



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO:

(1) ACCEPT FROM THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY (“ORSA”) BY GRANT DEED, A FEE SIMPLE INTEREST IN THE FOX THEATER, PURSUANT TO THE LONG-RANGE PROPERTY MANAGEMENT PLAN;

(2) EXECUTE AN ASSIGNMENT OF THE AMENDED GROUND LEASE FOR THE FOX THEATER WITH ORSA AS ASSIGNOR AND CURRENT GROUND LESSOR, THE CITY AS ASSIGNEE AND NEW GROUND LESSOR, AND THE FOX OAKLAND THEATER, INC. (“FOT”) AS GROUND LESSEE, FOR A TERM OF 16 YEARS; AND

(3) EXECUTE A LEASEBACK AGREEMENT FOR THE FOX THEATER BETWEEN FOT AS LESSOR AND THE CITY AS LESSEE FOR A TERM OF 16 YEARS AT A RATE OF \$247,500 PER YEAR, TOTALING APPROXIMATELY \$3.96 MILLION, WITH A CITY OPTION TO PURCHASE THE IMPROVEMENTS FOR A NOMINAL AMOUNT OF ONE DOLLAR UPON FOT’S SATISFACTION OF A PLEDGE TO PAY ORSA THE AMOUNT OF \$3.96 MILLION, PAYABLE IN ANNUAL INSTALLMENTS OF \$247,500 FOR A TERM OF 16 YEARS.

WHEREAS, the Fox Theater is an historic three-story building located at 1807 Telegraph Avenue in the Uptown District of Downtown Oakland and is listed on the National Register of Historic Places; and

WHEREAS, on July 19, 2005, the Board of the Oakland Redevelopment Agency (“Agency”) and City Council approved resolutions authorizing a Disposition and Development Agreement (“DDA”) between the Agency and Oakland Renaissance NMTC, Inc. (“ORNMTIC”), a non-profit corporation, for the renovation of the Fox Theater, pursuant to Agency Resolution No. 2006-0046 C.M.S. and City Resolution No. 79382 C.M.S. adopted July 18, 2006. The DDA provided for a 60-year Ground Lease, a loan of \$13 million, and other grants and funding from the Agency; and

WHEREAS, in 2006, the City and the Agency created a nonprofit affiliate, Fox Oakland Theater, Inc. (“FOT”) to facilitate renovation of the historic Fox Theater, and manage its rehabilitation pursuant to the terms of the DDA and 60-year ground lease (the “Ground Lease”); and

WHEREAS, the Agency provided \$46.4 million in deferred residual receipt loans (the “Loans”) to FOT to finance the renovation, which FOT has been unable to repay due to insufficient cash flow, with the exception of \$661,588 in debt service payments made by FOT on a \$1.4 million loan issued to Fox Theater Master Tenant, LLC in 2009 and assigned to FOT in 2017; and

WHEREAS, the Agency was dissolved in 2012, and by operation of law the Agency’s ownership of the Fox Theater real property and the Loans were transferred to the Oakland Redevelopment Successor Agency (“ORSA”), while FOT retained title to the Fox Theater improvements (the “Improvements”); and

WHEREAS, under the terms of the existing Ground Lease, upon termination of the Ground Lease, the Improvements automatically vest in ORSA as the owner of the Fox Theater real property; and

WHEREAS, ORSA’s Long Range Property Management Plan, approved by the California Department of Finance (“LRPMP”), provides that ORSA shall convey fee simple title to the Fox Theater to the City upon the satisfaction or termination of all enforceable obligations under the DDA and Ground Lease; and

WHEREAS, since 2017, the City has sought to transfer the Fox Theater real property from ORSA to the City consistent with the approved LRPMP; and

WHEREAS, the large unpaid balances of the Loans owed by FOT to ORSA, which total \$73.6 million as of June 2020 including principal and accrued unpaid interest, make it difficult to transfer the Fox Theater real property pursuant to the LRPMP without first restructuring or terminating the Loans as FOT is not able to generate sufficient cash flow from the Fox Theater property to repay the Loans and FOT has no other source of funds for repayment; and

WHEREAS, this Ordinance is being considered as part of a series of transactions to facilitate the transfer of the Fox Theater to the City pursuant to the LRPMP for the benefit of the City, FOT, ORSA, and the taxing entities; and

WHEREAS, in connection with the proposed transactions, ORSA will need to approve amendment of the DDA, amendment and assignment of the Ground Lease, and termination of the Loans, and will need to obtain the approval of the Alameda Countywide Oversight Board (“Oversight Board”) for such transactions pursuant to Section 34181(e) of the Health and Safety Code, based upon an Oversight Board finding that the transactions will reduce liabilities and increase revenues for the taxing entities; and

WHEREAS, as part of the contemplated transactions, the City would continue to lease the Fox Theater property to FOT, pursuant to the assignment and amendment of the Ground Lease; and

WHEREAS, as part of the contemplated transactions, the City would lease back all of FOT's interests in the Fox Theater pursuant to the proposed Leaseback Agreement with Option to Purchase, with lease payments by the City to FOT of \$247,500 per year for a period of 16 years;

WHEREAS, as part of the contemplated transactions, the City would also acquire FOT's rights and obligations as sublandlord under the tenant leases, as well as the rights and the obligations under FOT's professional services agreements, upon adoption of separate resolutions being considered concurrently with this Ordinance; and

WHEREAS, the City has published a notice of the time and place of the public hearing for this Ordinance for the acquisition, sale, and lease of property prior to the hearing; and

WHEREAS, pursuant to Government Code Sections 54240 and 54241, a local agency shall approve by ordinance a public leaseback agreement where the lease payments will be used to repay the indebtedness of a financing corporation taken out for construction of improvements, and any public entity leaseback agreements with terms that exceed five years or more are subject to the provisions for referendum applicable to such local agency; and

