

REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO



RESOLUTION NUMBER R- 04566

DATE OF FINAL PASSAGE SEP 22 2010

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING A FIRST AMENDMENT TO THE LEASE AGREEMENT WITH SAN DIEGO THEATRES, INC. IN CONNECTION WITH THE MAINTENANCE, OPERATION, AND USE OF CERTAIN PROPERTY, THAT INCLUDES THE BALBOA THEATRE, LOCATED WITHIN THE HORTON PLAZA REDEVELOPMENT PROJECT.

WHEREAS, the Redevelopment Agency of the City of San Diego (Agency) is involved in activities necessary to carry out and implement the Redevelopment Plan for the Horton Plaza Redevelopment Project (Project Area); and

WHEREAS, in order to carry out and implement the Redevelopment Plan for the Project Area, the Agency entered into a Lease Agreement (Lease) with San Diego Theatres, Inc. (Tenant) dated October 18, 2007, pursuant to which the Agency leased to Tenant certain real property and building (Leased Premises) that includes the Balboa Theatre; and

WHEREAS, the Agency and Tenant also entered into a Cooperation Agreement (Cooperation Agreement) dated October 18, 2007, providing for the rehabilitation, operation, use and maintenance of the Leased Premises in accordance with both the Lease and Cooperation Agreement; and

WHEREAS, pursuant to the Lease and the Cooperation Agreement, the obligations generally relating to the rehabilitation of the Leased Premises were undertaken by the Agency, and the obligations generally relating to the maintenance and operation of the Leased Premises were undertaken by the Tenant; and

WHEREAS, as part of the maintenance and operation obligations of the Tenant under the Lease, the Tenant is obligated to pay for all charges relating to the utility usage required for the operation of the Leased Premises, including all charges imposed on the Tenant as the "Customer" pursuant to that certain "Chilled Water Supply Agreement" (NRG Agreement) entered into by and between the Agency and NRG Energy Center (NRG), which NRG Agreement is attached as Exhibit "C" to the Lease; and

WHEREAS, the charges imposed on the Tenant under the NRG Agreement include the Usage Charge, the Energy Charge, and the Franchise Fee Charge, all of which relate to the ongoing usage of services under the NRG Agreement, and further include the Capacity Reservation Charge, which relates to reimbursement to NRG for the Leased Premises' share of certain capital improvements to NRG facilities which make possible the delivery of chilled water to the Leased Premises; and

WHEREAS, since the Agency is generally responsible for the costs of capital improvements under the Lease, the Agency and Tenant desire to enter into the proposed First Amendment to the Lease in order to clarify the terms of the Lease and provide for the Agency's payment of the Capacity Reservation Charge during the term of the Lease as said charge is imposed under the NRG Agreement; and

WHEREAS, as part of the First Amendment to the Lease, the Agency proposes to reimburse the Tenant for the amount of the Capacity Reservation Charge paid by Tenant since March 2008, estimated in the amount of \$65,965 through June 2010, and to pay the future monthly Capacity Reservation Charge as said charge becomes due and payable and estimated in the aggregate to be an amount up to \$35,000 for the remaining months of Fiscal Year 2010-2011; and

WHEREAS, the Agency has duly considered all terms and conditions of the First Amendment to the Lease and determines that said First Amendment is in the best interests of the City and the Project Area, and the health, safety, morals and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local law and requirements; NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego (Agency) as follows:

1. That the Agency hereby approves the First Amendment to the Lease Agreement (Lease) with San Diego Theatres, Inc. (Tenant) dated October 18, 2007 in connection with the maintenance, operation, and use of certain property, that includes the Balboa Theatre, located within the Horton Plaza Redevelopment Project.

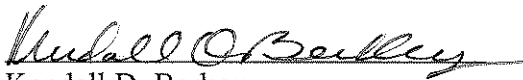
2. That, as part of the First Amendment to the Lease, the Agency hereby agrees to reimburse the Tenant for the total amount of the Capacity Reservation Charge paid by Tenant since March 2008, estimated in the amount of \$65,965 through June 2010.

3. That the Agency hereby authorizes the Executive Director or designee to execute the First Amendment to the Lease, a copy of which when executed by the Agency, shall be placed on file in the office of the Secretary of the Agency as Document No. 04566

4. That the Agency hereby authorizes the Executive Director or designee, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the

Lease as amended by the First Amendment and to administer the Agency's obligations,
responsibilities and duties to be performed thereunder in accordance with this Resolution.

APPROVED: JAN I. GOLDSMITH, General Counsel

By 
Kendall D. Berkey
Deputy General Counsel

KDB:nja
August 30, 2010
September 1, 2010 Cor.Copy
Cert.No: CC3000003552
Or.Dept:CCDC
RA-2011-15
PL#2010-01440
Comp. RA-2011-14

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the
City of San Diego, at this meeting of SEP 14 2010

REDEVELOPMENT AGENCY

By 
Jeannette Santos, Deputy Secretary

Approved: 9-22-10
(date)


JERRY SANDERS, Executive Director

Vetoed: _____
(date)

JERRY SANDERS, Executive Director

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000003552
DEPT. NO. _____

HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: Francisco J Lopez
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$100,000.00

Vendor: San Diego Theatres, Inc.

Purpose: Per the amended Amendment & Cooperation agreement, the Agency is responsible to reimburse the Tenant (San Diego Theatres, Inc. for the Balboa Theatre) for Capacity Reservations Charges which includes a portion of the chilled water supply services paid to NRG Energy Center. This CC covers \$65,965 for back expenses from March 2008-June 2010, plus \$34,035 for 2011 expenses authorized by this action.

Date: August 27, 2010 By: Francisco Lopez
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
001	400646	955500101000	955500101101	OTHR-06-NS	512059	2255	2255500011		\$100,000.00
TOTAL AMOUNT									\$100,000.00

FUND OVERRIDE

Passed by the Redevelopment Agency of The City of San Diego on SEP 14 2010, by the following vote:

Agency Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

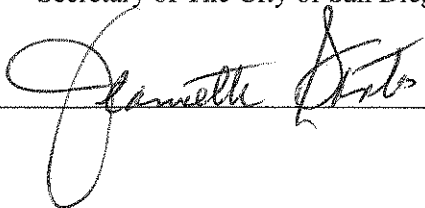
Date of final passage SEP 22 2010

AUTHENTICATED BY:

JERRY SANDERS
Executive Director of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
Secretary of The City of San Diego, California.

By , Deputy

Office of the Redevelopment Agency, San Diego, California

Resolution Number R- 04566