OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY COUNTY OF SAN FRANCISCO

RESOLUTION NO. 10-2015
Adopted, September 14, 2015

AUTHORIZING A FIRST AMENDMENT TO THE COMMERCIAL RETAIL LEASE FOR THE WEST CAFÉ IN YERBA BUENA GARDENS WITH SAMOVAR TEA LOUNGE YERBA BUENA, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO EXTEND THE TERM OF THE LEASE FOR TEN YEARS, WITH ONE FIVE-YEAR OPTION TO EXTEND; FORMER YERBA BUENA CENTER REDEVELOPMENT PROJECT AREA

WHEREAS, The Redevelopment Agency of the City and County of San Francisco, a public body, (the "Former Agency") was dissolved on February 1, 2012, pursuant to California Health and Safety Code Sections 34170 et seq. (the "Redevelopment Dissolution Law"); and,

WHEREAS, Under Redevelopment Dissolution Law, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, (the "Successor Agency") assumed all of the Former Agency's enforceable obligations, including ownership of the Former Agency's real property assets. As a result of these legislative acts the Successor Agency (1) became a separate legal entity, separate from the City and County of San Francisco (the "City"); and (2) owns certain real property commonly known as the Yerba Buena Gardens West Cafe (the "West Cafe"), which is located within the former Yerba Buena Center Redevelopment Project Area D-1 (the "Former YBC Project Area"); and,

WHEREAS, The Former Agency originally acquired the land on which the West Café is located with federal urban funds from the U.S. Department of Housing and Urban Development ("HUD") provided through a Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by HUD (the "HUD Contract"). Under the HUD Contract, the Former Agency was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan for the Former YBC Project Area ("Redevelopment Plan") and the federal standards for urban renewal under Title I of the Housing Act of 1949; and,

WHEREAS, In 1983, the Former Agency and the City executed, with HUD concurrence, the Yerba Buena Center Redevelopment Project Closeout Agreement ("YBC Closeout Agreement") whereby the Agency agreed to retain the Project Property (as defined in the YBC Closeout Agreement), including the property on which the West Café is located, for disposition, subject to applicable federal law and subject further to restrictions on the use of any proceeds received from the sale or lease of the Project Property (YBC Closeout Agreement, § 1 (b) & (c)). In approving the YBC Closeout Agreement, HUD emphasized that "all future proceeds from the sale or lease of Project Property must be treated as program income under the

CDBG [Community Development Block Grant] program" ("CDBG Program Income"). The Successor Agency thus holds the Project Property for the governmental purposes described in the YBC Closeout Agreement and the CDBG program (See 24 C.F.R. §§ 570.201 (completion of urban renewal projects under Title I of the Housing Act of 1949) and 24 C.F.R. § 570.800 (pre-1996 federal urban renewal regulations continue to apply to completion of urban renewal projects)); and,

WHEREAS, By 1993, the Former Agency had completed the retail space known as the West Café in the Yerba Buena Gardens ("Gardens") and initiated the leasing of the space to commercial tenants. Under the YBC Closeout Agreement, the revenue stream from the Project Property, including the West Café, is considered CDBG Program Income and may be used for operation, maintenance (including capital improvements), and security of the Gardens; and,

WHEREAS, Over the years, the Former Agency and now the Successor Agency have deposited West Café revenue, and funds from all Gardens sources, into a restricted, segregated account (the "Separate Account") pursuant to an interlocking set of agreements with the Successor Agency's long-term tenants and other Gardens stakeholders. These long-term agreements (ranging from 78 to 90 years) require the Former Agency to operate, maintain, and program the open space, and fund cultural operations at the Gardens. Additionally, these governing documents define and restrict expenditures from the Separate Account according to a distinct order of priority (first, to fund Gardens maintenance, operations, security, and activation of the open space, and second, to fund cultural operations in Gardens, and so on). <u>See</u> (1) Central Block 2 Entertainment and Retail Lease dated May 9, 1997 between the Successor Agency and Yerba Buena Entertainment Center LLC, (2) Yerba Buena Gardens Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated March 31, 1998 between the Successor Agency and YBG Associates LLC, and (3) Central Block 1 Retail Lease dated March 31, 1998 between the Successor Agency and CB-1 Entertainment Partners LP; and,