WHEREAS, pursuant to Government Code Section 54221(b)(2), the Surplus Lands Act exempts transfers to entities identified as transferees under an approved Long Range Property Management Plan, and the City of Oakland is identified in the LRPMP as the recipient of the Fox Theater property following satisfaction of the enforceable obligations; and

WHEREAS, Section 219(6) of the Charter requires that all City acquisitions of real property and all City conveyances or leases of real property for longer than one year be authorized by an ordinance enacted by the City, unless such authority has already been provided to the City Administrator by ordinance as codified in Oakland Municipal Code sections 2.41.020 and 2.41.030; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 2. Contingent upon the effectiveness of an Alameda Countywide Oversight Board resolution approving the proposed transactions, the City Council hereby authorizes: (1) acceptance of a Grant Deed, substantially in the form attached and incorporated herein as **Exhibit A**, from ORSA for a fee simple interest in the Fox Theater property pursuant to the LRPMP; (2) approval of an Amendment and Assignment of the Ground Lease, substantially in the form attached and incorporated herein as **Exhibit B**, for the Fox Theater property from ORSA as current lessor, to the City as new lessor, with FOT as tenant, for a term of 16 years; and (3) execution of

a Leaseback Agreement with Option to Purchase, substantially in the form attached and incorporated herein as **Exhibit C**, by and between FOT as lessor and the City as lessee for all of FOT's interests in the Fox Theater, pursuant to which the City will agree to pay rent to FOT in the amount of \$247,500 per year for a term of 16 years, and which will provide the City with an option to purchase the Fox Theater Improvements for a nominal amount of one dollar upon satisfaction of FOT's pledge of payments to ORSA or the expiration of the lease term.

SECTION 3. Contingent upon the effectiveness of an Alameda Countywide Oversight Board resolution approving the proposed transactions, the City Council authorizes the City Administrator or his or her designee, without returning to Council, to conduct all negotiations, execute and submit all documents, including but not limited to execution of applications, agreements, amendments, modifications, payment requests; transfer of operating reserves; and any related actions which may be necessary to effectuate the above-referenced agreements and transactions.

SECTION 4. That prior to execution, all agreements shall be reviewed and approved as to form and legality by the City Attorney, and executed copies shall be filed with the City Clerk.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 6. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland, California

Date of Attestation: _____

Exhibit A

Form of Grant Deed
(Fox Theater located at 1807 Telegraph Ave)

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

The City of Oakland
Economic and Workforce Development
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Director, Economic and Workforce
Development

EXEMPT FROM RECORDING FEES
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

(Fox Theater)

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Oakland Redevelopment Successor Agency (the “**Grantor**” or “**Successor Agency**”), acting to carry out the disposition of certain real property in accordance with the Long Range Property Management Plan adopted by Grantor pursuant to California Health and Safety Code Section 34191.5, hereby grants to the City of Oakland, a municipal corporation (the “**Grantee**” or “**City**”), the real property (the “**Property**”) located at 1807 Telegraph Avenue in the City of Oakland, Alameda County, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

1. The Property was previously owned by the former Redevelopment Agency of the City of Oakland, a public body, corporate and politic (the “**Redevelopment Agency**”).

2. Pursuant to Assembly Bill x1 26 (Chapter 5, Statutes of 2011-12 First Ex. Session), enacted in late June 2011, as amended by Assembly Bill 1484 (Chapter 26, Statutes of 2012), enacted on June 27, 2012, the Redevelopment Agency was dissolved as of February 1, 2012, and the Successor Agency succeeded to the interests of the Redevelopment Agency.

3. In accordance with California Health and Safety Code Section 34191.5, the Successor Agency prepared a Long-Range Property Management Plan (“**LRPMP**”) that addresses the disposition and use of real property formerly owned by the Redevelopment Agency, including the disposition of the Property by the Successor Agency to the City upon satisfaction of certain obligations. The LRPMP was approved by the Oversight Board for the Successor Agency, and the State of California Department of Finance (“**DOF**”) subsequently approved the LRPMP by letter to the Successor Agency dated _____, 20___. This Grant Deed has been prepared and executed to implement the LRPMP as approved by the Oversight Board and DOF.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by its duly authorized officer as of _____, 202__.

GRANTOR:

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

By: _____

Name: _____

Title: _____

Attest:

By: _____

Approved As To Form:

By: _____
Successor Agency Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____20__ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

PROPERTY

(Attach legal description.)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 202__, from the Oakland Redevelopment Successor Agency (“Successor Agency”) to the City of Oakland, a municipal corporation (“City’), is hereby accepted on behalf of the City by its _____ pursuant to authority conferred by Ordinance No. _____, adopted by the City Council on _____, 202__, and that the City consents to recordation of the Grant Deed by its duly authorized officer.

Dated: _____, 202__

CITY OF OAKLAND, A MUNICIPAL CORPORATION

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____, 20__ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit B

Form of Amendment and Assignment of the Ground Lease
(Fox Theater located at 1807 Telegraph Ave)

AMENDMENT AND ASSIGNMENT OF GROUND LEASE

THIS AMENDMENT AND ASSIGNMENT OF GROUND LEASE (this “**Agreement**”) is executed effective as of _____, 202__, (the “**Effective Date**”), by and among the OAKLAND REDEVELOPMENT SUCCESSOR AGENCY, successor agency to the Redevelopment Agency of the City of Oakland (“**ORSA**”), THE CITY OF OAKLAND, a municipal corporation (“**City**”), and FOX OAKLAND THEATER, INC., a California nonprofit public benefit corporation (“**FOT**” or “**Tenant**”).

