

**OVERSIGHT BOARD
TO THE
OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY**

**AGENDA ITEM: F.6.
MEETING DATE: April 25, 2012, 11:00 a.m.**

TO: Members of the Oversight Board

FROM: Curtis Cannon, Successor Agency Director, (805) 385-7407
Kymberly Horner, Interim Redevelopment Services Manager,
Successor Agency, (805) 385-7407

1. SUBJECT

Agreement with Strand Cinemas, LLC, Oxnard Theatre Group, LLC, and San Carlos Cinemas, Inc. to extend the current tolling agreement regarding claims related to the RiverPark theater approvals.

2. RECOMMENDED ACTION(S)

That the Board adopt a resolution approving the execution of the attached Extension of Tolling Agreement with Strand Cinemas, LLC, Oxnard Theatre Group, LLC, and San Carlos Cinemas, Inc.

3. DISCUSSION

Attached to this report is a proposed resolution to approve the attached Extension of Tolling Agreement with Strand Cinemas, LLC, Oxnard Theatre Group, LLC, and San Carlos Cinemas, Inc.

The Oxnard Community Development Commission ("CDC") previously entered into several agreements providing for development of a multiplex theater complex and related amenities in downtown Oxnard. The Recognized Obligation Payment Schedule provided to this the Board lists payments certain enforceable obligations in connection with such agreements. The downtown theater owners and operators assert that by permitting the construction and operation of a theater in the RiverPark project in the northwest part of the City, the City and the former CDC breached agreements with the downtown theater owners and operators. The downtown theater owners and operators claim entitlement to approximately \$8,000,000 to be provided to the former CDC for downtown assistance under a separate agreement between the former CDC and developers of the Riverpark project.

Prior to the CDC's dissolution, the CDC, City and the theater owners had been negotiating concerning these issues, and had executed a tolling agreement which will expire on May 15, 2012. To avoid a lawsuit which might be required to avoid limitations statutes, the parties desire an extension of the tolling agreement to enable the parties continue negotiations concerning a downtown assistance program and to avoid a legal challenge to the RiverPark theater approvals.

4. ATTACHMENTS

1. Extension of Tolling Agreement

EXTENSION OF TOLLING AGREEMENT

This Extension of Tolling Agreement ("Extension") is entered into effective April ____, 2012 ("Effective Date") by and among Strand Cinemas, LLC, a California limited liability company ("Strand"), Oxnard Theater Group, LLC, a Delaware limited liability company ("OTG"), San Carlos Cinemas, Inc. ("San Carlos"), and the City of Oxnard ("City") on its own behalf and as the City as the Oxnard Community Development Commission Successor Agency ("SA").

RECITALS

- A. Strand, OTG, San Carlos, the City, and the Oxnard Community Development Commission ("Commission") entered into that certain Tolling Agreement, effective July 28, 2011, to toll any applicable statute of limitations periods for any legal challenge to the "RiverPark Theater Approvals," as defined therein, and to allow the parties to continue to attempt to reach agreement on a Downtown Assistance Plan to provide assistance and support to the Downtown Theater (the "Tolling Agreement");
- B. The Tolling Agreement provided for a tolling period that automatically terminated on November 15, 2011, unless terminated sooner by any party;
- C. The Tolling Agreement was extended to May 15, 2012 under an "Extension of Tolling Agreement" effective November 7, 2011;
- D. On February 1, 2012, the Commission was dissolved pursuant to AB 1X 26, and the SA became responsible for carrying on certain redevelopment activities involving enforceable obligations and winding down the business of the Commission.
- E. The parties now desire to extend the tolling period for an additional six months, until November 15, 2012 to provide additional time to attempt to reach agreement on a Downtown Assistance Plan;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. The automatic termination date of the tolling period specified in paragraph 1 of the Extension of Tolling Agreement is hereby extended from May 15, 2012 to November 15, 2012. This extended period of tolling continues to be subject to earlier termination by any party, by giving thirty (30) days advance written notice of such earlier termination.

2. The city is entering into this Extension on its own behalf, and as the successor and assign of the Commission.

3. The Extension shall be binding upon, and shall inure to the benefit of, all successors and assigns of the parties, whether by agreement or by operation of law.

