

AGENDA PACKET

FOX OAKLAND THEATER, INC.

a California nonprofit public benefit corporation controlled by the City of Oakland

BOARD OF DIRECTORS MEETING

Tuesday, June 1, 2021
10:00 a.m.

TELECONFERENCE ACCESS INFORMATION AND PUBLIC COMMENT GUIDANCE

ACCESSING FOT BOARD TELECONFERENCE MEETINGS:

This meeting will be held by tele-conference and recorded. The public may observe and/or participate in this meeting in the following two ways:

- **To join the meeting by video conference**, please click on this Zoom link at the noticed meeting time:
<https://zoom.us/j/99217316112>
Webinar/Meeting ID: **992 1731 6112**
- **To listen to the meeting by phone**, please dial the numbers below, **depending on your location**, at the noticed meeting time.

To call using iPhone OneTap, dial either of the numbers below:

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followed by 928 011 522 93 #

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If you need special assistance to participate in meetings, **please contact the FOT Secretary Hui-Chang Li** (hLi@oaklandca.gov or 510-238-6239) or **FOTB staff Brandon Wolinsky**

(bWolinsky@oaklandca.gov or (510) 238-3250). When possible, please **notify staff five (5) days prior** to the meeting so we can make reasonable arrangements to ensure accessibility.

PROVIDING PUBLIC COMMENT:

All public comment will be taken at the beginning of the meeting under Agenda Item No. 2: Public Comment.

There are two ways to submit public comments:

- **Email before the meeting.** Please email bWolinsky@oaklandca.gov to send your comment directly to the Board and staff BEFORE the meeting starts. eComment submission closes five (5) minutes before posted meeting time
- **During the Public Comment period at the meeting.** During Agenda Item No. 2, participants may provide comment during the live meeting webcasting, either by:
 - Clicking the “**Raise Your Hand**” button to request to speak during the Public Comment period, which occurs in within the first half of the meeting. During your turn, you will be permitted to provide your comment, and after the allotted time, re-muted.
 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “* 9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted.
Please unmute yourself by pressing “* 6.”

AGENDA PACKET

FOX OAKLAND THEATER, INC.

a California nonprofit public benefit corporation controlled by the City of Oakland

BOARD OF DIRECTORS MEETING AGENDA

Tuesday, June 1, 2021 10:00 a.m.

1. Roll Call

Alexa Jeffress (President)	Betsy Lake (Director)
Margaret O'Brien (CFO)	Brendan Moriarty (Director)
Hui-Chang Li (Secretary)	Anthony Reese (Director)
Kelley Kahn (Director)	

2. Public Comment

(1 minute per speaker)

3. Nominate Anthony Reese as Acting Secretary

Presenter: Brendan Moriarty

ACTION ITEM

4. Approval of April 7, 2021 FOT Board Meeting Minutes

Presenter: Anthony Reese

ACTION ITEM

5. FOT Financial Status

Presenter: Patrick Lane

INFO ITEM

6. Fox Theater Asset Transfer from ORSA to City

Presenter: Patrick Lane

INFO ITEM

7. Property Management

7a) Property Management Agreement with Colliers

Presenter: Anthony Reese

INFO ITEM

7b) Property Management Agreement Extension with CCIG

Presenter: Anthony Reese

ACTION ITEM

Staff Recommendation:

Authorize staff to negotiate and execute an Amendment No. 14 to the professional services agreement with California Capital & Investment Group ("CCIG") to continue providing property management services at the Fox Theater ("Property") until 30 days after the closing date of the transfer of ownership of the Property from the Oakland Redevelopment Successor Agency ("ORSA") to the City.

7c) Capital Improvement Needs: Waterproofing, Roof Repair & HVAC

Presenter: Patrick Lane

ACTION ITEM

Staff Recommendation:

Authorize approval and execution of a Funding Agreement between the Fox Oakland Theater, Inc and the City of Oakland for up to \$1.0 million for roof replacement, water penetration prevention, and HVAC renovations to the Fox Theater, subject to acceptance and appropriation of such funds by the City Council.

7d) Repairs & Maintenance: Emporium Water Meter

Presenter: Anthony Reese

ACTION ITEM

Staff Recommendation:

- (1) Authorize CCIG to enter into contract with Kruse Plumbing to replace the faulty water sub-meter that services Emporium in an amount not-to-exceed \$15,000;
- (2) Authorize staff to negotiate a reduced payment plan with Emporium for their total outstanding EBMUD charges billed to-date (\$27,044.99 for the period as of Feb 3, 2021) and to collect no less than \$10,000 from Emporium upon execution of the First Amendment to the Lease Agreement; and
- (3) Grant staff administrative authority to negotiate and waive subsequent outstanding EBMUD charges due pursuant to Section 9(a) of the Emporium Lease.

8. Fox Theater Tenant Lease Amendments

8a) GASS Lease Amendment #5

Presenter: Brendan Moriarty

ACTION ITEM

Staff Recommendation:

Authorize approval and execution of a fifth lease amendment with GASS Entertainment, LLC to:

- (1) extend the expiration date of the first renewal option from February 6, 2024 to December 31, 2025;
- (2) grant a fourth option to renew for five (5) years from January 1, 2036 to December 31, 2040 for a total potential lease term of thirty-two (32) years;
- (3) adjust renewal terms to a January 1 to December 31 calendar basis and corresponding paid admissions rent as follows:
 - (A) First renewal term: February 6, 2019 to December 31, 2025;
 - (B) Second renewal term: January 1, 2026 to December 31, 2030;
 - (C) Third renewal term: January 1, 2031 to December 31, 2035;
 - (D) Fourth renewal term: January 1, 2036 to December 31, 2040;
- (4) adjust additional premises rent by an additional fourteen percent (14%) starting January 1, 2026 and by 10% every five (5) years thereafter;
- (5) adjust the landlord's share of the facility fee for each paid admission as follows:
 - (A) Increase from \$1.00 to \$1.50 effective January 1, 2031;
 - (B) Increase from \$1.50 to \$1.75 effective January 1, 2036;
 - (C) Effective January 1, 2026, increase the landlord's share of the facility fee annually by an amount equal to the percentage change in the consumer price index ("CPI") or two (2) percent, whichever is greater;