RECITALS

A. ORSA desires to transfer the real property underlying the historic Fox Theater at 1807 Telegraph Avenue in the City of Oakland (the “**Fox Theater**”) as more particularly described in Exhibit A attached hereto (the “**Property**”) to the City in accordance with ORSA’s Long Range Property Management Plan (“**LRPMP**”) approved by the Department of Finance. As described in the LRPMP, the Property has been retained by ORSA to satisfy enforceable obligations under (i) that certain Ground Lease for the Property dated September 20, 2006 and executed by and between the Redevelopment Agency of the City of Oakland (“**Redevelopment Agency**”) as Landlord and FOT as Tenant (as subsequently amended, the “**Ground Lease**”), and (ii) that certain Amended and Restated Disposition and Development Agreement dated December 15, 2006 and executed by and between the Redevelopment Agency and FOT (as subsequently amended, the “**DDA**”).

B. The parties are entering into this Agreement to reduce existing liabilities of ORSA, increase net revenues to the taxing entities, and facilitate transfer of the Property to the City pursuant to the LRPMP. The proposed transaction is anticipated to result in an increase in revenue to ORSA thereby reducing ORSA’s need for funding from the Redevelopment Property Tax Trust Fund. As part of the transaction, FOT and ORSA will execute a Second Amendment to the DDA to provide for termination of the DDA upon the transfer of the Property to the City, the assignment of ORSA’s interest as landlord under the Ground Lease to the City, and ORSA’s cancellation of the existing Redevelopment Agency loans related to the Property in exchange for the execution and delivery of a Pledge Agreement requiring FOT to pay to ORSA \$247,500 per year for a 16-year period, and FOT’s payment to ORSA of approximately \$4.4 million in current operating and replacement reserves. As part of the transaction, the City will manage the Fox Theater and lease back the building improvements owned by FOT and the Property under a Lease Back Agreement with Option to Purchase pursuant to which the City will be obligated to pay rent to FOT in amount of \$247,500 per year for 16 years, and will have an option to acquire title to the Fox Theater improvements when FOT’s payment obligations under the Pledge Agreement are satisfied.

C. To implement the foregoing, the parties desire to amend the Ground Lease and assign ORSA’s interest as Landlord thereunder to the City.

AGREEMENT

In consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ORSA, City and FOT agree as follows.

1. Definitions. Capitalized terms used herein without definition shall have the respective meanings specified in the Glossary of Defined Terms set forth in Exhibit B of the Ground Lease, or as defined in the DDA.

2. Amendment of Ground Lease.

A. Section 3 of the Ground Lease is hereby amended to read as follows:

3. TERM.

3.1 Term. The term of this Lease (“**Term**”) shall commence on the Lease Effective Date, and unless terminated sooner pursuant to Section 3.2, shall continue until 11:59 p.m. on the date that is the sixteenth (16th) anniversary of the Effective Date of that certain Amendment and Assignment of Ground Lease executed by and among OAKLAND REDEVELOPMENT SUCCESSOR AGENCY, successor agency to the Redevelopment Agency of the City of Oakland (“**ORSA**”), THE CITY OF OAKLAND, a municipal corporation (“**City**”), and FOX OAKLAND THEATER, INC., a California nonprofit public benefit corporation (“**FOT**”) (the “**Amendment and Assignment Agreement**”).

3.2 Termination of Lease. This Lease shall terminate on the earliest to occur of the following events (the “**Termination Date**”):

- (a) The expiration date of the Term;
- (b) The occurrence of any event specified in this Lease allowing Landlord or Tenant to terminate this Lease (subject to any notice and cure periods);
- (c) At Landlord’s option, upon the occurrence of any Event of Default under the DDA;
- (d) A date mutually agreed upon by Landlord and Tenant; and
- (e) Upon City’s exercise of its purchase option pursuant to that certain Leaseback Agreement with Option to Purchase executed by and between FOT and the City.

B. Section 5.2 of the Ground Lease is hereby amended to read as follows:

5.2 Title to Improvements and Personal Property. All existing improvements and personal property located in, on or at the Property or otherwise constituting part of the Property shall at all times during the Term of this Lease be leased to, and shall belong to, Tenant. Notwithstanding any transfer of the fee simple title interest by Landlord to any subsequent owner during the Term, Tenant shall at all times during the Term have title to

all tenant improvements and assets created as a result of qualified rehabilitation expenditures for Historic Tax Credit purposes throughout the Term of the Lease. Landlord (or subsequent Property owner) shall have title to the foregoing tenant improvements and assets after the Term. All the benefits and burdens of ownership of the foregoing shall be and remain in Tenant during the Term and shall be and remain in Landlord (or subsequent Property owner) after the Term.

C. Section 6 of the Ground Lease is hereby amended to read as follows:

6. RENT.

6.1 Capitalized Rent. Tenant shall pay Landlord, in lawful money of the United States of America, rent for the Term of this Lease in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000) (the "**Capitalized Rent**"). Tenant shall have no right to any rebate or reimbursement of the Capitalized Rent due to a Casualty, a Taking or the early termination of this Lease. The parties acknowledge that Tenant's obligation to pay the Capitalized Rent to Landlord has been satisfied as of the Effective Date of the Amendment and Assignment Agreement and shall be deemed satisfied notwithstanding any cancellation or forgiveness of that certain Promissory Note in amount of \$6,500,000 entered into between Tenant as Borrower and the Redevelopment Agency as Lender.

D. Section 37 of the Ground Lease is amended to read as follows:

37. NOTICES. All notices and other communications under this Lease shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) when transmitted by telecopier or facsimile device during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and an original is deposited in first class mail within two (2) Business Days thereafter addressed as set forth below; (c) on the first Business Day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or three (3) Business Days following deposit in United States registered or certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth below. Any party may change its address for notices by giving written notice to the other parties in the manner set forth above.

Notice to Landlord:

City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, California 94612
Attn.: _____
Tel. No.: (510) 238-6906
Fax. No.: (510) 238-3691

and Economic & Workforce Development Agency
City of Oakland
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Director of Economic & Workforce Development
Tel. No.: (510) 238-
Fax No.: (510) 238-3961

and Oakland City Attorney's Office
City of Oakland
One Frank H. Ogawa Plaza
Oakland, California 94612
Attention: Real Estate Unit
Tel. No.: (510) 238-
Fax. No.: (510) 238-6500

Notice to Tenant: Fox Oakland Theater, Inc.
Attn: Secretary of Fox Oakland Theater, Inc.
c/o Economic & Workforce Development
City of Oakland
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, California 94612

The addresses set out above may be changed from time to time by written notice in compliance with this section.

