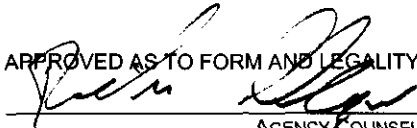


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APPROVED AS TO FORM AND LEGALITY


AGENCY COUNSEL

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

2006-0073

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING AMENDMENTS TO THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE AGENCY AND FOX OAKLAND THEATER, INC. (FOT), A NON-PROFIT ENTITY, REVISIONS AND SUPPLEMENTS TO ORIGINAL GUARANTEES REQUIRED FOR TAX CREDIT FINANCING FOR THE FOX THEATER PROJECT AND OTHER AGREEMENTS INCLUDING:

- **MODIFYING THE EXISTING LOAN REPAYMENT GUARANTEE FROM THE AGENCY TO FOT FOR CONVENTIONAL LOAN TO FOT NOT TO EXCEED \$6,500,000, AND THE EXISTING CONTINGENT LOAN NOT TO EXCEED \$3,530,000 FOR COSTS ASSOCIATED WITH OBTAINING HISTORIC TAX CREDITS AND NEW MARKETS TAX CREDITS, TO INCLUDE OPERATING COSTS WITHIN THE SCOPE OF THE GUARANTEES;**
- **A GUARANTEE BY THE AGENCY IN FAVOR OF THE TAX CREDIT INVESTMENT ENTITIES FOR (A) COMPLETION OF THE FOX THEATER REHABILITATION WORK IN COMPLIANCE WITH APPLICABLE LAWS AND THE HISTORIC TAX CREDITS REQUIREMENTS, (B) PAYMENT OF CARRYING COSTS THROUGH LEASE UP, AND (C) THAT THE PROJECT IS FREE OF LIENS UPON COMPLETION OF REHABILITATION;**
- **A GUARANTEE BY AGENCY IN FAVOR OF THE TAX CREDIT INVESTMENT ENTITIES RELATING TO THE HISTORIC TAX CREDITS AND NEW MARKETS TAX CREDITS IN EVENT THE TAX CREDITS ARE NOT AWARDED OR ARE RECAPTURED BY THE INTERNAL REVENUE SERVICE AS A RESULT OF NON-COMPLIANCE WITH IRS TAX CREDIT REQUIREMENTS BY FOR OR ITS AFFILIATED ENTITIES;**
- **ENVIRONMENTAL INDEMNIFICATION FOR THE LENDERS AND TAX CREDIT INVESTORS TO PROTECT AGAINST EXISTING AND FUTURE, KNOWN OR UNKNOWN ENVIRONMENTAL MATTERS**

WHEREAS, on July 19, 2005, the Agency authorized the Agency Administrator to enter into a Disposition and Development Agreement (“DDA”) with Oakland Renaissance NMTC, Inc. (“ORNMTTC”), a California non-profit corporation, for the renovation for the Fox Theater Project at the real property identified in Exhibit A; and

WHEREAS, on July 18, 2006, the Agency authorized the Agency Administrator to amend the DDA and permit the DDA to be assigned to Fox Oakland Theater, Inc. (“FOT”) a California non-profit corporation; and

WHEREAS, the Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project FOT will need a variety of sources of financing, including: state and federal grants, private fund raising, New Market Tax Credits, Historic Tax Credits, and financing from the Agency; and

WHEREAS, FOT solicited proposals for New Markets Tax Credit and Historic Tax Credit financing for the Fox Theater Project and has entered into a letter of intent with affiliates of Bank of America for New Markets and Historic Tax Credit financing; and

WHEREAS, the Bank of America proposal requires that the Agency make the types of guarantees that are typically given in tax credit financing to assure Bank of America affiliates receive the benefits of the tax credit financing; and

WHEREAS, Bank of America's New Markets Tax Credit proposal would provide \$10.4 million in financing for the Fox Theater Project; and

WHEREAS, Bank of America's Historic Tax Credits proposal would provide \$8.9 million in financing for the Fox Theater Project; and

WHEREAS, Bank of America's tax credit proposal requires the Agency to guarantee that construction of the Fox Theater Project is completed so that the Project will be eligible for tax credits; and

WHEREAS, the financing for the Fox Theater Project includes a commercial loan of \$6.5 million whose payments will be primarily secured by a guaranteed income stream donation to Oakland School for the Arts and ORNMTTC from CBS Outdoor's (formerly Viacom Outdoor) income from a billboard on Port of Oakland property, but will likely require additional security from the Agency because of unlikely, but possible, interruptions in the income stream should the billboard lease be terminated by the Port or actions of the California Transportation Agency and on July 18, 2006, the Agency approved a contingent loan to FOT of up to \$6.5 million to guarantee the commercial loan; and

