

SUMMARY REPORT PURSUANT TO SECTION 33433
OF THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW
ON A DISPOSITION DEVELOPMENT AND LOAN AGREEMENT
AND A LEASE AGREEMENT BY AND BETWEEN
THE CITY OF EL CERRITO REDEVELOPMENT AGENCY AND
PLEASANTOWN MOTION PICTURE COMPANY, LLC

I. INTRODUCTION

The California Health and Safety Code, Section 33433, requires that if a redevelopment agency wishes to sell or lease property to which it holds title, and if that property was acquired in whole or in part with property tax increment funds, the agency must first secure approval of the proposed sale or lease agreement from its local legislative body after a public hearing. A copy of the proposed sale or lease agreement and a summary report that describes and contains specific financing elements of the proposed transaction shall be available for public inspection prior to the public hearing. As contained in the Code, the following information shall be included in the summary report:

1. The cost of the agreement to the redevelopment agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the Agency, plus any expected interest on any loans or bonds to finance the agreement;
2. The estimated value of the interest to be conveyed or leased, determined at the highest and best use permitted under the redevelopment plan;
3. The estimated value of the interest to be conveyed in accordance with these uses, covenants, and development costs required under the proposed agreement with the Agency, i.e., the reuse value of the property;
4. An explanation of why the sale or lease of the property will assist in the elimination of blight, as required by Section 33433; and
5. The purchase price or sum of the lease payments, which the lessee will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

This report outlines the salient parts of the proposed Lease Agreement (Agreement) by and between the El Cerrito Redevelopment Agency (Agency) and Pleasantown Motion Picture Company, LLC (Tenant). This report is based upon information in the proposed Agreement, dated June 15, 2009, and is organized into the following seven sections:

1. **Introduction.** Describes the purpose of the report and requirements of the Section 33433 report.
2. **Summary of the Proposed Agreement.** This section includes a description of the property, project background, proposed Tenant, the proposed improvements and the major responsibilities of the Agency and the Tenant.
3. **Cost of the Agreement to the Agency.** This section outlines the cost of the Agreement to the Agency for costs associated with the Agreement between Tenant and the Agency.
4. **Estimated Value of the Interest to be Conveyed.** This section summarizes the value of the interests to be conveyed to the Tenant.
5. **Consideration Received and Reasons Therefore.** This section describes the lease payments to be paid by the Tenant to the Agency. It also contains a comparison of the lease payments and the fair market value at the highest and best use consistent with the redevelopment plan for the interests conveyed.
6. **Elimination of Blight.** This section includes an explanation of why the lease of the property will assist in the elimination of blight and supporting facts and materials.
7. **Conformance with Five-Year Implementation Plan.** This section describes how the Agreement is in conformance with the Agency's Five-Year Implementation Plan.

II. SUMMARY OF THE PROPOSED AGREEMENT

The following summarizes the proposed agreement for this project.

A. Description of the Property and the Project

Property

The subject property is the Cerrito Theater located at 10070 San Pablo Avenue, El Cerrito, California, 94530. Constructed in 1937 as a single-screen movie theater seating approximately 600 patrons, used as a warehouse or vacant for nearly 40 years, and then renovated in 2006 as a two-screen movie theater and restaurant, the building consists of approximately 10,000 square feet of gross leasable area. The theater seats approximately 150 downstairs and 140 upstairs, and the restaurant space at the front of the building seats 14. The renovated theater has barrel ceilings, murals, etched glass windows and mirrors, restored doors, and restored or replicated chandeliers and light fixtures. While the building is not listed on any historic register, the Agency expects to maintain the Cerrito as a community asset.

Background

The Agency purchased the Cerrito Theater in July 2002 and began looking for a theater operator to both renovate and operate the theater. A community group, Friends of the Cerrito Theater, formed and supported the project from its inception, including fundraising to pay for restoration of the historic elements of the building. The Agency selected Downey Street Productions and began the planning efforts for facility that would meet their operational needs and the Agency's goals for the project. Ultimately, the Agency spent over \$5 million on the project. The Cerrito opened for operation in November 2006, operated by Downey Street Productions under a Lease Agreement. However, the original operators were recently found in default by the Agency for non-payment of rent. The Lease Agreement was terminated when Downey Street Productions abandoned the property, leaving the theater temporarily closed.