5. Assignment and Assumption of Landlord's Interest under the Ground Lease.

As of the Effective Date, ORSA (as successor in interest to the Redevelopment Agency of the City of Oakland) hereby assigns its rights and obligations as Landlord in and under the Ground Lease to the City. In accordance with Section 17 of the Ground Lease, the City accepts such assignment, assumes ORSA's rights and obligations with respect to the Ground Lease, and releases ORSA from any further obligations in connection with the Ground Lease as of the Effective Date.

6. No Event of Default.

Notwithstanding anything to the contrary in the Ground Lease, Tenant's execution of this Agreement and the completion of any of the transactions referenced in the Recitals of this Agreement shall not constitute a Tenant Default under the terms of the Ground Lease nor an Event of Default under the DDA.

7. Recording. ORSA, City and FOT hereby consent to the recording of this document with the County Recorder of the County of Alameda upon request by ORSA, City, or FOT.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, ORSA, City, and FOT have caused their duly authorized representatives to execute this Amendment and Assignment of Ground Lease as of the Effective Date.

CITY OF OAKLAND:

CITY OF OAKLAND, a municipal corporation

By: _____

Name: _____
City Administrator

APPROVED AS TO FORM AND LEGALITY:

Barbara Parker, City Attorney

By: _____

Deputy City Attorney

**OAKLAND REDEVELOPMENT
SUCCESSOR AGENCY:**

Oakland Redevelopment Successor Agency,
a successor agency to the Redevelopment
Agency of the City of Oakland

By: _____

Name: _____
Agency Executive Director

APPROVED AS TO FORM AND LEGALITY:

By: _____

Agency Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE.

TENANT:

FOX OAKLAND THEATER, INC.
a California non-profit public benefit
corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Exhibit C

Form of Leaseback Agreement with Option to Purchase
(Fox Theater located at 1807 Telegraph Ave)

LEASE BACK AGREEMENT WITH OPTION TO PURCHASE

This Lease Back Agreement with Option to Purchase (this “**Agreement**” or this “**Lease**”) is entered into effective as of _____, 202__ (“**Effective Date**”) by and between Fox Oakland Theater, Inc., a California nonprofit public benefit corporation (“**Lessor**” or “**FOT**”) and the City of Oakland, a municipal corporation (the “**City**”).

RECITALS

A. Pursuant to that certain Ground Lease dated as of September 20, 2006, by and between the Redevelopment Agency of the City of Oakland (the “**Redevelopment Agency**”) as Landlord and FOT as Tenant, as subsequently amended by that certain Amendment and Assignment of Ground Lease dated as of the date hereof and entered into by and among the Oakland Redevelopment Successor Agency (“**ORSA**”) as Lessor as successor in interest to the Redevelopment Agency, City, and FOT (as so amended, the “**Ground Lease**”), FOT holds a leasehold interest in that certain real property underlying the historic Fox Oakland Theater at 1807 Telegraph Avenue in the City of Oakland (the “**Fox Theater**”) as more particularly described in Exhibit A attached hereto (the “**Real Property**”).

B. Pursuant to the Ground Lease and that certain Amended and Restated Disposition and Development Agreement dated as of December 15, 2006, executed by and between the Redevelopment Agency and FOT (as subsequently amended, the “**DDA**”), Lessor financed, constructed, and holds title to and is owner of existing improvements and assets constructed in and about the Fox Theater (the “**Improvements**”). The Real Property and the Improvements, collectively, are hereafter referred to as the “**Property**.”

C. This Agreement is being entered into to facilitate a transaction relating to the Property to reduce existing liabilities of ORSA, increase net revenues to the taxing entities, and facilitate transfer of the Property to the City pursuant to ORSA’s adopted Long Range Property Management Plan. The transaction is anticipated to result in a net increase in payments by Lessor to ORSA thereby reducing the ORSA’s need for funding from the Redevelopment Property Tax Trust Fund. As part of the transaction, FOT and ORSA have executed an amendment to the DDA to allow for its termination upon transfer of the Property to the City, the assignment of ORSA’s interest as landlord under the Ground Lease to the City, and ORSA’s cancellation of the existing Redevelopment Agency loans related to the Property in exchange for FOT’s execution and delivery of a Pledge Agreement, requiring FOT to make certain payments to ORSA including an annual payment of \$247,500 for a period of 16 years (the “**Pledge Agreement**”). As part of the transaction, pursuant to this Agreement, the City will lease back the Property from FOT and will manage the Fox Theater.

D. City desires to lease, and acquire an exclusive option to purchase, all of Lessor’s interest in the Property upon satisfaction of FOT’s payment obligations under the Pledge Agreement, and Lessor desires to lease the Property to City and provide City with an option to purchase the Property, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are acknowledged, the Parties agree as follows.

ARTICLE I

LESSOR'S REPRESENTATIONS AND WARRANTIES

1.1 Lessor's Representations and Warranties. Lessor represents and warrants to City as follows, and Lessor covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.1 not to be true, Lessor shall give written notice of such fact or condition to City upon such discovery. Lessor acknowledges that City shall rely upon Lessor's representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Lessor is a nonprofit corporation duly organized and in good standing under the laws of the State of California. Lessor has the full right, power and authority to undertake all obligations of Lessor as provided herein, and the execution, performance and delivery of this Agreement by Lessor has been duly authorized by all requisite actions. The signatory for the Lessor has been duly authorized to execute this Agreement on behalf of Lessor. This Agreement constitutes a valid and binding obligation of Lessor, enforceable in accordance with its terms.

(ii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Lessor to perform its obligations under this Agreement.

