

RESOLUTION NO. OB-06-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE AND RATIFYING THE EXECUTION THEREOF; APPROVAL OF LICENSE AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND HOWARD FISHER FOR STORAGE AND MAINTENANCE OF SECURED PROPERTY; APPROVAL OF AMENDMENT TO THE SUCCESSOR AGENCY FISCAL YEAR 2012-2013 BUDGET; APPROVAL OF PROMISSORY NOTE TO OBLIGATE THE SUCCESSOR AGENCY TO REPAY A LOAN FROM THE CITY OF EL CAJON TO FUND PROJECT MANAGEMENT AND ADMINISTRATIVE COSTS OF THE SUCCESSOR AGENCY.

WHEREAS, beginning on November 17, 2009, the former El Cajon Redevelopment Agency ("Agency") board approved three loans to the Downtown El Cajon Brewing Co., Inc., with original principal balances totaling \$645,000, for tenant improvements for the first brewing company and restaurant in El Cajon at 110 N. Magnolia Avenue ("Site"). All three loans are secured by, among other enforceable obligations, a Participation Agreement, Leasehold Deed of Trust, and Promissory Notes ("Loan Documents"); and

WHEREAS, on October 1, 2012, the Downtown El Cajon Brewing Co. Inc., filed for reorganization under Chapter 11 of the Bankruptcy Code. In order to protect the security interest in the Furniture, Fixtures and Equipment under the Loan Documents with current outstanding balances of \$601,086.65, the Successor Agency immediately hired outside counsel to assist during the bankruptcy process; to obtain relief from the automatic stay in bankruptcy court; to perfect its security interest; and to foreclose on the secured property; and

WHEREAS, costs for this activity have been charged to Project/Activity RD1201S – DDA Projects Monitoring, with an approved Fiscal Year 2012-2013 budget of \$36,780; and

WHEREAS, on April 1, 2013, the City of El Cajon, acting in its capacity as Successor Agency under the Loan Documents, executed a Settlement Agreement with the Downtown El Cajon Brewing Co., Inc. to surrender possession and all furnishings, fixtures and equipment, and all supplies, utensils, glassware, window coverings, wall art, signs and other property related to the operation of the business currently located at 110 N. Magnolia Avenue ("Secured Property") to the City of El Cajon, acting in its sole capacity as Successor Agency, who has a perfected security interest in the Secured Property; and

WHEREAS, a License Agreement between the property owner Howard Fisher and the Successor Agency dated April 1, 2013, is pending execution to use the Site for the purpose of storing, maintaining, and keeping all of the Successor Agency's Secured

Property on Site, and for the purpose of performing any utility and maintenance obligations; and

WHEREAS, although the Successor Agency and property owner are working cooperatively to find another operator to take over the Site, the Secured Property at the Site remains the responsibility of the City and numerous expenses will be incurred in the protection and maintenance of those assets until sale to another operator can be negotiated and approved; and

WHEREAS, due to anticipated expenses associated with the collection and maintenance efforts associated with DECB's Settlement and License Agreements that will exceed the budget of Project/Activity RD1201S, staff is seeking approval for an amendment to the Fiscal Year 2012-2013 Successor Agency budget in the amount of \$42,750 for Project/Activity RD0701S, to be paid from "Other" funds, and will be incorporated into ROPS 13-14B; and

WHEREAS, these expenses will result in an "advance" situation outlined in the Cooperation Agreement approved by the Oversight Board on April 26, 2012, and the City on May 8, 2012, the method for the repayment of which DOF previously recommended that the Successor Agency accept a loan from the City to cover enforceable obligations, execute the Note in favor of the City in the amount of the loan, and place this Successor Agency obligation to the City on a subsequent ROPS for reimbursement, subject to approval by the Oversight Board; and

WHEREAS, staff is also seeking authorization for the Successor Agency to execute the Note for the principal amount borrowed from the City and equal to the budget amendment of \$42,750, as authorized under the Cooperation Agreement previously approved by the Oversight Board and City, at an interest rate equal to the Local Agency Investment Fund - LAIF rate, currently 0.35%, until paid. The Promissory Note will reimburse the City for enforcement actions taken to protect and maintain assets, secured by existing enforceable obligations, with outstanding balances due of \$601,086.65

