MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Conditionally approving the transfer of operations of Pearl’s Deluxe Burgers, LLC to the owner of the property located at 1001 Market Street and 4 Sixth Street, consistent with the terms of a Façade and Tenant Improvement Loan Agreement approved under the Six on Sixth Economic Revitalization Program; Former South of Market Redevelopment Project Area

EXECUTIVE SUMMARY

In 2002, the Redevelopment Commission of the former San Francisco Redevelopment Agency (“Former Agency”) authorized the creation of the Six on Sixth Economic Revitalization Program (“Six on Sixth Program”) and allocated funding to provide forgivable loans for façade improvements, tenant improvements, and business assistance, and grants for design assistance to property and business owners on Sixth Street in the former South of Market Redevelopment Project Area (“Project Area”). The program was amended several times, most recently in 2010 to permit higher levels of assistance specifically for corner catalyst sites at Sixth and Market and Sixth and Howard Streets.

On October 19, 2010, the Redevelopment Commission approved a Façade and Tenant Improvement Loan Agreement (“Loan Agreement) under the Six on Sixth Program with Pearl’s Deluxe Burgers, LLC (“Pearl’s”) in the amount of $400,000, to establish a restaurant at the corner catalyst site located at 1001 Market Street and 4 Sixth Street. The loan is evidenced by a Promissory Note in the amount of $400,000, and secured by a Deed of Trust against the property, which is owned by a family represented by John Gall. Consistent with the Six on Sixth Program guidelines, the loan is forgivable over a five-year period so long as Pearl’s does not sell, assign, convey, close or otherwise transfer the business and is not in default under any other provision of the loan agreement. Notwithstanding the above, the loan agreement allows Pearl’s to transfer ownership and/or operation of the business to the owner of the property without triggering the repayment provisions in the Loan Agreement.

The Six on Sixth Program was terminated when the Former Agency was dissolved on February 1, 2012, but its requirements remain in effect through the numerous loan agreements that the Former Agency approved prior to its dissolution. On January 30, 2014, the Office of Community Investment and Infrastructure (“OCII”) was notified by Pearl’s that it was in negotiations to transfer the operations of the business to the property owner. Under the proposed
transfer, the property owner intends to continue the operations of the property as a restaurant, but with a new operator and a new name.

The preference criteria for the Six on Sixth Street Program, under which the Former Agency provided the loan to Pearl’s, include as a primary objective to “assure continuous business operations on-site for the term of the loan.” Staff interprets the Loan Agreement to allow the property owner to continue to use the space as a retail restaurant business, without triggering repayment of the loan, on the condition that the other terms of the Loan Agreement remain in effect.

Staff recommends that the Commission conditionally approve the transfer of operations of Pearl’s Deluxe Burgers, LLC to the owner of the property consistent with the terms of the Loan Agreement.

BACKGROUND

On November 26, 2002, the Redevelopment Commission authorized the creation of the Six on Sixth Program and allocated funding to provide forgivable loans for façade improvements, tenant improvements, and business assistance, and grants for design assistance to property and business owners on Sixth Street. The program achieved some significant successes, including attracting more than 30 new businesses to the Sixth Street corridor, most of which are still in business, including several restaurants such as Miss Saigon, Split Pea Seduction and Dottie’s True Blue Café. The program was terminated, along with all of the Former Agency’s other activities in the Project Area, when the Former Agency was dissolved in 2012. The terms and conditions of the program, however, remain in effect through the various loan agreements that were approved under the program.

The program was amended several times to expand its scope, most recently in October 2010 when the Redevelopment Commission approved higher levels of assistance specifically for corner catalyst sites at Sixth and Market and Sixth and Howard Streets. The purpose of these changes was to revitalize these prominent corner locations and provide the incentives necessary to attract successful and appropriate retail tenants. At that time, the catalyst site located at Sixth and Market Streets was in an extremely deteriorated condition, having been previously occupied by a restaurant that was shut down by the San Francisco Department of Public Health. Filling this corner space was a major goal of the Six on Sixth Program.

In 2010, Pearl’s Deluxe Burgers, a restaurant business that was established in 2003, signed a 10-year lease for the retail spaces at 1001 Market Street and 4 Sixth Street, and submitted an application under the Six on Sixth Program for a $400,000 façade and tenant improvement loan to help fund renovations, estimated to cost a total of about $600,000. Tenant improvements included: a new kitchen, including a hood system, plumbing distribution, and fixtures; electrical panels, distribution and fixtures; a new HVAC system; ADA entrances and restrooms; and new finishes throughout the customer and employee areas.

On October 19, 2010, the Redevelopment Commission approved a loan agreement with Pearl’s, which included the following terms and conditions:
• **Loan Amount**: $200,000 per retail space, or a maximum aggregate loan amount of $400,000, as evidenced by a Promissory Note.

