

AGENDA

SPECIAL MEETING OF THE OVERSIGHT BOARD OF THE EL CERRITO REDEVELOPMENT SUCCESSOR AGENCY

Wednesday, June 27, 2018, 7:00 pm

Hillside Conference Room
El Cerrito City Hall, Second Floor
10890 San Pablo Avenue
El Cerrito CA, 94530

1. Roll Call

2. Board/Staff Communications (*Informational reports on matters of general interest which are announced by the Oversight Boardmembers or Board staff.*)

3. Public Comment

Comments are limited to 3 minutes per speaker.

4. New Business Items

A. Approval of Minutes

Approve the January 24, 2018 Oversight Board of the El Cerrito Redevelopment Successor Agency special meeting minutes.

B. Consider Resolution Authorizing Sale of Property Located at 10066-72 San Pablo Avenue (Cerrito Theater)

C. Oversight Board presentation and appreciation

Adjournment

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| <ul style="list-style-type: none">▪ Oversight Board meetings are not televised.▪ In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I). |
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MINUTES

SPECIAL MEETING OF THE OVERSIGHT BOARD OF THE EL CERRITO REDEVELOPMENT SUCCESSOR AGENCY

Wednesday, January 24, 2018, 7:30 pm

Hillside Conference Room
El Cerrito City Hall, Second Floor
10890 San Pablo Avenue
El Cerrito CA, 94530

1. Roll Call

Present: Directors Potter, Rasiah, Solseng, Zepeda and Chair Jones all present.

Absent: Directors Dotson and Kronenberg

Also Present: Karen Tiedemann, Special Counsel; Melanie Mintz, Community Development Director

2. Board/Staff Communications

Community Development Director Mintz shared updates about the City's newly established Charter City Committee and shared the City's San Pablo Avenue Specific Plan planned development map.

3. Public Comment

None

4. New Business Items

A. Approval of Minutes

Approve the January 24, 2017 Oversight Board of the El Cerrito Redevelopment Successor Agency special meeting minutes.

Action: Moved, seconded (Potter/Rasiah; Ayes - Boardmembers Solseng, Zepeda and Chair Jones; Noes – None; Absent – Boardmembers Dotson, Kronenberg; Abstain - None) and carried to approve the minutes.

B. Review and Authorization to Submit the Draft Recognized Obligations Payment Schedule 18-19 (July 1, 2018 – June 30, 2019)

Adopt an Oversight Board resolution reviewing and authorizing submittal of the draft Amended Recognized Obligations Payment Schedule 18-19.

Action: Moved, seconded (Solseng/Zepeda; Ayes - Boardmembers Potter, Rasiah and Chair Jones; Noes – None; Absent – Boardmembers Dotson, Kronenberg; Abstain - None) and carried to adopt Oversight Board Resolution No. 2018–01.

C. Update on Disposition of properties within the Long Range Property Management Plan

Community Development Director Mintz and Counsel Tiedemann provided information regarding the proposed Disposition and Development Agreement for the Mayfair Block; the proposed Purchase and Sale for 1718 Eastshore and the status of other properties, including the theater and two small parcels near 1718 Eastshore.

D. Update on Dissolution timeline and establishment of Countywide Oversight Board

Counsel Tiedemann provided an update on the establishment of the Countywide Oversight Board that would occur July 1, 2018. It was discussed that this Oversight Board may be asked to convene one more time to consider disposition of the theater.

Adjourned at 8:40 p.m.

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AGENDA BILL

Agenda Item No. 4(B)

Date: June 27, 2018

To: Oversight Board to the El Cerrito Redevelopment Agency

From: Melanie Mintz, Director of Community Development

Subject: Purchase and Sale Agreement with Great Falls Entertainment, Inc. for 10066-72 San Pablo Avenue Cerrito Theater

ACTION REQUESTED

Adopt an Oversight Board Resolution approving Successor Agency Resolution No. 2018-2 authorizing the City Manager to execute a Purchase and Sale Agreement with Great Falls Entertainment, Inc. for the disposition of the Cerrito Theater at 10066-72 San Pablo Avenue for the purpose of continued operation as a theater and preservation of the property's historic elements.

BACKGROUND

The former El Cerrito Redevelopment Agency (RDA) acquired the property located at 10066-72 San Pablo Avenue to achieve several goals, including: to provide a much needed entertainment venue and community gathering place for the city; returning a historic theater to operation after 40 years of vacancy or operation as a furniture warehouse; restoring and replacing historic elements to the building; creating an economic engine for revitalization of the area surrounding the theater; putting El Cerrito on the map by drawing patrons from around the Bay Area; and maintaining a financially viable operation. In 2006, the theater opened with a lease to Downey Street Productions. In 2009, the current operators, Pleasantown Motion Picture Company, were selected to operate the theater by the City Council and former RDA, after the first operators failed to perform and their lease was cancelled. Under the current operators, the Rialto Cerrito Cinemas have been a successful venture, meeting all of the city's goals as stated above. Rialto Cerrito Cinemas provides first-run and independent/specialty films and community programming and concessions, including food service and the Scene Wine Bar.

The original 5-year lease (executed in 2009) with Rialto Cerrito Cinema included three five year options to extend. The first option was executed in July 2014 and expires in July 2019. There are two five year extensions remaining, which if exercised would extend the current operators rights to operate the theater through 2029.

Redevelopment Dissolution: In 2011 and 2012, the State of California adopted legislation (AB26 and AB 1484) to dissolve local redevelopment agencies. Together the Redevelopment Dissolution Statutes govern the required disposition of real property assets acquired by the former Redevelopment Agency for redevelopment purposes. Pursuant to the Dissolution Statues, particularly Health and Safety Code Section 34191.5,

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the Successor Agency to the former RDA and the Oversight Board approved a Long Range Property Management Plan (LRPMP) specifying how former RDA properties would be disposed of (Resolution 2015-03 and Resolution No. 2015-04 and 2015-06). The LRPMP was approved by the Department of Finance as required by the Dissolution Statutes. The approved LRPMP specifies that the theater property would be sold and sales proceeds distributed to the taxing entities. The Successor Agency transferred the property to the City but the Successor Agency remains responsible for the sale of the property and must approve the sale of the Property.

Over the past several years, City staff and the theater's current operators have been in conversation about a potential sale of the property to the operators. Pursuant to the Dissolution Laws, the El Cerrito Oversight Board will dissolve on June 30, 2018. Starting on July 1, 2018 all Successor Agency actions related to the sale of the property will need to be approved by a county-wide oversight board. Approval of the sale of the property by the local Oversight Board will expedite the transaction.

Due to the current operator's successful operations of, and commitment to, the Cerrito Theater, City staff approached them to make a proposal to purchase the theater and a proposed purchase price based on an estimate of value prepared by the City's consultant. The City and the Theater operators then negotiated the terms of the proposed Purchase and Sale Agreement. Additionally, the theater operators and City staff have been in dialogue with the Friends of Cerrito Theater and held a public forum at the theater on Wednesday, June 6 to discuss the proposed transaction. The item was considered at a joint City Council-Successor Agency meeting on June 19 and passed 5-0 with several community members present to speak in favor of the proposed Purchase and Sale Agreement.

ANALYSIS

The proposed Purchase and Sale Agreement was negotiated with Great Falls Entertainment, Inc. (the "Purchaser"), an affiliate to Pleasantown Motion Picture Company, the lessee under the current lease. In the proposed Agreement, the Purchaser will continue the lease with Pleasantown and the terms of that lease will remain in effect for the remaining 12 years. Purchaser can assign the Purchase and Sale Agreement but only to an entity that is controlled by the primary owner of Pleasantown. Any other assignment would require the consent of the City.