The Agency's original goals for the theater project included:

- Providing a much needed entertainment venue for the city, something community members had been seeking for many years
- Returning an historic theater to operation after 40 years of vacancy or use as a furniture warehouse
- Restoring and replicating historic elements to the building
- Creating an economic engine for revitalization of the area surrounding the theater
- Providing a community gathering place, accessible to all members of the community
- Putting El Cerrito on the map, drawing patrons from around the Bay Area
- Maintaining a financially viable operation in the theater for the long term.

To a large degree, the theater project met the Agency's goals. In seeking a new operator, the Agency specified objectives for the new operation, based on feedback from the community. The Agency wanted to take best advantage of the improvements made to the building, understanding that the improvements might also limit the building's use to certain types of operators. The objectives include:

- More varied programming, responsive the broader community, including families, adults, students, children and seniors.
- Increased operating hours to maximize the use of the building, which represented a significant investment by the community.
- Better utilization of the spaces now occupied by The It Club and The It Club Too, whether through longer hours, expanded food service, or creative programming and uses.
- A high standard of building maintenance, as the Cerrito is an important asset for the Agency and the community.
- Participation in marketing efforts with the City and businesses in the community that will increase not only the visibility of El Cerrito, but also the theater's share of the movie and restaurant markets.

Based on these goals, on May 19, 2009, the Agency issued a Request for Proposals for a new operator and three proposals were received by the deadline of June 8, 2009. Based on evaluation of those proposals, staff has concluded that Pleasantown Motion Picture Company, LLC is the most qualified operator and therefore recommended that they be selected to operate the Cerrito.

Tenant

The Tenant is Pleasantown Motion Picture Company, LLC, a California limited liability corporation formed by the Rialto Cinemas, Inc. Rialto's current core business is operation of the Elmwood Cinema in Berkeley and the Lakeside Cinema in Santa Rosa. The tenant intends to operate the Cerrito in the current movie/restaurant format. The format will be first run movies supported by select independent and foreign films as well as special events. The tenant will also work with the City and non-profits to include community programming and fund raising. During non-operating hours, the Cerrito will be made available to other organizations for community or business usage.

B. Agency and Tenant Responsibilities

Agency Responsibilities

Subject to the specific terms and conditions stated in the Agreement, the Agency responsibilities under the proposed Agreement are as follows.

1. The Agency will lease the premises to the Tenant for a term of five years, providing the Tenant with three options to extend the lease term each for an additional five year term.
2. The Agency will provide the property as described previously in this report, including use of 40 percent of the parking behind the building, and the furniture, fixtures and equipment necessary for operating the theater and restaurant.
3. The Agency will make available a tenant improvements allowance of not to exceed \$150,000 for initial tenant improvements.
4. The Agency will maintain and repair as necessary the structural elements of the marquee on the exterior of the building; the structural integrity of the building; plumbing and electrical systems serving the building (including the heating, ventilation, and air conditioning systems); and the building's exterior gutters and drainage system.

Tenant Responsibilities

Subject to the specific terms and conditions stated in the Agreement, the Tenant responsibilities under the proposed Agreement are as follows.

1. The Tenant will lease the theater from the Agency for a term of five years, with three options to extend the lease term each for an additional five year term.
2. The Tenant will pay the Agency a combination of base rent, and percentage rent.
 - a. The base rent is \$4,000 per month escalating every year by CPI in an amount between 2 and 4 percent.
 - b. The percentage rent is five percent of any gross revenues in excess of \$960,000 per year, increasing by CPI every year at a similar amount as base rent.
3. The Tenant will be responsible for:
 - a. maintenance or repairs related to the Tenant's use and occupancy of the building
 - b. Cleaning and maintaining the theater in a neat and orderly condition
 - c. Maintenance and repairs of furniture, fixtures and equipment provided by the Agency.
 - d. Protecting and maintaining the historic elements of the building.
4. The Tenant will pay for operating expenses, property taxes, insurance, and utilities, including but not limited to water, electrical, sewer, and if applicable, natural gas. The Tenant will deduct from any percentage rent paid to the Agency the possessory interest tax levied against the property and paid by the Tenant.
5. The Tenant will operate the theater in keeping with its proposed theater/restaurant use, making the theater available for up to 12 community events each year, at no charge to the Agency or its designee.

III. COST OF THE AGREEMENT TO THE AGENCY

This section presents the total direct cost of the Agreement to the Agency.

