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Title: RESOLUTION CONSENTING TO THE CREATION OF A NEW BUSINESS ENTITY, IL FORNAIO (AMERICA), LLC AS SUBLESSEE TO FERRY LANDING ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND AN ASSIGNMENT OF THE OWNERSHIP INTEREST OF IFCB HOLDING CORPORATION, A DELAWARE CORPORATION, IN IL FORNAIO (AMERICA), LLC TO CREATE RESTAURANTS HOLDINGS, INC., A JAPANESE CORPORATION AND CREATE RESTAURANTS NY INC., A NEW YORK CORPORATION, TO CONTINUE OPERATING IL FORNAIO RESTAURANT FOR THE REMAINDER OF THE TERM OF THE SUBLEASE THROUGH NOVEMBER 1, 2028, IF ALL EXTENSIONS ARE EXERCISED.

Sponsors:

Indexes:

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Attachments: 1. 7. 2019-0507 Attachment A, 2. 7. 2019-0507 Attachment B, 3. 7. 2019-0507 Attachment C, 4. 7. 2019-0507 Draft Resolution

Date	Ver.	Action By	Action	Result
2/11/2020	1	Board of Port Commissioners	adopted	

DATE: February 11, 2020

SUBJECT:

RESOLUTION CONSENTING TO THE CREATION OF A NEW BUSINESS ENTITY, IL FORNAIO (AMERICA), LLC AS SUBLESSEE TO FERRY LANDING ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND AN ASSIGNMENT OF THE OWNERSHIP INTEREST OF IFCB HOLDING CORPORATION, A DELAWARE CORPORATION, IN IL FORNAIO (AMERICA), LLC TO CREATE RESTAURANTS HOLDINGS, INC., A JAPANESE CORPORATION AND CREATE RESTAURANTS NY INC., A NEW YORK CORPORATION, TO CONTINUE OPERATING IL FORNAIO RESTAURANT FOR THE REMAINDER OF THE TERM OF THE SUBLEASE THROUGH NOVEMBER 1, 2028, IF ALL EXTENSIONS ARE EXERCISED.

EXECUTIVE SUMMARY:

The District entered into a forty (40) year lease with Ferry Landing Associates, LLC (Ferry Landing) on September 1, 1997, for restaurant and office building use, located at 1333 First Street, in the City of Coronado (the Lease).

Ferry Landing entered into a sublease with Il Fornaio America Corporation on November 1, 1998 for fifteen (15) years with two five-year options to extend, to operate an 8,800 square foot upscale Italian restaurant (Sublease). On July 27, 2016, the Board of Port Commissioners (BPC) consented to an assignment of ownership interest in the Sublease, as well as an additional option to extend for five (5) years to November 1, 2028. The ownership assignment made IFCB Holding Corporation (IFCB

Holding) the sole shareholder of Il Fornaio (America) Corporation. The ownership change did not change the executive management team or the operation of the restaurant.

Ferry Landing requests the District's consent to an assignment of ownership interest (Assignment) of the Sublease from IFCB Holding to Create Restaurants Holdings, Inc. and Create Restaurants NY Inc. (Create Restaurants), as the sole shareholders of a newly formed limited liability company, Il Fornaio (America), LLC. No changes to the restaurant name or operation are anticipated with the Assignment.

The Assignment is consistent with the terms and conditions established in the Lease and Board Policy No. 355 (BPC 355).

RECOMMENDATION:

Adopt a Resolution consenting to an assignment of ownership interest of IFCB Holding Corporation (dba Il Fornaio Restaurant) to Create Restaurants Holdings, Inc. and Create Restaurants NY Inc., and the Sublease with Ferry Landing Associates, LLC, for the remainder of the term of the Sublease through November 1, 2028, if all extensions are exercised.

FISCAL IMPACT:

Ferry Landing pays the District the greater of a percentage of gross revenues or a minimum annual rent. The current minimum annual rent is \$297,000, subject to periodic increases, as further detailed under Section 2 of the Lease. The Sublease with Il Fornaio Restaurant will continue to contribute to the percentage rent paid by Ferry Landing to the District. Il Fornaio Restaurant estimates an average annual gross sales of \$7,100,000 for the next five years, for which the District receives three percent (3%) from food sales, five percent (5%) from alcoholic and nonalcoholic beverage sales, and ten percent (10%) from miscellaneous sales.

This agenda item is subject to Board Policy No. 106 - Cost Recovery User Fee Policy.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.

DISCUSSION:

The Lease with the District covers approximately 172,196 square feet of land area, 118,596 square feet of water area, and 12,649 square feet of utility and access easements (Attachment A - Location Map). The permitted uses under the Lease include restaurant and office. The Sublease allows Il Fornaio (America) Corporation, through its ownership entity, IFCB Holding, to operate an 8,800 square foot restaurant with 276 seats (Attachment B - Sublease Agreement Between Ferry Landing Associates, LLC and Il Fornaio (America) Corporation). Il Fornaio Restaurant is a part of a restaurant chain that owns and operates 20 upscale Italian restaurants mostly on the west coast of the United States. Create Restaurants, the new ownership entity, has purchased the entire 20 restaurant chain, including the Ferry Landing location.

In conjunction with its ownership interest, Create Restaurants converted the Il Fornaio (America) Corporation entity into a limited liability company of the same name - Il Fornaio (America), LLC. If the District grants its consent, Il Fornaio (America), LLC would become the sublessee.

Ferry Landing provided its approval, as a District tenant, to the Assignment and believes Create Restaurants to be qualified to own Il Fornaio Restaurant and act as sublessee under the Lease (Attachment C - Ferry Landing Consent to Assignment of Sublease). Create Restaurants plans, develops, and operates a broad range of restaurants encompassing Japanese, Western, Chinese, and ethnic cuisines, including buffet style restaurants and bulk operation food courts. Create Restaurants currently operates 31 restaurants in Singapore and other parts of Asia.

Since entering the US market in 2016, Create Restaurants operates three restaurants in New York (Sushi Nao, Soba Totto, and Aburiya Kinnosuke). Create Restaurants is actively seeking opportunities to further expand their footprint in the US. Create Restaurants holds over \$9 million in total assets and earned \$1.3 million in net sales for 2018. Given Create Restaurant's portfolio and experience, staff believes that the Assignment is consistent with BPC 355.

For long term subleases (more than five years), BPC 355 states that they must meet the following conditions as a requirement to consent of the sublease:

- Sublease must meet current District lease requirements; and
- Provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises; and
- Provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail.

Based on the information provided, staff has determined the Assignment is consistent with BPC 355. Staff recommends that the Board adopt a Resolution consenting to the Assignment of the Sublease between Ferry Landing and Create Restaurants Holdings, Inc. and Create Restaurants NY Inc.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet and attachments, as presented to it, and approves them as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because the action will not have a potential to result in a direct or indirect physical change in the environment and is therefore not subject to CEQA. The Board's consent to an assignment of ownership interest will not affect operations of Il Fornaio Restaurant. No further action under CEQA is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act, which allow the Board to pass resolutions and do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Location Map

Attachment B: Sublease Agreement Between Ferry Landing Associates, LLC and Il Fornaio (America) Corporation

Attachment C: Ferry Landing Consent to Assignment of Sublease