RESOLUTION NO. 152-2004

Adopted December 14, 2004

CONSENTING TO THE TRANSFER OF THE FILLMORE CENTER FROM FILLMORE PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO FILLMORE CENTER ASSOCIATES LP, A CALIFORNIA LIMITED PARTNERSHIP, PURSUANT TO THE TAX EXEMPT BOND FINANCING REGULATORY AGREEMENT; 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. The Fillmore Center is a mixed-use project (the "Project") developed on six parcels totaling approximately 8.95 acres located on the west side of Fillmore Street, generally between O'Farrell and Turk Streets (the "Site") in the Western Addition Redevelopment Project Area A-2. As developed, the Project includes 1,114 apartments in a ten building complex of low-rise, medium-rise and high-rise buildings, with associated underground parking, approximately 60,000 square feet of commercial space and a health club. The Project also includes a parcel which was developed as the West Bay Conference Center and conveyed in 1995 to the West Bay Local Development Corporation.

2. The sale of the Site and Project development was financed in part by the 1985 issuance of two series of tax-exempt bonds in two series in the aggregate principal amount of $109,891,178.10 and subsequently refunded in 1992 in the aggregate amount of $108,500,000 as variable rate bonds maturing on December 1, 2017 (the "Bonds"), which Bonds are to be repaid solely from Project revenues.

3. In connection with the Bonds, the Agency has previously entered into an Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 15, 1992 ("Regulatory Agreement") among the Agency, the Trustee and a predecessor owner of the Project, which was further amended by the First Amendment dated as of September 30, 1998 (jointly the "Tax Regulatory Agreement").

4. As required by the Tax Regulatory Agreement, Fillmore Properties, LLC, a Delaware limited liability company that is the current owner of the Project (sometimes "Owner"), must obtain the Agency's consent prior to the transfer of the Project and the Agency is obligated to provide such consent if specified requirements are met.
5. The Owner intends to sell the Project to Fillmore Center Associates, LP, a newly formed California limited partnership, whose managing general partner will be Fillmore Center Associates, LLC, a California limited liability company whose sole member is Prisareit, Inc., a Florida Corporation (collectively the “Buyer”). The Buyer’s limited partner is Prudential Insurance Company of America, a New Jersey corporation.

6. The Buyer has indicated that it intends to enter into an agreement with the Laramar Group, an Owner affiliate that provides Project management services. During the past few weeks, staff also became aware of race discrimination claims regarding Project operations alleged by a former employee of the Laramar Group. Staff investigated such claims and has been unable to obtain sufficient evidence to verify or refute the claims. Accordingly, staff has negotiated a written agreement which obligates the Buyer to pay for and require Project leasing staff to undergo fair housing training (one one-day training per year for existing employees (with an additional training to be scheduled within the year for any new employees) and to pay for fair housing tests to be conducted by a fair housing organization (two per year) for three years.

7. Pursuant to Section 10 of the Tax Regulatory Agreement, the Agency's consent may not be unreasonably withheld or delayed upon (i) receipt by the Agency of reasonable evidence satisfactory to the Agency that the Buyer assumes in writing and in full, and is reasonably capable of performing and complying with, its duties and obligations under the Regulatory Agreement; (ii) the Agency and the Trustee receive an opinion of counsel that the Buyer has duly assumed those obligations, and that the assumption is legal, valid and binding on the Buyer; (iii) the Agency and the Trustee receive a certificate from the Owner that there is no existing default under the Regulatory Agreement; (iv) all administrative fees due the Trustee and the Agency have been paid or satisfactory provision has been made for such payment; and (v) the Agency receives an opinion of bond counsel that the transfer does not jeopardize the federal tax-exempt status of the bonds. All such requirements have been fulfilled, based on the following findings:

   a. Staff reviewed the relevant aspects of the proposed transaction and applicable proposed transaction documents, including forms of legal opinions, and conducted an extensive due diligence investigation of the including site visits to several of its properties and national canvassing for fair housing complaints, to determine Buyer’s capacity to perform the duties and obligations of the Regulatory Agreement through the Buyer. Staff reviewed the results of its due diligence investigation and found reasonable evidence that Prisareit, the sole member of Fillmore Center Associates, LP's general partner, is reasonably capable of performing and complying with its duties and obligations under the Regulatory Agreement.
b. Staff reviewed a proposed form of Assignment and Assumption Agreement required to satisfy the requirements of the Tax Regulatory Agreement, which indicates that upon Buyer's acquisition of the Project, Buyer will assume all obligations under the Tax Regulatory Agreement and finds it satisfactory to assume in full the obligations of the Tax Regulatory Agreement.

