

RESOLUTION NO. 116-2006

Adopted August 15, 2006

AUTHORIZING A THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH FILLMORE DEVELOPMENT ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO CONTRIBUTE AN ADDITIONAL \$900,000, INCLUDING \$572,500 IN PREDEVELOPMENT LOAN FUNDS AND \$327,500 IN PREDEVELOPMENT LOAN REPAYMENTS, TO COVER THE AGENCY'S PORTION OF THE INCREASED CONSTRUCTION COSTS ASSOCIATED WITH THE PUBLIC PARKING GARAGE ON AGENCY PARCEL 732-A, AND TO MODIFY OTHER TERMS; WESTERN ADDITION REDEVELOPMENT PROJECT AREA A-2

BASIS FOR RESOLUTION

1. On May 18, 2004, the Commission of the Redevelopment Agency of the City and County of San Francisco (the "Agency") by Resolution No. 56-2004 approved a Disposition and Development Agreement ("DDA") with Fillmore Development Associates, LLC, a California limited liability company ("FDA"), for the purchase and development of Agency Parcel 732-A located at the northeast corner of Fillmore and Eddy Streets (the "Site") in the Western Addition Redevelopment Project Area A-2.
2. The DDA documents the mutual promises, duties, obligations and responsibilities of the Agency and FDA regarding FDA's proposal to purchase, subdivide and develop the Site. The development proposal includes approximately 40,500 square feet of entertainment-related, retail/commercial uses, 80 for-sale condominium units (including 12 affordable units) with associated parking, and a 111-stall public parking garage (the "Project").
3. Also on May 18, 2004, the Commission, by Resolution No. 57-2004, approved a predevelopment loan agreement with FDA for \$1.25 million to cover some of the Project's predevelopment costs (the "Loan Agreement"). FDA was required under the DDA to repay the full amount of the predevelopment loan (plus accrued interest) when escrow closed on the Project's construction financing. At that time, the estimated cost of the Project was \$57.2 million, with the Agency funding about \$18.3 million through a combination of grants, loans and deferred ground lease payments. The Agency's funding included a \$4.7 million grant to build the public parking garage that will serve the commercial uses on the Site.
4. On April 5, 2005, the Commission, by Resolution No. 53-2005, approved a first amendment to the DDA (the "First Amendment") to allow FDA to defer repayment of up to \$900,000 of the predevelopment loan as follows: (1) \$500,000 would be repaid (a) from construction financing if it was not needed to

cover potential cost overruns or (b) from housing sales proceeds if it was needed to cover cost overruns and (2) \$400,000 would be repaid from housing sales proceeds instead of from construction financing. The remaining \$350,000 (plus accrued interest) would still be repaid from construction financing. In addition, the First Amendment extended the deadline for the close of escrow on the construction financing from March 31, 2005 to May 31, 2005. The Loan Agreement was also amended on April 5, 2005, by Resolution No. 53-2005, to incorporate these changes.

5. On June 7, 2005, the Commission approved, by Resolution No. 89-2005, a second amendment to the DDA which extended the deadline to close escrow on the construction financing from May 31, 2005 to August 31, 2005, eliminated references to Parcel 725-C, and made other modifications.
6. On August 23, 2005, under the authority given to it under the Commission-approved DDA, the Agency entered into a Grant Agreement (the "Grant Agreement") to provide FDA with \$864,445 to cover the costs of Soil Remediation ("Remediation Grant") and \$4,698,794 to cover the cost of constructing the public parking garage ("Garage Grant"). The Grant Agreement requires FDA to quitclaim the public parking garage at construction completion to the Agency or its assignee, at no cost to the Agency beyond the Garage Grant.
7. Escrow closed on the Project's construction financing in early September 2005. At the close of escrow, FDA informed the Agency that it needed to retain the \$500,000 in Predevelopment Loan funds for a contingency fund to cover possible cost overruns, and would repay the \$500,000 with housing sales proceeds, as allowed under the First Amendment.
8. In recent months, the Developer requested that the Agency fund an additional \$1,163,961 to cover the increase in construction costs since May 2004 for the public parking garage. During negotiations over this request, Agency staff and the Developer agreed that only \$1,015,967 of this amount reflected the construction cost increase associated with the public parking garage ("Public Garage Cost Increase"). The Developer and Agency staff propose that the parties share in covering this construction cost increase.
9. Because the Agency does not have any more money available to it for this Project in the Western Addition Redevelopment Project Area A-2 budget, staff looked at ways to restructure the Agency's original financing package to provide additional financial assistance. Under this proposed Third Amendment, the Agency would fund up to \$900,000 of the Public Garage Cost Increase, using a combination of FDA's performance deposit and the remaining principal balance of the predevelopment loan. As part of the proposed agreement with the Developer, FDA agreed to fund with non-Agency sources the balance of the Public Garage Cost Increase (at least \$115,967).

10. Upon Commission authorization of the proposed Third Amendment to the DDA, the Agency will amend its related \$4.7 million Grant Agreement with FDA for the public parking garage to incorporate the \$900,000 increase to the grant amount.
11. FDA has also requested revisions to the DDA to further detail (1) the eligibility requirements for the purchasers of the affordable housing units and (2) the exact percentage of Area Median Income to be used to calculate the initial purchase price of the affordable housing units. These changes will also be incorporated into the DDA through the proposed Third Amendment.
12. Staff recommends approval of the proposed Third Amendment to the DDA.

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 the Third Amendment to the Disposition and Development Agreement with Fillmore Development Associates, LLC, a California limited liability company, for the mixed-use project on Agency Parcel 732-A in the Western Addition Redevelopment Project Area A-2 to (1) increase the amount of the Agency's grant for the public parking garage from \$4,698,794 by \$900,000 for a total aggregate amount not to exceed \$5,598,794 and (2) to modify other terms as detailed above, substantially in the form lodged with the Agency General Counsel, and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction; Western Addition Redevelopment Project Area A-2.

APPROVED AS TO FORM:


for James B. Morales 8/9/06
Agency General Counsel