds	**$3,510,369**