HAYWARD SUCCESSOR AGENCY OVERSIGHT BOARD

RESOLUTION. 2013-06

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING SUBORDINATION AGREEMENT AND RELATED MATTERS FOR A RETAIL ATTRACTION LOAN

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Former Agency") Downtown Retail Attraction Loan Program (the "Retail Attraction Loan Program") was developed in response to the growing number of vacant buildings in the Downtown Hayward Redevelopment Area, west of Foothill Boulevard and, in October 2008, the Foothill Boulevard Façade Improvement Initiative became the primary focus for the expenditure of Retail Attraction Loan Program funds; and

WHEREAS, among the various loan agreements implementing the Foothill Boulevard Façade Improvement Initiative, the former Redevelopment Agency executed that certain City of Hayward Retail Attraction Initiative Loan Fund Loan Agreement with RLW, LLC (the "Borrower"), executed on March 9, 2011 (the "Loan Agreement") to fund improvements on properties located at 22401-87 Foothill Blvd, Hayward, CA (the "Property"); and

WHEREAS, the Loan Agreement is secured by the following deeds of trust (collectively the "Agency Deeds of Trust"):

1. A short form deed of trust in the amount of $300,000 recorded against the properties addressed 22401 Foothill Blvd, 22415-22423 Foothill Blvd, and 2249-22433 Foothill Blvd, Hayward CA 94541

2. A short form deed of trust in the amount of $100,000 recorded against the properties addressed 22349-22445 Foothill Blvd, Hayward, CA 94541

3. A short form deed of trust in the amount of $100,000 recorded against the properties addressed 22455-22475 Foothill Blvd, Hayward, CA 94541

4. A short form deed of trust in the amount of $80,000 recorded against the property addressed 22481 Foothill Blvd, Hayward, CA 94541; and

WHEREAS, in addition to the Loan Agreement, Richard Weinstein executed a personal guaranty (the "Guaranty"), which unconditionally guarantees payment of the various facade loans, adding additional security for repayment of any funds disbursed under the Loan Agreement; and

WHEREAS, the Loan Agreement, the Agency Deeds of Trust, and the Guaranty are subordinated to an existing mortgage in the amount of $7 million; and

WHEREAS, the Borrower desires to refinance a preexisting mortgage with a new commercial loan and the proposed new loan terms are:

1. Principal Amount: The lesser of: (1) 75% of appraised value or (2) 1.25 debt service coverage ratio and a 6.5% underwriting rate and 25-year amortization. The Loan amount is currently estimated to be $8 million;

2. A term not to exceed ten years; and

3. A fixed interest rate of approximately 4.29% (5-year Constant Maturity Treasury + 325 basis points) for the first five years; which resets at year 6 to a fixed rate equal to the then current 5-year Constant Maturity Treasury + 325 basis points; and

WHEREAS, the provider of the new loan is requesting subordination of the former Agency Loan Agreement, the Agency Deeds of Trust and the Guaranty, to the new loan; and

WHEREAS, on February 1, 2012, the Former Agency was dissolved pursuant to Assembly Bill x1 26 (the "Dissolution Act"); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City of Hayward (the "City Council") declared that the City of Hayward, a charter city (the "City"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Hayward (the "Dissolved Agency") effective February 1, 2012; and

WHEREAS, pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the refinancing of the project will enhance the financial stability of the Borrower and ensure the continued operation of businesses on the Property in accordance with the requirements of the Loan Agreement; and

WHEREAS, by the staff report accompanying this Resolution and incorporated into this Resolution by this reference ("Staff Report"), the Oversight Board has been provided supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds and determines that the foregoing recitals are true and correct, and together with the following documents and information form the basis for the approvals, authorizations, findings, and determinations set forth in this Resolution: (1) the Staff Report; and (2) the information provided by the Borrower and Successor Agency staff and the public.

