




Office of the City Manager

03

CONSENT CALENDAR

April 7, 2015

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Michael Caplan, Manager of Office of Economic Development
Subject: Elmwood Theater Foundation Loan Modification

RECOMMENDATION

Adopt a Resolution directing the City Manager to modify the outstanding loan from the Citywide Loan Fund to the Elmwood Theater Foundation to waive outstanding late fees through June 2015, modify the repayment schedule and extend the term of the loan.

FISCAL IMPACTS OF RECOMMENDATION

The Elmwood Theater Foundation (“the Foundation”) owes \$2,885 in outstanding late fees, which the City would forfeit. However, the restructured loan will enable the Foundation to make prompt, regular payments on the note in the future. By restructuring the loan, the City can help to ensure the continued financial viability of the Elmwood Theater, an essential contributor to the vitality of the Elmwood commercial district, which generates significant sales tax revenue for the City. The restructured loan would maintain the current interest rate (5%) and the City would not take any losses of interest or principal.

CURRENT SITUATION AND ITS EFFECTS

The Elmwood Theater Foundation has been unable to comply with the payment schedule originally established for its loan from the City of Berkeley. This has resulted in irregular payments and the assessment of late fees. The organization has requested that the City waive currently outstanding late fees and restructure its loan to allow for more regular, consistent repayment.

BACKGROUND

In 2005 the City made a \$170,000 loan from the Citywide Loan Fund to Elmwood Theater Foundation to finance seismic upgrades to the theater. The repayment of that loan was scheduled to occur in monthly installments; however, the City has primarily received large, periodic payments: a \$25,000 payment in July 2008, a \$35,000 payment in May 2010, and a \$30,000 payment in January 2012. Late and inconsistent payments have meant that a significant portion of the repayment amount to date (\$2,759) has been assigned to penalties rather than paying off the principal.

The Foundation is ready to make an additional \$35,000 payment. In January 2015, the Foundation sent a letter to Office of Economic Development staff requesting that the City waive the outstanding late fees (\$2,885 as of April 7, 2015) before accepting the payment.

Additionally, the Foundation would like the City to restructure the loan for the remaining principal after the pending payment is applied (\$120,438). The Foundation is able to make monthly payments of \$1,500; they have committed to set up a recurring payment with their bank and stay current on the obligations of the revised note. Maintaining the original interest rate (5%), this would effectively require the City to extend the loan repayment term by approximately 3 years beyond the initially planned 15-year term, extending the final due date from August 2020 to June 2023.

ENVIRONMENTAL SUSTAINABILITY

The Elmwood Theater is a neighborhood theater whose primary market is the immediately surrounding community. The local theater enhances neighborhood walkability and services. As such, the continued viability of the theater may help to reduce greenhouse emissions generated by private auto trips, contributing to the City's environmental sustainability goals.

RATIONALE FOR RECOMMENDATION

The Elmwood Theater is a cultural asset and critical to the vitality of the Elmwood district. The City of Berkeley played a central role in helping to reopen the Theater by establishing the Foundation as a volunteer-run organization.

ALTERNATIVE ACTIONS CONSIDERED

N/A

CONTACT PERSON

Jordan Klein, Economic Development Project Coordinator, Office of Economic Development, 981-7534

Attachments:

1: Resolution

Exhibit A: Amendment to Loan Agreement

Exhibit B: Modified Payment Schedule

RESOLUTION NO. -N.S.

MODIFICATION OF THE LOAN TO ELMWOOD THEATER FOUNDATION

WHEREAS, in 2005 the City of Berkeley loaned \$170,000 to Elmwood Theater Foundation to finance seismic work on the Elmwood Theater; and

WHEREAS, Elmwood Theater Foundation has been unable to comply with the payment schedule established for that loan, resulting in irregular payments and the assessment of late fees; and

WHEREAS, Elmwood Theater Foundation has requested that the City waive outstanding late fees and restructure the loan agreement, and has committed to setting up recurring automatic payments to ensure compliance with the modified loan agreement; and

WHEREAS, the Elmwood Theater is a cultural asset that is critical to the vitality of the Elmwood commercial district, which generates significant sales tax revenue for the City of Berkeley; and

WHEREAS, the City of Berkeley played a central role in reopening the Elmwood Theater by establishing Elmwood Theater Foundation as a volunteer-run organization that is responsible for oversight of the theater.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend modify the loan to Elmwood Theater Foundation to waive outstanding late fees through June 2015, modify the repayment schedule and extend the term.

Exhibits

A: Amendment to Loan Agreement

B: Modified Payment Schedule

AMENDMENT TO AGREEMENT

THIS AGREEMENT is entered into April __, 2015, between the CITY OF BERKELEY ("Lender"), a Charter City organized and existing under the laws of the State of California, and the Elmwood Theater Foundation ("Borrower"), a California nonprofit corporation doing business at 2964-2966 College Avenue, Berkeley, CA, 94705.

WHEREAS, Lender and Borrower previously entered into a Loan Agreement ("Loan Agreement") dated April 21, 2005, in which Lender agreed to lend Borrower \$90,000 to be repaid with interest at 5 percent per annum, with payments of interest only for 60 months followed by 120 amortizing installments of principal and interest; and

WHEREAS, Lender and Borrower previously agreed on August 31, 2005 to modify the Loan Agreement, increasing the original loan by \$80,000 from \$90,000 to \$170,000 on the same terms and waiving the loan origination fee; and

WHEREAS, on April 7, 2015, the Berkeley City Council adopted Resolution No. ##### authorizing the City Manager to amend the Loan Agreement to modify the payment schedule and extend the term.

NOW, THEREFORE, Lender and Borrower agree for mutual consideration to amend said Loan Agreement as follows:

1. The text of Section 1 of the Loan Agreement is amended to read as follows:
"FOR VALUE RECEIVED, in installments as herein stated, the undersigned ("Borrower") promises to pay to the CITY OF BERKELEY ("Lender"), or order, at its office at Berkeley, California, or at such other place as the holder hereof may designate, in lawful money of the United States of America, the principal sum of One Hundred Twenty Thousand Four Hundred Thirty-Seven and 75/100 Dollars (\$120,437.75), with interest from the date hereof on unpaid principal balance at the rate of five percent (5%) per annum (computed on the basis of 365 days/year, actual

days elapsed) Principal and interest are payable in equal monthly installments of One Thousand Four Hundred Ninety-Nine and 42/100 Dollars (\$1,499.42) each on the first day of each month beginning on the first day of May, 2015, and continuing for ninety-five (98) successive months, and until said principal and interest have been paid. Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease on the principal so credited. All outstanding principal and interest is due and payable Ninety-Five (98) months from the date of this Note.”

2. In all other respects, the LOAN AGREEMENT dated August 31, 2005, shall remain in full force and effect.

IN WITNESS WHEREOF, Lender and Borrower have executed this Agreement as of the date written on the first paragraph of this Agreement.

Elmwood Theater Foundation
 (“Borrower”)

By _____
 David Salk, President

CITY OF BERKELEY
 (“Lender”)

By _____
 Christine Daniel, City Manager

This document has been approved as to form by the City Attorney’s Office.

By _____
 City Attorney

PROMISSORY NOTE
(Installment Payment)

\$120,437.75

Berkeley, California

April __, 2015

1. FOR VALUE RECEIVED, in installments as herein stated, the undersigned ("Borrower") promises to pay to the CITY OF BERKELEY ("Lender"), or order, at its office at Berkeley, California, or at such other place as the holder hereof may designate, in lawful money of the United States of America, the principal sum of One Hundred Twenty Thousand Four Hundred Thirty-Seven and 75/100 Dollars (\$120,437.75), with interest from the date hereof on unpaid principal balance at the rate of five percent (5%) per annum (computed on the basis of 365 days/year, actual days elapsed) Principal and interest are payable in equal monthly installments of One Thousand Four Hundred Ninety-Nine and 42/100 Dollars (\$1,499.42) each on the first day of each month beginning on the first day of May, 2015, and continuing for ninety-five (98) successive months, and until said principal and interest have been paid. Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease on the principal so credited. All outstanding principal and interest is due and payable Ninety-Five (98) months from the date of this Note.

2. This Note may be prepaid, at any time or from time to time, in whole or in part without premium or penalty. Any prepayment of principal must be accompanied by interest accrued but unpaid hereunder to the date of receipt of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal in reverse chronological order of installment maturity dates under this Note.

3. This Note is the Note defined in, and is entitled to the benefits of, the agreement entitled "Loan Agreement" (the "Loan Agreement"), dated concurrently herewith, between Borrower and Lender. Terms defined in the Loan Agreement shall, when used herein, have the same meaning as therein.

4. This Note is either secured by, or entitled to the benefits, rights and privileges of, the following instruments executed contemporaneously herewith:

Deed of Trust on property located at 2964-2966 College Avenue, Berkeley, California, in favor of Lender (Exhibit C of the Loan Agreement).

5. Borrower hereby waives presentment, demand for payment, notice of dishonor, protest and notice of protest of this Note. Borrower agrees to pay all costs of collection when incurred, excluding attorney's fees. Borrower agrees to perform and comply with each of the covenants, conditions, provisions and agreements of Borrower contained in the Loan Agreement, or any agreement or instrument evidencing, securing, or guaranteeing the indebtedness evidenced hereby. No alteration, amendment or waiver of any provision of this Note, the Loan Agreement, or any agreement or instrument evidencing or providing security for this Note, made by agreement of the holder hereof or any other person or party, shall constitute a waiver of any other term hereof, or otherwise release or discharge the liability of Borrower under this Note.

6 In the event that a monthly loan payment is ten (10) days or more overdue, a late fee of five percent (5%) of said outstanding payment shall be added to the unpaid principal amount of this Note, and interest shall accrue thereon at the rate specified in Section 1 of this Note. If an Event of Default (as defined in the Loan Agreement) shall occur and be continuing, the entire principal balance of this Note, together with interest which shall have accrued thereon, may be declared immediately due and payable in the manner and with the effect provided in the Loan Agreement. After occurrence of an Event of Default, unpaid accrued interest shall be added to the unpaid principal amount of this Note, and interest shall accrue thereon at the rate specified in this Note.

7. This Note is governed by and is to be construed in accordance with the laws of the State of California.

Borrower

Exhibit B: Modified Payment Schedule

Citywide Loan Fund: Payment Schedule for Elmwood Theater Foundation
April 7, 2015

Loan Amount: \$120,437.75
Interest Rate: 5%
Amortization: 95 Months
Monthly Payment: \$1,499.42

