

Commission on Community Investment and Infrastructure

RESOLUTION NO. 13-2014

**Adopted March 18, 2014**

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

WHEREAS, 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; and

WHEREAS, 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 "Property"). 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; and

WHEREAS, 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; and

WHEREAS, 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, 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; and

WHEREAS, 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 obligated to repay all or some portion of the loan amount. 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 obligation to repay the loan, 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." Staff interprets this transfer provision as requiring the owner to maintain a retail restaurant business at the site to avoid repayment of the loan; and

WHEREAS, 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, pursuant to Pearl's obligation as the Borrower under the terms of the Note. 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"; and

WHEREAS, 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); and

WHEREAS, OCII staff has concluded that the proposed transfer does not trigger repayment of the loan and recommends approval of the transfer, 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 to 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; now therefore, be it

RESOLVED, that the Commission on Community Investment and Infrastructure hereby approves the transfer of operations of Pearl's to the property owner subject to the conditions included in this Resolution and authorizes the Executive Director of the Office of Community Investment and Infrastructure to take any and all actions necessary to grant such approval of this this transaction.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 18, 2014.

*Natasha Jones*

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Commission Secretary