


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING THE FORGIVENESS OF (A) A CITY LOAN TO ATHENA MT, LLC, OF UP TO TWO MILLION DOLLARS (\$2,000,000) IN OUTSTANDING PRINCIPAL, PLUS ALL ACCRUED AND UNPAID INTEREST AND FEES, AND (B) A CITY REVOLVING LINE OF CREDIT TO SIAVASH AFSHAR WITH A FINAL OUTSTANDING BALANCE OF ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000), PLUS ACCRUED AND UNPAID INTEREST AND FEES FOR THE FOOTHILL SEMINARY POINT RETAIL PROJECT, EACH CONTINGENT UPON THE SALE OR TRANSFER OF THE PROJECT TO A QUALIFIED PURCHASER; AND MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland ("City") owns 1.69 acres of land on the corner of Foothill Boulevard and Seminary Avenue (the "Property"); and

WHEREAS, on June 2, 2015, the City Council approved Ordinance No. 13312 C.M.S., authorizing a Lease Disposition and Development Agreement with Sunfield Development, LLC ("Sunfield") and a Ground Lease ("Lease") with Seminary Point, LLC, for the development of Seminary Point, a neighborhood commercial retail shopping center on the Property (the "Project"); and

WHEREAS, on June 7, 2016, the City Council approved Resolution No. 86221 C.M.S., authorizing a \$2,000,000 loan (the "City Loan") to Athena MT LLC, and a \$1,500,000 revolving line of credit (the "City RLOC") to Siavash Afshar, both affiliates of Sunfield Development, LLC ("Sunfield") to be used for development of Seminary Point, and as a loan guarantee for the senior lender of the Project; and

WHEREAS, the City provided the City Loan to Athena MT LLC in the amount of \$2,000,000 from Central City East Tax Allocation Bond Series 2006A Taxable Bond Fund (5643), CIP Central City East Organization (94899), Non-Grant Loan Expenditures Account (58312), Foothill Seminary NCP Project (1003243), and Central City East Program (SC18) to assist the Project; and

WHEREAS, the City provided the City RLOC with transactions booked to Central City East Tax Allocation Bond Series 2006A Taxable Bond Fund (5643), Debt Service Organization (90411), Other Liabilities Account (24216), DP900 Administrative Project (1000021), Debt/Lease Payments Program (IN09); and

WHEREAS, since the Covid-19 pandemic, Seminary Point has had persistent financial challenges, occupancy issues, and high security and maintenance costs, and Seminary has not made any rent payments pursuant to the terms of the Lease with the City; and

WHEREAS, McCormick 101 LLC, the senior lender (“Senior Lender”), has placed the Project in forbearance until April 1, 2027; and

WHEREAS, in the event of a foreclosure by the Senior Lender, the City Loan would be extinguished without repayment, and the City would have poor prospects of success in pursuing Siavash Afshar for repayment of the RLOC; and

WHEREAS, the City and the Senior Lender want Seminary Point, LLC, to sell the leasehold interest to a qualified buyer that can invest in and revitalize the Project to support long-term economic and community-serving outcomes on this key site in the Foothill/Seminary corridor; and

WHEREAS, the Project is currently encumbered by unsustainable public and private debt and unable to attract qualified buyers willing to assume the current financing structure; and

WHEREAS, forgiving the outstanding City Loan and RLOC would remove these financial barriers and allow Seminary Point, LLC, to enable a viable sale of the leasehold and long-term stabilization of the Project under new ownership; and

WHEREAS, the City and the Senior Lender have agreed on City participation in Project sales proceeds above a certain threshold and thus potentially recoup some City Loan principal depending on the final sales price for the property, as more particularly described in Attachment A, as incorporated by reference herein; and

WHEREAS, City Loan and RLOC forgiveness are exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section §15061(b)(3) (general rule); now, therefore be it

RESOLVED: That, in order to facilitate a sale of the Project to a qualified buyer, City Council hereby authorizes the City Administrator to forgive (a) up to two million dollars (\$2,000,000) in outstanding principal, plus all accrued and unpaid interest and fees as of the date of the sale of the Project to a qualified buyer in connection with the City Loan to Athena MT, LLC, of, and (b) final outstanding balance of one million five hundred thousand dollars (\$1,500,000), plus all accrued and unpaid interest and fees as of the date of the sale of the Project to a qualified buyer in connection with the City RLOC to Siavash Afshar; and be it

FURTHER RESOLVED: That the forgiveness of the \$2 million City Loan and the \$1.5 million City RLOC in the Central City East Tax Allocation Bond Series 2006A Taxable Fund (5643) will not have a negative impact on the existing City budget since these funds were authorized by City Council in 2016 and the expected repayment revenues had never been budgeted; and

FURTHER RESOLVED: That appropriate due diligence, in accordance with current City policies and practices, shall be performed prior to the approval of any prospective purchaser and forgiveness of the City Loan and the City RLOC, and the City Administrator shall retain discretion to carry out such actions.

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and execute loan forgiveness agreements or similar documents with Athena MT, LLC and Siavash Afshar in connection with the forgiveness of the City Loan and the City RLOC; and be it

FURTHER RESOLVED: The City Council hereby authorizes the City Administrator to negotiate and execute an intercreditor or similar agreement, and any other related agreements or documents necessary to implement the City's participation in Project sales proceeds above a certain threshold, which threshold is to be negotiated between Senior Lender and the City; and be it further

FURTHER RESOLVED: The City Council hereby authorizes the City Administrator to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (b) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate and consummate the transactions in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution, and be it further

FURTHER RESOLVED: The settlement and release agreements and any other documents necessary for the forgiveness of the City Loan and the City RLOC and the participation of the City in the Project sales proceeds shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk; and be it further

FURTHER RESOLVED: That the City finds and determines, after independent review and consideration, that this action complies with the California Environmental Quality Act (CEQA) because these actions on the part of the City are exempt under CEQA Guidelines Section §15061(b)(3) (general rule); and be it further

FURTHER RESOLVED: That all documents shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to conduct negotiations, execute documents, and take any other action with respect to the loans consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

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