(iii) No Lessor Bankruptcy. Lessor is not the subject of a bankruptcy or insolvency proceeding.

(iv) Disclosure. Lessor has disclosed to City all material information related to the condition of the Property in Lessor's possession, custody or control. Lessor has delivered to City copies of all contracts and agreements and studies related to the Property in Lessor's possession, custody or control.

ARTICLE II

LEASE OF PROPERTY; TERM; TITLE TO IMPROVEMENTS

2.1 Lease of Property. Lessor hereby leases the Property to City, and City leases the Property from Lessor, for the term and subject to the terms, covenants, agreements, and conditions set forth in this Agreement.

2.2 Term. The term of this Lease ("**Term**") shall commence on _____, 202__ ("**Commencement Date**"), and unless sooner terminated as provided in this Agreement, shall end on the sixteenth (16th) anniversary of the Commencement Date (the "**Termination Date**"). Lessor shall deliver possession of the Property to City on the Commencement Date.

2.3 Early Termination on Satisfaction of Pledge Agreement and Exercise of Option. This Agreement shall terminate upon Lessor's satisfaction of the payment obligations under the terms of the Pledge Agreement and City's exercise of the Option under Article IV.

2.4 Title to Improvements Upon Termination of Agreement. Upon the expiration or earlier termination of this Agreement, City will acquire title to all Improvements, free and clear of all liens and encumbrances created by or arising through or under Lessor.

ARTICLE III

RENT

3.1 Rent. Throughout the Term, the rent payable by City to Lessor (the "**Rent**") shall be Two Hundred Forty Seven Thousand, Five Hundred Dollars (\$247,500) per year. The Lessor and the Lessee have agreed and determined that Rent is not in excess of the total fair rental value of the Property. In making such determination, consideration has been given to the costs of acquisition and financing of the Property, the uses and purposes served by the Property and the benefits therefrom that will accrue to the parties by reason of this Agreement and to the general public by reason of City's use of the Property. All payments shall be paid to Lessor, in lawful money of the United States of America, at Lessor's address for notices under this Lease or to another person or at another place as Lessor may designate by written notice delivered to City pursuant to Section 13.2. Lessor and City understand and intend that the obligation of City to make rent payments hereunder shall constitute a current expense of City and shall not in any way be construed to be a debt of City in contravention of any applicable constitutional or statutory limitations, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of City. Rent paid by City under the terms of this Agreement shall be deemed in consideration for the use of the Property and the Improvements for the year in which rent is paid, and shall be subject to abatement as provided in Section 3.7.

3.2 Due Date; FOT Pledge. City shall pay Rent to Lessor on or before the Commencement Date and annually on or before each anniversary of the Commencement Date during the Term. Lessor pledges to apply all Rent received from City, including any prepaid Rent, toward Lessor's payment obligations under the Pledge Agreement.

3.4 Taxes, Utilities, Additional Rent. In addition to the Rent, City shall be responsible for the payment of all property taxes, assessments, and utilities, owed for the Property, if any. Lessor shall provide City with copies of property tax and utility bills within ten (10) days following Lessor's receipt thereof. City shall make all payments of property taxes, assessments and utilities on or before the due date for such charges and upon request, shall provide the Lessor with evidence of such payment or shall make such payment to Lessor. If City fails to make such payments, following written notice to City, Lessor may make such payments and add the amount paid to any Rent due.

3.5 Right to Contest. City shall have the right to contest the legal validity or amount of any taxes, assessments, or charges for which City is responsible under this Lease, and may institute

such proceedings as City considers necessary. If City contests any such tax, assessment, or charge, City may withhold or defer payment or pay under protest but shall protect Lessor and the Property from any lien by adequate surety bond or other appropriate security.

3.6 Appropriation. City shall take such action as may be necessary to include all Rent and other City payment obligations hereunder in its annual budget and annually to appropriate an amount necessary to make such payments. During the term of this Agreement, upon Lessor's request, City will furnish a copy of City's annual budget upon its adoption.

3.7 Abatement. During any period in which, by reason of material damage or destruction, there is substantial interference with the use and right of possession by City of the Property or any substantial portion thereof, rental payments due hereunder shall be abated. The amount of abatement shall be such that the resulting rental payments represent fair consideration for the use and possession of usable portions of the Property that are not damaged or destroyed. Such abatement shall continue through the period commencing with the date of such damage or destruction and ending with the substantial completion of the work of repair or replacement of the Property or portions thereof. In the event of any such damage or destruction, this Agreement shall continue in full force and effect.

ARTICLE IV

OPTION TO PURCHASE

4.1 Grant of Option. Lessor hereby grants to City an exclusive option (the "**Option**") to purchase the Property, pursuant to this Article IV upon the terms and conditions set forth in this Article IV.

4.2 Exercise of Option. Subject to Section 4.2.1 and provided that City is not in default under this Lease, City may exercise the Option at any time during the Term of this Lease by giving the Lessor written notice of City's intent to exercise the Option ("**Exercise Notice**").

4.2.1 Conditions to Exercise of Option. City may exercise the Option at any time following the satisfaction of all FOT payment obligations under the Pledge Agreement.

4.2.2 City Payment to Lessor for Satisfaction of Pledge Agreement Obligations. At any time during the term of this Agreement, City may make a payment to Lessor equal to the then-outstanding balance of the payments FOT is obligated to pay to ORSA under the Pledge Agreement. Lessor covenants that upon receipt of any such payment from City, Lessor shall promptly remit such funds to ORSA, and shall take all actions necessary to terminate the Pledge Agreement.

4.3 Closing Procedures. Within five (5) business days following City's delivery of the Exercise Notice, City and Lessor shall open escrow for the purchase and sale of the Property at a title company mutually acceptable to City and Lessor. The date for close of escrow for the purchase of the Property ("**Closing Date**") shall be no later than sixty (60) days after the date of the Exercise Notice unless the parties agree to an extension of such date. On the Closing Date,

Lessor will convey the Property to City by Grant Deed pursuant to escrow instructions mutually approved by City and Lessor. In City's discretion, the issuance of an Owner's policy of title insurance in form and from a title company approved by City shall be a condition to Closing. City will pay the cost of the title policy, and will pay all applicable transfer taxes and closing costs.

