RESOLUTION NO. 151-2004

Adopted December 14, 2004

AUTHORIZING AN ELEVENTH AMENDATORY AGREEMENT TO THE AGREEMENT FOR DISPOSITION OF LAND FOR PRIVATE DEVELOPMENT WITH FILLMORE PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO IMPLEMENT VARIANCES PERMITTING A CHANGE IN LAND USE REQUIREMENTS FOR THE RECREATIONAL SPACE, AN INCREASE IN RESIDENTIAL DENSITY AND CHANGES TO MINIMUM OFF-STREET PARKING REQUIREMENTS; AND ALSO AUTHORIZING A CHANGE IN THE COMMERCIAL AND RETAIL TENANT MIX; AGENCY PARCELS 707-A, 726-A, 731-A, 749-C, 750-A AND A PORTION OF VACATED ELLIS STREET; WESTERN ADDITION REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

1. Fillmore Properties, LLC ("Fillmore Properties") is the successor-in-interest to Fillmore Center Developers, a California limited partnership ("FCD"), that entered into an Agreement for Disposition of Land for Private Development executed between the Agency and FCD, dated December 16, 1985, (the "LDA") for the development of Agency Parcels 707-A, 726-A, 731-A, 749-C, 750-A and a portion of vacated Ellis Street (the "Site").

2. The LDA has been amended on a number of occasions, most recently by a Tenth Amendatory Agreement dated November 15, 1992, and all further references to the LDA shall include such amendatory agreements.

3. Pursuant to the LDA, the Agency sold the Site to FCD for development in accordance with the Redevelopment Plan for the Western Addition Redevelopment Project Area A-2 (the "Redevelopment Plan").

4. The specific land uses and development program authorized for the Site are contained in the LDA, which authorized a mixed-use complex of low-rise, medium-rise, and high-rise buildings containing up to 1,113 residential units, up to 73,000 square feet of retail and commercial space, a 27,000-square-foot recreational center to primarily serve tenants in the project’s residential units, and a community building of between 5,000 and 30,000 square feet.

5. As built, the Site consists of ten buildings, commonly known as The Fillmore Center, containing a total of 1,114 residential units (containing no more than 3,475 Agency Rooms), no more than 73,000 square feet of commercial and retail space, and an approximately 31,669 gross-square-foot commercial
health club (the "Commercial Recreation Facility") (collectively the "Improvements"). Pursuant to the LDA, the Community Building known as the West Bay Conference Center was constructed on the Parcel VI portion of the Site and conveyed on or about September 5, 1995, to the West Bay Local Development Corporation, a nonprofit entity, and is not part of The Fillmore Center.

6. In 1998, the current owner, Fillmore Properties purchased the Improvements. The Agency and Fillmore Properties have negotiated an Eleventh Amendatory Agreement to the LDA (the "Eleventh Amendment") to bring the LDA into conformity with what was actually constructed and to revise other problematic provisions of the LDA.

7. The Eleventh Amendment will implement two variances requested for The Fillmore Center requested by Fillmore Properties and modify certain other LDA requirements as follows:

   a. Redefine the permitted commercial and retail uses at the Site.

   b. Authorize the use and operation of a Commercial Recreation Facility at the Site as a permitted Recreational Space.

   c. Authorize an additional 4,669 square feet for the Commercial Recreation Facility, bringing the Commercial Recreational Facility’s total allowable gross square footage from no more than 27,000 square feet to 31,669 square feet.

   d. Authorize one additional residential unit, bringing the total residential units allowed to 1,114 units containing 3,475 Agency Rooms.

   e. Memorialize and recognize certain existing and previously negotiated obligations of the current and future owners of the Site, which are found in a June 1, 1996 Settlement Agreement with the Agency, which generally addresses Fillmore Properties’ obligations with respect to its accessibility requirements for the residential units.

   f. Memorialize the approval by the City and County of San Francisco’s Department of Building Inspections of requirements in a November 5, 1998 Agreement between the Agency and Fillmore Properties concerning The Fillmore Center.

   g. Require Fillmore Properties to use good-faith efforts to lease 50% of the ground-floor commercial space to retail tenants, and make other efforts to foster and strengthen the Fillmore Jazz Preservation District.
h. Require Fillmore Properties to reconfigure its garage space to provide 63 parking spaces for the Commercial Recreation Facility, which satisfies the Redevelopment Plan’s parking requirements.

i. Require Fillmore Properties to pay the Agency a one-time, lump sum amount of $312,424, which is the estimated benefit Fillmore Properties has received from collecting rent on the Commercial Recreation Facility’s additional 4,669 square feet since it started operations at the Site in November 1998.

8. The adoption of this resolution is contingent on the adoption of a companion resolution approving the variances requested by Fillmore Properties.

9. Agency staff has determined that the variances and the Eleventh Amendment are exempt from environmental review pursuant to the California Environmental Quality Act (“CEQA”) because there are no physical changes resulting from the proposed Eleventh Amendment except new construction to reconfigure a portion of the off-street parking spaces. The reassignment of existing off-parking spaces reserved for residential use to commercial parking spaces available to the public and reconfiguration of such off-street parking spaces within an existing parking facility does not warrant further environmental review since it normalizes the existing conditions at The Fillmore Center.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to execute an Eleventh Amendatory Agreement to the Agreement for Disposition of Land for Private Development, and related documents, with Fillmore Properties, LLC, a Delaware limited liability company, to permit a change in land use requirements for the Recreational Space to permit the Commercial Recreation Facility, an increase in allowable square footage of the Commercial Recreation Facility by approximately 4,669 square feet, no more than 1,114 residential units containing no more than 3,475 Agency Rooms, and a change in retail tenant mix, for Agency Parcels 707-A, 726-A, 731-A, 749-C, 750-A and a portion of vacated Ellis Street in the Western Addition Redevelopment Project Area A-2, substantially in the form lodged with the Agency General Counsel.

APPROVED AS TO FORM:

[Signature]
James B. Morales
Agency General Counsel