

DATE ISSUED: June 22, 2006

REPORT NO. RA-06-28

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Docket of June 27, 2006

SUBJECT: Fourth Implementation Agreement to the Disposition and Development  
Agreement with North Park Theatre, LLC for the North Park Theatre

REFERENCE: Fourth Implementation Agreement with North Park Theatre, LLC for the  
North Park Theatre Renovation Project

REQUESTED ACTION:

Approve the Fourth Implementation Agreement to the Disposition and Development Agreement (DDA) with North Park Theatre, LLC for the North Park Theatre renovation project.

STAFF RECOMMENDATION:

Approve the Fourth Implementation Agreement to the Disposition and Development Agreement (DDA) with North Park Theatre, LLC for the North Park Theatre renovation project.

SUMMARY:

Subject to a Disposition and Development Agreement with Arnold "Bud" Fischer, doing business as North Park Theatre, LLC (Developer) adopted on April 23, 2002, the Redevelopment Agency has performed a seismic retrofit of the historic North Park Theatre and conveyed the property to Mr. Fischer. Mr. Fischer has performed interior and exterior tenant improvements to the theatre which reopened as a modern live-performance venue on October 14, 2005. The renovated theatre includes a 736-seat performance space, a 5,800 square foot restaurant, and 6,700 square feet of leaseable office space. Mr. Fischer has executed a long-term lease for the renovated theatre with Lyric Opera San Diego, including an option to purchase the auditorium. Lyric Opera San Diego has been successful in generating pledges of \$3,700,000 toward the purchase of the theatre.

After nearly two decades of disuse and decay, the renovation of the North Park Theatre has been completed and the first public performance conducted on October 14, 2005. Leases have been executed with tenants of the ground- and upper-floor commercial spaces along University Avenue and with Lyric Opera San Diego, the operating tenant of the theatre auditorium.

The proposed Fourth Implementation Agreement to the DDA with North Park Theatre, LLC for the North Park Theatre restoration provides for an increase of \$100,000 for expenditures not included in the original scope of development, including \$80,000 for the installation of foundation drains along the north and east property boundaries, the replacement of soils saturated by rain after the Agency removed the original sidewalk in the course of its seismic retrofit, and the cost of water-proofing subsurface structures at the base of the elevator and \$20,000 to fund landscape architectural services for the preliminary design of public improvements proposed for 29th Street adjacent to the North Park Theatre.

**ALTERNATIVE:**

Do not approve the recommended actions.

**FISCAL CONSIDERATIONS:**

A loan to the Agency from North Park Theatre, LLC funds the Agency's subsidy of \$3,335,000 for the rehabilitation of the North Park Theatre. The Agency's subsidy is funded by an advance of funds by the developer. Interest on the developer's advances, totaling \$3,335,000, accrues at a rate of 6.75% (Prime plus two percent as calculated on August 1, 2004) for a period of two years ending on July 31, 2006. Beginning on August 1, 2006, the interest rate will increase to Prime plus two-and-one-half percent and increase by one-half percentage point each subsequent August 1<sup>st</sup> while a principal balance remains outstanding. The Prime rate as of June 2, 2006 was eight percent (8%). If the Prime rate were to remain unchanged through August 1<sup>st</sup>, the effective interest rate on the developer's advance would adjust to ten and one-half percent (10.5%). The increase in the developer advance of \$100,000 will be subject to the same interest rate as the existing principal amount.

The proposed Fourth Implementation Agreement (Attachment 1) provides for an increase in the developer advance of \$100,000 for expenditures not included in the original scope of development for a total developer advance of \$3,435,000. The loan will be repaid from North Park tax increment funds, or from a future bond issuance or other financing. The Agency has conducted a request for proposals for a bank line of credit in the approximate amount of \$10 million. If obtained, the proceeds of a line of credit would be applied to the repayment of the developer advance. Although the interest rate applicable to the contemplated line of credit is not fixed at this date, it is anticipated to be between 3.5% and 3.75% below the effective rate of the current developer advance rate.

**PREVIOUS AGENCY and/or COMMITTEE ACTION:**

On April 23, 2002, at a joint public hearing, the City Council and Redevelopment Agency approved a Disposition and Development Agreement (DDA) with North Park Theatre LLC. for the development of the North Park Theatre.

On May 2, 2003, the Redevelopment Agency approved the First Implementation Agreement to the DDA for the theatre rehabilitation. The First Implementation Agreement extended the time allowed for completion of the Agency seismic retrofit and conveyance to the Developer.

On April 28, 2004, the Redevelopment Agency approved the Second Implementation Agreement to authorize the Executive Director to execute a loan of \$3,300,000 from the Developer to the Redevelopment Agency as an additional subsidy to the project. The additional subsidy was needed to fill a funding gap resulting from previously undetected deficiencies in the property, higher building and historic renovation standards, enhanced theatre production capacities, additional environmental testing and mitigation, labor costs and price inflation. The loan of \$3,300,000 from the Developer to the Redevelopment Agency was to be repaid from future receipts of unallocated tax increment or other available sources. Principal and interest payments were deferred, with an interest rate of 5% on the outstanding balance. The terms of the Second Implementation Agreement also restricted the use of the theatre auditorium such that it cannot be physically rededicated to a non-performance purpose for a period of fifty years from the date of execution of the agreement.