WHEREAS, On October 18, 2005, the Former Agency entered into a 10-year Commercial Retail Lease for the West Café with PJR LLC, a California limited liability company, lessee, (the "Original Lease"), which defines the West Café as the "Premises". On May 1, 2012, PJR LLC, as lessee, assigned all of its rights, title, and interest in the Original Lease to Samovar Tea Lounge Yerba Buena, LLC, a California limited liability company ("Samovar"), and Samovar agreed to be bound by and perform the terms, covenants, and conditions of the Original Lease. Pursuant to Article 10.1 of the Original Lease, on May 17, 2013, the Successor Agency consented to the assignment of the Original Lease to Samovar. The term of the Original Lease expires on February 29, 2016; and,

WHEREAS, Section 2.2 of the Original Lease provides that the Successor Agency and Samovar may agree to extend the term and modify any other provisions of the Lease before March 1, 2016. Further, this section requires Samovar to notify the Successor Agency in writing of Samovar's desire to extend the term of the lease.

Accordingly, on September 2, 2014, the Successor Agency received Samovar's written notification of its wish to extend the term of the Original Lease; and,

WHEREAS, The Successor Agency and Samovar have negotiated the terms of a First Amendment to the Commercial Retail Lease (the "First Amendment") Together, the Original Lease and the First Amendment comprise the "Lease;" and,

WHEREAS, The key terms of the First Amendment include (i) extending the term of the Lease for one ten-year term from March 1, 2016 to February 28, 2026, with an option for one additional five-year period, to February 28, 2031, (ii) increasing rental payments based on fair market rental value (described below), (iii) providing a rent adjustment in the first lease year to reflect Samovar's $50,000 investment in tenant improvements, (iv) increasing existing fees for landscaping and security services, (v) updating the Successor Agency's insurance and indemnification provisions, (vi) clarifying permitted uses and minimum operating days/hours, and (vii) other minor amendments to the Lease; and,

WHEREAS, The Lease rental payments negotiated in the First Amendment represent fair market rental value and will ensure that the Successor Agency is realizing the "highest and best use" for its property. To determine the highest and best use, the Successor Agency retained AECOM, a San Francisco real estate economics firm ("AECOM"), to undertake a retail leasing market study and recommend lease terms based on market data. AECOM evaluated market conditions for retail spaces in the Yerba Buena, South of Market, Financial District, and Market Street areas as well as in the San Francisco market as a whole. After reviewing 20 comparable leases and interviewing brokers active in the Yerba Buena area, AECOM found that:

i. The average asking rent for a ground floor lease in the Yerba Buena area is approximately $58 per square foot per year;

ii. The asking rents for spaces in the best Yerba Buena locations—street-level with the highest foot traffic—are as high as $80 per square foot per year, as opposed to rents for the most challenging locations on the second or third levels with low foot traffic that are as low as $30 per square foot per year;

iii. The rent differential between spaces in desirable locations and those in the more challenging locations can be up to 50 percent; and,

iv. The West Café is in a less desirable second floor location, which negatively affects the market rent for the space.

Given these conditions, AECOM concluded that the current (2015) rent for the West Café ($44 per square foot per year) is within market range, based on comparable existing retail leases for the area and the characteristics of the space. AECOM recommended a renewal rent in 2016 that is a three percent increase over the 2015 rent, subject to the requirements in Article 3.1 (a) of the Lease; and, WHEREAS, AECOM also recommended the following terms regarding the length of the lease term and requirements for tenant improvements:

i. One ten-year term and one five-year renewal option. While industry standard renewal terms can be 5 or 10 years depending on a large number of factors, AECOM made its recommendation due to the historic difficulty in finding a suitable, long term tenant for the West Cafe; the overall challenges associated with the location, access, and visibility of the space; the demonstrated commitment and track record of the Tenant; and the investment in tenant improvements currently planned by the Tenant; and,

ii. A minimum expenditure on tenant improvements by the Tenant and in recognition of the expenditure, a first year rent adjustment equivalent to four months free rent amortized over 12 months; and,

WHEREAS, The YBC Closeout Agreement authorizes the Successor Agency to enter into the First Amendment; the Separate Account obligates it to dedicate the revenues generated from the Lease to the Yerba Buena Gardens consistent with CDBG Program Income requirements. Both the YBC Closeout Agreement and the Separate Account are enforceable obligations of the Successor Agency to fulfill the government purposes of the CDBG program; and