A. Estimated Costs to the Agency

The Agency has already incurred the cost of acquiring, renovating and equipping the building. In addition, the Agency will incur costs for improvements to the theater in order to lease it to the Tenant. Total direct costs to the Agency are summarized below. A summary of revenue sources to offset these costs follows.

Original Project Cost

Building Acquisition	\$539,600
Renovation	4,454,193
Furniture, Fixtures & Equipment	<u>461,000</u>
Subtotal Original Project Cost	\$5,454,793
Kitchen Equipment Purchase from Downey Street	\$100,000
Tenant Improvement Allowance for Pleasantown	<u>\$150,000</u>
Total Cost	\$5,704,793

B. Estimated Revenues to the Agency

Per the terms of the Agreement, the Agency will lease the theater to Tenant in return for monthly lease payments over the life of the lease term. The lease payments to the Agency will be in the form of base rent and percentage rent paid by the Tenant. The lease payments and resulting revenues to the Agency are as follows.

Base Rent

The Agency will receive a monthly base rent of \$4,000 per month or \$48,000 per year, adjusted annually by the increase in the consumer price index (CPI), not less than two percent and not more than four percent.

Percentage Rent

Percentage rent would not be applicable until the theater operation's gross revenue exceeds \$960,000 annually, otherwise known as the percentage rent trigger. The percentage rent trigger is increased by the increase in the (CPI) similar to the base rent. The percentage rent would be five percent of gross revenues in excess of the percentage rent trigger. Based upon operating assumptions provided by the operator, it is conceivable that the Agency will collect percentage rent, but because these amounts are speculative, no percentage rent to the Agency is included in this report.

Tax Increment

As the theater is being leased to a private party, the Tenant is responsible for payment of possessory interest tax. A possessory interest is a private property interest in government-owned property or the right to the occupancy and use of government-owned property that is granted through a lease, concession, license or other type of agreement. The Agency will receive property tax increment for the possessory interest created by the Tenant's leasehold on the theater. The County Assessor will determine the amount of the property tax to be paid. As the lease terms allow that possessory interest tax paid by the Tenant will be credited towards the

percentage rent owed to the Agency, the tax increment revenue to the Agency is not reflected as a revenue source in this analysis.

Estimated Total Revenue to the Agency

The net present values of the estimated stream of base rent and percentage rent (net of taxes paid), assuming an annual CPI increase of three percent and a discount rate of five percent are as follows. Percentage rents are estimated based on information provided the Tenant and assumptions about tax rates.

<u>Term</u>	<u>Base Rent</u>	<u>Percentage Rent Net of Taxes Paid</u>
2009-2014	\$220,000	\$54,000
2015-2019	\$200,000	\$62,000
2020-2024	\$180,000	\$80,000
2025-2029	<u>\$165,000</u>	<u>\$97,000</u>
Total	\$765,000	\$113,000

Depending on the term of the lease and the degree to which the Tenant pays percentage rent, the cost to the Agency of the project is roughly \$4.9 million.

IV. VALUE OF THE INTEREST TO BE CONVEYED

The fair market value of the theater leasehold at its highest and best use can be imputed by comparing the competing proposals for operation of the theater that were received in response to the Agency's recent solicitation. The three proposals were as follows:

- \$6,500 monthly or 10 percent of gross receipts, whichever is higher, with a tenant improvement allowance of \$200,000. This operator projected the lowest gross receipts and no restaurant service, including no use of the retail spaces at the front of the building. Insufficient consideration was given to the Agency's requirement of community use of the theater.
- 6 percent of gross receipts, no minimum and no tenant improvement allowance. This operator projected the highest gross receipts, seeming overly optimistic given unfamiliarity with the restaurant component of the operation and no proposed use for the retail spaces at the front of the building. Community use of the theater was proposed.
- \$4,000 monthly or 5 percent of gross receipts, whichever is higher, with a tenant improvement allowance of \$150,000. This operator was conservative in its projections, reflecting the fact that the theater had been closed and that restaurant service would be a new venture. Community use of the theater was proposed.

Since each proposal had a percentage rent component, Agency revenues from each selected operation would be based at least in part on gross receipts. The revenues projected in each proposal relied upon different business models and how conservative or aggressive the operator was with their projections. The estimated revenues to the Agency from the three proposals ranged from \$54,000 to \$160,000 in the first year. The selected operator, while having the lowest percentage of gross receipts proposed, was in the mid range in terms of its projected revenues and planned more fully utilizing the capacity of the building.