c. A form of opinion of counsel to Buyer will be issued as of the date of the real estate transfer that the Buyer has or will have duly assumed the obligations of the Tax Regulatory Agreement and that such obligations are legal, valid and binding.

d. Agency has received a certificate executed by the Owner stating that there is no existing or continuing default under the Tax Regulatory Agreement.

e. The Agency has received all fees due to it to date pursuant to the Loan Agreement and the Trustee has indicated that it has received all such fees due it as well.

f. Agency bond counsel has prepared a form of opinion based on the proposed transaction concluding that the tax exempt status of the bonds will not be jeopardized by this transfer to the Buyer.

8. Prior to or at closing, Owner will pay the Agency a one-time administrative fee of $150,000 to compensate the Agency for its work connected to review of the transfer request and bond counsel costs pertaining to the completion and review of the Credit Enhancement Agreements (hereafter described) and related documents prepared to enable the provision of substitute credit enhancements for the bonds.

9. In connection with the proposed sale of the Project to Buyer and as required to comply with credit enhancement requirements for the Bonds, Credit Enhancement Agreements will be executed by the Federal Home Loan Mortgage Corporation, a shareholder-owned government sponsored enterprise organized under federal law ("Freddie Mac"), in replacement of the existing letters of credit previously issued in 1998.

10. In connection with the Credit Enhancement Agreements to be executed by Freddie Mac, Supplement to the Official Statement dated November 18, 1992 has been prepared and the Agency is asked to execute a number of certificates and agreements, including, without limitation, an Intercreditor Agreement between Freddie Mac, the Agency, U.S. Bank National Association, and the Trustee for the bondholders ("Trustee"); and an agreement between the Agency, the Trustee Freddie Mac, and the new Project Owner to clarify certain matters pertaining to the Bonds ("Clarifying Agreement") and a Second Amendment to the Tax Regulatory Agreement.

11. A form of Supplement to the Official Statement dated November 18, 1992, Intercreditor Agreement, Clarifying Agreement and Second Amendment to the Tax Regulatory Agreement have been prepared and lodged with the Agency General Counsel, in addition to other documents and instruments necessary to enable the continuing compliance after Buyer's acquisition of the Project as to with requirements of the documents and instruments pertaining to the Bonds.
12. Based on the above described investigation and document submissions, staff recommends that the requested consent be given, subject to due execution and delivery of all the referenced documents and certificates at or before the time of the real estate transfer.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco as follows:

1. Based on the previously stated background, the Agency gives its consent to request by Fillmore Apartments LLC to transfer the Fillmore Center Project to Fillmore Center Associates, LP, a California limited partnership, subject to due execution and delivery of all required documents and certificates at or before the time of the real estate transfer.

2. The Agency approves and authorizes the preparation of the following: preparation of a Supplement to the Official Statement, and execution of the documents and certificates necessary to comply with the transfer requirement of the Tax Regulatory Agreement; other documents necessary to enable compliance with requirements of the bonds, such documents to include, without limitation, the Credit Enhancement Agreements, the Clarifying Agreement, the Intercreditor Agreement, and the Second Amendment to the Tax Regulatory Agreement as well as the execution and delivery of other ancillary documents and certificates (collectively the “Bond Documents”), substantially in the form presented to the Agency General Counsel, with such changes or modifications thereto as are deemed necessary or advisable by the Executive Director or the Deputy Executive Director, Finance and Administration; or the Deputy Executive Director, Housing; upon consultation with the Agency General Counsel.

3. All actions heretofore taken by the officers and agents of the Agency with respect to the sale, issuance and remarketing of the Bonds are hereby approved, confirmed and ratified.

4. The Executive Director, the Deputy Executive Director, Finance and Administration; the Deputy Executive Director, Housing; the Secretary and Assistant Secretaries, the Agency General Counsel and Deputy General Counsels and other officers of the Agency (each an “Authorized Officer”), are also authorized and directed, jointly and severally, to do any and all things, including, without limitation, authorizing the distribution of a Supplement to the Official Statement and “deeming final” information relating to the Agency included therein, and to complete, execute and deliver any and all documents and certificates, including, without limitation, the Bond Documents and a tax certificate, with such changes, deletions and insertions to be approved by an Authorized Officer, deemed necessary or advisable in order to consummate the lawful remarketing of the Bonds, such approvals being conclusively
evidenced by the execution and delivery thereof and otherwise to implement the purposes of this Resolution.

Approved as to Form:

James B. Morales
Agency General Counsel