

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2016- 5

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A \$1,400,000 LOAN FROM THE AGENCY AND FOX THEATER MASTER TENANT, LLC TO FOX OAKLAND THEATER, INC. AND SUBORDINATING 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 \$1,400,000 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 "Restaurant Space" on 18th and Telegraph of which the landlord's (Fox Theater Master Tenant LLC) share were estimated to be approximately \$1.4 million; and

WHEREAS, the \$1,400,000 Agency 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 \$1,400,000 Agency 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 \$1,400,000 Agency loan from Fox Theater Master Tenant LLC and eliminate the other development entities including Fox Theater Master Tenant LLC; and

WHEREAS, assignment of the \$1,400,000 Agency loan is required for these actions to be concluded; and

WHEREAS, Fox Oakland Theater will provide the same security for the \$1,400,000 Agency 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; and

WHEREAS, the ORSA Board is scheduled to hear corresponding legislation on October 4th, 2016; now:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the proposed assignment of ORSA's loan and other actions related to the Fox Theater financing described herein will benefit the taxing entities because the assignment will

- (1) reduce the financial liability of the taxing entities by facilitating the refinancing of the Fox Theater conventional debt and avoiding the need to pay on the existing loan guaranty on ORSA's Recognized Obligation Payment Schedule ("ROPS"); and
- (2) increase net revenues to the taxing entities by reducing the need for a payment on the Fox Theater loan guaranty, increase the net revenue available for repaying the loan and thereby increase the amount of residual Redevelopment Property Tax Trust Fund ("RPTTF") funds that will flow to the taxing entities; and
- (3) be in the best interest of the taxing entities because it both reduces ORSA liabilities and increases funds that will flow to the taxing entities.

SECTION 2. The Oakland Oversight Board hereby consents to the assignment of the Agency 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.

SECTION 3. The Oakland Oversight Board hereby approves the subordination of this \$1,400,000 Agency loan to a new loan of not more than \$4,600,000.

SECTION 4. The Oakland Oversight Board hereby approves the action of the ORSA Board authorizing the ORSA Administrator to assign the Agency loan and other actions related to the Fox Theater re-financing.

ADOPTED, OAKLAND, CALIFORNIA September 26, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- ^{MOSS}BYRD, CHAIR CARSON, ~~LITTLE~~, MULVEY, ORTIZ, TUCKER

NOES-

ABSENT-

ABSTENTATIONS- TUCKER

EXCUSED - LITTLE

ATTEST: 
 SECRETARY OAKLAND
 OVERSIGHT BOARD