Based on a comparison of the proposals received, which represent the best estimate of the fair market value of the interest to be conveyed given the unique nature of the property and its improvements, the value of the interest to be conveyed under the terms of the proposed lease appears to be less than or equal to the fair market value of the highest and best use of the property that is consistent with the redevelopment plan. As such, the proposed lease terms reflect the fair reuse value of the property, given the constraints on the property created by the Agency's requirements for varied programming, increased use of the building, fuller utilization of the Agency's investment in the front retail spaces and the restaurant kitchen, and community use of the building.

V. CONSIDERATION RECEIVED AND REASONS THEREFORE

The consideration being paid to the Agency is less than or equal to the fair market lease value for the premises. The proposed reuse of the property by the Tenant will likely result in the lowest revenue stream to the Agency of the proposals received. However, the Agency has determined that the operation proposed and provided for in the Lease Agreement with Pleasantown offers the most viable use of the premises as a theater and restaurant and the best complementary use for the other uses and activities on San Pablo Avenue. The theater will continue to draw patrons locally and regionally, help stimulate redevelopment along San Pablo Avenue, maintain the historic elements of the building, provide a community gathering place and much needed entertainment venue, and further the goals to stimulate economic development in this area. The operator has experience operating a small theater, and has credible plans to implement restaurant service. Additionally, the operator is prepared to commence operations of the theater in a timely fashion that will ensure that the theater does not remain dark for an extended period of time which could impact the viability of the theater returning to operations over the long term.

VI. ELIMINATION OF BLIGHT

The theater is located on San Pablo Avenue between Central and Fairmount Avenues, at the southern end of the Redevelopment Project Area. The theater has been renovated for use by a different tenant, but is currently vacant. It is located on a block that has recently experienced some redevelopment, but that also suffers from challenges to successful investment. Many of the properties on the block are small, some are vacant or underutilized, and some are in disrepair. Renovation of the theater addressed the physical and economic blight constituted by the building, created a gateway feature with the marquee, and created an incentive for further private investment in the area. The Agency is entering into this Agreement to build on these previous efforts and achieve its objectives of removing blight, stimulating private investment and invigorating commercial activity in the Project Area.

VII. CONFORMANCE WITH FIVE-YEAR IMPLEMENTATION PLAN

The proposed Project and Lease Agreement conform to and assist in achieving the goals defined in the Agency's Five-Year Implementation Plan. The operation of the Cerrito Theater will provide significant community and economic benefits and assist in the economic development program to support the Agency's overall mission of blight elimination efforts.

In 2002, the Agency acquired the Cerrito Theater property, negotiated a Disposition, Development and Loan Agreement with Downey Street Productions (Original Agreement) and prepared the summary report required under California Health and Safety Code, Section 33433 in 2004. The Project and the Original Agreement were at that time found to conform to the Agency's 2000/04 Five-Year Implementation Plan. The goals outlined in that Plan that are relevant to the theater renovation are as follows:

- Increase the number and diversity of businesses in the city.
- Provide a support for the business community, encouraging existing businesses.
- Increase and diversify tax revenues.
- Increase opportunities to purchase local goods, services, and entertainment as well as opportunities to satisfy the retail and service needs of neighboring communities.
- Expand employment opportunities for local area residents.
- Improve El Cerrito's image and strengthen our sense of community while enhancing residential and commercial property values.

The 2000/04 Plan also lays out "strategic themes" to guide efforts towards reaching these goals:

- Attracting new businesses.
- Retaining and expanding existing businesses, and supporting local startups.
- Making commercial areas more functional and attractive for economic activity.

Relevant programs and activities outlined in the 2000/04 Plan include:

- Identifying specific sites and encouraging development.
- Creating attractive "gateways" at key entry points into the City.

The Agency's current Five-Year Implementation covers fiscal years 2007/08 through 2011/12 and outlines a redevelopment program to support the Agency's overall mission of blight reduction. As the initial Agency rehabilitation of the Cerrito Theatre was undertaken in 2002 and completed in 2006, the goals, objectives and programs of the current Plan address the Cerrito Theatre as a focal point around which to leverage further economic development. The relevant programs and activities outlined in the current Plan include:

- Facilitation of Private Investment, including leveraging the success of the Cerrito Theater rehabilitation into further local economic development opportunities.
- Business Recruitment and Retention.

The continued successful operation of the Cerrito Theater is critical to achieving these goals. Therefore, the proposed Project will conform to the Implementation Plan, and will achieve the goals specifically defined in the Implementation Plan.