WHEREAS, the Agency financing for the Fox Theater Project includes a contingent loan of \$3,530,000 to FOT to be used to meet the annual return and buyout costs associated with obtaining Historic and New Markets Tax Credits, which costs are

not covered by revenue from the net operating income from the Project (approved on July 18, 2006); and

WHEREAS, Bank of America's tax credit proposal requires the Agency to provide guarantees sufficient to avoid a Project operating deficit and to pay the preferred return and such guarantee can be accomplished by modifying existing Agency guarantees to the Fox Theater Project for a commercial loan \$6.5 million and a return and buyout contingent loan of \$3.5 million the agency has already provided to the Fox Theater Project; and

WHEREAS, the Bank of America proposal requires the Agency provide an environment indemnity for the Bank of America affiliates providing a tax credit financing;

WHEREAS, the California Community Redevelopment Law (Health & Safety Code Section 33433) requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold or leased for development pursuant to a redevelopment plan, the disposition must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

WHEREAS, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contained a copy of the DDA terms and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; and

WHEREAS, a joint public hearing between the Agency and the City Council of the City of Oakland was held to hear public comments on the sale of the Property for the Project; and

WHEREAS, notice of the disposition of the Property and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; and

WHEREAS, the City Council has approved the disposition of the Property by resolution after the public hearing; and

WHEREAS, the Agency is considered a "Responsible Agency" under the California Environmental Quality Act (CEQA); and

WHEREAS, on July 19, 2005 the Agency adopted a Mitigated Negative Declaration for the Project; and

WHEREAS, the Agency hereby finds and determines on the basis of substantial evidence in the record that the Initial Study and Mitigated Negative Declaration fully

analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional environmental review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Initial Study/Mitigated Negative Declaration due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

RESOLVED: That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency does not necessitate preparation of a subsequent or supplemental EIR Section 15162 (subsequent EIRs and negative declarations); and be it further

RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to negotiate and execute appropriate amendments to the DDA and agreements with the tax credit financing entities providing tax credit financing to the Fox Theater Project for the following:

(1) guarantee that the Fox theater project will be completed in accordance with the requirements of the National Park Service certification for historic property status and for eligibility for historic tax credits;

(2) guarantee against loss of tax credits due to a breach by FOT entities of the applicable tax credit rules and regulations;

(3) guarantee that the Fox Theater Project has funds sufficient as it is in to provide the following:

- (a) replacement reserves,
- (b) recurring expenses,
- (c) debt service payments,
- (d) preferred return for tax credit financing, and
- (e) reserve for tax credit buyout;

(4) an indemnity for protecting the tax credit financiers, and the commercial lending entity from existing and future, known or unknown losses from environmental contamination; and be it further

RESOLVED: That the agency hereby authorizes the Agency Administrator or her designee to negotiate and execute further amendments to the DDA necessary to effectuate the required guarantees, and to modify existing loans and guarantees to provide income stream guarantee; and be it further

RESOLVED: That the Agency finds and determines that the consideration that the Agency will receive under the DDA equals or exceeds the reuse value of the Fox Theater taking into account the uses, covenants, conditions, and development costs required by the DDA; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, OCT 31 2006, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BRUNNER, QUAN, NADEL, QUAN, TATE~~, BRUNNER, QUAN, NADEL, QUAN, TATE, KERNIGHAN, AND CHAIRPERSON DE LA FUENTE - 5

