



Memorandum

TO: HONORABLE MAYOR,
CITY COUNCIL AND
SUCCESSOR AGENCY BOARD

FROM: Richard A. Keit

SUBJECT: SEE BELOW

DATE: November 29, 2017

Approved

Date

1 DECEMBER 2017

**SUBJECT: FIFTH AMENDMENT TO THE AMENDED AND RESTATED LEASE
WITH THE COMEDY CLUB OF SAN JOSE, LLC (IMPROV) FOR THE
JOSE THEATRE**

RECOMMENDATION

Successor Agency Board approve the Fifth Amendment to the Amended and Restated Lease (Lease) with the Comedy Club of San Jose, LLC ("Improv") for the use of the Jose Theater located at 62 South Second Street extending the term for five years and increasing the base monthly rent of \$6,000 by 5% each year.

OUTCOME

Approval of the Fifth Amendment to the Lease with the Comedy Club of San Jose ("Improv") will allow the Improv to remain at the Jose Theatre for an additional five years; allow the Improv to physically upgrade the building; increase net revenues to the Successor Agency and reduce liabilities associated with the operation and maintenance of the Jose Theater. If the five-year lease is approved, the Improv will spend just over a half-million dollars in interior improvements.

BACKGROUND

The Jose Theater, located at 62 South Second Street, was built in 1904 and is the oldest theater in Downtown San Jose ("Property"). The former San Jose Redevelopment Agency ("Agency") purchased the Property in 2000 and completed seismic and façade upgrades to the building. In 2000, the Agency issued a Request for Qualifications for the adaptive reuse of the historic Jose Theatre.

In June 2001, the Agency Board approved a Lease with the Comedy Club of San Jose, for the Property. The Lease provided the Property be used as a live entertainment, comedy venue with

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an ancillary restaurant and bar. The Improv has extensive experience in operating live entertainment comedy venues in 23 locations nationwide.

The Improv opened for business in November 2002 pursuant to a 10-year lease. On December 18, 2012, the Successor Agency Board authorized the Successor Agency to negotiate and execute a new one-year lease with the Improv.

On February 28, 2013, the Oversight Board approved an Amended and Restated Lease for a term of one (1) year ending on December 31, 2013. On April 13, 2013, the Department of Finance (DOF) approved the New Lease. Subsequent Amendments and their approval dates are listed in the table below:

	Oversight Board Approval	Dept. of Finance Approval	Successor Board Approval
First Amendment	11/14/13	1/10/14	12/13/13
Second Amendment	10/13/14	12/5/14	11/18/14
Third Amendment	11/19/15	12/31/15	12/8/15
Fourth Amendment	10/27/16	11/21/16	11/13/16

The proposed Fifth Amendment was approved by the Oversight Board on November 9, 2017. Successor Agency staff requested a three-year lease, the minimum number of years the Improv would consider in order to commit over a half-million dollars for interior improvements. The Oversight Board immediately understood the value of a multi-year lease and requested staff modify the lease to five years. The resolution incorporating the five-year lease was sent to DOF on November 10, 2017. DOF has forty-five (45) days to approve or reject the resolution. As of this writing they have not submitted their approval or disapproval of the requested action.

ANALYSIS

The proposed Fifth Amendment to the New Lease will extend the term of the lease five (5) years to December 31, 2022, and increase the monthly Base Rent by five (5) percent each year as detailed in the table below. All other terms of the Lease, including the participation rent, will remain unchanged.

Year	Monthly Base Rent with 5% Annual Increase
January 1, 2018 through December 31, 2018	\$ 6,300
January 1, 2020 through December 31, 2019	\$ 6,615
January 1, 2020 through December 31, 2020	\$ 6,946
January 1, 2020 through December 31, 2021	\$ 7,293
January 1, 2020 through December 31, 2022	\$7,658

Rationale for Five-year Lease

There are several extremely compelling factors for approval of this Fifth Amendment:

- The building located at 62 South Second Street (Jose Theatre) is collateral for a Federal Section 108 Housing and Urban Development (HUD) loan the Agency obtained in 2008. The Loan will not be paid off until 2025. Since the Jose Theater cannot be sold until the HUD loan has been repaid in full and the security is released from the Property, keeping the Property leased during this period allows the Successor Agency to increase its revenues by receiving rent for the use of the property and decrease its liabilities by having the tenant pay for the operation and maintenance of the property. Furthermore, pursuant to the Dissolution Legislation the loan repayment to HUD cannot be accelerated.
- The Improv wants to make significant interior improvements costing approximately \$516,000. This money will be used to improve the Successor Agency's property. There is no risk to the Successor Agency and, the improvements should increase the value of the property (their Overview & Proposal is attached). The Improv will not make a major investment unless there is a multi-year lease.
- The Improv has been a reliable and credit worthy tenant for the last sixteen (16) years. If the Improv were to vacate the building the likelihood of obtaining another tenant is marginal at best given the configuration of the building, which was constructed as a movie theatre.
- If the Improv vacates the Property, the Successor Agency would likely not receive any rent because it is unlikely any other tenant would lease the building because of its configuration as a theatre. In addition, by allowing the Improv to remain as a tenant in the Property, the Successor Agency reduces its liabilities since the Successor Agency will not incur costs associated with maintaining an unoccupied building.

Summary of Key Terms:

Use: Comedy Club

Premises: 14,200 square feet located at the Jose Theater, 62-64 South Second Street.

Term: Five-year extension to December 31, 2022

Annual Rent: 2018 monthly base rent of \$6,300 plus percentage rent equal to 5% of gross sales in excess of \$2,500,000 up to \$3,000,000 (additional threshold) and 7% of Gross Sales in excess of \$3,000,000. The

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monthly base rent will increase by 5% each year beginning in 2018 and continuing through year five, 2022 whereby the monthly base rent will be \$7,658.

Right to Terminate: The Successor Agency and the Tenant each have the right to terminate the lease upon ninety (90) days written notice to the other party.

In addition to the base rent of \$6,000 a month (\$72,000 annually), the Improv's gross sales for last year was \$3,571,448.86 triggering a percentage rent provision in the Lease that requires the Improv to pay percentage rent of five percent (5%) on gross sales exceeding \$2.5 million and up to \$3 million (additional threshold) and seven (7%) on gross sales exceeding \$3.0 million. This calendar year the Improv paid the Successor Agency an additional \$65,001 in percentage rent. The club ownership has indicated that this year the club is doing well and should yield similar revenue.

The Jose Theatre is listed in the Long Range Property Management Plan as property "Retained to Fulfill an Enforceable Obligation". The Property is retained as security for a U.S. Housing and Urban Development Section 108 loan. The property will be solicited for sale after the Loan is repaid by 2025.

EVALUATION AND FOLLOW-UP

No additional follow up action with the City Council is expected at this time.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda Website for the December 12, 2017, Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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FISCAL/POLICY ALIGNMENT

The approval of the Fifth Amendment to the Amended and Restated Lease will provide the Successor Agency with additional revenue. With Base Rent increasing 5 % each year over the five-year period and assuming, conservatively, no gain in percentage rent, the Successor Agency's revenue over the five (5) year extension period will total \$742,749 (\$417,744 Base Rent, \$325,005 Percentage Rent).

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

RICHARD A. KEIT
MANAGING DIRECTOR

For more information, contact Richard Keit, Managing Director, Successor Agency, at 408-795-1849.