In addition to establishing purchase price and terms of the sale, the proposed Purchase and Sale Agreement includes several measures to protect the original investment and goals of the former RDA that were and are consistent with the Redevelopment Plan and current City priorities, including the San Pablo Avenue Specific Plan. Below is a summary of the proposed Purchase and Sale Agreement's major terms:

Purchase Price: The proposed Purchase Price of \$790,000 was established and negotiated considering the estimated property value, desired use, condition/maintenance requirements of the building and property, existing lease and accompanying restrictions on the property, as further described below. The estimated value of the property of \$891,000 was calculated by Management Partners, the City's consultant, based on

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capitalization of the current rent income derived from the lease. The estimated value of the property reflects the continued use of the property as an entertainment venue and restrictions existing in the current lease regarding preservation of historic elements and use of the property. The Purchaser had the property inspected and provided estimates for near and medium-term property maintenance and repairs needed at the Property, which were formerly the responsibility of the RDA and now the Successor Agency. The resulting proposed Purchase Price of \$790,000 reflects the value of the property less a portion of the major near-term capital expenditures identified in the Property Condition Assessment Report. Further, items in immediate need of repair will be completed prior to the close of escrow, by the lessee, as has been standard practice and deducted from rent owed at closing. If the repair items cost more than the rent owed the remaining amount will be deducted from the purchase price. (Section 17(b)).

Use Restriction: At close of escrow, the City will record on the property a Use Restriction that includes the following (as detailed in Attachment 2, Exhibit C):

Permitted Use: Throughout the 99-year term of the Agreement, unless modified by the City, the theater property will be used only as a public venue offering feature-length motion pictures, or programs, live performance and a restaurant. (Attachment 2, Exhibit C, Article 2.1)

Community Events: The owner of the theater will continue to provide at least twelve "Community Use Days" whereby the owner makes one auditorium available to the City, or the City's designee. This term has been a popular component of the current lease, and the City and proposed Buyer have agreed to include this provision in the Use Restriction. (Attachment 2, Exhibit C, Article 2.2)

Protection of Historic Elements: Throughout the term, including during rehabilitation or other construction, the Buyer shall maintain, protect and preserve the Historic Elements in the theater in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. If, in the event, the City approves a modification to the use or the removal of the Historic Element, the historic element will become property of the City. The City will have the right to inspect the property to confirm compliance and the right to remove a historic element for preservation if the City approves a modification to the building that would otherwise eliminate the Historic Element. (Attachment 2, Exhibit C, Article 2.3, 2.4, 2.5)

Right of First Refusal: The Use Covenant also includes a Right of First Refusal for the City, specifying that if the proposed buyer (or Owner) received an offer to purchase or otherwise transfer the property, that the City would be able to purchase the property for the same terms. (Attachment 2, Exhibit C, Article 3.1.)

Contingencies: The Agreement provides 90-days for the Purchaser to approve or disapprove of the condition of the property through physical inspections. The Agreement also provides a 120 day contingency period for the Purchaser to obtain financing for the acquisition.

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FINANCIAL CONSIDERATIONS

The net proceeds from the sale of the theater property would be distributed by the County-Auditor Controller to the seventeen (17) affected taxing entities as defined by the Dissolution Statues.

LEGAL CONSIDERATIONS

The resolutions have been reviewed and approved by Counsel.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Proposed Oversight Board Resolution
2. Proposed Purchase and Sale Agreement

OVERSIGHT BOARD RESOLUTION NO. 2018-XX

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE EL CERRITO REDEVELOPMENT AGENCY AUTHORIZING THE SALE OF THAT CERTAIN PROPERTY LOCATED AT 10066-72 SAN PABLO AVENUE TO GREAT FALLS ENTERTAINMENT, INC.

WHEREAS, prior to the dissolution of the El Cerrito Redevelopment Agency (the "Dissolved RDA"), the Dissolved RDA owned certain properties (the "Properties") located within the City of El Cerrito Redevelopment Project Area (the "Project Area") including that certain property located at 10066-72 San Pablo Avenue (the "Property");

WHEREAS, upon dissolution of the Dissolved RDA in accordance with California Law, the Successor Agency to the El Cerrito Redevelopment Agency (the "Successor Agency") succeeded to all the rights and obligations of the Dissolved RDA; and

WHEREAS, the Successor Agency, in accordance with Health and Safety Code Section 34191.5 prepared and the Department of Finance approved a Long Range Property Management Plan ("LRPMP") including the Property which calls for the Property to be sold and the proceeds of the sale to be distributed to the affected taxing entities; and

WHEREAS, in accordance with the LRPMP, the City has negotiated the terms of a sale of the Property to Great Falls Entertainment, Inc., in accordance with a purchase and sale agreement substantially in the form on file with the City Clerk; and

WHEREAS, the Successor Agency governing board approved the sale of the Property in accordance with the terms of the Purchase and Sale Agreement on June 19, 2018 pursuant to Resolution No. 2018-02 and the City of El Cerrito approved the sale of the Property in accordance with the terms of the Purchase and Sale Agreement on June 19, 2018 pursuant to Resolution No. 2018-40; and

WHEREAS, the Oversight Board has determined that the sale of the Property in accordance with the Purchase and Sale Agreement is in the best interest of the taxing entities and meets the provisions of the Dissolution Law; and

WHEREAS, pursuant to Section 15061(b)(3) of the CEQA Guidelines, CEQA review of the conveyance of the Property is not required because it can be seen with certainty that conveyance of the Property will not alter the existing use of the Property.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Oversight Board finds that the above recitals are accurate.
2. The Oversight Board hereby approves the sale of the Property to Great Falls Entertainment, Inc. in accordance with the terms of the Purchase and Sale Agreement as such

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Attachment 1

agreement may be modified or amended by the City in accordance with the authority granted to the City Manager pursuant to the City's approval of the sale of the Property, and directs the City and the Successor Agency to proceed with the sale of the Property.

3. This Resolution shall take effect in accordance with Health and Safety Code Sections 34179(h) and 34191.5.

I CERTIFY that at a regular meeting on _____, 2018, the Oversight Board to the Successor Agency to the El Cerrito Redevelopment Agency passed this Resolution by the following vote:

AYES:	Board Members:
NOES:	Board Members:
ABSENT:	Board Members:
ABSTAINS:	Board Members:

IN WITNESS of this action, I sign this document on _____, 2018.

William Jones, Oversight Board Chair

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(10070 San Pablo Avenue, El Cerrito, California)**

This Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") is dated, for reference purposes only, as of June __, 2018 (the "Effective Date"), by and between the City of El Cerrito, a municipal corporation (the "Seller" or the "City"), and Great Falls Entertainment, Inc., a California corporation (the "Buyer"), with reference to the following facts and purposes.

RECITALS

A. The City owns that certain real property, as more particularly described in Exhibit A attached to this Agreement, and commonly known as 10070 San Pablo Avenue, El Cerrito, California (the "Land"). The Land is improved with an existing building consisting of approximately seven thousand nine hundred thirty-two (7,932) square feet commonly known as the "Cerrito Theater" (the "Building"). The Land, the Building, any all other property located thereon owned by the City (including without limitation the furniture, fixtures, and equipment in the Building, except to the extent owned by the Tenant, as defined in Recital C), and any rights of the City related thereto (if any), are collectively referred to as the "Property".