- (D) Clarify landlord and tenant's reporting and meeting requirements regarding the collection and use of the facility fee for capital improvements by landlord and major repairs and maintenance by tenant; and
- (6) clarify tenant's obligation to provide the Oakland School of the Arts ("OSA") with use of the theater space pursuant to a memorandum of understanding ("MOU") between tenant and OSA dated May 3, 2021.

8b) OSA Lease Amendment

Presenter: Brendan Moriarty

ACTION ITEM

Staff Recommendation:

Authorize approval and execution of a first lease amendment with Oakland School of the Arts, a nonprofit organization to:

- (1) extend the term of the lease from June 30, 2021 to June 30, 2023 with a three-year option to renew until June 30, 2026;
- (2) effective July 1, 2021 to June 30, 2023, reduce base rent of \$78,375 per month by 40% in an amount equal to \$47,025 per month; and in the event of a hold over, adjust base rent annually by an amount equal to the percentage change in the consumer price index or two (2) percent, whichever is greater;
- (3) provide a rent credit of \$68,131.81 for tenant's base rent obligations for use of the theater space;
- (4) provide a rent credit of \$10,000 for tenant's base rent obligations for professional services related to analysis of repairs and improvements for the HVAC system;
- (5) clarify landlord's obligations to repair and maintain the structural portions of the building; and
- (6) acknowledge that tenant and the theater operator have entered into a memorandum of understanding for tenant's free and discounted use of the theater space and terminate the landlord's obligation to provide tenant rent credit for use of the theater space.

9. Other Items

INFO ITEM

9a) Board Meeting Schedule Revisions

- Cancel June 7, 2021 and September 13, 2021 meetings
- Move to bi-annual board meetings on 1st Mondays of December and June; tentative meeting schedule:
 - Thursday, December 1, 2021
 - Wednesday, June 1, 2022

9b) Board Composition

Presenter: Anthony Reese/Brendan Moriarty

ACTION ITEM

Staff Recommendation:

Accept resignation of Margaret O'Brien as a board member and discuss board composition.

10. Adjournment

FOX OAKLAND THEATER, INC.

a California nonprofit public benefit corporation controlled by the City of Oakland

BOARD OF DIRECTORS MEETING Wednesday, April 7, 2021, 1:00 p.m.

MINUTES

1. Roll Call

Meeting called to order at 1:00 pm.

Board members present: Alexa Jeffress, Margaret O'Brien, Hui-Chang Li, Kelley Kahn, Brendan Moriarty, Anthony Reese

Quorum was achieved with six members present.

2. Public Comment

(1 minute per speaker)

Lisa Sherman-Colt, Executive Director of OSA, provided comment in favor of a rent reduction for OSA due to the financial impacts caused by COVID.

Kimberly Palmore (OSA), provided comment in support of Lisa Sherman-Colt's previous comment.

3. Approval of December 7, 2020 FOT Board Meeting Minutes

ACTION ITEM

Presenter: Hui-Chang Li

Hui-Chang Li read a correction to the draft minutes

Alexa Jeffress moved to approve December 7, 2020 meeting minutes, seconded by Anthony Reese. Motion passed, with one abstention from Margaret O'Brien due to absence at last meeting.

4. FOT Financial Status (Exhibit A)

INFO ITEM

Presenter: Hui-Chang Li

Hui-Chang Li provided update that the FOT Inc. audit is nearing completion. Once completed, a copy will be provided to board members. Operating reserves increased from \$5.2 million to \$5.9 million, as of March 1, 2021. The increase is due to an APE/GASS payment of its full outstanding balance through February 1, 2021. Additionally, APE/GASS has since resumed paying its monthly payments. \$1 million from the operating reserves is intended to go towards the HVAC and roof repair/replacement project. \$4.4 million will be going towards the ORSA asset transfer. OSA rent reserves continues to decline and is anticipated to be exhausted by June 1, 2021. Following completion of the asset transfer and

roof repair project, FOT Inc. is expected to have \$500,000 in operating reserves, which is what is expected to be maintained for the remaining 16-year term.

Patrick Lane explained that the \$4.4 million will be paid by FOT Inc. to ORSA, but under the bond expenditure agreement, \$3.4 million will be transferred to the City. \$2.8 million will be held by the City as capital reserves for the Fox Theater, with the remaining \$600,000 held as Fox Theater's operating reserves.

5. Fox Theater Asset Transfer from ORSA to City

INFO ITEM

Presenter: Hui-Chang Li

Hui-Chang Li provided update on the ongoing asset transfer process: City Council, the County Oversight Board, and DOF have all provided necessary approvals on this item. Staff are currently in the implementation stage to close on this transaction. Staff have opened escrow and are working with the Office of the City Attorney and outside counsel to finalize legal documents. Signing parties will be FOT Inc., ORSA, and the City. Staff will be able to finalize this item following approval of lease amendments and property management agreement with Colliers. Expected to finalize within the next 60 days.

Approval of pending lease amendments is planned for upcoming May FOT Board meeting. An amendment to the management agreement to allow CCIG to remain for 30 days after the asset transfer is also planned for the May meeting.

6. Property Management

6a) Property Management Agreement with Colliers

INFO ITEM

Presenter: Anthony Reese

Anthony Reese stated that staff and Colliers are still negotiating on the insurance and indemnification items in the management agreement

6b) Emporium Lease Amendment

ACTION ITEM

Presenter: Brendan Moriarty/ Anthony Reese

Staff Recommendation

Authorize approval and execution of a lease amendment and guaranty amendment with Emporium Oakland, LLC to:

1. Extend the lease from September 1, 2021 to August 31, 2026 as lessee's option to exercise a first extended term of five (5) years
2. Adjust base rent by fifty percent (50%) from April 1, 2020 through March 31, 2023
3. Resume base rent in the amount of \$10,357.36 per month, as adjusted annually, from April 1, 2023 through August 31, 2026
4. Waive the ten percent (10%) late charge and require a lump sum payment of \$93,675.94 ("lump sum") in outstanding adjusted base rent and outstanding additional rent for the period of April 1, 2020 through August 31, 2021 upon execution of the lease amendment

5. Provide lessee the right to terminate effective April 1, 2023 upon a ninety (90) day notice
6. Adjust guarantor's liability to six (6) months of base rent in effect; and
7. Reconcile CAM charges on a January to December calendar year basis ([Exhibit B](#))

Due to lack of a rent reduction mechanism built into their lease agreement and an inability to operate business effectively over the past year, Emporium has experienced significant accrual of unpaid rent, totaling almost \$150,000. Staff has proposed a lease amendment as detailed in the proposed resolution, to assist with the financial burden and to extend the lease, which would otherwise expire on August 31, 2021, until August 31, 2026.

Brendan Moriarty moved to approve and execute lease amendment and guaranty amendment with Emporium Oakland, LLC. Motion was seconded by HuiChang Li. Motion passed by consensus.

6c) Capital Improvement Needs: Roof Repair & HVAC

INFO ITEM

Presenter: Patrick Lane/ George Durney

Patrick Lane provided update: FOT Board approved a resolution in December authorizing FOT to enter into a contract with Garland, Inc. for roof repair, following an informal bidding process. However, the Office of the City Attorney determined that due to the tax credit unwinding process, FOT is now considered a City-related entity. Therefore, FOT needs to closely follow the City's full public contracting process, which was not previously followed to arrive at the selection of Garland.

Staff have now started the process to find a new contractor to complete the roof repair work. In addition, due to COVID and OSA's planned recommencement of in-person learning, HVAC work needs to be completed as well. Staff now intend to coordinate both repair work concurrently.

Staff is currently scoping and bidding a roof and HVAC repair/replacement project for the Fox Theater. Due to OSA intending to have in-person learning by August 2021, this item is considered an "emergency" situation, and therefore the City Administrator's Office advised that an emergency declaration can be issued, which will shorten the contracting process.

Staff is working with Public Works and the tenant to assist with defining the Scope of Work for the project. Provided FOT Board approval is granted at the May meeting, FOT Inc. will transfer funds to the City to implement this work – which will likely be more than \$1 million due to the expanded SOW.

Margaret clarified that OSA will be resuming in-person learning next week per Lisa's text comment. In response to an inquiry to Brendan Moriarty, Patrick Lane stated that they were unable to provide estimate of cost or timeline of the repair work due to still ongoing project scoping.

Hui-Chang Li also noted that authorization for the transfer of \$1 million will come back as an action item at the next FOT board meeting

7. Other Items to Discuss

8. Adjournment for Closed Session

Pursuant to California Government Code Section 54956.8:

CONFERENCE WITH REALPROPERTY NEGOTIATORS

- a) **Property:** Fox Theater, 1807 Telegraph Ave, Oakland, California (a portion of the ground floor of the wrap around buildings off Telegraph, along 18th Street and 19th Street, as well as the second and third floors)

FOT's Negotiator: Brendan Moriarty, Anthony Reese, Patrick Lane, Naree Chan, and Jordan Flanders

Negotiating Parties: APE/GASS

Under Negotiation Price and terms of payment for the lease of the property's theater space.

- b) **Property:** Fox Theater, 1807 Telegraph Ave, Oakland, California (a portion of the ground floor of the wrap around buildings off Telegraph, along 18th Street and 19th Street, as well as the second and third floors)

FOT's Negotiator: Brendan Moriarty, Anthony Reese, Patrick Lane, Naree Chan, and Jordan Flanders

Negotiating Parties: Oakland School of the Arts

Under Negotiation Price and terms of payment for the lease of the property's school space.

X

Hui-Chang Li
Secretary

Item #6 FOT Financial Status – Update

- Operating Reserves as of
 - March 1, 2021: approximately **\$5.9 million**

 - May 1, 2021: approximately **\$6.0 million**
 - Includes \$1 million anticipated for HVAC and Roof Repair/Replacement

 - Includes One-Time Reserve Payment for ORSA Asset transfer: \$4.4 million

 - Includes OSA Rent Reserve remaining: \$68,903
 - expected to exhaust by 6/1/2021

AMENDMENT NO. 14
PROFESSIONAL SERVICES AGREEMENT
FOX OAKLAND THEATER, INC AND CALIFORNIA CAPITAL & INVESTMENT
GROUP

This Amendment No. 14 is entered into as of June ___, 2021 (the “Effective Date”), by and between **FOX OAKLAND THEATER, INC.**, a California nonprofit public benefit corporation (hereinafter called “FOT”) and **CALIFORNIA CAPITAL & INVESTMENT GROUP**, a California general partnership (hereinafter called “CCIG” or “Contractor”), amends that certain Professional Services Agreement (originally between Contractor (as successor to California Capital Group) and the Redevelopment Agency of the City of Oakland dated February 1, 2004 (the “Original Agreement”), as amended by Amendment No. 1 dated February 9, 2005, Amendment No. 2 dated August 1, 2005, Amendment No. 3 dated August 21, 2006, Amendment No. 4 dated November 27, 2006, Amendment No.5 dated July 31, 2008, Amendment No. 6 dated January 1, 2009, Amendment No. 7 dated June 2, 2009, Amendment No. 8 dated October 5, 2010, Amendment No. 9 dated January 25, 2013, Amendment No. 10 dated January 25, 2013, Amendment No. 11 dated December 11, 2019, Amendment No. 12. dated June 30, 2020, and Amendment No. 13 dated December 31, 2020.

A. The Original Agreement as amended as set forth above and as amended by this Amendment No. 14 shall hereinafter collectively be referred to as the “Agreement”.

B. Pursuant to that certain Assignment Agreement (Services Agreements) dated as of April 18, 2017, this Agreement was assigned by Fox Theater Landlord LLC, a California limited liability company, and Fox Theater Master Tenant LLC, a California limited liability company, jointly as assignor, to FOT, as assignee.

C. On December 7, 2020, FOT unanimously approved an extension of the Agreement for services by Contractor on an hourly basis until the later of February 28, 2020 or 30 days after the execution of an agreement between FOT and Colliers International Real Estate Management Services (CA), Inc. (“Colliers”) to assist and facilitate the transition of property management services to Colliers.

D. The agreement between FOT and Colliers was executed on April ___, 2021.

E. On May ___, 2021, FOT unanimously approved an extension of the Agreement for services by Contractor on an hourly basis until 30 days after the closing date of the transfer of ownership of the Fox Theater Property (“Property”), located at 1805 Telegraph Avenue in Oakland, California, from the Oakland Redevelopment Successor Agency (“ORSA”) to the City of Oakland (“City”).

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Time for Performance

Effective as of June _____, 2021, the time for performance of the contract work shall be extended from May ____ 2021 until 30 days after the closing date of the transfer of ownership of the Property from ORSA to the City.

2. Authority

The persons signing below represent that they have the authority to bind their respective party, and all necessary board of director's, shareholders', partners', members', city or other approvals have been obtained.

3. Ratification of Agreement

The Agreement, as modified by this Amendment No. 13, remains in full force and effect, and the parties hereby ratify the same.

4. Counterparts

This Amendment No. 13 may be signed in multiple counterparts, which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment No. 13 as of the Effective Date.

FOX OAKLAND THEATER, INC.,
a California nonprofit public benefit
corporation

By: _____
Name: _____
Title: _____

**CALIFORNIA CAPITAL &
INVESTMENT GROUP,**
a California general partnership

By: _____
Name: _____
Title: _____

Approved as to form and legality:

**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

RE: AUTHORIZE APPROVAL AND EXECUTION OF A FUNDING AGREEMENT BETWEEN THE FOX OAKLAND THEATER, INC. AND THE CITY OF OAKLAND FOR UP TO \$1.0 MILLION FOR ROOF REPLACEMENT, WATER PENETRATION PREVENTION, AND HVAC RENOVATIONS TO THE FOX THEATER, SUBJECT TO ACCEPTANCE AND APPROPRIATION OF SUCH FUNDS BY THE CITY COUNCIL

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation (the “Corporation”), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, the Fox Theater has several areas of leakage at the roof, exterior walls and at or below grade walls and floors, as documented through visual observations by the two principal tenants, the Oakland School of the Arts (“OSA”) and Another Planet Entertainment (“APE”); and

WHEREAS, after soliciting bids and reviewing proposals from Architectural Resources Group and Wiss, Janney, Elstner Associates, Inc. (“WJE”), on December 9, 2019 the Corporation entered into a contract with WJE, an engineering firm specializing in waterproofing investigation, generated a Leak Investigation & Roof Condition Report identifying several sources of leaks, including multiple roofs; exterior walls, and at or below grade walls; and provide recommendations for repairs; and

WHEREAS, on March 2, 2020, WJE submitted the Leak Investigation & Roof Condition Report; and

WHEREAS, the Corporation is in negotiations with tenants to repair and upgrade components of the heating, ventilating and air conditioning systems (“HVAC”); and

WHEREAS, the Corporation is in the process of transferring the ground lease and building improvements for the Fox Theater to the City of Oakland; and

WHEREAS, the Corporation will be unable to implement the building renovations before transfer of the building improvements to the City of Oakland; and

WHEREAS, the Corporation has set aside One Million Dollars (\$1,000,000) for the renovations and desires to enter into a Funding Agreement with the City of Oakland so that the City can implement the renovations; and

NOW, THEREFORE, BE IT RESOLVED: That the Corporation shall authorize the execution of a Funding Agreement with the City of Oakland, for a not to exceed amount of One Million Dollars (\$1,000,000), subject to acceptance and appropriation of such funds by the City Council; and

FURTHER RESOLVED: That any one officer of the Corporation and any one board member of the Corporation, acting on behalf of the Corporation, shall be authorized and directed to execute and deliver any and all necessary documents and instruments to facilitate the transactions authorized herein and any other action described in this Resolution; and

RESOLVED FURTHER: That to the extent that any actions authorized herein have already been performed by the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK- SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action by Unanimous Written Consent as of May __, 2021.

Alexa Jeffress, President

Hui Chang Li, Secretary

Margaret O'Brien, Chief Financial Officer

Betsy Lake, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Acting Secretary

**ACTION BY THE BOARD OF DIRECTORS OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

AUTHORIZE APPROVAL AND EXECUTION OF A FIFTH LEASE AMENDMENT WITH GASS ENTERTAINMENT, LLC TO:

(1) EXTEND THE EXPIRATION DATE OF THE FIRST RENEWAL OPTION FROM FEBRUARY 6, 2024 TO DECEMBER 31, 2025;

(2) GRANT A FOURTH OPTION TO RENEW FOR FIVE (5) YEARS FROM JANUARY 1, 2036 TO DECEMBER 31, 2040 FOR A TOTAL POTENTIAL LEASE TERM OF THIRTY-TWO (32) YEARS;

(3) ADJUST RENEWAL TERMS TO A JANUARY 1 TO DECEMBER 31 CALENDAR BASIS AND CORRESPONDING PAID ADMISSIONS RENT AS FOLLOWS:

(A) FIRST RENEWAL TERM: FEBRUARY 6, 2019 TO DECEMBER 31, 2025;

(B) SECOND RENEWAL TERM: JANUARY 1, 2026 TO DECEMBER 31, 2030;

(C) THIRD RENEWAL TERM: JANUARY 1, 2031 TO DECEMBER 31, 2035;

(D) FOURTH RENEWAL TERM: JANUARY 1, 2036 TO DECEMBER 31, 2040;

(3) ADJUST ADDITIONAL PREMISES RENT BY AN ADDITIONAL FOURTEEN PERCENT (14%) STARTING JANUARY 1, 2026 AND BY 10% EVERY FIVE (5) YEARS THEREAFTER;

(5) ADJUST THE LANDLORD'S SHARE OF THE FACILITY FEE FOR EACH PAID ADMISSION AS FOLLOWS:

(A) INCREASE FROM \$1.00 TO \$1.50 EFFECTIVE JANUARY 1, 2031;

(B) INCREASE FROM \$1.50 TO \$1.75 EFFECTIVE JANUARY 1, 2036;

(C) EFFECTIVE JANUARY 1, 2026, INCREASE THE LANDLORD'S SHARE OF THE FACILITY FEE ANNUALLY BY AN AMOUNT EQUAL TO THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX ("CPI") OR TWO (2) PERCENT, WHICHEVER IS GREATER;

(D) CLARIFY LANDLORD AND TENANT'S REPORTING AND MEETING REQUIREMENTS REGARDING THE COLLECTION AND USE OF THE

FACILITY FEE FOR CAPITAL IMPROVEMENTS BY LANDLORD AND MAJOR REPAIRS AND MAINTENANCE BY TENANT; AND

(6) CLARIFY TENANT'S OBLIGATION TO PROVIDE THE OAKLAND SCHOOL OF THE ARTS ("OSA") WITH USE OF THE THEATER SPACE PURSUANT TO A MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN TENANT AND OSA DATED MAY 3, 2021.

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation ("FOT" or the "Corporation"), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, GASS Entertainment, LLC ("GASS" or "Tenant") entered into the Fox Theater Building Lease (the "Lease") on or about December 1, 2006, for the lease of approximately 69,450 square feet of the concert hall portion ("Premises") of the historic Fox Theater (the "Fox Theater" or the "Building") located at 1805 Telegraph Avenue in Oakland, California; and

WHEREAS, the Lease was amended on June 30, 2010, by a First Amendment to Fox Theater Building Lease (the "First Amendment") to, among other provisions, extend the Termination Date until February 6, 2019 and receive a second option to renew until June 30, 2026; and

WHEREAS, the Lease was amended again on May 18, 2011 (the "Second Amendment") which amendment is in full force and effect. The Second Amendment added 1,300 square feet of additional premises to the lease for a bar and event space ("Additional Premises") until February 6, 2019, and any such extensions for the concert hall would apply to the Additional Premises; and

WHEREAS, the Second Amendment added Section 44.13 to the Lease and obligated Another Planet Entertainment, LLC ("APE" or "Guarantor") to guarantee the Additional Premises Rent payments; and

WHEREAS, Tenant has exercised its first option to renew the 69,450 square feet concert hall and additional 1,300 square feet premises for a bar and event space until February 6, 2024; and

WHEREAS, The Lease was amended a third time on April 10, 2015 ("Third

Amendment”) which amendment is in full force and effect. The Third Amendment revised the amortization of tenant improvement allowance repayments; and

WHEREAS, the Lease was amended a fourth time on September 8, 2017 (“Fourth Amendment”) which amendment is in full force and effect. The Fourth Amendment addressed the unwinding of the tax credit ownership structure such that the Building improvements and the ground lease would be owned by the Corporation; and

WHEREAS, the Fourth Amendment further re-confirmed a second option to renew until June 30, 2026; a third option to renew until February 6, 2029; and a fourth option to renew until February 6, 2034; and

WHEREAS, on March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency in response to the COVID-19 pandemic threat to public health and safety. On March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19. On March 16, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order, and further amended the order on April 29, 2020, that required all Alameda County Residents to stay in their homes and leave only for specified essential purpose; and

WHEREAS, Corporation and Tenant wish to amend the Lease in light of the impact to Tenant from the Shelter-in-Place Orders issued by the Alameda County Public Health Department in response to the global COVID-19 pandemic and to address other issues; and

WHEREAS, the Corporation and Tenant desire to amend the Lease to reflect the following terms and conditions as summarized in Exhibit A and herein:

- (1) Extend the expiration date of the current exercised First Renewal Term from February 6, 2024 to December 31, 2025; and
- (2) Grant a Fourth Option to Renew for five (5) years from January 1, 2036 to December 31, 2040 for a total potential lease term of thirty-two (32) years;
- (3) Adjust renewal terms and corresponding Paid Admissions Rent to a January 1 to December 31 calendar basis as follows:
 - (a) First renewal term: February 6, 2019 to December 31, 2025;
 - i. \$2.00 for each Paid Admission during the Lease Year that is greater than 100,000 but less than or equal to 130,000 and

- ii. \$2.50 for each Paid Admission during the Lease Year that is greater than 130,000.
- (b) Second renewal term: January 1, 2026 to December 31, 2030;
 - i. \$2.25 for each Paid Admission during the Lease Year that is greater than 100,000 but less than or equal to 130,000 and
 - ii. \$2.75 for each Paid Admission during the Lease Year that is greater than 130,000.
- (c) Third renewal term: January 1, 2031 to December 31, 2035;
 - i. \$2.50 for each Paid Admission during the Lease Year that is greater than 100,000 but less than or equal to 130,000 and
 - ii. \$3.00 for each Paid Admission during the Lease Year that is greater than 130,000.
- (d) Fourth renewal term: January 1, 2036 to December 31, 2040;
 - i. \$2.90 for each Paid Admission during the Lease Year that is greater than 100,000 but less than or equal to 130,000 and
 - ii. \$3.40 for each Paid Admission during the Lease Year that is greater than 130,000; and

(4) Adjust Additional Premises Rent by an additional fourteen percent (14%) starting January 1, 2026 and by 10% every five (5) years thereafter;

(5) Adjust the Landlord's share of the Facility Fee for each Paid Admission as follows:

- (a) Increase from \$1.00 to \$1.50 effective January 1, 2031;
- (b) Increase from \$1.50 to \$1.75 effective January 1, 2036;
- (c) Effective January 1, 2026, increase the Landlord's share of the Facility Fee annually by an amount equal to the percentage change in the Consumer Price Index ("CPI") or two (2) percent, whichever is greater;
- (d) Clarify Landlord and Tenant's reporting and meeting requirements regarding the collection and use of the Facility Fee for capital improvements by Landlord and major repairs and maintenance by Tenant; and

(6) Clarify Tenant's obligation to provide the Oakland School of the Arts ("OSA") with use of the theater space pursuant to a Memorandum of Understanding ("MOU") between Tenant and OSA dated May 3, 2021 as included in Exhibit B.

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to have the Corporation authorize the execution of a Lease Amendment with the Tenant and to conduct all other necessary actions for this transaction.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorize the Corporation to execute a Lease Amendment with the Tenant that substantially reflects the terms and conditions as set forth herein; and be it

FURTHER RESOLVED: That the Lease Amendment between the Corporation and Tenant shall be reviewed and approved for form and legality by the Corporation's General Counsel; and be it

FURTHER RESOLVED: That any one officer of the Corporation and any one board member of the Corporation, acting on behalf of the Corporation, shall be authorized and directed to execute and deliver any and all necessary documents and instruments to facilitate the transactions authorized herein and any other action described in this Resolution; and be it

FURTHER RESOLVED: That to the extent that any actions authorized herein have already been performed by the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action as of _____.

Alexa Jeffress, President

Margaret O'Brien, Chief Financial Officer

Betsy Lake, Board Member

Kelley Kahn, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Acting Secretary

**MEMORANDUM OF UNDERSTANDING BETWEEN OAKLAND SCHOOL OF THE
ARTS AND GASS ENTERTAINMENT, LLC REGARDING USE OF THE FOX
THEATER**

This Memorandum of Understanding (“MOU”) is entered into and effective as of May 3, 2021 by and between Oakland School of the Arts (“OSA”), a California nonprofit public benefit corporation, and GASS Entertainment, LLC (“GASS”), a Delaware Limited Liability Company. OSA and GASS are collectively referenced as “Party” or “Parties” here within. GASS is the Lessee of the theater portion of the Fox Theater. The intent of the MOU is to establish the legal right, during the term of GASS’ Lease for OSA to a limited and defined use of the Fox Theater on an annual basis for so long as OSA leases a portion of the Fox Theater Building and to create a legally enforceable obligation for the Parties to reach an agreement regarding the timing and condition of use of the Fox Theater.

RECITALS

Whereas OSA is a party to that certain Amended and Restated Fox Theater Building Lease dated as of January 26, 2016 (the “OSA Lease”) with Fox Oakland Theater, Inc., a California nonprofit public benefit corporation controlled by the City of Oakland (“Landlord”) for a portion of the Fox Theater building located at 1805 Telegraph Avenue in Oakland, California (the “Building”).

Whereas GASS is a party to that certain Fox Theater Building lease with Landlord dated as of December 2006 (the “GASS Lease”) pursuant to which GASS leases a portion of the Building known as the Fox Theater along with a portion of the premise containing the adjacent bar and lobby/annex (the “Theater”).

Whereas pursuant to the OSA and GASS Leases, GASS shall provide OSA with use of the Theater for up to 10 performance events per year and up to an additional 30 performance events per year rent free with OSA reimbursing GASS for all out of pocket expenses associated with these additional events. The OSA and GASS Lease provides that Landlord would require the aforementioned terms as part of the GASS Lease and Landlord would waive any applicable rent and/or fees to GASS for all OSA usage.

Whereas the Parties agree that the relationship regarding OSA’s use of the Theater should be established in a separate agreement and desire to have this separate agreement, rather than have the OSA Lease and the GASS Lease control these arrangements. Further to this, the Parties acknowledge that clarification of types of events for such usages be identified in writing and how such OSA usage of the Theater shall be funded. Therefore, the Parties have decided to enter into this MOU to establish the principal terms and condition related to OSA’s right to use the Theater and to further commit to negotiating a separate contract that will govern this relationship in more detail.

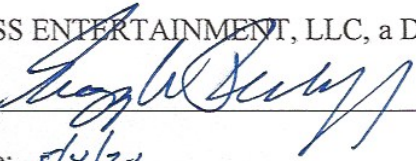
Taking the above into account, and for true and valuable consideration, the Parties agree as follows:

1. The Parties intend that this MOU is legally binding and that upon execution of this MOU each Party will be bound to fulfill the obligations described herein.
2. The Parties intend that in any year where the Theater is open for public performances, OSA will have the right to: (a) use of the Theater by faculty and students up to ten (10) times annually, free of charge of rent or overhead charges provided such usage is during normal school hours of approximately 8am-5pm and does not require any rental equipment or outside labor; this usage will not involve any public access or participation (each an "OSA Activity"); and (b) up to thirty (30) events (each an "OSA Event") per year free of charges for rent or fees with OSA reimbursing GASS for all direct out of pocket costs necessary for the operation of a publicly staged event. These costs include but are not limited to: utilities, insurance, security, ushers, ticket takers, stagehands, janitorial, and equipment rentals). The Parties acknowledge that there will be no mark up on these expenses and GASS will provide their own full time staff free of charge. The Parties intend that the usage for OSA Activities contemplated under (a) above will include, but are not limited to, programs such as master classes, assemblies, rehearsals, etc.
3. If OSA elects to have food and/or beverage service as part of an OSA Activity or an OSA Event, GASS shall have the exclusive right to provide such services and will retain all revenue associated with such beverage/food services. OSA will have no right to share in any such revenues. OSA acknowledges that GASS has an exclusive vendor for ticketing at the Theater. All public access, whether paid or invited must be coordinated through GASS, and its vendor for ticketing, for ticketing entry. All service fees above face price are retained by vendor and OSA has no share in such fees.
4. Each use of the Theater by OSA for an OSA Activity or an OSA Event shall be subject to a written show agreement between the Parties that sets forth the rights and obligations of the Parties in relation to that event. This show agreement will include GASS providing OSA with an estimated budget of reimbursable costs relative to their OSA Event, where applicable and other standard terms. Subject to #5 below, GASS shall have full discretion and control over scheduling of OSA Events.
5. OSA shall submit its proposed schedule of performance dates to GASS, each year at least six months in advance of each date, and the Parties agree to work cooperatively to negotiate the exact times and dates of the OSA Activities and OSA Events. GASS shall confirm the final dates at least six weeks in advance of each scheduled date for an OSA Activity or an OSA Event. GASS will be allowed to reschedule up to two OSA Events or OSA Activities per year, provided GASS gives at least four weeks advance written notice of the need to reschedule.
6. The Parties agree to negotiate in good faith a long form contract which sets forth the precise terms of the agreement with regard to the allocation of costs associated with OSA use of the Theater, the scheduling requirements, the billing

requirements and any other issues related to conduct of the parties with regard to the use of the space to which the Parties agree, provided however, that the long form agreement will include the terms hereof and be consistent with the terms and conditions of this MOU. If for any reason the long-form agreement is not completed, this MOU will be the agreement of the Parties. OSA and GASS acknowledge that the long form agreement will not be able to be completed prior to each of their core businesses being able to open fully as they operated pre-covid.


WHEREFORE, the Parties do execute this Agreement as of the date set forth above:

GASS ENTERTAINMENT, LLC, a Delaware Limited Liability Company

By: 

Date: 5/4/21

OAKLAND SCHOOL OF THE ARTS, a California Nonprofit Public Benefit Corporation

By: 
Lisa Sherman-Colt, Executive Director

Date: 5/2/21

Additional Rent

Lease Section #			4.2	4.2	5.1	5.7	5.7	44.7	44.8	
	Start Date	End Date	100-130k Paid Admissions Rent	130k+ Paid Admission Rent	CAM, Taxes, Insurance Maximum	Minimum Facility Fee	Landlord's Share of Facility Fee	TI Allowance Repayment Per Month*	VIP "Additional Premises" Monthly Rent	Note re VIP Rent Escalation
Term										
Initial 10-yr, Years 1-5	2/6/2009	2/5/2014	\$1.50	\$2.00	\$175,000	\$2.00	\$1.00	\$1,500	\$2,413	Additional Premises Commencement Date 9/1/11
Initial 10-yr, Years 6-10	2/6/2014	2/5/2019	\$1.75	\$2.25	\$175,000 plus annual CPI	\$2.00	\$1.00	\$1,129	\$2,558	6% increase for three years (2011 to 2014)
1st Renewal 5-yr plus 22.7 month COVID extension, Years 11-17	2/6/2019	12/31/2025	\$2.00	\$2.50	\$175,000 plus annual CPI	\$2.00	\$1.00	\$1,129	\$2,814	10% increase for five years
2nd Renewal 5-yr, Years 18-22	1/1/2026	12/31/1930	\$2.25	\$2.75	\$175,000 plus annual CPI	\$2.00	\$1.00 plus CPI or 2%	\$1,129	\$3,207	14% increase for seven yrs (2019 to 2025)
3rd Renewal 5-yr, Years 23-27	1/1/1931	12/31/1935	\$2.50	\$3.00	\$175,000 plus annual CPI	\$3.00	\$1.50 plus CPI or 2%	n/a	\$3,528	10% increase for five years
4th Renewal 5-yr, Years 28-32	1/1/1936	12/31/1940	\$2.90	\$3.40	\$175,000 plus annual CPI	\$3.50	\$1.75 plus CPI or 2%	n/a	\$3,881	10% increase for five years

*Note: \$1,500: 9/1/2011 to 12/31/2014; \$1,129: 1/1/15 to 7/31/27; \$1,022 on 8/1/27

**ACTION BY THE BOARD OF DIRECTORS OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

AUTHORIZE APPROVAL AND EXECUTION OF A FIRST LEASE AMENDMENT WITH OAKLAND SCHOOL FOR THE ARTS, A NONPROFIT ORGANIZATION TO:

(1) EXTEND THE TERM OF THE LEASE FROM JUNE 30, 2021 TO JUNE 30, 2023 WITH A THREE-YEAR OPTION TO RENEW UNTIL JUNE 30, 2026;

(2) EFFECTIVE JULY 1, 2021 TO JUNE 30, 2023, REDUCE BASE RENT OF \$78,375 PER MONTH BY 40% IN AN AMOUNT EQUAL TO \$47,025 PER MONTH; AND IN THE EVENT OF A HOLD OVER, ADJUST BASE RENT ANNUALLY BY AN AMOUNT EQUAL TO THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX OR TWO (2) PERCENT, WHICHEVER IS GREATER;

(3) PROVIDE A RENT CREDIT OF \$68,131.81 FOR TENANT’S BASE RENT OBLIGATIONS FOR USE OF THE THEATER SPACE;

(4) PROVIDE A RENT CREDIT OF \$10,000 FOR TENANT’S BASE RENT OBLIGATIONS FOR PROFESSIONAL SERVICES RELATED TO ANALYSIS OF REPAIRS AND IMPROVEMENTS FOR THE HVAC SYSTEM;

(5) CLARIFY LANDLORD’S OBLIGATIONS TO REPAIR AND MAINTAIN THE STRUCTURAL PORTIONS OF THE BUILDING; AND

(6) ACKNOWLEDGE THAT TENANT AND THE THEATER OPERATOR HAVE ENTERED INTO A MEMORANDUM OF UNDERSTANDING FOR TENANT’S FREE AND DISCOUNTED USE OF THE THEATER SPACE AND TERMINATE THE LANDLORD’S OBLIGATION TO PROVIDE TENANT RENT CREDIT FOR USE OF THE THEATER SPACE.

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation (the “Corporation” or “Landlord”), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, Oakland School of the Arts, a California nonprofit public benefit corporation (“Tenant”) entered into the Fox Theater Building Lease (the “Lease”) on or about December 18, 2006, for the lease of approximately 62,910 square feet of the (“Premises”) of the historic Fox Theater (the “Fox Theater” or the “Building”) located at 1805 Telegraph Avenue in

Oakland, California. Fox Theater Master Tenant had leased the Fox Theater from Fox Theater Landlord LLC (“Owner”) pursuant to a lease commencing on January 1, 2007; and

WHEREAS, a new Lease was executed on January 1, 2009, and the Lease was further amended and restated on January 26, 2016; and

WHEREAS, on March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency in response to the COVID-19 pandemic threat to public health and safety. On March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19. On March 16, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order, and further Amended the order on April 29, 2020, that required all Alameda County Residents to stay in their homes and leave only for specified essential purpose; and

WHEREAS, Corporation and Tenant wish to amend the Lease in light of the impact to Tenant from the Shelter-in-Place Orders issued by the Alameda County Public Health Department in response to the global COVID-19 pandemic and to address other issues; and

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to have the Corporation authorize the execution of a Lease Amendment with the Tenant and to conduct all other necessary actions for this transaction.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorize the Corporation to execute a Lease Amendment with the Tenant that substantially reflects the terms and conditions herein; and be it

FURTHER RESOLVED: That the Corporation and Tenant wish to amend the Lease to reflect the following terms and conditions:

- (1) Extend the Lease expiration date of June 30, 2021 to June 30, 2023 with a three-year option to extend the Lease until June 30, 2026;
- (2) Effective July 1, 2021 to June 30, 2023, reduce Base Rent by 40% in an amount equal to \$47,025 per month with Base Rent of \$78,375 to resume on July 1, 2023; and in the event of a hold over, adjust Base Rent annually by an amount equal to the percentage change in the Consumer Price Index or two (2) percent, whichever is greater;
- (3) Provide a rent credit of \$68,131.81 for Tenant’s Base Rent obligations for its use of the theater space;

- (4) Provide a rent credit of up to \$10,000 for Tenant's Base Rent obligations for professional services related to analysis of repairs and improvements for the heating, ventilation, and air conditioning ("HVAC") system to further consistency with the California Department of Public Health ("CDPH") COVID-19 and Reopening In-Person Instruction Framework & Public Health Guidance for K – 12 Schools in California, 2020-2021 School Year, dated March 20, 2021;
- (5) Clarify Landlord's obligations to repair and maintain the structural portions of the Building; and
- (6) Acknowledge that Tenant and the Theater Operator have entered into a Memorandum of Understanding for Tenant's free and discounted use of the theater space and terminate the Landlord's obligation to provide Tenant rent credit for use of the theater space.

FURTHER RESOLVED: That the Lease Amendment between the Corporation and Tenant shall be reviewed and approved for form and legality by the Corporation's General Counsel; and be it

FURTHER RESOLVED: That any one officer of the Corporation and any one board member of the Corporation, acting on behalf of the Corporation, shall be authorized and directed to execute and deliver any and all necessary documents and instruments to facilitate the transactions authorized herein and any other action described in this Resolution; and be it

FURTHER RESOLVED: That to the extent that any actions authorized herein have already been performed by the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action as of _____.

Alexa Jeffress, President

Margaret O'Brien, Chief Financial Officer

Betsy Lake, Board Member

Kelley Kahn, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Acting Secretary