

File No. 096679

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 12/2/09

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
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OTHER

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Completed by: Gail Johnson

Date 11/25/09

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 Amendment to the John Stewart Company Sublease

2
3 **Resolution Approving and Authorizing the Execution of a Fifth Amendment to Sublease**
4 **with the John Stewart Company to Discontinue Earthquake and Flood Insurance.**

5
6 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island
7 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States
8 of America; and,

9 WHEREAS, The Base was selected for closure and disposition by the Base
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
11 subsequent amendments; and,

12 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
16 conversion of the Base for the public interest, convenience, welfare and common benefit of
17 the inhabitants of the City and County of San Francisco; and,

18 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
19 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter
20 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority
21 as a redevelopment agency under California redevelopment law with authority over the Base
22 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the
23 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
24 administer the public trust for commerce, navigation and fisheries as to such property; and,

1 WHEREAS, The Board of Supervisors approved the designation of the Authority as a
2 redevelopment agency for Treasure Island in 1997; and,

3 WHEREAS, On March 17, 1999, The John Stewart Company ("JSCO") and the
4 Authority entered into a Sublease, Development, Marketing and Property Management
5 Agreement (the "Sublease") for the development, marketing and property management of up
6 to 766 housing units, as shown on Exhibits B-1 and B-2 of the Sublease (the "Premises") at
7 former Naval Station, Treasure Island, in San Francisco, California; and,


8 WHEREAS, The parties have entered into the following amendments to the Sublease
9 with the approval of the Authority's Board of Directors and the Board of Supervisors: a First
10 Amendment dated August 15, 2000, to amend the Premises; a Second Amendment dated
11 June 12, 2003, to amend the Phase 1 and 2 Premises and the Rent Schedule; a Third
12 Amendment dated March 22, 2006, to extend the term of the Sublease on a month-to-month
13 basis not to exceed the effective date of a disposition and development agreement between
14 the Authority and a master developer for Treasure Island and Yerba Buena Island; and a
15 Fourth Amendment dated August 8, 2006, to increase residential utilities rates; and,

16 WHEREAS, Under Section 25.1 (e) of the Sublease, JSCO is required to provide
17 Earthquake and Flood Insurance coverage totaling \$8,000,000 after a \$1,000,000 deductible
18 per occurrence costing JSCO approximately \$276,000 annually; and,

19 WHEREAS, The Risk Manager for the City and County of San Francisco has reviewed
20 the requirement that JSCO secure Earthquake and Flood Insurance for the Sublease
21 Premises and concluded the current coverage would not be of benefit to the Authority given
22 both the limited level of coverage and requirements under the policy to replace the structures
23 that may sustain major damage, which may not be allowed due to the existence of the
24 Tidelands Trust; now, therefore be it

1 RESOLVED, That the Board of Supervisors hereby approves and authorizes the
2 Director of Island Operations of the Authority to execute and enter into the Fifth Amendment
3 to the Sublease, Development, Marketing and Property Management Agreement between the
4 Authority and JSCO, in substantially the form filed with the Clerk of the Board of Supervisors
5 in File No. 090679, and any additions, amendments or other modifications to such
6 Fifth Amendment (including, without limitation, its exhibits) that the Director of Island
7 Operations of the Authority or her designee determines, in consultation with the City Attorney,
8 are in the best interests of the Authority and do not otherwise materially increase the
9 obligations or liabilities of the Authority, and are necessary or advisable to effectuate the
10 purpose and intent of this resolution.

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12 RECOMMENDED:

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14 _____
15 Mirian Saez, Director of Island Operations
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Treasure Island Development Authority

CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY
ONE AVENUE OF THE PALMS,
2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



MIRIAN SAEZ
DIRECTOR OF ISLAND OPERATIONS

File 090679

October 22, 2009


Ms. Angela Calvillo, Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton Goodlett Place
Room 224
San Francisco, CA 94102

RECEIVED
CITY OF SAN FRANCISCO
2009 OCT 22 PM 4: 27
BY SR

Dear Ms. Calvillo;

Please find the attached resolution and supporting materials requesting authorization of the Fifth Amendment to the Sublease with the John Stewart Company to Discontinue Earthquake and Flood Insurance. The Treasure Island Development Authority's by-laws require Board of Supervisors approval of any agreement entered into by the Authority for a term longer than 10 years or with anticipated revenues of \$1 million or more. The Sublease with the John Stewart Company was executed in March 1999 and the Authority has received in excess of \$1 million of revenues under the Sublease.

The Authority requests that these items be introduced at the Board of Supervisors and calendared for a committee hearing at your office's earliest opportunity. Please contact me directly at (415) 274-0669 with any questions regarding the introduction of this item.

Sincerely,

Mirian Saez
Director of Island Operations

**Treasure Island Development Authority
City and County of San Francisco**

Resolution Approving and Authorizing the Execution of a Fifth Amendment to Sublease with the John Stewart Company to Discontinue Earthquake and Flood Insurance.

