

RESOLUTION NO. 43-2010

Adopted May 4, 2010

AUTHORIZING A FIRST AMENDMENT TO THE GROUND LEASE AND A FIRST AMENDMENT TO THE SECOND AMENDED AND FIRST RESTATED LOAN AGREEMENT WITH MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP, FOR 150 BERRY STREET, TO MODIFY THE TERMS AND CONDITIONS OF THE AGREEMENTS; MISSION BAY NORTH REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. On September 17, 1998, the Agency Commission approved the Mission Bay North and South Redevelopment Plans and Owner Participation Agreements with Catellus Development Corporation.
2. In March 1999, the Redevelopment Agency of the City and County of San Francisco ("Agency") issued a Request for Proposals for developers of an Affordable Rental Housing Development with a commercial component ("Project"), and in June 1999 selected Mission Housing Development Corporation ("MHDC"). Between 1999 and 2002, the Agency Commission authorized actions enabling MHDC to proceed with development of the Project, including a Ground Lease Agreement, a HOPWA Loan Agreement for approximately \$1,000,000, a Tax Increment Loan Agreement for approximately \$6,300,000, a tax-exempt bond issuance, and a Standby Payment Agreement guaranteeing the Project's ability to pay debt service on that portion of its tax-exempt bonds that were underwritten with the value of the Project's Section 8 rental subsidies.
3. Since its opening in 2002, the Project has operated well and met its financial obligations, including payment of all operating expenses and debt service, as well as, in some years, payment to the Agency of ground rent from surplus cash flow. A portion of the Project's income, with which it has paid its expenses and debt service, has come from commercial revenue. This income has been a steady and reliable source of funds since 2002, due to the mandatory annual rent payment from the Master Retail Lease's Lessee, Catellus Operating.
4. In addition to MHDC's role as the Project's developer, a MHDC affiliate serves as the managing general partner of the Project's owner, Mission Bay Affordable Housing, L.P. ("Owner").

5. In February 2009, Agency staff learned and received documentation evidencing that MHDC and Catellus Operating had entered into a Master Retail Lease Assignment and Assumption Agreement dated September 17, 2008, whereby MHDC became the Master Lessee of the Master Retail Lease. This was done despite the fact that the Agency specifically told MHDC that it may not assume the lease as Master Lessee and despite the fact that the Agency's prior written consent must be given and was not.
6. The Agency determined that the unauthorized transfer of the Master Retail Lease violated the Ground Lease and Loan Agreement for the Project between the Agency and the Owner ("Agreements") and the Agency issued a Notice of Default under those Agreements on March 4, 2009. MHDC has disputed the default and in order to resolve the default and dispute related thereto, the Agency and MHDC have agreed upon amendment terms to the Agreements designed to protect and preserve the financial health of the Project and the Agency's financial investment.
7. The proposed amendments to the Agreements, effective as of January 1, 2010, provide MHDC with a financial incentive to provide excellent commercial management, but also provide financial benefit to the Project in that all commercial income will now flow to the Project. The Project's development partners – Citibank, as lender, and Merritt Capital, representing the investor limited partner – are in agreement with the proposed operating changes.
8. Authorizing the First Amendment to the Ground Lease and a First Amendment to the Second Amended and First Restated Loan Agreement is not a project as defined by the California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5), because modification of the terms and conditions of the Ground Lease and Loan Agreement to facilitate the continued operation of affordable rental housing at Rich Sorro Commons is an Agency administrative activity that will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

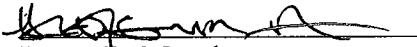
RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to:

1. Execute a First Amendment to the Ground Lease and a First Amendment to the Second Amended and First Restated Loan Agreement with Mission Bay Affordable Housing Limited Partnership, a California limited partnership, substantially in the form lodged with the Agency General Counsel.

2. Enter into any and all ancillary documents or take any additional actions necessary to consummate the transactions authorized by this Resolution, in forms to be approved by the Agency General Counsel.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel