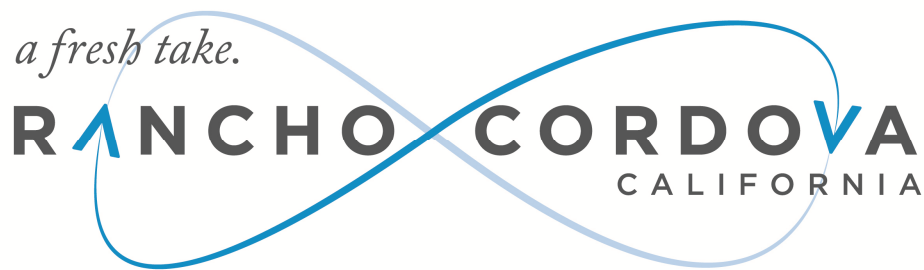


CITY OF RANCHO CORDOVA



CONCURRENT MEETING CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, December 14, 2015

5:30 PM – Special Meeting
Coloma Room

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members Budge, McGarvey, Skoglund, Terry and Mayor Sander.

2. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. SPECIAL MEETING ITEM

- 3.1 **Subject:** A Resolution of the City Council of the City of Rancho Cordova Authorizing the City Manager to Execute the Second Amendment to the Entertainment Center Financing Agreement to Extend the Project Financing Deadline until March 31, 2016 and Remove the City's Obligation to Issue a Fee Deferral Loan of up to \$775,000.

Recommendation: Approve City Council Resolution No. 145-2015.

Result of Recommended Action: Adoption of Resolution 145-2015 will authorize the City Manager to execute an amendment to the Entertainment Center Financing Agreement to extend the project financing term sheet deadline for three months to the date of March 31, 2016, remove the City's obligation to issue a fee deferral loan of up to \$775,000, and require the developer to release the City from all claims related to the Agreement.

Staff Report: Cyrus Abhar, City Manager; and Curt Haven, Economic Development Director.

Advances Goals: 1, 2, 6.

4. ADJOURNMENT

ADDITIONAL INFORMATION

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, MMC, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the Monday, December 14, 2015 Special Meeting of the Rancho Cordova City Council/Successor Agency to the CRA/RCFC was posted and available for review on Friday, December 11, 2015 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranhocordova.org.

Signed Friday, December 11, 2015 at Rancho Cordova, California.


Mindy Cuppy, MMC, City Clerk

MEMORANDUM

DATE: December 14, 2015

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, City Manager
Adam Lindgren, City Attorney



SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE ENTERTAINMENT CENTER FINANCING AGREEMENT TO EXTEND THE PROJECT FINANCING DEADLINE BY THREE MONTHS AND REMOVE THE CITY'S OBLIGATION TO ISSUE A FEE DEFERRAL LOAN OF UP TO \$775,000

RECOMMENDATION

Adopt Resolution No. 145-2015.

RESULT OF RECOMMENDED ACTION

Adoption of Resolution 145-2015 will authorize the City Manager to execute the Second Amendment to the Entertainment Center Financing Agreement to extend the project financing deadline by three months to March 31, 2016, remove the City's requirement to issue a fee deferral loan of up to \$775,000, and require the developer to release the City from all claims related to the Agreement.

BACKGROUND

On July 1, 2013, City Council approved the design and site plans for the American Family Entertainment Center, a 72,682 square foot entertainment center complex proposed for a 13-acre site on the east side of Kilgore Road Between Trade Center Drive and Sun Center Drive. As part of this action, Council approved the Entertainment Center Financing Agreement ("Agreement") with Rancho Cordova Entertainment Group LLC ("Developer"). The Agreement required the Developer to secure project financing by December 31, 2014. This deadline was extended by one year by the Council at its December 15, 2014 meeting.

The Developer has requested an additional 3-month extension on the deadline to secure project financing. In recent meetings with City management, the project team indicated that a new partnership with an equity firm should enable them to secure financing by the deadline and commence construction soon. The Developer has spent over \$650,000 to get the project permit ready.

The proposed Second Amendment to the Agreement extends the deadline to secure project financing until March 31, 2016. Additionally, it removes the City's obligation to issue a fee deferral loan of up to \$775,000 for the project, and obligates the Developer to release all claims against the City related to the Agreement.

If the Developer is unsuccessful in securing project financing by the March 31, 2016 deadline, the City will have no further obligations under the Agreement.

RECOMMENDED MOTION

Move the City Council adopt Resolution No. 145-2015.

ATTACHMENT

Resolution No. 145-2015. Including Exhibit A: Second Amendment to Entertainment Center Financing Agreement.

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CITY OF RANCHO CORDOVA

RESOLUTION NO. 145-2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE
ENTERTAINMENT CENTER FINANCING AGREEMENT TO EXTEND THE PROJECT
FINANCING DEADLINE UNTIL MARCH 31, 2016 AND REMOVE THE CITY'S OBLIGATION
TO ISSUE A FEE DEFERRAL LOAN OF UP TO \$775,000**

WHEREAS, the City Council and residents of the City of Rancho Cordova ("City") have long shared the desire to have a first rate movie theatre, bowling alley, restaurant and entertainment venue in the City; and

WHEREAS, the City Council entered into the Entertainment Center Financing Agreement ("Agreement") with the Rancho Cordova Entertainment Group, LLC ("Developer") on July 1, 2013; and

WHEREAS, the Agreement calls for the development of a movie theatre, bowling alley, restaurant and entertainment venue in the heart of the City; and

WHEREAS, Section 7.2 of the Agreement required the Developer to secure project financing within eighteen (18) months of the effective date of the Agreement and this Section was amended on December 15, 2014 to extend the deadline by one year until December 31, 2015; and

WHEREAS, the City Council now desires, in response to the Developer's request, to grant an additional three (3) month extension to the Developer's deadline to secure project financing; and

WHEREAS, the City Council desires to remove the City's obligation in Section 7.1(e) of the Agreement to issue the Developer a fee deferral loan up to \$775,000; and

WHEREAS, the City Council also desires that the Developer be required to release the City from any and all claims related to this Agreement and amendments thereto; and

WHEREAS, the Second Amendment to the Agreement, attached hereto as **Exhibit A**, carries out the amendments desired by the parties to this Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES HERBY RESOLVE THAT:

The City Manager is authorized to execute the Second Amendment to the Entertainment Center Financing Agreement in substantially the same form as that attached hereto, as **Exhibit A**.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

David M. Sander, Mayor

ATTEST:

Mindy Cuppy, MMC, City Clerk

2560442.1

EXHIBIT A TO RESOLUTION 145-2015

SECOND AMENDMENT TO CONTRACT NO. 145-2013, ENTERTAINMENT CENTER FINANCING AGREEMENT BETWEEN THE CITY OF RANCHO CORDOVA AND RANCHO CORDOVA ENTERTAINMENT GROUP, LLC

This Second Amendment to the Entertainment Center Financing Agreement between the City of Rancho Cordova and the Rancho Cordova Entertainment Group, LLC (the "Second Amendment") is entered into as of December 14, 2015 (the "Effective Date"), by and between the City of Rancho Cordova, a California municipal corporation ("Rancho Cordova"), and Rancho Cordova Entertainment Center, LLC ("Developer"), a California limited liability corporation. Rancho Cordova and Developer are hereinafter collectively referred to as the "Parties."

RECITALS

- A. On July 1, 2013, the Rancho Cordova City Council authorized the City Manager to execute the Entertainment Center Financing Agreement between Rancho Cordova and Rancho Cordova Entertainment Group LLC (the "Agreement") to enable Rancho Cordova to assist with the development of a family entertainment center complex on approximately 13 acres of City land.
- B. The First Amendment to the Agreement was enacted on December 15, 2014 via City Council Resolution No. 144-2014 to extend the developer's deadline to secure project financing until December 31, 2015
- C. The parties now desire to further extend the Developer's deadline to secure project financing until March 31, 2016.
- D. The parties also desire to amend the Agreement to remove the City's requirement to issue a fee deferral loan to the Developer and to require the Developer to release the City from all claims related to the Agreement and the project.

NOW, THEREFORE, the Parties to this Second Amendment agree as follows:

Section 1. Deadline to secure project financing.

Section 7.2(g) of the Agreement is hereby amended to read as follows:

"g. Project Financing. The total project cost is \$ 36,700,000. Developer is responsible for securing Project Financing for the remainder of the Project cost after the City Capital Contribution and Developer's Capital Contributions. The expected Project Financing is estimated to reach \$27,000,000. Developer shall submit documentation demonstrating that Developer has secured Project by March 31, 2016. This means Developer must submit evidence of a contractual commitment of one or more lenders to provide the Developer with the total amount of financing needed to fully pay the expected costs to construct and implement the Project, exclusive of Developer and City Contributions, up to and including the issuance of the Certificate of Occupancy. Each of the Developer

EXHIBIT A TO RESOLUTION 145-2015

Entities which are signatories to this Agreement agrees to repay in full the sum borrowed and to remain in compliance at all times with the terms of the Project Financing; the Developer signatories to this Agreement agree that they will not claim or assert that the creation of any partnership, limited liability company, corporation or other legal entity in any way limits such obligations and potential liabilities.”

Section 2. Elimination of fee deferral loan requirement.

Section 7.1(e) to the Agreement is hereby amended to read as follows:

“e. **Fee Deferral Loan.** Intentionally deleted to reflect the Parties’ desire that the City no longer be obligated to issue a fee deferral loan to Developer.”

Section 3. Release of all claims.

Section 13.28 is hereby added to the Agreement to read as follows:

“13.28 Release of All Claims. Developer releases City from any and all potential claims and causes of action, known or unknown, related to this Agreement and the Entertainment Center Project and any work or activities carried out pursuant to this Agreement and the Entertainment Center Project, including activities carried out related to negotiations for amendments and/or extensions to the Agreement. Developer expressly waives and relinquishes any rights and benefits which it may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Developer acknowledges that it has reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Developer acknowledges that its attorney has fully explained the impact of these provisions, and knowingly accepts the risks associated with this provision.”

Section 4. All other terms and conditions in the Agreement shall remain in full force and effect to the extent they are not in conflict with this Second Amendment.

Section 5. The signatures of the Parties to this Second Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Second Amendment, shall constitute one complete Amendment.

EXHIBIT A TO RESOLUTION 145-2015

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Amendment.

RANCHO CORDOVA ENTERTAINMENT GROUP LLC,
a California limited liability corporation

XXXXXXXXXXXXXXXXXX, its XXXXXXXXXXXXXXXXXXXX

CITY OF RANCHO CORDOVA,
a California municipal corporation

Cyrus Abhar, City Manager

Attest:

Mindy Cuppy, City Clerk

Reviewed as to Form:

Adam U. Lindgren, City Attorney

2560429.1

