RESOLUTION NO. 107-2001

Adopted June 12, 2001

AUTHORIZING THE TERMINATION OF THE AGREEMENT FOR DISPOSITION OF LAND FOR PRIVATE DEVELOPMENT WITH FILLMORE RENAISSANCE ASSOCIATES, L.P., A CALIFORNIA LIMITED PARTNERSHIP IN CONNECTION WITH THE DEVELOPMENT OF PARCEL 732-A LOCATED ON THE NORTHEAST CORNER OF FILLMORE AND EDDY STREETS; WESTERN ADDITION APPROVED REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

A. The Redevelopment Agency of the City and County of San Francisco ("Agency") and Fillmore Renaissance Associates, L.P., a California limited partnership, ("Developer") entered into an Agreement for Disposition of Land for Private Development dated as of November 21, 1989, for the purchase and development of Agency Parcels 732-A for residential development ("Site"), as amended by a First Amendatory Agreement dated March 27, 1990, as amended by a Second Amendatory Agreement dated July 10, 1990, as amended by a Third Amendatory Agreement dated September 25, 1990, as amended by a Fourth Amendatory Agreement dated December 18, 1990, as amended by a Fifth Amendatory Agreement dated October 8, 1991, as amended by a Sixth Amendatory Agreement dated October 24, 1995 and as amended by a Seventh Amendatory Agreement dated September 26, 2000 (together, the "Agreement").

B. The First through Fifth Amendatory Agreements were executed to extend the Developer’s Schedule of Performance under the Agreement and to permit reconfigurations of the housing mix and type (condo, rental, affordable and market-rates) to achieve a feasible housing development during the early 1990s.

C. The Sixth Amendatory Agreement dated October 24, 1995 permitted a change of use of the Site from residential to commercial including a multi-screen cinema complex, jazz and supper club, and parking garage (the “Revised Project”), which is consistent with Agency’s economic development activities in the Lower Fillmore Economic Revitalization Program. It also required the Developer to submit a proposal to the Agency for the integration of the various elements of the Revised Project on the site, with supporting conceptual design documents, cost estimates to assess the physical and financial feasibility of the Revised Project and other relevant information.

D. The Seventh Amendatory Agreement dated September 26, 2000 granted the Developer a 90-day extension to submit by December 27, 2000 a Revised Project or, alternatively, a Second Revised Project consistent with the Agency’s Fillmore Revitalization Program for the Site and that the Agreement would be terminated if a feasible proposal was not submitted.

E. Since October 24, 1995, the Developer has attempted to establish a feasible Revised Project at the Site. By Resolution No. 218-97, on October 28, 1997, the Commission
conditionally approved Agency financial assistance of $6 to $8 million requested by the Developer to achieve a feasible development ("Financial Assistance"). The approval of Financial Assistance was conditioned upon a schedule of milestones to be met by the Developer.

F. In 1996, the Developer identified prospective tenants for the jazz supper club (The Blue Note) and the theater (AMC) and began its negotiation of lease terms for those elements of the project.

G. In February 2000, the prospective tenant of the movie theater, AMC, ceased lease negotiations with the Developer because AMC's proposed revisions to its Letter of Intent were deemed unacceptable. In order to attract another theater operator, the Developer and the Agency considered the possibility of increasing the density of the development to increase the number of movie screens from 8 to 12 and granted the Developer additional time to market the proposed theater to other theater operators. On March 21, 2000, the Agency granted the Developer a 60-day period to solicit proposals from other theater operators. On May 20, 2000, the Developer submitted a letter of intent from UltraStar Theaters, Inc. ("UltraStar"). However, the proposed financial terms of the project as revised with UltraStar would have required $10 million more in public resources than the Agency had committed.

H. Therefore, on June 23, 2000, the Agency issued a Notice of Default pursuant to the terms of the Agreement based on the Developer's failure to meet certain performance dates under the Agreement and to submit a feasible development proposal with balanced uses and sources of funds and requiring no more Agency resources than the approved Financial Assistance. Pursuant to the terms of the Agreement, the Developer had 30 days from the Notice of Default to cure the default by meeting the Agency's conditions set forth in the notice.

I. The default was not cured within the 30-day cure period, and pursuant to Sections 8.02 and 8.13 of the Agreement, the Agency issued a Notice of Termination on August 31, 2000. On September 12, 2000, the Agency Commission held a hearing on the Notice of Termination and by Resolution No. 171-2000 extended the Termination Date until October 10, 2000 to permit the negotiation of an amendment to the Agreement which would permit the Developer ninety (90) days to submit for staff review and Commission consideration either (a) a financially feasible Revised Project or, (b) a proposal for a second revised project (the "Second Revised Project") which can be implemented for the development of the Site.

J. The Seventh Amendatory Agreement dated September 26, 2000 granted the Developer a 90-day extension to submit by December 27, 2000 a Revised Project or, alternatively, a Second Revised Project that was feasible and could be achieved within available resources and that if the Developer did not submit either a Revised Project or, alternatively, a Second Revised Project that was feasible, that staff would recommend that the Commission terminate the Agreement.

K. On December 27, 2001, the Developer submitted two proposals; one for the movie-theater/jazz supper club and parking garage project, and the other for a residential project
with a jazz supper club element. Neither of the two proposals met the feasibility criteria set forth in the Seventh Amendment.

L. Based on a further forbearance request by the Developer and the conceptual restructuring plan which the Developer submitted to the Agency, on February 27, 2001, by Resolution No. 38-2001, the Agency agreed to continue its forbearance from the termination of the Agreement for an additional 60-day period to allow the Developer to work with its designated theater operator and its team to finalized the restructuring plan. The plan was to include revisions to the project ownership and development team structure to increase development capacity and access to more private funding. At the end of this extension, the Developer and its new team were required to submit a binding agreement for the new development entity and related documents, and to have negotiated an Eighth Amendment with a new performance schedule and an assignment of the LDA to move the original entertainment concept forward.

M. The Developer has not met any of the performance requirements of Resolution No. 38-2001. Instead, on April 30, 2001, the Developer notified the Agency that it would require additional financial assistance of $2.5 to $7.5 million above the $6.4 million that the Agency had already committed (for a total Agency financial of up to $13.9 million) for the Developer to implement the entertainment proposal. Since this proposal far exceeds the Agency's commitment for the project, the proposal was deemed infeasible by the Agency.

N. The Developer has failed to perform accordingly to the terms of the Agreement and is in default with respect to several key performance milestones, including submission of a feasible development program with in the committed public funding.

O. Staff recommends that the Agency terminate the Agreement based on the Developer's default.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to terminate the Agreement for Disposition of Land for Private Development with Fillmore Renaissance Associates, L.P., a California limited partnership, in connection with the development of Parcel 732-A and is directed to prepared a Request for Proposals to offer the property subject to the following conditions: 1) that the Request for Proposals be issued as soon as possible; 2) that Charles Collins be notified of such offering as a courtesy and encouraged to submit a proposal; and 3) that there be extensive community participation in the preparation of the Request for Proposals.

APPROVED AS TO FORM

Bertha A. Ontiveros
Agency General Counsel

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