SUMMARY OF PROPOSED ACTION

This item seeks approval to amend the Sublease, Development, Marketing and Property Management Agreement between the Treasure Island Development Authority and the John Stewart Company, Inc., a California corporation, to delete the requirement for Earthquake and Flood Insurance.

BACKGROUND

On March 17, 1999, the John Stewart Company ("JSCO") and the Treasure Island Development Authority (the "Authority") entered into a Sublease, Development, Marketing and Property Management Agreement (the "Sublease") for the development, marketing and property management of up to 766 housing units on Treasure Island and Yerba Buena Island (the "Premises"). The Sublease was first amended on August 15, 2000, to amend the Premises. On June 12, 2003, a Second Amendment to Sublease was executed to amend the Phase 1 and 2 Premises and the Rent Schedule. A Third Amendment to Sublease was executed on March 22, 2006, to extend the term of the Sublease on a month-to-month basis not to exceed the effective date of a disposition and development agreement between the Authority and a master developer for Treasure Island and Yerba Buena Island. On August 8, 2006, the Parties entered into the Fourth Amendment to increase residential utilities rates.

Under Sublease Section 25.1 (e), JSCO is required to provide Earthquake and Flood Insurance coverage totaling \$8,000,000 after a \$1,000,000 deductible per occurrence. The cost of this coverage is approximately \$276,000 annually. The Risk Manager for the City and County of San Francisco has reviewed the requirement that JSCO secure Earthquake and Flood Insurance for the Sublease Premises and concluded the current coverage would not be of benefit to the Authority given both the limited level of coverage and requirements under the policy to replace the structures that may sustain major damage. Given that the limit on the combined policies is only \$8,000,000 and the current values are in the \$54,000,000 range for 106 structures, recovery of a claim under the policy would have a small impact in the event of a catastrophic Earthquake or Flood loss. In addition, because the Premises are subject to the Tidelands Trust, there are significant limits on the ability to rebuild and replace the structures as required under the policy. Given these circumstances, continuation of the Earthquake and Flood Insurance coverage is not a cost-effective use of funds. All other required forms of coverage including Property Insurance and Commercial General Liability Insurance will not be affected by discontinuation of Earthquake and Flood Insurance.

RECOMMENDATION

Approve the Fifth Amendment to the Sublease, Development, Marketing and Property Management Agreement between the Authority and the John Stewart Company, Inc., a California corporation, to delete Section 25.1(e) (Earthquake and Flood Insurance) from the terms and conditions of the Sublease.

Mirian Saez, Director of Island Operations

**FIFTH AMENDMENT TO SUBLEASE, DEVELOPMENT, MARKETING AND
PROPERTY MANAGEMENT AGREEMENT**

THIS FIFTH AMENDMENT TO SUBLEASE, DEVELOPMENT, MARKETING AND PROPERTY MANAGEMENT AGREEMENT (this "Fifth Amendment"), dated for reference purposes only as of January 1, 2010, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Authority"), and the JOHN STEWART COMPANY, a California corporation ("Subtenant").

RECITALS

A. Sublandlord and Subtenant entered into that certain Sublease dated for reference purposes as of March 17, 1999 (the "Original Sublease"), for the development, marketing and property management of up to 766 housing units, as shown on Exhibits B-1 and B-2 of the Original Sublease (the "Premises") at former Naval Station, Treasure Island, in San Francisco, California. The Original Sublease was first amended on August 15, 2000, to amend the Premises. The Parties entered into the Second Amendment on June 12, 2003 to amend the Phase 1 Premises and the Phase 2 Premises, respectively, and amend the Rent Schedule. On March 22, 2006, the Parties entered into a Third Amendment to extend the term of the Sublease on a month-to-month basis not to exceed the effective date of a disposition and development agreement between the Authority and a master developer for Treasure and Yerba Buena Islands. The Parties entered into the Fourth Amendment on August 8, 2006 to increase residential utilities rates. The Original Sublease as amended by the First, Second, Third and Fourth Amendments are collectively referred to as the "Sublease." All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Sublease.

B. Sublandlord and Subtenant desire to amend the Sublease to remove the requirement of providing Earthquake and Flood Insurance for the Premises.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Sublandlord and Subtenant hereby amend the Sublease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Effective Date.** The effective date of this Fifth Amendment shall be January 1, 2010 (the "Effective Date").
3. **Earthquake and Flood Insurance.** As of the Effective Date, Sublease Section 25.1(e) (Earthquake and Flood Insurance) is hereby deleted in its entirety.
4. **Counterparts.** This Fifth Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof.
5. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Sublease shall remain in full force and effect.

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Fifth Amendment to Sublease at San Francisco, California, as of the date first above written.

SUBLANDLORD:

TREASURE ISLAND DEVELOPMENT AUTHORITY

By: _____
Mirian Saez
Director of Island Operations

SUBTENANT:

JOHN STEWART COMPANY, INC.
a California corporation

By: _____

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Amendment Prepared By: Richard A. Rovetti, Deputy Director of Real Estate _____
(initial)