4.4 Purchase Price. The purchase price ("**Purchase Price**") for the Property shall be One Dollar (\$1.00). The Purchase Price shall be payable in cash at the closing.

4.5 Title Conditions. If the City exercises the Option, title to the Property shall be conveyed to City subject only to such title exceptions as City shall reasonable approve. Notwithstanding anything to the contrary herein, Lessor shall convey title free and clear of all monetary liens and encumbrances. Lessor agrees that during the Term of this Lease, Lessor will not create or permit any lien or encumbrance affecting the Property without the prior written consent of City.

4.6 Condition of Property; Casualty and Condemnation. City agrees that if it exercises the Option, except for title exceptions City reasonably disapproves, City will acquire the Property "AS IS" and "WHERE IS" without any representation or warranty of Lessor, express, or implied as to the nature or condition of title to the Property or its fitness for City's intended use of same. Based on City's rights under this Lease, City acknowledges that City will be familiar with the condition of the Property and will have conducted its own independent inspection, investigation, and analysis of the Property as it deems necessary or appropriate. In the event of a casualty loss or condemnation of all or part of the Property, City may condition the close of escrow upon Lessor's assignment to City of proceeds of insurance and condemnation proceedings.

ARTICLE V

USE OF PROPERTY

5.1 Permitted Use. City shall be permitted to use the Property as an entertainment venue, educational facilities, retail and restaurant uses, and for any other lawful purposes. At all times during the Term of this Lease and at City's sole cost, City shall maintain and keep the Property in good condition, reasonable wear and tear excepted. All expenses related to the improvement, operation and maintenance of the Property during the Term shall be borne by City.

5.2 City Covenants. City shall not do or permit to be done on the Property, nor bring or keep or permit to be brought or kept in the Property, anything (i) which is prohibited by or in conflict with any law, ordinance, or governmental rule; (ii) which is prohibited by the standard form of fire insurance policy; or (iii) which will increase the existing rate of or affect fire or other insurance on the Property or its contents or cause a cancellation of any insurance policy covering the Property or any part thereof. City shall not use or allow the Property to be used for any unlawful purpose, nor shall City cause, maintain, or permit any nuisance or waste on or about the Property. City shall comply with all laws and governmental rules now or later in force insofar as they relate to the use or occupancy of the Property.

ARTICLE VI

HAZARDOUS MATERIALS

6.1 City Covenants. City shall not permit any Hazardous Material, as defined in Section 6.5, to be generated, used, stored or disposed of on the Property, except for substances which are ordinarily and customarily used in connection with the operation and maintenance of commercial property similar to the Property, provided that such use is in compliance with applicable laws.

6.2 Lessor Representations. Lessor represents and warrants to City that as of the Commencement Date: (i) to Lessor's best knowledge, there are no Hazardous Materials in, on or under the Property; (ii) Lessor has received no notice that the Property is in violation of any applicable environmental laws; and (iii) to Lessor's best knowledge, the Property is in compliance with applicable environmental laws.

6.4 Indemnity. Lessor and City shall each indemnify, protect, defend and hold the other harmless from (i) any breach of their respective representations or warranties set forth in this Article VI, and (ii) all claims, damages, liabilities or expenses arising out of the release of Hazardous Materials or the violation of any applicable environmental law by such party, or such party's employees, agents, contractors or representatives. This indemnification includes all penalties, fines, remedial or enforcement actions, environmental consultant fees and attorneys' fees resulting from such release or violation of law.

6.5 Definition of Hazardous Material. As used herein, the term "**Hazardous Material**" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Property. Hazardous Material includes: any "hazardous substance", as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675); "Hazardous waste", as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k); any pollutant, contaminant, pesticide, herbicide, fertilizer or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect); petroleum products; radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code sections 2011-2297g-4; asbestos in any form or condition; and Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

ARTICLE VII

LIENS

7.1 Liens. Lessor represents and warrants that there are no liens or encumbrances affecting the Property other than liens appearing of record. Lessor covenants that during the Term of this Lease, Lessor shall not cause or permit any lien or encumbrance to be recorded against the Property without City's written consent, which City may withhold in the exercise of City's sole

discretion. City covenants that during the Term of this Lease, City shall not cause or permit any lien or encumbrance to be recorded against the Property without Lessor's written consent which shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE VIII

INDEMNIFICATION AND INSURANCE

8.1 City's Indemnity. City shall indemnify, protect, defend and hold Lessor and Lessor's employees, agents and representatives harmless from and against all claims, liability, damage, or loss arising out of or attributable to (i) the breach of City's representations, warranties and covenants set forth in this Agreement, or (ii) any injury or death of any person or damage to or destruction of property attributable to the use of the Property by City during the Term, except to the extent caused by the negligence or willful misconduct of Lessor or Lessor's agents, contractors, or employees. Lessor shall promptly give notice to City of any claim or demand.

8.2 City's Insurance. City shall, at City's expense, obtain and keep in force throughout the Term, a policy of Commercial General Liability insurance or equivalent self-insurance, against liability for bodily injury, personal injury, death, and damage to property occurring on the Property with combined single limit coverage of at least One Million Dollars (\$1,000,000) per occurrence and a general aggregate limit of bodily injury and property damage liability of at least Two Million Dollars (\$2,000,000). The policy of insurance required to be carried by City pursuant to this Section shall name Lessor as an additional insured, and shall provide that the policy shall not be subject to cancellation, lapse, or change, except after at least thirty (30) days prior written notice to Lessor.