WHEREAS, In addition, Redevelopment Dissolution Law authorizes the Oversight Board to approve the First Amendment because it: 1) constitutes an amendment to the Lease, which is also an enforceable obligation, and would be in the best interests of the taxing entities, Cal. Health & Safety Code § 34181 (e); 2) is a disposition of a leasehold interest for a government purpose and is consistent with the Long-Range Property Management Plan ("PMP") that is pending approval by the California Department of Finance ("DOF"), Cal Health & Safety Code § 34181 (a); and 3) preserves, as part of the wind down process, an asset of the former redevelopment agency prior to disposition of the land associated with the leasehold interest. Cal. Health & Safety Code §§ 34169 (d) & 34171 (f); and,

WHEREAS, California Health and Safety Code § 34181(e) requires that the Oversight Board make findings that approving the First Amendment and extending the term of the West Café lease is in the best interest of the taxing entities. The City, as a taxing entity and future owner of the West Café, would benefit from having a viable business in the West Café, as opposed to having a vacant space because it will (1) provide the City with a stable asset upon transfer, (2) allow the Tenant to amortize future Tenant Improvements, and (3) secure the continuing restricted revenue stream from rent and other fees to be used for the operation, maintenance (including capital improvements), and security of the Gardens. Additionally, the City would benefit from payroll taxes and possessory interest taxes generated from the West Café; and,

WHEREAS, The Redevelopment Dissolution Law requires the Successor Agency to dispose of its real property assets under a Long-Range Property Management Plan ("PMP")

(California Health and Safety Code, Section 34191.5). The Successor Agency submitted its PMP to the State of California Department of Finance ("DOF") in November 2013 and included the West Cafe property as part of the Yerba Buena Gardens section of the PMP that proposes a transfer of Yerba Buena Gardens ("Gardens") to the City for a governmental purpose consistent with the YBC Closeout Agreement. DOF must approve the Successor Agency's PMP before the West Café, as a component of Yerba Buena Gardens, can be transferred to the City. At this time, DOF is reviewing the Successor Agency's PMP; and,

WHEREAS, The First Amendment constitutes a disposition of an asset by lease and therefore requires the Oversight Board's approval of the specific property transfer after 10 days' notice to the public of the transfer of the leasehold interest. Cal. Health & Safety Code §§ 34181 (a) & (f). To comply with this provision of Redevelopment Dissolution Law, staff published a "notice of public hearing" in the San Francisco Examiner on September 3, 2015. The notice included information about (i) the Oversight Board's meeting, (ii) the proposed leasehold transfer of West Cafe to Samovar, and (iii) the First Amendment's is availability for review by the public. In addition, staff mailed the notice to property owners within a 300-foot radius of West Cafe on September 2, 2015. Staff also published the notice on OCII's website beginning on August 31, 2015; and,

WHEREAS, Pending the approval of the PMP and subsequent transfer of the West Café to the City, the Successor Agency has, under California Health and Safety Code § 34169, a continuing obligation to preserve the assets of the Former Agency and appropriately manage the West Café. The Lease for the West Café will expire on February 29, 2016, prior to the transfer to the City. As a function of prudent asset management, the Successor Agency is proposing the First Amendment to the Lease to continue West Café operations, avoid a potential vacancy of the space, and ensure uninterrupted Lease rental payments to the Successor Agency and to the City after the transfer; and,

WHEREAS, Upon DOF's approval of the PMP, the Successor Agency will assign the Lease to the City, which has reviewed and recommended, through its Director of its Real Estate Division, the approval of the First Amendment; and,

WHEREAS, Staff recommends conditional authorization of the First Amendment to the Lease; and,

WHEREAS, The First Amendment to the Lease is categorically exempt from the California Environmental Quality Act ("CEQA") Guidelines § 15301, Existing Facilities, which permit leasing of a public structure or facility involving negligible or no expansion of use. Since the West Café is an existing facility and the proposed First Amendment will have no expansion of the use, the First Amendment is exempt from CEQA; and,

WHEREAS, The Commission on Community Investment and Infrastructure conditionally authorized the First Amendment on September 1, 2015 by Resolution No. 55-2015; now, therefore, be it

RESOLVED, That the Oversight Board finds, that for the reasons stated above, the First Amendment to the Lease with Samovar Tea Lounge Yerba Buena, LLC, a California limited liability company, is in the best interest of the taxing entities; and, be it further

RESOLVED, That the Executive Director of the Successor Agency is authorized, subject to review and approval DOF, to execute the First Amendment to the Lease with Samovar Tea Lounge Yerba Buena, LLC, a California limited liability company, in substantially the form of the First Amendment attached to the Oversight Board memorandum accompanying this Resolution, to extend the term of the Lease for ten years, with one five-year option to extend, and to make other minor modifications to the Lease.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of September 14, 2015.

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Oversight Board Secretary