B. The Property was formerly owned by the El Cerrito Redevelopment Agency (the "Former Agency"). As of February 1, 2012, the Former Agency was dissolved pursuant to California Health & Safety Code Section 34172. Prior to the Effective Date, the successor agency to the Former Agency transferred and conveyed the Property to the Seller. As of the Effective Date, the City is the fee owner of the Property.

C. Prior to its dissolution, the Former Agency entered into that certain Lease Agreement dated as of July 1, 2009 (the "Lease"), with Pleasantown Motion Picture Company, LLC, a California limited liability company (the "Tenant"), for the Property. The Tenant and the Buyer are both controlled (directly or indirectly) by Ky J. Boyd. As the successor-in-interest to the Former Agency, the City is the landlord under the Lease.

D. The City desires to sell the Property to the Buyer, and the Buyer desires to purchase the Property from the Seller, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Buyer and the Seller (each a "Party", and, collectively, the "Parties") agree as follows:

Section 1. Purchase and Sale of the Property. Subject to the terms and conditions set forth below, the Seller agrees to sell, and the Buyer agrees to purchase, the Property.

Section 2. Independent Consideration. Within three (3) business days after the Effective Date, Buyer shall pay the Seller the amount of One Hundred Dollars (\$100) (the "Independent Consideration"). The Independent Consideration shall be non-refundable to the Buyer, and shall not be credited towards the payment of the Purchase Price (defined below). The

Independent Consideration shall constitute separate, independent, and good and valuable consideration provided by the Buyer to the Seller for the rights extended to the Buyer under this Agreement.

Section 3. Opening Escrow. Prior to the Effective Date, the Parties opened an escrow account (the "Escrow") with Old Republic Title Company, 555 12th Street, Suite 2000, Oakland, California (the "Escrow Holder" or the "Title Company"). The account number for the Escrow is _____.

Section 4. Purchase Price. The purchase price for the Property shall be Seven Hundred Ninety Thousand and no/100 Dollars (\$790,000.00) (the "Purchase Price").

Section 5. Payment of Purchase Price. The Purchase Price shall be paid by the Buyer as follows:

(a) Deposit. Within five (5) days after the Effective Date, the Buyer shall deposit with the Escrow Holder the amount of Twenty Thousand and no/100 Dollars (\$20,000.00) as an earnest money deposit (the "Deposit"). The Deposit and all accrued interest shall be fully refundable to the Buyer in the event that this Agreement is terminated pursuant to Sections 6, 7, 8, 13, or 15. The Deposit, and all accrued interest, shall be credited toward the Purchase Price on the Closing Date, as defined below.

(b) Balance of the Purchase Price. The Buyer shall deposit with the Escrow Holder the balance of the Purchase Price in lawful money of the United States of America, together with all of the Buyer's closing and other costs as set forth in Section 17, no later than one (1) business day prior to Close of Escrow, as defined below, for the purchase of the Property. The Buyer shall receive a credit towards the Purchase Price in the amount of five thousand dollars (\$5,000.00), representing the security deposit held by the City pursuant to the Lease and if applicable, a credit for costs of repairs set forth in Exhibit D as required pursuant to Section 17(b) below.

Section 6. Buyer's Physical Inspection Contingency.

(a) Physical Inspection Contingency Period. The Buyer's obligation to purchase the Property is subject to the contingency set forth in this Section. Such contingency is solely for the benefit of the Buyer, and may be waived by the Buyer in the Buyer's sole and absolute discretion. The Buyer, in the Buyer's sole and absolute discretion, shall approve or disapprove the condition of the Property (the "Physical Inspection Contingency") during the period beginning on the Effective Date and ending at 5:00 p.m. (California time) on the date that is ninety (90) days after the Effective Date (such period shall be referred to herein as the "Physical Inspection Contingency Period"). On, or before, expiration of the Physical Inspection Contingency Period, the Buyer shall deliver written notice to the Seller either approving or disapproving the physical condition of the Property. The Buyer's failure to deliver such notice shall be deemed approval. If the Buyer timely disapproves the physical condition of the Property in accordance with this Section, then: (1) the Deposit shall be returned to the Buyer immediately upon the written request of the Buyer to Title Company (2) the Buyer shall pay all of the cancellation charges of the Title Company ("Cancellation Charges"), if any; and (3) this

Agreement shall automatically terminate and be of no further force or effect and neither Party shall have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. Following the Buyer's satisfaction of, or the deemed approval, of the Physical Inspection Contingency, the Buyer shall have no further right to terminate this Agreement pursuant to this Section.

(b) Right of Entry. As of the Effective Date, the City hereby grants the Buyer the right to enter onto the Property, for purposes of the Physical Inspection Contingency. In connection with such entry and investigation, the Buyer shall give the City at least three (3) days prior written notice for invasive testing. The Buyer shall promptly repair and restore any damage caused directly by the Buyer (or any of its agents) to the Property. The Buyer shall deliver to the City, within thirty (30) days after receipt thereof, a complete copy of any investigation, test, report or study which the Buyer conducts, or causes to be conducted, with respect to the Property (except confidential or proprietary information). In addition to the obligations set forth in Section 12, below, the Buyer shall indemnify, defend and hold the City and its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) to the extent arising out of the Buyer's (or any agent of the Buyer's) entry upon the Property, or the investigation(s) and test(s) which the Buyer (or its agents) may conduct; provided, however, that this indemnity shall not apply to matters (a) to the extent arising from the results of the Buyer's investigations, tests and inspections (including the discovery of existing environmental conditions on the Property), (b) due to the negligence, acts or omissions or willful misconduct of the City or its directors, officers, employees, or agents or any third party's agents, employees, invitees or licensees, or (c) resulting from latent defects within, on or adjacent to the Property or from any hazardous materials existing within, on or adjacent to the Property prior to Buyer's entry. Such indemnity obligation is in addition to any applicable indemnity in favor of the City pursuant to the Lease, and such indemnity obligation shall survive the termination or expiration of this Agreement.

Section 7. Financial Feasibility Contingency. The Buyer's obligation to purchase the Property is subject to the contingency set forth in this Section. Such contingency is solely for the benefit of the Buyer, and may be waived by the Buyer in the Buyer's sole and absolute discretion. The Buyer, in the Buyer's sole and absolute discretion, shall approve or disapprove the financial feasibility of the Property (the "Financial Feasibility Contingency") during the period beginning on the Effective Date and ending at 5:00 p.m. (California time) on the date that is one hundred twenty (120) days after the Effective Date (such period shall be referred to herein as the "Financial Feasibility Contingency Period"). On, or before, expiration of the Financial Feasibility Contingency Period, the Buyer shall deliver written notice to the Seller either approving or disapproving the financial feasibility of the Property. The Buyer's failure to deliver such notice shall be deemed approval. If the Buyer timely disapproves of the financial feasibility of the Property in accordance with this Section, then: (1) the Deposit shall be returned to the Buyer immediately upon the written request of the Buyer to Title Company; (2) the Buyer shall pay all of the Cancellation Charges, if any; and (3) this Agreement shall automatically terminate and be of no further force or effect and neither Party shall have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. Following the Buyer's satisfaction of, or the deemed approval, of the Financial Feasibility Contingency, the Buyer shall have no further right to terminate this Agreement pursuant to this Section.

Section 8. Condition of Title. At Close of Escrow the Seller shall deliver insurable title to the Property, free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession except for: (i) exceptions _____ (inclusive) as set forth on that certain title report dated _____, 2018, issued by the Escrow Holder a copy of which is attached hereto as Exhibit B (the "Title Report"); (ii) the Lease; and (iii) a declaration of restrictive covenants and use restriction to be executed by the Parties (the "Use Restriction"). Among other things, the Use Restriction provides that: (1) the Property shall be used for public entertainment purposes; (2) the Buyer shall preserve the historic elements of the Building; (3) the City shall have a right of first refusal in the event the Buyer desires to sell the Property to an unrelated third party; and (4) the term of such agreement shall be for ninety-nine (99) years. A form of the Use Restriction is attached hereto as Exhibit C.

