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APPROVED AS TO FORM AND LEGALITY:

BY: Kiran Jain
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2014- 002

A RESOLUTION RATIFYING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ASSUMPTION, REAFFIRMATION AND RATIFICATION OF GUARANTEES AND INDEMNITIES REQUIRED FOR TAX CREDIT FINANCING FOR THE FOX THEATER PROJECT INCLUDING:

- **A GUARANTEE BY AGENCY IN FAVOR OF THE TAX CREDIT INVESTMENT ENTITIES RELATING TO THE HISTORIC TAX CREDITS AND NEW MARKETS TAX CREDITS IN EVENT THE TAX CREDITS ARE NOT AWARDED OR ARE RECAPTURED BY THE INTERNAL REVENUE SERVICE AS A RESULT OF NON-COMPLIANCE WITH IRS TAX CREDIT REQUIREMENTS BY FOR OR ITS AFFILIATED ENTITIES;**

WHEREAS, on July 19, 2005, the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") authorized the Agency Administrator to enter into a Disposition and Development Agreement ("DDA") with Oakland Renaissance NMTC, Inc. ("ORNMTC"), a California non-profit corporation, for the renovation for the Fox Theater Project (the "Project") at the real property identified in Exhibit A; and

WHEREAS, on July 18, 2006, the Redevelopment Agency authorized the Agency Administrator to amend the DDA and permit the DDA to be assigned to Fox Oakland Theater, Inc. ("FOT") a California non-profit corporation; and

WHEREAS, the Redevelopment Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project, it would need a variety of sources of financing, including: state and federal grants, private fund raising, New Market Tax Credits (NMTC), Historic Tax Credits (HTC), and financing from the Agency; and

WHEREAS, the Project was ultimately financed with a combination of sources of funds including NMTCs and HTCs; and

WHEREAS, as a condition to obtaining the NMTC and HTC investments in the Project, the Redevelopment Agency was required to provide certain guarantees and indemnities to the investor, Bank of America Development Corporation; and

WHEREAS, on October 31, 2006, the Agency authorized the Agency Administrator to further amend the DDA and enter into agreements with tax credit financing entities to provide the following guarantees:

1. A guarantee that the Fox theater project will be completed in accordance with the requirements of the National Park Service certification for historic property status and for eligibility for HTCs;
2. A guarantee against loss of tax credits due to a breach by FOT entities of the applicable tax credit rules and regulations;
3. A guarantee that the Fox Theater Project has funds sufficient to provide the following:
 - (a) replacement reserves,
 - (b) recurring expenses,
 - (c) debt service payments,
 - (d) preferred return for tax credit financing, and
 - (e) reserve for tax credit buyout;
4. An indemnity for protecting the tax credit financiers, and the commercial lending entity from existing and future, known or unknown losses from environmental contamination; and

WHEREAS, the Redevelopment Agency, consistent with the approved Amended DDA, entered into certain guaranty agreements for the benefit of the NMTC and HTC investors; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") is the successor to all rights and obligations of the Redevelopment Agency pursuant to the provisions of Health and Safety Code Section 34173; and

WHEREAS, Banc of America Community Development Corporation has requested that ORSA enter into two Assumption, Reaffirmation and Ratification of Indemnity Agreements("Reaffirmation Agreements") for the 2006 and 2009 NMTC Transactions for the Fox Theater, reaffirming that ORSA is the successor to the Redevelopment Agency and is obligated under the guarantees previously provided by the Redevelopment Agency; and

WHEREAS, ORSA has already assumed the guaranty obligations and has listed the guaranty obligations on the Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, Since the Fox Project was completed over five years ago, and no changes to the physical project would be triggered by the this legislation, there will be no effect on the environment by this new action and it is therefore exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), which states that "CEQA applies

only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA", and

WHEREAS, the Reaffirmation Agreements do not change or increase ORSA's obligations but rather ratify that ORSA is obligated under the guaranty agreements; now, therefore, be it

RESOLVED: That ORSA hereby authorizes the Agency Administrator or his designee to negotiate and execute appropriate agreements with the tax credit financing entities providing tax credit financing the Fox Theater Project, including the Assumption, Reaffirmation and Ratification of Indemnity for the 2006 and 2009 NMTC transactions; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by ORSA Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA: APR 22 2014, 2014

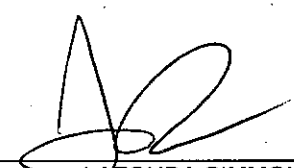
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and CHAIRPERSON KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
Secretary of the Oakland
Redevelopment Successor Agency