Month	Payment	Principal	Interest	Balance
1	(\$1,499.42)	(\$997.60)	(\$501.82)	\$ 119,440.16
2	(\$1,499.42)	(\$1,001.75)	(\$497.67)	\$ 118,438.40
3	(\$1,499.42)	(\$1,005.93)	(\$493.49)	\$ 117,432.48
4	(\$1,499.42)	(\$1,010.12)	(\$489.30)	\$ 116,422.36
5	(\$1,499.42)	(\$1,014.33)	(\$485.09)	\$ 115,408.03
6	(\$1,499.42)	(\$1,018.55)	(\$480.87)	\$ 114,389.48
7	(\$1,499.42)	(\$1,022.80)	(\$476.62)	\$ 113,366.68
8	(\$1,499.42)	(\$1,027.06)	(\$472.36)	\$ 112,339.62
9	(\$1,499.42)	(\$1,031.34)	(\$468.08)	\$ 111,308.28
10	(\$1,499.42)	(\$1,035.64)	(\$463.78)	\$ 110,272.64
11	(\$1,499.42)	(\$1,039.95)	(\$459.47)	\$ 109,232.69
12	(\$1,499.42)	(\$1,044.28)	(\$455.14)	\$ 108,188.41
13	(\$1,499.42)	(\$1,048.64)	(\$450.79)	\$ 107,139.77
14	(\$1,499.42)	(\$1,053.01)	(\$446.42)	\$ 106,086.77
15	(\$1,499.42)	(\$1,057.39)	(\$442.03)	\$ 105,029.37
16	(\$1,499.42)	(\$1,061.80)	(\$437.62)	\$ 103,967.58
17	(\$1,499.42)	(\$1,066.22)	(\$433.20)	\$ 102,901.35
18	(\$1,499.42)	(\$1,070.67)	(\$428.76)	\$ 101,830.69
19	(\$1,499.42)	(\$1,075.13)	(\$424.29)	\$ 100,755.56
20	(\$1,499.42)	(\$1,079.61)	(\$419.81)	\$ 99,675.96
21	(\$1,499.42)	(\$1,084.10)	(\$415.32)	\$ 98,591.85
22	(\$1,499.42)	(\$1,088.62)	(\$410.80)	\$ 97,503.23
23	(\$1,499.42)	(\$1,093.16)	(\$406.26)	\$ 96,410.07
24	(\$1,499.42)	(\$1,097.71)	(\$401.71)	\$ 95,312.36
25	(\$1,499.42)	(\$1,102.29)	(\$397.13)	\$ 94,210.08
26	(\$1,499.42)	(\$1,106.88)	(\$392.54)	\$ 93,103.20
27	(\$1,499.42)	(\$1,111.49)	(\$387.93)	\$ 91,991.71
28	(\$1,499.42)	(\$1,116.12)	(\$383.30)	\$ 90,875.58
29	(\$1,499.42)	(\$1,120.77)	(\$378.65)	\$ 89,754.81
30	(\$1,499.42)	(\$1,125.44)	(\$373.98)	\$ 88,629.37
31	(\$1,499.42)	(\$1,130.13)	(\$369.29)	\$ 87,499.24
32	(\$1,499.42)	(\$1,134.84)	(\$364.58)	\$ 86,364.40
33	(\$1,499.42)	(\$1,139.57)	(\$359.85)	\$ 85,224.83
34	(\$1,499.42)	(\$1,144.32)	(\$355.10)	\$ 84,080.51
35	(\$1,499.42)	(\$1,149.09)	(\$350.34)	\$ 82,931.43