Section 9. Condition of the Property.

(a) **"AS IS" PURCHASE. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY ACQUIRED THE PROPERTY FROM THE SUCCESSOR TO THE FORMER AGENCY IN CONNECTION WITH THE DISSOLUTION OF THE FORMER AGENCY UNDER APPLICABLE STATE LAW, AND THAT THE TENANT IS IN (AND HAS BEEN IN) POSSESSION OF THE PROPERTY SINCE THE EFFECTIVE DATE OF THE LEASE. THEREFORE, THE BUYER SPECIFICALLY ACKNOWLEDGES THAT THE CITY IS SELLING AND THE BUYER IS BUYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (1) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (4) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (5) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (6) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (7) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (8) THE CONDITION OF TITLE TO THE PROPERTY. THE BUYER AFFIRMS THAT THE BUYER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS**

RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE BUYER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE BUYER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

Buyer's Initials:_____

(b) Survival. The terms and conditions of this Section shall expressly survive the Close of Escrow, shall not merge with the provisions of the Grant Deed (defined below), or any other closing documents and shall be deemed to be incorporated by reference into the Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Buyer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Buyer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Buyer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. The Buyer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (2) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the City would not have agreed to sell the Property to the Buyer for the Purchase Price without the disclaimers and other agreements set forth in this Section.

(d) Buyer's Release of the City. The Buyer, on behalf of itself and anyone claiming by, through or under the Buyer hereby waives its right to recover from and fully and irrevocably releases the City, and its council members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Buyer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions,

latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any claims responsibility and/or liability arising under the Lease; (3) any presence of hazardous or toxic materials or substances; and (4) any information furnished by the Released Parties under or in connection with this Agreement. Notwithstanding the foregoing, this release shall not apply to, nor shall the Released Parties be released from, the Released Parties' actual fraud or misrepresentation.

(e) Scope of Release. The release set forth in Section 9(d) hereof includes claims of which the Buyer is presently unaware or which the Buyer does not presently suspect to exist which, if known by the Buyer, would materially affect the Buyer's release of the Released Parties. The Buyer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Buyer agrees, represents and warrants that the Buyer realizes and acknowledges that factual matters now unknown to the Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Buyer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Buyer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Buyer, on behalf of itself and anyone claiming by, through or under the Buyer, hereby assumes the above-mentioned risks and hereby expressly waives any right related to such risks that the Buyer and anyone claiming by, through or under the Buyer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Buyer's Initials: _____

Notwithstanding the foregoing, this release shall not apply to, nor shall the Released Parties be released from, the Released Parties' actual fraud or misrepresentation.

Section 10. Representations and Warranties of the Seller. The Seller makes the following representations and warranties to the Buyer, as of the Effective Date, and the Seller will deliver to the Buyer at Close of Escrow an estoppel certificate representing the following:

(a) No Condemnation. To the best of the Seller's knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property, nor does the Seller have any knowledge that any such action is contemplated.

(b) No Proceedings. To the best of the Seller's knowledge, there are no notices of any code violation, legal actions, or other legal proceedings or threatened against or affecting the Property or the Seller's title to the Property (including any existing or contemplated actions under Title 11 of the United States Code), and the Seller has not received notice from any

public entity with respect to any future proceeding or basis for any future proceeding against or affecting the Property, or concerning any existing or potential, past, present or future toxic or hazardous material or conditions at or within the Property.

(c) Clear Title and Authority. The Seller is the sole owner of the Property, free of restrictions, leases, liens, easements, covenants, conditions and restrictions, and other encumbrances, except as set forth in the Title Report and the Lease. Subject only to the terms of this Agreement, the Seller also represents that the Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transaction contemplated herein.

(d) Lease. Other than the Lease, and as set forth on the Title Report, the Seller has not executed any agreement conveying any right to use or occupy the Property (or any portion thereof).

(e) Warranty. Seller warrants that there are no undisclosed oral or written leases or licenses by the City regarding all or any portion of the Property.

(f) No Default. Neither the execution of this Agreement nor the consummation of the transaction contemplated herein shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Seller is a party or by which the Seller may be bound.

Section 11. Representations and Warranties of Buyer. The Buyer hereby represents and warrants the matters set forth below to be true to the best of Buyer's knowledge as of the Effective Date, and the Buyer will deliver to the Seller at Close of Escrow an estoppel certificate representing the following:

(a) Authority. The Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

(b) No Default. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Buyer is a party or by which the Buyer may be bound.

(c) OFAC Orders. To Buyer's knowledge, Buyer is in compliance with the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control - Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Neither Buyer nor any beneficial owner of Buyer, to Buyer's knowledge: (1) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"); (2) has been determined by competent authority to be subject to the prohibitions contained in the

Orders; (3) is owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (4) shall transfer or permit the transfer of any interest in it or any beneficial owner in it to any person who is or whose beneficial owners are listed on the Lists.

Section 12. Indemnification.

(a) By Seller. The Seller hereby agrees to defend, indemnify and hold the Buyer harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) to the extent arising from: (1) any personal injury or property damage relating to the Property which occurred prior to the date of Close of Escrow and not caused by the acts or omissions of the Buyer or the Buyer's agents, employees, or invitees, or by the Tenant or the Tenant's agents, employees, or invitees; or (2) the breach of any of the Seller's covenants, obligations, representations or warranties made hereunder. The indemnity contained in this Section shall survive the termination of this Agreement.

(b) By Buyer. The Buyer hereby agrees to defend, indemnify and hold the Seller harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) to the extent arising from: (1) any personal injury or property damage relating to the Property which occurred after the date of Close of Escrow and not caused by the acts or omissions of the Seller or the Seller's or Seller's agents, employees, or contractors; or (2) the breach of any of Buyer's covenants, obligations, representations or warranties made hereunder. The indemnity contained in this Section shall survive the termination of this Agreement.

(c) No Limitation. The Parties further agree and understand as follows: a Party does not, and shall not be deemed to, waive any rights against the other Party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the Parties unless specifically so provided.

Section 13. Casualty or Condemnation. If, prior to Close of Escrow, the Seller becomes aware that all or any material portion of the Property has been destroyed, substantially damaged, or subjected to a threat of condemnation, or has become the subject of any proceedings, judicial, administrative, or otherwise with respect to a taking by eminent domain or condemnation, then the Seller shall promptly give the Buyer notice thereof and grant the Buyer immediate physical access to inspect any damage, subject to the rights of the Tenant, and the Buyer, at its sole option, may, within ten (10) days following such notification elect to terminate this Agreement by giving the Seller written notice thereof, in which event the Parties shall be

relieved and released of and from any further duties, obligations, rights, or liabilities hereunder and the Deposit shall be released to the Buyer. For the purposes of this Section, the term "material portion" refers to ten percent (10%) or more of the usable and buildable square footage of the Property. If the Buyer chooses not to terminate this Agreement and elects to complete the transaction contemplated hereunder, then this Agreement shall remain in full force and effect and the transfer of the Property, less any portion taken by eminent domain or condemnation, shall be consummated as contemplated by this Agreement, with such adjustment in the Purchase Price as shall be mutually agreed upon by the Parties acting in good faith, provided, however, in the event that the Parties cannot mutually agree on the amount of the adjustment in the Purchase Price within sixty (60) days of such damage, then the Parties will mutually select three (3) independent appraisers to perform individual appraisals, with each Party bearing one-half the costs of the three (3) appraisals, with the median appraisal value of the three (3) appraisals determining the adjustment in the Purchase Price. In the event this Agreement is terminated pursuant to this Section, then (1) the Seller shall have no obligation to convey the any portion of the Property, or any other interest in the Property to the Buyer; (2) the Parties shall have no further obligation or duty under this Agreement (except for any provisions that expressly survive the termination of this Agreement); and (3) the Deposit shall be returned to the Buyer. If this Agreement is not terminated pursuant to this Section, at the Close of Escrow, the Seller shall transfer to the Buyer all of their right, title, and interest in and to any insurance proceeds, if any, resulting from any casualty or any awards that have been or may thereafter be made for any taking or condemnation; provided, however, nothing in this Section shall be deemed to obligate the City to obtain or maintain any insurance.