BE IT FURTHER RESOLVED that Oversight Board hereby approves subordination of the Loan Agreement, the Agency Deeds of Trust, and the Guaranty to financing substantially consistent with the new loan terms from the private lender, so long as the principal balance of the

senior financing does not exceed $7 million; and authorizes the City Manager to execute a subordination or similar agreement with the private lenders on behalf of the Successor Agency, in a form approved by the Successor Agency signatory and the Successor Agency Counsel, such approval to be evidenced by the execution of such agreement, and provided such agreement gives the Successor Agency notice and time to cure any of the Borrower's defaults under the private lender loan documents.

BE IT FURTHER RESOLVED that the Successor Agency is hereby directed to notify the California Department of Finance of the actions set forth in this Resolution in accordance with Health and Safety Code Sections 34179(h).

BE IT FURTHER RESOLVED that this Resolution shall take effect conditioned upon the formal approval of the Department of Finance at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

HAYWARD, CALIFORNIA, June 21, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: 4	BOARD MEMBERS:	Sweeney, Chair Armas Henson Hodges
NOES: 0	BOARD MEMBERS:	
ABSTAIN:	BOARD MEMBERS:	
ABSENT: 3	BOARD MEMBERS:	Salinas Bristow Valle

Chair of the Oversight Board to
the Hayward Successor Agency

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DATE: June 21, 2013

TO: Chair and Members of Oversight Board

FROM: Assistant City Manager

SUBJECT: Approval of Subordination of Foothill Façade Loan for RLW, LLC (Richard Weinstein)

RECOMMENDATION

That the Oversight Board adopts the attached resolution (Attachment I) approving the subordination of loan documents for the façade improvement loan with RLW, LLC.

BACKGROUND AND DISCUSSION

Retail Attraction Loan Program. In July 2006, the Council Downtown Committee approved a Downtown Retail Attraction Loan Program (the "Retail Attraction Loan Program") in response to the growing number of vacant buildings in the Downtown Hayward Redevelopment Area, west of Foothill Boulevard and in October 2008 the Foothill Boulevard Façade Improvement Initiative became the primary focus for the expenditure of Retail Attraction Loan Program funds.

Foothill Boulevard Façade Improvement Initiative. The Foothill Boulevard Façade Improvement Initiative shifted the focus of the Retail Attraction Loan Program from filling vacancies to improving facades with the goal of improving the image of the downtown's retail gateway, and ultimately strengthening the retail mix. This shift also resulted in making retail attraction loans available to building owners as well as retail tenants, and in concentrating improvements in two blocks of Foothill Boulevard (rather than throughout the entire Retail Attraction Loan Program target area). The Retail Attraction Loan Program targeted the west side of Foothill Boulevard from Maple Court to A Street and the east side of Foothill Boulevard from A Street to B Street.

On March 16, 2010, the former Redevelopment Agency's governing board authorized the Agency's Executive Director to execute a contract with SZFM Design Studio to develop façade improvements on the two blocks of Foothill Boulevard that are the focus of the Foothill Boulevard Façade Improvement Initiative. Staff subsequently began working with SZFM Design Studio and building owners to enhance the retail image of the historic district by upgrading building exteriors, including signage, lighting, and other elements.

To participate in the Foothill Boulevard Façade Improvement Initiative, property owners were required to comply with the terms detailed below:

Loan Amount	Up to $100,000 based on a 50/50 match per building Loan sized on project costs estimated from design drawings, so actual costs, in some cases, may exceed initial projections
Terms	**Interest rate**: 3% simple interest - deferred **Term:** 15 years Payments deferred for 15 years unless the loan defaults as defined in the Loan Agreement at which time interest begins to accrue and is due in monthly payments along with monthly payments of principal amortized over the remaining terms of the loan until event of default is corrected. The Loan is forgiven at the conclusion of the 15-year loan term if the Borrower continues to meet the terms of the Loan Agreement. After Year 10, beginning in Year 11, the loan balance shall be reduced by 20% of the original principal balance each year. The loan becomes due and payable if the building is sold prior to the conclusion of the loan term. **Disbursement**: Loan funds are disbursed to building owners when they demonstrate that they have contributed no less than 50% of the costs.
Collateral	• Deed of Trust on building • City loan can be subordinated to private financing. • Personal Guarantee of building owners

The former Redevelopment Agency was successful in promoting the Foothill Boulevard Façade Improvement Initiative and executed loan agreements committing One Million One Hundred Twenty-Six Thousand Eight Hundred Sixty-Three Dollars ($1,126,863) for façade improvement loans. The loan agreements entered into to implement the Foothill Boulevard Façade Improvement Initiative were listed on various Recognized Obligation Payment Schedules approved by the Successor Agency, the Oversight Board, and the Department of Finance.