8.3 Lessor's Indemnity. Lessor shall indemnify, protect, defend, and hold City and City's officials, employees, agents and representatives harmless from and against all claims, liability, damage, or loss arising out of or attributable to (i) the breach of Lessor's representations, warranties and covenants set forth in this Agreement or any injury or death of any person or damage to or destruction of property, or (ii) the use of the Property by Lessor or Lessor's employees, agents, representatives or other tenants, except to the extent caused by the negligence or willful misconduct of City and City's agents, contractors, invitees or employees.

ARTICLE IX

LICENSES AND SUBLEASES

9.1 Licenses. City shall be permitted to enter into license agreements and maintenance, management, and operations agreements with entities that will have responsibility for the maintenance and operation of the Fox Theater and the Property. City shall be permitted to grant licenses and subleases of the Property to permit subtenants to operate on and use the Property on such terms as may be determined by City.

ARTICLE X

EVENTS OF DEFAULT

10.1 Events of Default. The following shall constitute events of default by City under this Lease (each an “Event of Default”):

(i) A default by City in the payment when due of any Rent and the continuation of such default for ten (10) or more days after written notice of the default from Lessor;

(ii) A default by City in the performance of any of the terms, covenants, agreements, or conditions in this Lease, other than a default by City in the payment when due of any Rent, and the continuation of the default beyond thirty (30) days after notice by Lessor or, if the default is curable and would require more than thirty (30) days to remedy, beyond the time reasonably necessary for cure;

(iii) The bankruptcy or insolvency of City, or the commencement of proceedings of any kind by or against City under the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act, unless City is discharged from voluntary proceedings within ninety (90) days;

(iv) The appointment of a receiver for a substantial part of City’s assets; unless the receiver is discharged within (90) days; or

(v) The abandonment of the Property for a period of thirty (30) days or more, or as established pursuant to section 1951.3 of the California Civil Code.

10.2 Lessor Default. Lessor shall be in default of this Lease if Lessor fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of default has been given by City to Lessor. If such default cannot reasonably be cured within thirty (30) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within the (30) day period, and diligently and in good faith continues to cure the default. If City, by reason of Lessor's default, pays any sum or does any act that requires the payment of any sum, the sum paid by City shall be due from Lessor to City at the time Lessor receives notice of such payment. Lessor’s failure to promptly remit payments due to ORSA pursuant to the Pledge Agreement shall constitute an event of default hereunder.

ARTICLE XI

REMEDIES

11.1 Termination upon Default. Upon the occurrence of any Event of Default by City, Lessor may, in addition to any other rights and remedies given here or by law, terminate this Lease and exercise remedies relating to it without further notice or demand in accordance with the following provisions:

(i) So long as the Event of Default remains uncured after notice as provided in Section 13.2, Lessor shall have the right to give notice of termination to City, and on the date specified in such notice, this Lease shall terminate.

(ii) If this Lease is terminated, Lessor may, by judicial process, reenter the Property, remove all persons and property, and repossess and enjoy the Property, all without prejudice to other remedies that Lessor may have because of Agency's default or the termination.

(iii) If this Lease is terminated, Lessor shall have all of the rights and remedies of a landlord provided by Civil Code § 1951.2, in addition to any other rights and remedies Lessor may have.

(iv) If this Lease is terminated pursuant to this Section 11.1, the Option shall also terminate.

11.2 Remedies Cumulative. The remedies provided in this Lease are in addition to any other remedies available to Lessor at law, in equity, by statute, or otherwise.

11.3 Right of Lessor to Cure Defaults. If City fails to perform any obligation under this Lease, and such failure continues for thirty (30) days after notice of the failure by Lessor, or such longer period as may be allowed under this Lease, Lessor may, without waiving or releasing City, make payment or perform other acts required by this Lease on City's behalf. All sums paid by Lessor and all necessary incidental costs shall be payable to Lessor on demand and shall constitute additional Rent under this Lease.

11.4 Termination For Non-Appropriation. Notwithstanding any other provision of this Agreement, the City shall not be obligated for the City's performance hereunder or by any provision of this Agreement during any of the City's future fiscal years unless and until the City Council appropriates funds for this Agreement in the City's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The City shall notify the Lessor in writing of any such non-allocation of funds at the earliest possible date.

11.5 Non-Acceleration. Lessor shall not under any circumstances have the right to accelerate the rental payments that fall due in future rental periods or otherwise declare any rental payments not then in default to be immediately due and payable.

ARTICLE XII

EMINENT DOMAIN

If all or any part of the Property is taken through eminent domain, this Lease shall terminate for the part taken as of the date of taking. For a partial taking, either Lessor or City shall have the right to terminate this Lease for the balance of the Property by notice to the other within thirty (30) days after the taking. However, Lessor's or City's right to terminate arises only if the portion of the Property taken substantially handicaps, impedes, or impairs the use of the balance of the Property. In the event of any taking, compensation due for such taking shall be allocated as provided in the California Eminent Domain Law. In the event of a partial taking of the

Property that does not result in a termination of this Lease, subsequent rental payments shall be equitably reduced.

ARTICLE XIII

GENERAL PROVISIONS

13.1 No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Lease shall not be deemed to be a waiver of any subsequent breach of the agreement, condition, or provision or any other agreement, condition, or provision contained in the Lease, nor shall any custom or practice that may arise between the parties in the administration of the terms of this Lease be construed to waive or to lessen the right of Lessor or City to the performance by the other in strict accordance with these terms. The subsequent acceptance of Rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by the other party of any agreement, condition, or provision of this Lease, other than the failure of City to pay the particular accepted Rent, regardless of knowledge of the preceding breach at the time of the rental acceptance.