Section 14. **LIQUIDATED DAMAGES UPON BUYER DEFAULT.** IN THE EVENT THAT THE ESCROW AND THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT FAIL TO CLOSE AS A RESULT OF THE DEFAULT OF THE BUYER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE BUYER AND THE SELLER AGREE THAT THE SELLER WILL SUSTAIN DAMAGES, AND THAT THE SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT FAIL TO CLOSE AS A RESULT OF DEFAULT OF THE BUYER, AND THE SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THE SELLER, AS THE SELLER'S SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED TO THE DEPOSIT, AND INTEREST EARNED THEREON, AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE RESULTING DAMAGES WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN, AND, THEREFORE, THE PARTIES AGREE AFTER NEGOTIATION BETWEEN THEM THAT RETENTION OF THE DEPOSIT, AND ALL THE INTEREST EARNED THEREON, AS LIQUIDATED DAMAGES WILL BE AN APPROPRIATE FORM OF COMPENSATION TO THE SELLER. BY PLACING THEIR INITIALS IN THE SPACES BELOW, BOTH PARTIES AGREE TO LIQUIDATE DAMAGES AS SET FORTH ABOVE. IN THE EVENT ESCROW FAILS TO CLOSE AS A RESULT OF THE BUYER'S DEFAULT AND THE SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) FOLLOWING THE SELLER'S RECEIPT OF THE DEPOSIT,

AND ALL INTEREST EARNED THEREON, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE ESCROW CREATED HEREBY SHALL TERMINATE, AND (B) THE ESCROW HOLDER SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, RETURN PROMPTLY TO THE PARTIES ALL DOCUMENTS AND INSTRUMENTS TO THE PARTY WHO DEPOSITED THE SAME. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

SELLER'S INITIALS:

BUYER'S INITIALS:

Section 15. Seller Default. In the event that the escrow and the transaction contemplated by this Agreement fail to close as a result of the default of the Seller in the performance of its obligations under this Agreement, and the Buyer is not in default of any obligation under this Agreement, then the Buyer may either: (1) terminate this Agreement; or (2) prosecute an action for specific performance. The Buyer hereby covenants and agrees that in no event shall the Buyer be entitled to claim, or obtain, any monetary damages following the City's default under this Agreement, with the exception of the return of the Deposit to the Buyer. The Buyer hereby further covenants and agrees that the Buyer shall be estopped from asserting any claim for damages, including, but not limited to, actual damages, compensatory damages, consequential damages, damages for restitution, or damages in any other form. The Parties hereby acknowledge and agree that the prohibition on the Buyer's ability to recover, and the City's liability for, monetary damages arising out of a City default under this Agreement have been separately negotiated by the Parties, and that the City would not have agreed to convey the Property to the Buyer without such prohibition. In the event of conflict between the terms of this Section, and any other provision of this Agreement, the terms of this Section shall control.

Section 16. Close of Escrow. Subject to the other provisions of this Agreement, Escrow shall close on a date mutually agreeable to the parties but in no event later than November 1, 2018. Upon Close of Escrow, the Seller shall convey the Property to the Buyer by grant deed in form reasonably acceptable to the Buyer (the "Grant Deed"). The "Closing Date" or "Close of Escrow" hereunder shall be the date that the Grant Deed and the Use Restriction are recorded with the office of the Recorder of Contra Costa County. In conjunction with the recordation of the Grant Deed, upon written request of either Party, the Parties shall execute an assignment of the Lease, in favor of the Buyer, in a form reasonably acceptable to the Parties. The City may determine to submit escrow instructions to Escrow Holder in addition to this Agreement, but which in no event may be inconsistent with this Agreement.

Section 17. Costs of Escrow and Closing; Payments Due Under the Lease.

(a) Costs of Escrow and Closing. The Buyer shall pay all transfer taxes, and all other title costs and escrow costs (including, but not limited to the Buyer's title insurance policy) in connection with the closing of the transaction contemplated by this Agreement. All such costs to be paid by the Buyer in this Section shall be in addition to the Purchase Price. The Seller shall not be responsible for any costs necessary for the Close of Escrow.

(b) Payments Due Under the Lease. In conjunction with the Close of Escrow, the Buyer shall cause the Tenant to pay all unpaid rent covering the period before the Close of Escrow, and any other amounts owed but unpaid by the Tenant to the City, pursuant to the Lease, as of the Close of Escrow. Such amounts shall be in addition to the Purchase Price. City shall instruct Tenant to pay to Buyer any percentage rent owed to the City and unpaid through September 30, 2018. To the extent that the percentage rent owed and unpaid as determined through September 30, 2018 is less than the costs of the repairs set forth in Exhibit D, Buyer shall be entitled to a credit against the Purchase Price for such amount at Close of Escrow. Within thirty days of the Close of Escrow, Buyer shall cause the Tenant to determine the percentage rent earned between October 1, 2018 and the Close of Escrow and such amount shall be paid to the City. Buyer shall provide the City with the calculation of the percentage rent owed along with such payment.

Section 18. Title Insurance. As a condition to the Close of Escrow, the Escrow Holder shall be ready to issue to the Buyer a 2006 ALTA extended coverage owner's title insurance policy, in an amount no less than the Purchase Price, insuring fee title to the Property vested in Buyer, subject to only the following exceptions _____ described in the Title Report, and the Use Restriction. Buyer shall be responsible for obtaining any survey necessary to remove any survey exceptions from title necessary to obtain the 2006 ALTA extended coverage owner's title insurance policy.

Section 19. Assignments/Possession. The Buyer shall have the right, at any time prior to the Close of Escrow, to assign or otherwise transfer its rights and obligations under this Agreement to any entity owned or controlled by Ky J. Boyd. All other assignments shall require the prior written approval or consent of the Seller, which may be granted or denied in the City's sole discretion. Possession of the Property shall be delivered to the Buyer, subject to the Lease, at the Close of Escrow.

Section 20. Broker's Commission. The Buyer represents to the Seller that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement. The Seller represents to the Buyer that it has not engaged or used the services of any person, firm, or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement. The Buyer and the Seller (each, reciprocally, as an "Indemnitor") agree to indemnify and hold the other (as "Indemnitee") harmless from all expense, loss, damage and claims, including the Indemnitee's attorneys' fees, if necessary, arising out the Indemnitor's breach of the foregoing representation.

Section 21. Notices. All notices required or permitted hereunder shall be in writing. Unless otherwise provided herein, any notice, tender or delivery to be given pursuant to this Agreement by either Party may be accomplished by personal delivery, by first class certified

mail, return receipt requested, or by delivery via an overnight courier which guarantees next day delivery. Any notice delivered by certified mail, return receipt requested shall be deemed received on the date of delivery reflected on the return receipt. Any notice delivered by overnight shall be deemed received one (1) business day after deposit thereof with the overnight courier. Notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this Section, on not less than ten (10) days prior written notice.