• **Matching Requirements**: Consistent with the Six on Sixth Program guidelines, Pearl’s was required to invest $1 in tenant improvements for every $3 contributed under the program, or at least $133,000. To do this, Pearl’s applied for and received a $215,000 loan from the Central Market Cultural District Loan Fund, which is administered by the Mayor’s Office of Economic and Workforce Development. In addition, Pearl’s made a significant equity investment of approximately $100,000 to cover startup costs prior to the business opening.

• **Collateral**: With the consent of the property owner, the loan is secured by a Deed of Trust against the Property.

• **Forgivable Loan Period**: Five years, commencing on November 1, 2011. Over the five-year loan term, fourth-fifths of the loan amount is forgiven at the end of four years of operation, while the remaining one-fifth is forgiven after five years of operation, as long as Pearl’s is not in default of any provisions of the loan agreement.

• **Repayment Obligation**: If Pearl’s transfers or closes the business before completing four years of operations, it must repay the full loan amount. If Pearl’s transfers or closes the business after completing four years of operations but before the completion of five years of operation, it must repay four-fifths of the loan amount (“Repayment Obligation”). However, notwithstanding the above, if Pearl’s enters into an agreement with the property owner to transfer the ownership and/or operation of the business, the transfer does not trigger the repayment provisions.

**DISCUSSION**

On January 30, 2014, OCII was notified by Pearl’s that it was in negotiations to transfer the operation of the business to the property owner, consistent with the provisions of the Loan Agreement. Under a proposed transfer agreement between Pearl’s and the property owner, the property owner would find a new operator for the business that will provide continuous operations of a retail restaurant business, and Pearl’s would lease all of its furniture, fixtures, and equipment to the new operator. The Promissory Note and Deed of Trust would remain in place.

The Loan Agreement requires the Retail Business, defined as “Pearl’s Deluxe Burgers,” to remain in continuous operations for five years or else the Borrower, which is Pearl’s, is subject to the Repayment Obligation. As noted above, this requirement is consistent with the original Six on Sixth Street Program, which had the primary objective of “assur[ing] continuous business operations on-site for the term of the loan.” After five years of continuous operations, the loan amount is forgiven. The Repayment Obligation, however, does not apply “if the Borrower enters into an agreement with the Property Owner to transfer the ownership and/or operation of the Retail Business at the Property.” Loan Agreement, Section 3.1 at p. 7. Staff interprets this
transfer provision as requiring the owner to maintain a retail restaurant business at the site to avoid the Repayment Obligation.

The property owner and Pearl’s have entered into a transfer agreement that provides, among other things, Pearl’s acknowledgement of its continuing liability for any loan repayment due under the Loan Agreement. The property owner intends to continue the operations of the property as a restaurant use, but with a new operator and a new name. The property owner has entered into an operating agreement with Dan Lu D.B.A., which is consistent with the Six on Sixth Program standard that “property owners are required to control rent at the CPI for the first five years after securing a tenant, and thereafter at increments not to exceed prevailing rents along Fifth and Seventh Streets between Stevenson and Harrison Streets for the following ten years.” The purpose of this condition is “to prevent exorbitant rent increases as a result of the tenant improvement program.”

Staff has concluded that the proposed transfer does not trigger the Repayment Obligation, so long as the following conditions are met:

1. The new tenant shall be a retail restaurant business serving the general public and shall not be charged a rent that exceeds the Six on Sixth Program rent control standards described above;
2. During the remaining term of the Loan Agreement, the property must be continuously operated as a retail restaurant business, allowing for a 30-day period after the closing of Pearl’s for renovations required by the new operator;
3. During the 30-day closure period, the property must display a professionally-designed and created “coming soon” sign announcing the name of and details about the new operator;
4. Pearl’s enters into a lease of all of its furniture, fixture, and equipment located on the Property to the new operator; and
5. Pearl’s remains as the borrower under the Loan Agreement and the Promissory Note and thus liable for fulfilling the Repayment Obligation if the new restaurant use closes before the term of the Loan Agreement expires.

Although the Sixth and Market Pearl’s was popular after it opened in 2010, the business has had difficulty recently. Pearl’s closed their Alameda location in 2012, leaving only the Sixth and Market location and their original San Francisco restaurant on Post Street. Pearl’s made the decision to transfer operations to the property owner based on the performance of the location. However, other restaurants on the Sixth Street corridor have been more successful, including Miss Saigon and Dottie’s True Blue Café.
CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the transfer of operations from Pearl’s to the property owner will not independently result in a physical change in the environment and is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15262 and 15061(b)(3).

(Originated by Michael J. Grisso, Senior Project Manager, and Christine Maher, Development Specialist)

Tiffany J. Bohee
Executive Director

Attachment 1: Six on Sixth Street Program Description
Attachment 2: Façade and Tenant Improvement Loan Agreement between Pearl’s Deluxe Burgers and the Former Agency
Attachment 3: Transfer Agreement between Pearl’s Deluxe Burgers and Property Owner