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OAKLAND

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APPROVED AS TO FORM AND LEGALITY:

BY: RFN
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2016- 008

A RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO CONSENT TO THE ASSIGNMENT OF THE \$1.4 MILLION LOAN AGREEMENT BETWEEN THE AGENCY AND FOX THEATER MASTER TENANT, LLC TO ASSIGN THE \$1.4 MILLION LOAN TO FOX OAKLAND THEATER, INC. AND SUBORDINATE THE LOAN TO A NEW \$4,600,000 LOAN

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc. ("FOT") to ground lease and undertake the restoration of the Fox Theater and to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required creation of several other entities to employ New Markets and Historic Tax Credits in the project, including Fox Theater Manager, Inc., Fox Theater Landlord LLC and Fox Theater Master Tenant LLC; and

WHEREAS, in December 2006 Fox Theater Master Tenant LLC entered into a ten year lease agreement with GASS Entertainment, LLC ("GASS") for the purpose of operating the Fox Theater as a live performing arts venue; and

WHEREAS, a portion of the wrap around buildings in the Fox Theater, on 18th Street and Telegraph Avenue, was set aside to be a restaurant (the "Restaurant Space"); and

WHEREAS, in November 2009 Fox Theater Master Tenant LLC entered into a \$1.4 million loan to cover tenant improvements in the "Restaurant Space"; and

WHEREAS, in October 2010 Fox Theater Master Tenant LLC entered into a five year lease agreement with BMZ Enterprises, LLC ("Rudy's") for the purpose of operating a restaurant in a portion of the Restaurant Space; and

WHEREAS, in May 2011 Fox Theater Master Tenant LLC amended the lease agreement with GASS for the purpose of adding the VIP Space, a portion of the Restaurant Space, to the lease; and

WHEREAS, the project never had funds to complete tenant improvements for the Fox Theater's the "Restaurant Space" on 18th and Telegraph of which the landlord's (Fox Theater Master Tenant LLC) share was estimated to be approximately \$1.4 million; and

WHEREAS, the \$1.4 million loan and other funds from the Fox Theater project were used to fund the basic tenant improvements and to give tenant improvement allowances to GASS and Rudy's for the Restaurant Space; and

WHEREAS, a portion of the rent from the Restaurant Space (i.e., everything over \$1.50/sq. ft./month, along with the repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space) is being used by Fox Theater Master Tenant LLC to repay the \$1.4 million loan; and

WHEREAS, Fox Theater Master Tenant LLC is no longer required to exist for the tax credit financing because the tax credit compliance periods are over; and

WHEREAS, Fox Oakland Theater wishes to take over the project, assume the \$1.4 million loan from Fox Theater Master Tenant LLC and eliminate the other development entities including Fox Theater Master Tenant LLC; and

WHEREAS, assignment of the \$1.4 million loan is required for these actions to be concluded; and

WHEREAS, Fox Oakland Theater will provide the same security for the \$1.4 million loan: a pledge of the funds from a portion of the rent from the Restaurant Space and repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space; and

WHEREAS, financing of the Fox Theater Project included a \$6,500,000 construction loan that has a ten year term with an approximately \$4,600,000 balloon payment due in December of 2016; and

WHEREAS, refinancing of the \$6,500,000 construction loan, which would have a principal amount of \$4,600,000 at the time of the refinancing, may require subordination of the \$1,400,000 Agency loan; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173;

Now, therefore, be it

RESOLVED: That ORSA hereby finds and determines that assignment of the \$1,400,000 Agency loan to Fox Oakland Theater and the subordination of this loan to a new construction loan will reduce several contingent liabilities related to loan and tax credit guaranties; eliminate the chance of future loan repayments to the lender under the guaranty; and assist with the repayment of the Agency loan; and be it further

RESOLVED: That ORSA hereby consents to the assignment of the loan made to Fox Theater Master Tenant LLC to Fox Oakland Theater in the amount of the \$1,400,000 under the terms and conditions set forth in this resolution; and be it further

RESOLVED: That ORSA hereby approves the subordination of this \$1,400,000 Agency loan to a new loan of not more than \$4,600,000; and be it further

RESOLVED: That the ORSA Administrator is authorized to negotiate, approve, and execute any loan documents to permit the assignment of the \$1,400,000 loan to Fox Oakland Theater, Inc. and the subordination of this loan to a lender chosen to refinance the loan with a principal amount of \$4,600,000; 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 ORSA 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 ORSA's decision is based is the Economic and Workforce Development Department, Project Implementation, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA.

OCT 04 2016

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____,
2016

PASSED BY THE FOLLOWING VOTE:

AYES- [REDACTED] CAMPBELL WASHINGTON, [REDACTED], GUILLEN, KALB,
KAPLAN, REID, and [REDACTED], -5

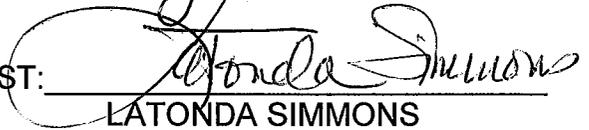
NOES- 0

ABSENT- Gatto -1

ABSTENTION- 0

Excused - Brooks, Gibson McElhenny

ATTEST:


LATONDA SIMMONS

Secretary of the Oakland
Redevelopment Successor Agency