To City: City of El Cerrito
 10890 San Pablo Avenue
 El Cerrito, CA 94530
 Attention: City Manager

with a copy to: Goldfarb & Lipman LLP
 1300 Clay Street, 11th Floor
 Oakland, CA 94612
 Attention: Karen Tiedemann

To Buyer: Great Falls Entertainment, Inc.
 6868 McKinley Street
 Sebastopol, CA 95472
 Attention: Ky J. Boyd

with a copy to: Cooper, White & Cooper LLP
 201 California Street, 17th Floor
 San Francisco, CA 94111
 Attention: Beau Simon

Section 22. General Provisions.

(a) Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference thereto. The headings of this Agreement are for convenience only and do not in any way limit or amplify the terms or provisions hereof. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, or neuter, and to the singular or plural, as the identity of the Party or Parties may require.

(b) Invalidity. If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(c) Entire Agreement. The Recitals set forth above, and all exhibits attached hereto, are hereby incorporated into this Agreement by this reference. This Agreement supersedes all prior negotiations and agreements between the Parties with respect to the subject matter hereof, and is intended by the Parties as a final expression of their agreement with respect

to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms with respect to the subject matter hereof and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the Parties.

(d) No Drafting Party. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

(e) Successors. Subject to the requirements of Section 19, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

(f) Time of the Essence. Time is of the essence in this Agreement. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a day of the week on which the City is open to the public for carrying on substantially all business functions (a "Business Day"), then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. In no event shall a Saturday or Sunday be considered a Business Day.

(g) Force Majeure. Any deadline herein shall be subject to extensions due to events of Force Majeure. The term "Force Majeure" means a delay in performance caused by: (a) war, terrorist acts, insurrection or riots; (b) earthquakes, fires, floods, other casualties or acts of God; (c) restrictions or delays imposed or mandated by government agencies, or the actions or inactions of government agencies that are outside the control of a Party or the enactment of laws or regulations that prevent or preclude compliance by a Party with its obligations under this Agreement; (d) litigation brought by persons other than a Party or an affiliate of a Party; (e) acts of one Party, or failure of such Party to act when action is required, which to the extent in and of itself prevents or precludes compliance by the other Party with any material provision of this Agreement; or (f) other similar basis for excused performance that is not within the reasonable control of the Party whose performance is sought to be excused. The term "Force Majeure" does not include delays associated with: (i) economic or market conditions; (ii) the unavailability of financing; or (iii) the financial inability or insolvency of a Party.

(h) Cooperation of Parties. The Buyer and the Seller shall, during the Escrow period, execute such further escrow instructions and any and all other documents reasonably necessary or appropriate to close the purchase and sale pursuant to the terms of this Agreement so long as all such documents are consistent with this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(j) Attorneys' Fees and Costs. In the event any action or proceeding in court or other dispute resolution mechanism permitted under this Agreement is commenced by either

Party to interpret or enforce the terms of this Agreement, the prevailing Party therein shall be entitled to recover from the non-prevailing Party all of the prevailing Party's reasonable costs and expenses in connection therewith, including on any appeal and including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and reasonable attorneys' fees and costs for the services rendered to the prevailing Party in such action or proceeding (which shall include, without limitation, the reasonable costs for services of the City's in-house counsel).

(k) City's Regulatory Authority. The Buyer acknowledges that the City is entering into this Agreement solely in its capacity as the fee owner of the Property. Therefore, the Buyer agrees and acknowledges that nothing in this Agreement (including, but not limited to, the execution of this Agreement, or the execution of the Grant Deed in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (a) the City in connection with the review and approval of any proposed construction plans for the Property (or any change to such plans), or any use, or proposed use, of the Property; (b) any office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Property; or (c) any approval required by the City for the sale of the Property. This Section shall survive the termination or expiration of this Agreement, and the recordation of the Grant Deed.

(l) Lease. Nothing in this Agreement shall be deemed to waive, limit, or impair any of the rights of the City under the Lease. Any termination of this Agreement shall have no effect on the Lease, and, in the event of any termination of this Agreement, the Lease shall remain in full force and effect (subject to its terms).

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER:

CITY OF EL CERRITO, a municipal corporation

By: _____
Scott Hanin, City Manager

APPROVED AS TO FORM:

City Attorney

BUYER:

GREAT FALLS ENTERTAINMENT, INC., a
California corporation

By: _____

NOTE: Buyer must initial Sections 9(a), 9(e) and 14.

NOTE: Seller must initial Section 14.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(TO BE COMPLETED)

EXHIBIT B

COPY OF TITLE REPORT

(TO BE COMPLETED)

EXHIBIT C

FORM OF USE RESTRICTION

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS GOVERNING USE
OF PROPERTY AND RIGHT OF FIRST REFUSAL
(Cerrito Theater)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS GOVERNING USE OF PROPERTY AND RIGHT OF FIRST REFUSAL (the "Agreement") is made and entered into as of _____, 2018 (the "Effective Date"), by and between the City of El Cerrito, a municipal corporation, or any successor-in-interest (the "City"), and _____, a _____ or any successor-in-interest (collectively, the "Owner") with reference to the following:

RECITALS

A. Owner is the fee owner of that certain property in the City of El Cerrito, California, commonly known as 10070 San Pablo Avenue, which is more particularly described in Exhibit A (the "Land"). As of the Effective Date, the Owner acquired the Land from the City, and the Land is improved with an existing building consisting of approximately seven thousand nine hundred thirty-two (7,932) square feet commonly known as the "Cerrito Theater" (the "Building"). The Land and the Building are collectively referred to as the "Property".

B. As a condition of the sale of the Property by the City to the Owner, the City requires that the Owner enter into this Agreement to restrict the use of the Property and to provide the City a right of first refusal in the event the Owner desires to sell the Property, subject to the provisions of this Agreement, and that this Agreement be recorded on the Property in the Official Records of Contra Costa County.

NOW THEREFORE, it is hereby agreed by and between the City and the Owner (each a "Party", and, collectively, the "Parties") as follows:

**ARTICLE 1
DEFINITIONS**

As used in this Agreement, the terms set forth below shall have the following meanings (other defined terms herein not referenced below shall have the meanings where first used).

1.1 "Building" means the building located on the Land, as of the Effective Date, consisting of approximately seven thousand nine hundred thirty-two (7,932) square feet, and commonly known as the "Cerrito Theater".

1.2 "City" means the City of El Cerrito, a municipal corporation, and its successors or assigns.

1.3 "Control" shall mean direct or indirect ownership, management or control of or by: (1) the managing member or members in the case of a limited liability company; (2) the managing general partner or general partners in the case of a partnership; and (3) a majority of the directors in the case of a corporation, as determined by the City.

1.4 "Historic Elements" means the historic architectural elements within or about the Building set forth in Exhibit B attached.

1.5 "Land" means that certain real property in the City of El Cerrito, California, commonly known as 10070 San Pablo Avenue, consisting of approximately 12, 981 square feet which is more particularly described in Exhibit A.

1.6 "Official Records" means the official land records of Contra Costa County.

1.7 "Owner" means _____, a _____, and its successors or assigns.

1.8 "Party" means either the City or the Owner. "Parties" means each Party.

1.9 "Permitted Use" means a cinema and restaurant or cafe, or other public entertainment-oriented use, available to the general public as further described in Section 2.1.