36	(\$1,499.42)	(\$1,153.87)	(\$345.55)	\$	81,777.55
37	(\$1,499.42)	(\$1,158.68)	(\$340.74)	\$	80,618.87
38	(\$1,499.42)	(\$1,163.51)	(\$335.91)	\$	79,455.36
39	(\$1,499.42)	(\$1,168.36)	(\$331.06)	\$	78,287.01
40	(\$1,499.42)	(\$1,173.22)	(\$326.20)	\$	77,113.78
41	(\$1,499.42)	(\$1,178.11)	(\$321.31)	\$	75,935.67
42	(\$1,499.42)	(\$1,183.02)	(\$316.40)	\$	74,752.65
43	(\$1,499.42)	(\$1,187.95)	(\$311.47)	\$	73,564.69
44	(\$1,499.42)	(\$1,192.90)	(\$306.52)	\$	72,371.79
45	(\$1,499.42)	(\$1,197.87)	(\$301.55)	\$	71,173.92
46	(\$1,499.42)	(\$1,202.86)	(\$296.56)	\$	69,971.06
47	(\$1,499.42)	(\$1,207.87)	(\$291.55)	\$	68,763.18
48	(\$1,499.42)	(\$1,212.91)	(\$286.51)	\$	67,550.28
49	(\$1,499.42)	(\$1,217.96)	(\$281.46)	\$	66,332.32
50	(\$1,499.42)	(\$1,223.04)	(\$276.38)	\$	65,109.28
51	(\$1,499.42)	(\$1,228.13)	(\$271.29)	\$	63,881.15
52	(\$1,499.42)	(\$1,233.25)	(\$266.17)	\$	62,647.90
53	(\$1,499.42)	(\$1,238.39)	(\$261.03)	\$	61,409.51
54	(\$1,499.42)	(\$1,243.55)	(\$255.87)	\$	60,165.96
55	(\$1,499.42)	(\$1,248.73)	(\$250.69)	\$	58,917.23
56	(\$1,499.42)	(\$1,253.93)	(\$245.49)	\$	57,663.30
57	(\$1,499.42)	(\$1,259.16)	(\$240.26)	\$	56,404.14
58	(\$1,499.42)	(\$1,264.40)	(\$235.02)	\$	55,139.74
59	(\$1,499.42)	(\$1,269.67)	(\$229.75)	\$	53,870.07
60	(\$1,499.42)	(\$1,274.96)	(\$224.46)	\$	52,595.11
61	(\$1,499.42)	(\$1,280.27)	(\$219.15)	\$	51,314.83
62	(\$1,499.42)	(\$1,285.61)	(\$213.81)	\$	50,029.22
63	(\$1,499.42)	(\$1,290.97)	(\$208.46)	\$	48,738.26
64	(\$1,499.42)	(\$1,296.34)	(\$203.08)	\$	47,441.91
65	(\$1,499.42)	(\$1,301.75)	(\$197.67)	\$	46,140.17
66	(\$1,499.42)	(\$1,307.17)	(\$192.25)	\$	44,833.00
67	(\$1,499.42)	(\$1,312.62)	(\$186.80)	\$	43,520.38
68	(\$1,499.42)	(\$1,318.09)	(\$181.33)	\$	42,202.30
69	(\$1,499.42)	(\$1,323.58)	(\$175.84)	\$	40,878.72
70	(\$1,499.42)	(\$1,329.09)	(\$170.33)	\$	39,549.62
71	(\$1,499.42)	(\$1,334.63)	(\$164.79)	\$	38,214.99
72	(\$1,499.42)	(\$1,340.19)	(\$159.23)	\$	36,874.80
73	(\$1,499.42)	(\$1,345.78)	(\$153.65)	\$	35,529.03
74	(\$1,499.42)	(\$1,351.38)	(\$148.04)	\$	34,177.64
75	(\$1,499.42)	(\$1,357.01)	(\$142.41)	\$	32,820.63
76	(\$1,499.42)	(\$1,362.67)	(\$136.75)	\$	31,457.96
77	(\$1,499.42)	(\$1,368.35)	(\$131.07)	\$	30,089.62
78	(\$1,499.42)	(\$1,374.05)	(\$125.37)	\$	28,715.57
79	(\$1,499.42)	(\$1,379.77)	(\$119.65)	\$	27,335.80
80	(\$1,499.42)	(\$1,385.52)	(\$113.90)	\$	25,950.27
81	(\$1,499.42)	(\$1,391.29)	(\$108.13)	\$	24,558.98

82	(\$1,499.42)	(\$1,397.09)	(\$102.33)	\$	23,161.89
83	(\$1,499.42)	(\$1,402.91)	(\$96.51)	\$	21,758.98
84	(\$1,499.42)	(\$1,408.76)	(\$90.66)	\$	20,350.22
85	(\$1,499.42)	(\$1,414.63)	(\$84.79)	\$	18,935.59
86	(\$1,499.42)	(\$1,420.52)	(\$78.90)	\$	17,515.07
87	(\$1,499.42)	(\$1,426.44)	(\$72.98)	\$	16,088.63
88	(\$1,499.42)	(\$1,432.38)	(\$67.04)	\$	14,656.24
89	(\$1,499.42)	(\$1,438.35)	(\$61.07)	\$	13,217.89
90	(\$1,499.42)	(\$1,444.35)	(\$55.07)	\$	11,773.54
91	(\$1,499.42)	(\$1,450.36)	(\$49.06)	\$	10,323.18
92	(\$1,499.42)	(\$1,456.41)	(\$43.01)	\$	8,866.77
93	(\$1,499.42)	(\$1,462.48)	(\$36.94)	\$	7,404.29
94	(\$1,499.42)	(\$1,468.57)	(\$30.85)	\$	5,935.72
95	(\$1,499.42)	(\$1,474.69)	(\$24.73)	\$	4,461.04
96	(\$1,499.42)	(\$1,480.83)	(\$18.59)	\$	2,980.20
97	(\$1,499.42)	(\$1,487.00)	(\$12.42)	\$	1,493.20
98	(\$1,499.42)	(\$1,493.20)	(\$6.22)	\$	0.00