

OVERSIGHT BOARD RESOLUTION NUMBER OB-2016-4

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE TERMINATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND FIRST COMMERCIAL REAL ESTATE FINANCING REGARDING THE SUSHI SPACE LOCATED IN THE CARNATION BUILDING.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in 1996, the Former RDA made a loan to Carnation, LLC, a California limited liability company, in the principal amount of \$536,000 (Rehab Loan) pursuant to a Rehabilitation Loan Agreement by and between Carnation and the Former RDA and for the purpose of rehabilitating a portion of the Carnation Building for use as a cultural arts and performance center (Loan Agreement); and

WHEREAS, the Rehab Loan was evidenced by a promissory note in the amount of \$536,000 (Original Note) and secured by a Deed of Trust (Original Deed of Trust); and

WHEREAS, in connection with the Rehab Loan, Carnation and the Former RDA entered into that certain Agreement Affecting Real Property dated February 20, 1997 and recorded February 21, 1997 as Document No. 1997-0078778 in the Official Records (Original AARP); and

WHEREAS, the Original AARP required that a 6,050 square foot portion of the Carnation Building (Sushi Space) be leased to Sushi Performance and Visual Art (Sushi, Inc.), or to a substitute non-profit cultural arts use, at below-market rent until February 20, 2027; and

WHEREAS, Carnation entered into a commercial lease with Sushi, Inc. relating to the Sushi Space, which included an “Addendum to Commercial Lease Agreement” for the benefit of the Former RDA (Lease); and

WHEREAS, in August 2003, Carnation, with Former RDA approval, sold the Carnation Building to ICON LLC (ICON), for the construction of a mixed-use development consisting of the historic rehabilitation of the Carnation Building, 320 condominium units, and approximately 18,000 square feet of commercial space; and

WHEREAS, pursuant to an Assignment and Assumption Agreement dated August 5, 2003 by and among the Former RDA, Carnation, and ICON, ICON assumed all obligations of Carnation under the Loan Agreement, the Original Note, the Original Deed of Trust, the Original AARP, and the Lease; and

WHEREAS, pursuant to that certain Agreement Regarding Carnation Block Condominiums by and between the Former RDA and ICON date October 6, 2003 and that certain First Amendment to Agreement Regarding Carnation Block Condominiums by and between the Former RDA and ICON dated September 26, 2006, the Original Note was cancelled and replaced with a letter of credit in the amount of \$536,000 (Letter of Credit), the Original Deed of Trust was reconveyed, and the lien of the Original AARP was released and extinguished; and

WHEREAS, in December 2008, ICON and the Former RDA replaced the Letter of Credit with a new promissory note for \$536,000 dated December 10, 2008 (Replacement Note), secured by a deed of trust dated December 10, 2008 and recorded on December 31, 2008 as Document No. 2008-0660765 (Replacement Deed of Trust), and entered into that certain Agreement Affecting Real Property dated December 10, 2008 and recorded on December 31, 2008 as

Document No. 2008-0660764 (Replacement AARP), limiting use of the Sushi Space to be leased to Sushi, Inc. or a substitute cultural arts use until May 19, 2031; and

WHEREAS, in December 2008, the Former RDA also consented to the sale of the Sushi Space to First Commercial Real Estate Financing (FCREF) and the assignment of ICON's rights, interests, and obligations under the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease to FCREF pursuant to that certain Assignment and Assumption Agreement dated December 23, 2008 and recorded December 31, 2008 as Document No. 2008-0660767 in the Official Records; and

WHEREAS, in May 2011, Sushi, Inc. defaulted on the Lease and in June 2011, had vacated the Sushi Space with \$222,659 of obligations in default; and

WHEREAS, as required under the Agency Documents, FCREF notified the Former RDA of the default and the Former RDA declined to cure the default; and

WHEREAS, pursuant to the Replacement AARP and the Lease, upon an uncured default by Sushi, Inc., FCREF may lease the Sushi Space to another entity for purposes other than exclusive use as a cultural arts and performance center (Alternative User); and

WHEREAS, pursuant to the Replacement AARP and the Lease, in the event FCREF leases the Sushi Space to an Alternative User, FCREF shall pay the Excess Rent, defined as eighty percent of the differential between the gross rent that Sushi, Inc. was to pay and the gross rent from the Alternative User; and

WHEREAS, FCREF indicates that it does not have the resources to fund leasing commissions and tenant improvements for tenants in the Sushi Space and that FCREF's efforts to lease the Sushi Space to other entities have been unsuccessful; and

WHEREAS, FCREF now desires to enter into a termination agreement in which FCREF shall pay \$1,021,000 in exchange for the termination, reconveyance, and/or removal of the Loan Agreement, Replacement Note, Replacement Deed of Trust, Replacement AARP, and the Lease (Termination Agreement); and

WHEREAS, Keyser Marston Associates, Inc. (KMA) prepared a financial analysis of the proposed city pay out, solving for the estimated loan prepayment amount based on inputs and assumptions reflecting KMA's independent market research (KMA Analysis); and

WHEREAS, the KMA Analysis cash flow projection results support the reasonableness of the FCREF's offer of \$1,021,000; and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, pursuant to Code section 34181(e), the Oversight Board may approve any amendments to, or early termination of, any contracts, agreements, or other arrangements of the Former RDA if the Oversight Board finds that amendments or early termination would be in the best interests of the local taxing entities; and

WHEREAS, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, the Termination Agreement; and

WHEREAS, a copy of the Termination Agreement is included as Attachment A to the Staff Report dated January 25, 2016 accompanying this item; and

WHEREAS, the current assessed value for the Sushi Space is \$642,880, which generates \$6,000 in annual property taxes to the taxing entities; and

WHEREAS, if the Sushi Space continues to remain vacant, then the taxing entities can only expect to receive the same level of annual tax revenue, increased by 2% annually per Proposition 13; and

WHEREAS, over a five-year period, KMA estimates that, as a result of the proposed Termination Agreement, the Sushi Space is projected to generate, based on a potential sale and future tenant improvements, an increase in tax revenues to all of the taxing entities combined of \$60,0000 over a five-year period (present value terms); and

WHEREAS, the proceeds from the FCREF payment pursuant to the Termination Agreement and funding from the Redevelopment Property Tax Trust Fund (RPTTF) held by San Diego County Assessor's Office may be used to pay enforceable obligations and any residual RPTTF money not dedicated to enforceable obligations may be distributed to local taxing entities;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Termination Agreement is hereby approved.
2. The Board finds, in accordance with Code section 34181(e), that the Termination Amendment is in the best interests of the local taxing entities.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on January 25, 2016.



Chair, Oversight Board