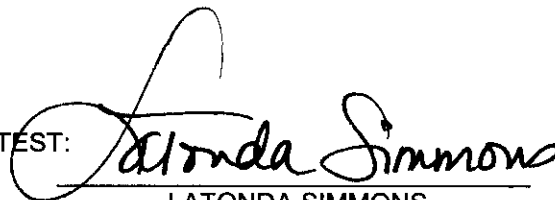
NOES - 0

ABSENT - Reid - 1

ABSTENTION - 0

Excused - Brooks, Chang - 2

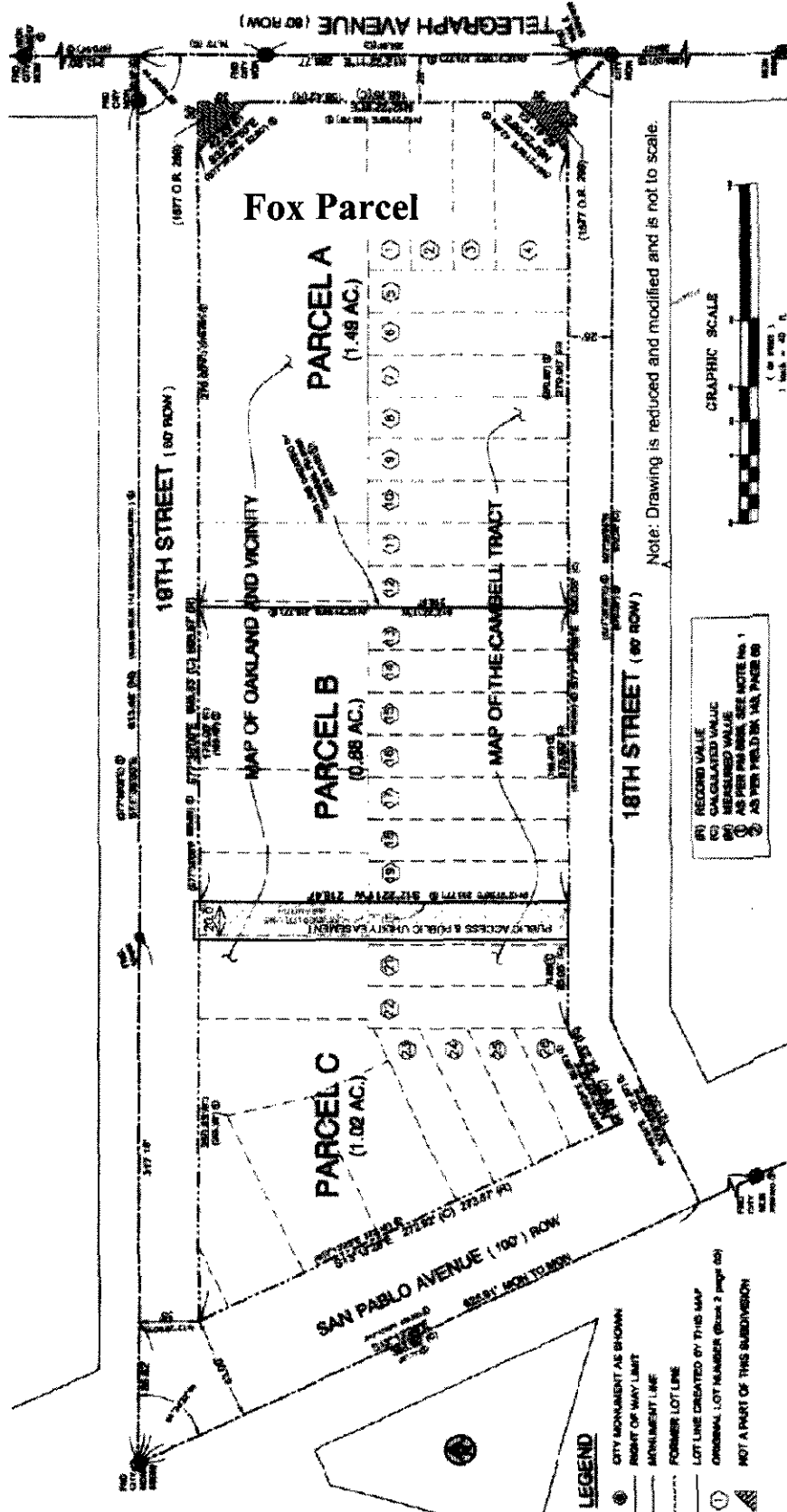
ATTEST:



LATONDA SIMMONS

Secretary of the Redevelopment Agency
of the City of Oakland, California

EXHIBIT A
PARCEL MAP



(R) RECORDED VALUE
(C) CALCULATED VALUE
(M) MEASURED VALUE
(A) AS PER PARCEL SEE NOTE No. 1
(S) AS PER FIELD BK. 144, PAGE 08

LEGEND
 CITY MONUMENT AS SHOWN
 RIGHT OF WAY LIMIT
 MONUMENT LINE
 FORMER LOT LINE
 LOT LINE CREATED BY THIS MAP
 ORIGINAL LOT NUMBER (Sheet 2 page 08)
 NOT A PART OF THIS SUBDIVISION

Note: Drawing is reduced and modified and is not to scale.