The Third Implementation Agreement approved on December 9, 2004 authorized the Developer to increase the Developer Loan by \$35,000 to cover the cost of removing a derelict City fire service lateral and to seal concrete slab floors against moisture intrusion. The Third Implementation Agreement also provided for quarterly interest-only payments on the outstanding balance of the Developer Loan and introduced an escalating interest rate on the outstanding balance after project completion. Under the Third Implementation Agreement, interest on the outstanding balance of the loan is calculated at prime plus 2% for the first two years following project completion, and increasing by one-half percentage point each year thereafter, not to exceed prime plus 4% or the maximum permitted by law.

Pursuant to the State Guidelines for the Implementation of the California Environmental Quality Act (CEQA) (California Administrative Code, Section 15000 et. seq.) and the San Diego Redevelopment Agency’s amended “Procedures for Implementation of CEQA and the State CEQA Guidelines” (adopted July 17, 1990), an Environmental Secondary Study analyzing the probable environmental effects of the North Park Theatre Project as approved on February 10, 2004.

**COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:**

The North Park Project Area Committee (PAC) held a regularly scheduled meeting on September 13, 2005 and adopted a motion of support for the proposed action by a vote of 6 in favor, 1 opposed, with one abstention.

**KEY STAKEHOLDERS and PROJECT IMPACTS:**

Development Team -

ROLE	FIRM	OWNERSHIP
Developer	Firm: North Park Theatre, LLC	Arnold G. “Bud” Fischer
Architect	Firm: Bundy & Thompson Architecture	Richard Bundy David Thompson
Landscape Architect	Firm: Wallace Roberts & Todd, LLC	A Limited Liability Company

City Resident and Business Impact – None with this action.

Respectfully submitted,

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Maureen Ostrye  
Deputy Executive Director  
Redevelopment Agency

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Approved: James T. Waring  
Assistant Executive Director  
Redevelopment Agency

Attachments:

1. Fourth Implementation Agreement with North Park Theatre, LLC for the North Park Theatre Renovation Project

**FOURTH IMPLEMENTATION AGREEMENT  
TO THE DISPOSITION AND DEVELOPMENT AGREEMENT  
BETWEEN THE REDEVELOPMENT AGENCY AND  
NORTH PARK THEATRE LLC**

This Fourth Implementation Agreement [Agreement] is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO [Agency] and NORTH PARK THEATRE LLC [Developer].

For and in consideration of the mutual covenants and conditions set forth in this Agreement, the Agency and Developer agree as follows:

**RECITALS**

a. The Agency and Developer have entered into a Disposition and Development Agreement dated April 23, 2002 [the Original DDA, as amended by the First, Second and Third Implementation Agreements to the Original DDA [collectively, the DDA], all of which are incorporated herein by this reference. Any capitalized term contained in this Agreement that is not otherwise defined shall have the meaning attributed to such term in the DDA.

b. The purpose of the DDA is to effectuate the Redevelopment Plan for the North Park Redevelopment Project by providing, among other things, for the disposition (by sale) of certain real property defined in the DDA as the Property and the rehabilitation of the historic North Park Theatre building, as described in the DDA on file in the Office of the Agency as Document No. D-03462.

c. The purpose of the Second Implementation Agreement, on file in the Office of the Agency as Document No. D-03762, is to amend the DDA to provide a loan to the Agency from Developer [Agency Loan], in the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000).

d. The purpose of the Third Implementation Agreement, on file in the Office of the Agency as Document No. D-03838, is to increase the Agency Loan by Thirty Five Thousand Dollars (\$35,000) and amend the terms of Agency Loan repayment.

e. The purpose of this Fourth Implementation Agreement is to (1) increase the amount of Agency Loan by One Hundred Thousand Dollars (\$100,000), to be repaid in accordance with Paragraph (a) of the Third Implementation Agreement

**NOW THEREFORE**, the Agency and Developer agree that the DDA is amended as follows:

a. As additional consideration for the Developer's performance under the DDA, the Agency shall pay or reimburse Developer for additional costs related to the Rehabilitation Work, in the amount of \$100,000.00.

- b. Amounts advanced by Developer that are to be reimbursed or paid under this Agreement shall bear interest calculated as set forth in Paragraph (a) of the Third Implementation Agreement.
- c. The All other terms of the DDA not amended hereby shall remain in force and effect.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Agreement.

NORTH PARK THEATRE LLC, A  
CALIFORNIA LIMITED LIABILITY  
COMPANY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Arnold G. Fischer  
Managing Member

REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James T. Waring  
Assistant Executive Director

APPROVED as to form and legality, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

MICHAEL J. AGUIRRE  
Agency General Counsel

By: \_\_\_\_\_  
Deputy General Counsel