The RLW, LLC Façade Loan

Among the various loan agreements implementing the Foothill Boulevard Façade Improvement Initiative, the former Redevelopment Agency executed a Retail Attraction Initiative Loan Fund Loan Agreement with RLW, LLC on March 9, 2011 (the "Loan Agreement"). At that time the Loan Agreement was executed, RLW, LLC, owned six of the seven buildings on the west side of Foothill Boulevard. Accordingly, the Loan Agreement provides for funding of façade improvements to all six of the properties. In addition to the Loan Agreement, Richard Weinstein

executed a personal guaranty (the "Guaranty"), which unconditionally guarantees payment of the various facade loans, adding additional security for repayment of any funds disbursed under the Loan Agreement.

The Loan Agreement is secured by the following deeds of trust (collectively the "Agency Deeds of Trust"):

1. A short form deed of trust in the amount of $300,000 recorded against the properties addressed 22401 Foothill Blvd, 22415-22423 Foothill Blvd, and 22349-22433 Foothill Blvd, Hayward CA 94541.

2. A short form deed of trust in the amount of $100,000 recorded against the properties addressed 22349-22445 Foothill Blvd, Hayward, CA 94541.

3. A short form deed of trust in the amount of $100,000 recorded against the properties addressed 22455-22475 Foothill Blvd, Hayward, CA 94541.

4. A short form deed of trust in the amount of $80,000 recorded against the property addressed 22481 Foothill Blvd, Hayward, CA 94541

Under the terms of the Loan Agreement and accompanying promissory notes, provided no default has occurred commencing on the 11th anniversary of the promissory notes, and annually thereafter, 20% of the principal and accrued interest will be forgiven, and it is anticipated that the entire loan will be forgiven on the 15th anniversary of the promissory notes.

The Loan Agreement, the Agency Deeds of Trust, and the Guaranty are subordinate to financing from Torrey Pines Bank in the amount of $7 million.

RLW, LLC desires to refinance the preexisting mortgage with a new commercial loan and the proposed new loan terms are as follows:

1. The lesser of : (1) 75% of appraised value or (2) 1.25 debt service coverage ratio and a 6.5% underwriting rate and 25-year amortization. The Loan amount is currently estimated to be $8 million;

2. A Term not to exceed 10 years; and

3. A fixed interest rate of approximately 4.29% (5-year Constant Maturity Treasury + 325 basis points) for the first five years; which resets at year 6 to a fixed rate equal to the then current 5-year Constant Maturity Treasury + 325 basis points.

The provider of the new loan is requesting subordination of the Loan Agreement, the Agency Deeds of Trust and the Guaranty to the new loan. The terms of the original Agency Façade loan are not changing from those outlined above.

ECONOMIC AND FISCAL IMPACT

The economic and fiscal impacts of the actions contemplated are negligible as the Loan Agreement, the Agency Deeds of Trust and the Guaranty are already subordinate to the existing first mortgage. The Oversight Board's approval will not materially affect the Successor Agency's security and will enhance the financial stability of the Borrower and ensure the continued operation of businesses on the Property in accordance with the requirements of the Loan Agreement.

NEXT STEPS

Following approval by the Oversight Board, staff will submit the resolution to the Department of Finance (DOF) for review and approval consistent with the requirements of Health and Safety Code Section 34179(h). DOF will have 45 days to review the information submitted and provide a determination.

Prepared by: Mary Thomas, Analyst

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:

Fran David, City Manager

Attachment I: Resolution