13.2 Notices. All notices, consents, demands, and other communications from one party to the other that are given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been fully given when delivered, including delivery by commercial delivery services or facsimile transmission, or if deposited in the United States mail, certified or registered, postage prepaid, when received or refused. All notices, consents, demands, and other communication shall be addressed as follows:

To Lessor:

Fox Oakland Theater, Inc.
Attn: President of Fox Oakland Theater, Inc. c/o Economic & Workforce
Development
City of Oakland
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, California 94612

To City:

City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, California 94612
Attn.:
Tel. No.: (510) 238-6906
Fax. No.: (510) 238-3691

With copy to:

Oakland City Attorney's Office
City of Oakland
One Frank H. Ogawa Plaza
Oakland, California 94612
Attention: Real Estate Unit

Tel. No.: (510) 238-3601
Fax. No.: (510) 238-6500

13.2 Entire Agreement. There are no oral agreements between Lessor and City affecting this Lease, and this Lease supersedes and cancels all previous negotiations, arrangements, representations, agreements, and understandings between Lessor and City. Exhibits A and B attached hereto are hereby incorporated by reference.

13.3 Time of the Essence. Time is of the essence in this Lease and all of its provisions.

13.4 Binding on Successors. The agreements, conditions, and provisions contained in this Lease shall, subject to the provisions for assignment, apply to and bind the heirs, executors, administrators, successors, and assigns of the parties to it.

13.5 Attorneys' Fees. In the event that any action, proceeding or arbitration is commenced to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees and expenses.

13.6 Severability. If any provision of this Lease is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Lease, and all other provisions shall remain in full force and effect.

13.7 Governing Law. This Lease shall be governed by and construed pursuant to law of the State of California.

13.8 Further Assurances. The parties agree to take such other actions and to execute such other instruments reasonably necessary to effectuate the intent of this Agreement. The parties agree to execute and record in the Official Records of Alameda County the Memorandum of Lease and Option to Purchase attached hereto as Exhibit B.

13.9. Amendments. This Lease may be modified only in writing and only if signed by all of the parties at the time of the modification.

13.10 Counterparts. This Lease may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one instrument.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

CITY OF OAKLAND:

CITY OF OAKLAND,
a public body, corporate and politic

By: _____
Name:
City Administrator

APPROVED AS TO FORM AND LEGALITY:

Barbara Parker
City Attorney

By: _____
=
Deputy City Attorney

LESSOR:

FOX OAKLAND THEATER, INC.
a California non-profit public benefit
corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

PROPERTY DESCRIPTION

(Attach legal description.)

Exhibit B

**Recording Requested by
and when Recorded, return to:**

The City of Oakland
Economic and Workforce Development
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Director, Economic and Workforce Development

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF LEASE WITH OPTION TO PURCHASE

This Memorandum of Lease Back with Option to Purchase (this “**Memorandum**”) dated as of _____, 202__, is executed by and between the City of Oakland, a municipal corporation (“**City**”) and the Fox Oakland Theater, Inc., a California nonprofit public benefit corporation (“**Lessor**”) in reference to that certain Lease Back Agreement with Option to Purchase dated as of _____, 202__, by and between City and Lessor (the “**Lease**”).

1. The purpose of this Memorandum is to provide notice of the existence of the Lease and the Option provided therein. The Lease is incorporated herein by reference.
2. Lessor is the holder of a ground leasehold interest in the property located in the City of Oakland, County of Alameda, State of California known as Alameda County Assessor’s Parcel No. _____ located at 1807 Telegraph Avenue in the City of Oakland and more particularly described in Exhibit A attached hereto (the “**Property**”).
3. Pursuant to the Lease, Lessor has leased to City, and City has leased from Lessor, the Property and the improvements owned by Lessor related to the Fox Oakland Theater located thereon (the “**Improvements**”) upon and subject to all of the terms and conditions set forth in the Lease.
4. The term of the Lease (“**Term**”) commences on _____, 202__ (the “**Commencement Date**”), and unless sooner terminated or extended pursuant to the terms and conditions of the Lease, the Term expires on the sixteenth (16th) anniversary of the Commencement Date.
5. The Lease provides that the City has an option to purchase the Property upon the occurrence of specified events as more particularly set forth in the Lease.
6. Copies of the unrecorded Lease are available at the offices of the City.
7. In the event of any inconsistency between this Memorandum and the Lease, the Lease shall control.
8. This Memorandum may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one instrument.

9. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

CITY OF OAKLAND:

CITY OF OAKLAND, a municipal corporation

By: _____

Name: _____

City Administrator

APPROVED AS TO FORM AND LEGALITY:

Barbara Parker
City Attorney

By: _____

Deputy City Attorney

LESSOR:

FOX OAKLAND THEATER, INC.
a California non-profit public benefit
corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____ 20__ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____ 20__ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

PROPERTY

(Attach legal description.)

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO:

(1) ACCEPT FROM THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY (“ORSA”) BY GRANT DEED, A FEE SIMPLE INTEREST IN THE FOX THEATER, PURSUANT TO THE LONG-RANGE PROPERTY MANAGEMENT PLAN;

(2) EXECUTE AN ASSIGNMENT OF THE AMENDED GROUND LEASE FOR THE FOX THEATER WITH ORSA AS ASSIGNOR AND CURRENT GROUND LESSOR, THE CITY AS ASSIGNEE AND NEW GROUND LESSOR, AND THE FOX OAKLAND THEATER, INC. (“FOT”) AS GROUND LESSEE, FOR A TERM OF 16 YEARS; AND

(3) EXECUTE A LEASEBACK AGREEMENT FOR THE FOX THEATER BETWEEN FOT AS LESSOR AND THE CITY AS LESSEE FOR A TERM OF 16 YEARS AT A RATE OF \$247,500 PER YEAR, TOTALING APPROXIMATELY \$3.96 MILLION, WITH A CITY OPTION TO PURCHASE THE IMPROVEMENTS FOR A NOMINAL AMOUNT OF ONE DOLLAR UPON FOT’S SATISFACTION OF A PLEDGE TO PAY ORSA THE AMOUNT OF \$3.96 MILLION, PAYABLE IN ANNUAL INSTALLMENTS OF \$247,500 FOR A TERM OF 16 YEARS.