1.10 "Property" means, collectively, the Land and the Building.

1.11 "Security Financing Interest" means a mortgage, deed of trust, or other reasonable security instruments securing loans against the Property. The words "mortgage" and "deed of trust" as used in this Agreement include all other modes of financing real estate acquisition, construction, and land development.

1.12 "Term" means the term of this Agreement which shall commence on the Effective Date, and terminate on the earlier of: (i) ninety-nine (99) years after the recordation of this Agreement in the Official Records; or (ii) the date on which the City, in the City's sole discretion, records a notice of termination (or similar document) in the Official Records terminating this Agreement and releasing this Agreement as an encumbrance against the Property.

1.13 "Transfer" means any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Property, or any part thereof or any interest therein or any contract or

agreement to do any of the same, by the Owner to any entity which is not under the Control of, or does not Control, or is not under common Control with, the Owner or Ky J. Boyd.

ARTICLE 2 USE RESTRICTIONS

2.1 Permitted Use. Throughout the Term, the Owner shall use the Property, or cause the Property to be used, for the Permitted Use (as defined in Section 1.9 and as further described in this Section 2.1). In using the Property for the Permitted Use, the Owner shall make the Property available to the general public as a first-class cinema, exhibiting feature-length motion pictures, or for programs or cultural or community-oriented events or live performances, and a restaurant or cafe (including, at the Owner's option, the sale of beer, wine, or other alcoholic beverages). Such use may include the sale of promotional or ancillary items related to the Owner's use of the Property. No other activities or uses of the Property are permitted.

2.2 Community Events. The Owner shall, at least twelve (12) times per calendar year, make one (1) auditorium within the Property available to the City, or the City's designee. Such use shall be at no charge to the City, or the City's designee, provided, that such use does not require Owner to provide additional staff within the Property, and provided further that such use does not include discounted or free food or beverages during such event. The community events shall be selected or approved by the City pursuant to a process to be determined by the City. Community events may include fundraising events for local community groups, use of the Property for community forums or other uses that benefit the El Cerrito Community. Owner shall make reasonable efforts to accommodate the requested community use of the Property, provided such events do not interfere with already scheduled activities of the Property, including, without limitation, Owner's contractual obligations to motion picture distributors, or other contractual obligations to third parties.

2.3 Protection of Historic Elements. Throughout the Term, including during any rehabilitation or other construction on or about the Property, the Owner shall maintain, protect, and preserve the Historic Elements utilizing "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" document as a guide. Any repair to any Historic Elements shall be done to the satisfaction of the Community Development Director or his/her designee or successor. Owner's responsibility pursuant to this Section shall include the prompt repair of any damage to the Historic Elements, and prompt restoration of any Historic Elements that are destroyed or damaged as a result of Owner's ownership, use, or occupancy of the Property. Owner shall have no obligation to repair or restore the Historic Elements if the damage to the Historic Elements is the result of a catastrophic event that results in substantially all of the Building being destroyed. Notwithstanding the foregoing, the City, at its cost and expense, shall be responsible for holding, storing, maintaining and preserving any historic elements of the Building that were removed from the Building as part of the renovation of the Building in approximately 2006, to the extent in the possession of the City.

2.4 City Right to Remove Historic Elements. In the event the Owner desires to remove, dismantle, or otherwise cause or permit the removal of any Historic Element from the Property, then Owner shall notify the City in writing of such decision. If the City, within ninety

(90) days after receipt of such notice, agrees in writing to Owner's action to remove or dismantle the Historic Element(s), then the Owner shall permit the City (and its agents) to enter the Property, and remove such Historic Element(s), at no cost to the Owner, at a time mutually determined by the Parties. The City shall repair any damage to the Property caused in connection with the removal of the Historic Element(s); provided, however, the City shall have no obligation to repair, or otherwise restore, any pre-existing condition revealed or discovered during the removal of the Historic Elements. In the event the City does not agree to remove the Historic Element(s) within such ninety (90) day period, then the Owner may remove such Historic Element(s), subject to applicable law. If the removal of the Historic Elements is part of a recovery effort due to an emergency causing significant damage to the Building, the Building Official (or her/his successor) is the sole agent of the City to declare if the Building is safe for persons to retrieve Historic Elements. The time duration for removal in this instance is waived in this circumstance and the Community Development Director (or her/his successor) shall set a new duration of time in which the City (and its agents) may remove the Historic Elements.

2.5 Inspection. For purposes of confirming compliance with this Agreement, the Property shall be made available by Owner to the City for inspection during regular business hours upon seventy-two (72) hours' written notice; provided, however, that any such inspection shall occur only once during any twelve (12) calendar month period and the Owner shall have the right to have a representative present during any such inspection by the City.

ARTICLE 3 CITY RIGHT OF FIRST REFUSAL

3.1 Right of First Refusal. In the event the Owner receives an offer to purchase or otherwise Transfer the Property which the Owner is prepared to accept (an "Offer"), then Owner shall notify the City in writing of the terms of such Offer. If the City, within thirty (30) days after receipt of such notice, agrees in writing to acquire such interest set forth in the Offer on the terms stated, then the Owner shall sell and convey such interest to the City on the terms stated in the notice. If the City does not so indicate its agreement within such thirty (30) day period (or if the City does not respond in writing within such thirty (30) day period), then such right shall terminate, and the Owner shall thereafter have the right to convey such interest to the party making the Offer on the terms of such Offer, or other terms not substantially less favorable to the Owner. If such offeror does not purchase such interest on such terms set forth in the Offer, then the City shall have the same right of first refusal pursuant to this Section in the event of any later Offer is received by the Owner.

3.2 Exclusions. The following transactions are not subject to the City's right set forth in Section 3.1: (i) any Transfer of the Property to an entity under the Control of Owner, an entity that Controls Owner, or an entity that is under common Control with Owner, or an entity that is owned, managed, or controlled by Ky J. Boyd; (ii) any Transfer of the Property to a person or entity acquiring both the Property and the business operated at the Property (including without limitation in connection with a sale of all or substantially all of the assets or stock or membership or partnership interests of the Owner); (iii) any Transfer of the Property to a non-profit entity; (iv) any Transfer creating a Security Financing Interest; and (v) any Transfer resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

3.3 Agreement Remains in Effect. In the event the City elects to forego its right set forth in Section 3.1, above, then this Agreement, and all of the Owner's duties and obligations set forth in this Agreement, shall continue in full force and effect, and, pursuant to Section 5.7, any successor-in-interest to the Owner shall be subject to this Agreement.

ARTICLE 4 DEFAULT

4.1 Violations by Owner. Failure of the Owner to cure any default in the Owner's obligations under the terms of this Agreement within thirty (30) days after the Owner's receipt of a written notice of default from the City (or such longer period of time up to an additional ninety (90) days as may be reasonably necessary to remedy such default, provided that the Owner has commenced action during the thirty (30) days necessary to remedy such default, and the Owner is proceeding with reasonable diligence to remedy such default) will constitute a default under this Agreement.

4.2 Remedies. Subject to the applicable notice and cure period set forth above, the City may exercise any and all remedies available to it at law or equity with respect to the Owner's failure to satisfy the terms of this Agreement. Owner acknowledges that any breach in Owner's performance of Owner's obligations under this Agreement will materially impair the public policy of the City to protect and preserve artistic events within the City. Therefore, Owner agrees that the City is entitled to equitable relief in the form of specific performance, and that an award of damages may not be adequate to compensate the City for Owner's failure to perform according to the terms of this Agreement. Notwithstanding the foregoing, the City, in its sole and absolute discretion, may elect the appropriate remedy for Owner's default under this Agreement.