WHEREAS, the City of El Cajon as Successor Agency requested a determination that said Promissory Note become an enforceable obligation for inclusion on the next Recognized Obligation Payment Schedule for reimbursement; and

WHEREAS, the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency held a regularly scheduled meeting on April 18, 2013, at which time it considered approval of a Promissory Note ("Note") entered into between the City of El Cajon acting as Successor Agency to the former El Cajon Redevelopment Agency and the City of El Cajon, in favor of the City of El Cajon in order to reimburse the City for anticipated enforceable obligation costs incurred for the surrender of Secured Property from the Downtown El Cajon Brewing Co, Inc. on April 1, 2013; and

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
1. The recitals above are true and correct and have been incorporated herein by reference.
 2. Approval of the Settlement Agreement, License Agreement and Promissory Note is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.
- B. The Oversight Board hereby approves that certain Settlement Agreement between Stephan Meadows, Mandy Meadows and Downtown El Cajon Brewing Co. ("DECB") and the City of El Cajon, in its capacity as successor agency to the El Cajon Redevelopment Agency, executed to collect property under a perfected security interest, and ratifies such action previously taken by the Executive Director in executing the Settlement Agreement and taking possession and protecting the Secured Property;
- C. The Oversight Board hereby approves that certain License Agreement between Howard Fisher and the City of El Cajon, solely in its capacity as the successor agency to the El Cajon Redevelopment Agency, for the purpose of storing, maintaining, and keeping the Secured Property and performing utility and maintenance obligations on the property at 110 N. Magnolia Avenue, El Cajon ("Site");
- D. The Oversight Board hereby approves an amendment to the Fiscal Year 2012-2013 Successor Agency Budget to add Project/Activity #RD0701S and appropriating \$42,750 from "Other" funds received in order to disburse project management and administrative costs associated with the preservation and maintenance of Secured Property;
- E. The Oversight Board hereby acknowledges the making of a loan from the City of El Cajon (the "City"), to the City of El Cajon acting as Successor Agency to the former El Cajon Redevelopment Agency (the "Successor Agency") in the amount of \$42,750, in order to fund project management and administrative costs incurred on behalf of the Successor Agency;
- F. The Oversight Board hereby approves that certain Promissory Note in the principal amount of \$42,750 (the "Note"), with interest thereon at a rate not to exceed the interest earned by the City on its accounts with the Local Agency Investment Agency from time to time, until the entire principal and accrued interest is paid in full, which principal amount represents the amount of a loan to

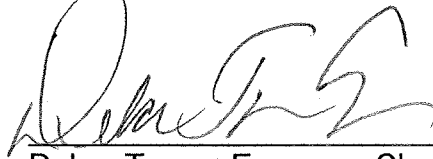
the Successor Agency by the City, under terms and conditions set forth in the Note.

- G. The Oversight Board hereby finds that the Note, in the form and content attached hereto as Exhibit "A" and incorporated herein by this reference, subject to any minor conforming, technical, or clarifying changes approved by the Oversight Board legal counsel, is an enforceable obligation and should be included on the next Recognized Obligation Payment Schedule ("ROPS") for reimbursement; and
- H. The Oversight Board hereby approves that the City Manager of the City, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, execute the Note on behalf of the Successor Agency, and directs that the Secretary of the Oversight Board delivers copies of the executed Note to the County Auditor Controller, the State Department of Finance, the County Administrative Officer, the State Controller's Office, and to post on the Successor Agency website upon approval by the Oversight Board.

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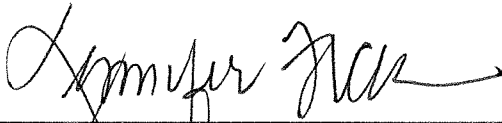
PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a meeting held this 18th day of April, 2013, by the following vote to wit:

AYES: BUXBAUM, GRIFFIN, GRIFFITHS, RANU, TURNER-EMERSON
NOES: NONE
ABSENT: ABUSHABAN, CHADWICK



Debra Turner-Emerson, Chairperson

ATTEST:



Jennifer Ficacci, Oversight Board Acting Secretary