4. Except as modified herein, the Tolling Agreement shall remain in full force and effect in accordance with its terms and provisions, all of which are expressly incorporated herein.

IN WITNESS WHEREOF, the parties to this Agreement have each executed this Agreement as of the Effective Date.

CITY OF OXNARD

STRAND CINEMAS, LLC

By: _____
Karen R. Burnham,
Interim City Manager

By: _____
Neno Spondello,
Managing Member

By: _____
Alan Holmberg,
City Attorney

By: _____
Dave O. White,
Managing Member

OXNARD COMMUNITY
DEVELOPMENT COMMISSION
SUCCESSOR AGENCY

OXNARD THEATRE
GROUP, LLC
By: Strand Cinemas, LLC, its
Managing Member

By: _____
Karen R. Burnham,
Interim Successor Agency Director

By: _____
Neno Spondello,
Managing Member

By: _____
Alan Holmberg,
Successor Agency General Counsel

SAN CARLOS CINEMAS, INC.

By: _____
ames D. Vaughn, Esq.

RESOLUTION NO. _____**A RESOLUTION OF THE BOARD OF DIRECTORS TO THE OVERSIGHT BOARD OF THE OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY APPROVING THE EXTENSION OF THE TOLLING AGREEMENT WITH STRAND CINEMAS, LLC, OXNARD THATRE GROUP, LLC, AND SAN CARLOS CINEMAS, INC.**

WHEREAS, the City of Oxnard Community Development Commission ("Agency") was a Community Development Commission in the City of Oxnard ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, AB 1X 26 ("AB 26") and AB 1X 27 ("AB 27") were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code ("Health and Safety Code"); and

WHEREAS, the California Redevelopment Association and League of California Cities filed a *lawsuit in the Supreme Court of California (California Redevelopment Association, et al. v. Matosantos, et al., Case No. S194861)* alleging that AB 26 and AB 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding AB 26, invalidating AB 27, and holding that AB 26 may be severed from AB 27 and enforced independently; and

WHEREAS, the Supreme Court generally revised the effective dates and deadlines for performance of obligations in Part 1.85 arising before May 1, 2012 to take effect four months later; and

WHEREAS, as a result of the Supreme Court's decision, on February 1, 2012, all redevelopment agencies were dissolved and replaced by successor agencies established pursuant to Health and Safety Code Section 34173; and

WHEREAS, the City Council of the City adopted Resolution No. 14,135 on January 10, 2012, pursuant to Part 1.85, electing for the City to serve as the successor agency to the Agency upon the dissolution of the Agency under AB 26 ("Successor Agency"); and,

WHEREAS, ABx1 26 adds to the Redevelopment Law Health and Safety Code section 34179, et seq., providing for establishment of an Oversight Board to oversee certain actions of successor agencies and carry out other directions of ABx1 26;

WHEREAS, the Oversight Board of the Oxnard Community Development Commission Successor Agency ("Board") has been created by the appointment under Health and Safety Code section 34179(a) of members sufficient to constitute a quorum;

WHEREAS, the Successor Agency has requested that the Oversight Board approve a tolling agreement to forestall possible litigation during discussion, which discussion may lead to resolution of issues which would be litigated; and

WHEREAS, the parties to such agreement, the nature and purpose of such agreement, as well as a copy of the proposed agreement, are described in the agenda report.

WHEREAS, approval of such an agreement is a financially prudent alternative to litigation;

NOW, THEREFORE, the Board of Directors DOES HEREBY FIND, DETERMINE, RESOLVE, AND ORDER as follows:

1. The Board approves and the City of Oxnard, as Oxnard Community Development Commission Successor Agency may execute, in the form attached to the agenda report, the Extension of Tolling Agreement with Strand Cinemas, LLC, Oxnard Theatre Group, LLC, and San Carlos Cinemas, Inc.

2. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the Board at its meeting held on the 25th day of April 2012, by the following vote:

AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS
ABSENT: BOARD MEMBERS:

ATTEST:

Daniel Martinez, Board Secretary