ARTICLE 5 GENERAL PROVISIONS

5.1 Notices. All notices required pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (a) upon personal delivery, including delivery by courier, or reputable overnight delivery service that provides a receipt for delivery, or (b) three (3) business days after the mailing by registered or certified mail, return receipt requested, to the Party to receive such notice at the addresses set forth below:

To the City: City of El Cerrito
 10890 San Pablo Avenue
 El Cerrito, CA 94530
 Attention: City Manager

with a copy to: City of El Cerrito
 10890 San Pablo Avenue
 El Cerrito, CA 94530
 Attention: City Attorney

To the Owner:

6868 McKinley Street
Sebastopol, CA 95472
Attention: Ky J. Boyd

with a copy to:

Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Attention: Beau Simon

Any Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above.

5.2 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property shall contain therein the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955

and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

5.3 Entire Agreement. The Recitals set forth above, and all exhibits attached hereto, are hereby incorporated into this Agreement by this reference. This Agreement contains the entire agreement between the Parties as to the subject matter hereof, and supersedes any and all prior arrangements and understandings between the Parties as to the subject matter hereof, and no other agreement, statement or promise made by either Party as to the subject matter hereof which is not contained herein shall be binding or valid; provided, however, that nothing in this Section limits the effect or enforceability of the City of El Cerrito Municipal Code upon the Property. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

5.4 Amendment. This Agreement may be amended only by the written agreement of the Parties, and recorded in the Official Records.

5.5 Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable pursuant to any California statute which became effective after the Effective Date, the remaining portions of this Agreement shall nevertheless remain in full force and effect.

5.6 Waiver. The waiver of, or failure to enforce, any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provisions hereof.

5.7 Covenant Running with the Land. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, Owner and its heirs, executors, administrators, successors, transferees, and assignees (each a "Transferee") having or acquiring any right, title or interest in or to any part of the Property, whether by operation of law or in any manner whatsoever, including any Transfer, and shall run with and burden the Property for the entire Term. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including without limitation Section 1468 of the California Civil Code. Each covenant to do, or to refrain from doing, some act on the Property hereunder: (a) is for the benefit of the Property and is a burden on the Property, (b) runs with the Property, and (c) is binding upon each Party and each successive owner during its ownership of the Property or any portion thereof, and shall be a benefit to and a burden upon each Party and the Property hereunder and each other person or entity succeeding in an interest to the Property.

5.8 Assignment and Assumption; Release. Provided that a Transferee expressly assumes Owner's obligations hereunder pursuant to an assignment and assumption agreement in a form approved by the City in connection with a Transfer (which approval shall not be unreasonably withheld), the Owner shall be released from all obligations following the recordation of such assignment and assumption agreement in the Official Records.

5.9 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or any third party to create the relationship of principal and agent or of partnership or of joint venture or of association. Owner acknowledges, understands and agrees that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Property (or any other portion of the Property). The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold the City harmless from any liability, loss or damage as set forth in Section 5.10. Any review by the City of any documents submitted by the Owner to the City pursuant to this Agreement, or any actions taken by, or on behalf of the Owner, is solely to confirm compliance with the requirements of this Agreement and shall not be deemed to be a representation of any

kind of the validity or legal enforceability of such document(s), or that such action complies with any applicable law.

5.10 Hold Harmless; Indemnity. Owner shall indemnify, defend (with counsel reasonably selected by the City), and hold harmless the City and its officers, officials, agents, and employees against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury or death of any person or damage to property or other liability of any nature, or any claims by any invitee, guest, or user of the Property, arising out of Owner's ownership of the Property, except where the cause of such is the gross negligence or willful misconduct of the City or its employees, agents or contractors. The indemnification obligations set forth in this Section shall survive any termination or expiration of this Agreement.

5.11 Applicable Law and Venue. This Agreement shall be governed by California law. Venue for any dispute arising out of this Agreement shall be Contra Costa County.

5.12 Attorneys' Fees and Costs. In the event any action or proceeding in court or other dispute resolution mechanism permitted under this Agreement is commenced by either party to interpret or enforce the terms of this Agreement, the prevailing Party therein shall be entitled to recover from the non-prevailing Party all of the prevailing Party's reasonable costs and expenses in connection therewith, including on any appeal and including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and reasonable attorneys' fees and costs for the services rendered to the prevailing Party in such action or proceeding (which shall include the reasonable costs for services of the City's in-house counsel).

5.13 Time is of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence. References in this Agreement to days shall be to calendar days. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a day of the week on which the City of El Cerrito is open to the public for carrying on substantially all business functions (a "Business Day"), then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. In no event shall a Saturday or Sunday be considered a Business Day.

5.14 Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference thereto. The headings of this Agreement are for convenience only and do not in any way limit or amplify the terms or provisions hereof. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, or neuter, and to the singular or plural, as the identity of the party or parties may require.

5.15 No Limitation on Municipal Powers. Nothing in this Agreement shall limit, waive, or otherwise impair the authority and discretion of: (a) the City's Building

Department, in connection with the review and approval of any proposed construction plans for the Property (or any change to such plans), or any use, or proposed use, of the Property; or (b) the City Council, or any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Property.

5.16 Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts, which shall constitute one and the same agreement.

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

CITY:

CITY OF EL CERRITO, a municipal corporation

By: _____

Name: _____

Its: _____

OWNER:

By: _____

Name: _____

(Signatures must be notarized)

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 _____)

On _____, before me, _____,
Notary Public, 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.

Name: _____
Name: Notary Public

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 _____)

On _____, before me, _____,
Notary Public, 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.

Name: _____
Name: Notary Public

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

TO BE COMPLETED

EXHIBIT B
HISTORIC ELEMENTS

1. The entirety of the marquee sign including the exterior structural-decorative elements and the decorative ledge/canopy above the ticket booth
2. The remaining original etched art glass in the ticket booth
3. The shape and size of the foyer and lobby
4. The fluted posts and beams that lead from foyer to lobby
5. The painted decorative recessed lobby ceiling and decorative frieze beneath the ceiling
6. The etched art mirror with Diana and the fauns on the back wall of the concessions area
7. The doors to Theatre 1 and Theatre 2, including the Diana and faun art glass in each
8. The barrel vaulted ceilings inside both Theatre 1 and Theatre 2
9. The large louvered chandeliers located in Theatre 1 and Theatre 2, one per theatre, the four wall mounted light scones in Theatre 1 and the four wall mounted light scones in Theatre 2. (Note: the original operator replaced many of the historic glass panels in the scones with inferior quality plastic panels.)
10. The paint textures and colors (to the extent these were original and not added in the 2006 remodel) in Theatres 1 and 2 and the decorative friezes in Theatre 1
11. The horizontal decorative trim fluting between the lower and upper sections wall sections in Theatres 1 and 2
12. The Heinsbergen studio mural and decorative border featured in Theatre 1
13. The proscenium arch in Theater 1
14. The size and position of the stage in Theatre 1 in relation to the proscenium arch

**EXHIBIT D
IMMEDIATE REPAIR COSTS**

Investigate & Repair Water Damage	\$10,000
Façade Repair	\$1,000
Storefront Doors Replacement	\$16,000
Carpet Replacement	\$16,300
Vinyl Concessions Floor Replacement	\$3,740
Parking Lot Repair	\$10,000
Asphalt Pavement - Seal Coat, Restripe, Crack Seal and Replace Damaged Wheel Stop	
Rear Fencing - Attractive Nuisance Abatement	\$6,320
Marquee Fall Restraint System	<u>\$10,000</u>
Total	\$73,360