

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: October 24, 2006

2006 OCT 12 PM 1:23

RE: 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 the Event the Tax Credits Are Not Awarded or Are Recaptured by the Internal Revenue Service (IRS) as a Result of Non-Compliance With IRS Tax Credit Requirements by FOT or Its Affiliated Entities;**
- **Environmental Indemnification for the Lenders and Tax Credit Investors to Protect Against Existing and Future, Known or Unknown Environmental Matters**

SUMMARY

This report presents the status of the Fox Theater Renovation Project (Project) and requests authorization for guarantees and indemnities relating to providing tax credit financing necessary to proceed with the development phase of the Project. Fox Oakland Theater, Inc. ("FOT"), the non-profit entity renovating the Fox Theater, has selected a proposal from Bank of America affiliated entities to provide the New Markets Tax Credits (NMTC) and Historic Tax Credits (HTC) financing for the Project. The current estimate for the tax credit financing is approximately \$2.3 million more than anticipated in the July 18, 2006 report to the City Council

on the Project. Along with this type of financing, investors typically require guarantees from developers and/or related entities.

The guarantees and indemnities for the Project require the Agency to make agreements with the entities providing tax credit equity financing and further amendments to the Disposition and Development Agreement the Agency currently has with FOT for the Project. The DDA amendments and Agency agreements with the tax credit entities will include modifications and additions to the Agency's guarantees and financial assistance related to the HTC and NMTC, including: (1) modifications to the loan repayment guarantee from the Agency to a conventional lender not to exceed \$6,500,000; (2) modifications to the contingent loan not to exceed \$3,530,000 from the central district fund balance to be used for costs associated with obtaining HTC and NMTC; and (3) addition of a guarantee to complete the rehab work and to pay carrying costs through lease up, free of liens and in compliance with applicable laws and the HTC requirements and to obtain final certification from the National Park Service; (4) addition of a guarantee relating to repaying the investor for the loss of the HTC and the NMTC to the extent resulting from a breach by the development and operating entities that are controlled by FOT of applicable NMTC rules and regulations; (5) environmental indemnities provisions for the benefit of the tax credit financiers and commercial lender at each level to protect against existing and future, known or unknown environmental matters.

FISCAL IMPACT

None of the guarantees require a specific payment by the Agency, but they put the Agency at risk for contingent obligations. If the Project runs into financial problems in the construction and/or operation of the Project, the Agency may have to repay portions of any loss by tax credit investors based on guarantees that remain to be finally negotiated.:

1. If the project runs into cost overruns, the Agency may be required to invest additional funds to ensure completion of the Project (the Project does not anticipate requiring this so there is no way of estimating the cost).
2. If the Project fails to qualify for or has the HTC recaptured, the Agency may have to reimburse the investor for its equity investment or lost tax credits. This would only apply if the breach occurred by the development and operating entities that are controlled by FOT .
3. If the Project fails to qualify for or has the NMTC recaptured, the Agency may have to reimburse the investor for its equity investment or lost tax credits. This would only apply if the breach occurred by the development and operating entities that are controlled by FOT. (new).
4. If the Project does not generate sufficient revenue, or if the CBS/Viacom billboard revenue [providing an income stream to the Project for Oakland School for the Arts (OSA) rent] were to cease, the Agency may have to pay up to \$6.5 million in principal plus interest (already approved), plus \$3.5 million in preferred return and to buyout the

investors (already approved), and both guarantees would also be used to cover any short fall in operating income (new).

5. If the Project runs into unanticipated hazardous materials contamination, the Agency may be required to invest additional funds to ensure completion of the Project (the Project does not anticipate requiring this so there is no way of estimating the cost). In any event, because the Agency is leasing the Fox Theater to the development entity, the Agency retains liability for environmental contamination as the property owner.

Staff considers the likelihood of the Agency incurring obligations regarding the HTC and NMTC guarantees (items 2 and 3 above) very small. It is more likely that the Agency may incur obligations regarding the operating cost guaranty in order to ensure sufficient funds to buy out the tax credit investors at the end of the tax credit benefit period; however this guarantee was included in the July 18, 2006 approval. It also must be noted that the investors are requesting layers of protection that are in some cases redundant, and would not require multiple recoveries. If the Agency covers costs to guarantee completion, then the most likely risk will have been eliminated. If the Agency reimburses investors for 2 and/or 3, then the preferred return and buyout in 4, which have already been approved, would not be required. Any impacts from these obligations will be on the Oakland Redevelopment Agency's Central District Operations Fund. There is no impact for the City or the General Fund.

BACKGROUND AND HISTORY

On July 19, 2005, the Agency and City Council approved resolutions authorizing a Disposition and Development Agreement between the Agency and Oakland Renaissance NMTC, Inc. (ORNMTC), a non-profit corporation, for the Fox Theater Project – Redevelopment Agency of the City of Oakland Resolution No. 2006-0046 C.M.S. and Oakland City Council Resolution No. 79382 C.M.S.

On July 18, 2006, the Redevelopment Agency and City Council approved resolutions authorizing an Amended and Restated Disposition and Development Agreement between the Redevelopment Agency (Agency) and Oakland Renaissance NMTC, Inc. (ORNMTC), which was later assigned to a newly created non-profit corporation, Fox Oakland Theater, Inc. (FOT), for the Fox Theater Project – Redevelopment Agency of the City of Oakland Resolution No. 2006-0057 C.M.S. and Oakland City Council Resolution No. 80057 C.M.S. These approvals included authorization for:

- A loan repayment guarantee from the Agency to a conventional lender not to exceed \$6,500,000;
- A contingent loan not to exceed \$3,530,000 from the Central District fund balance to be used for costs associated with obtaining Historic and New Markets Tax Credits.

The further amendments to the DDA will revise this loan guarantee and contingent loan as well as provide a completion guarantee, a tax credit recapture guarantee and environmental indemnities.

PROJECT DESCRIPTION

The Project consists of the renovation of the Fox Theater into a live performing arts center with a flexible seating plan capable of accommodating between 500 and 2,300 patrons. It will be structurally upgraded to meet existing seismic standards and renovated in a manner that will meet the Secretary of the Interior's Standards for Rehabilitation of Historic Properties (the Secretary's Standards). The existing attached buildings, which wrap around the Theater and are part of the original 1928 design, will be renovated into the future home of the OSA. These buildings will be used for academic classrooms. Two new additions have been designed onto the single story portions of the wrap-around buildings as part of the new school design. These will serve as performing arts studios for the school. Restaurant and bar spaces are designed for the ground floor along Telegraph Avenue. These will serve the Uptown neighborhood in general and the Theater during performances.

The Project is using a complex financial structure to generate equity from HTC and NMTC. As of the date of preparing this report the amount of HTC financing is \$8.9 million and NMTC is \$10.4. The HTC and NMTC are programs that provide income tax credits for investments in historic buildings and qualified active low-income community businesses. For a city, redevelopment agency or non-profit corporation to use these tax credits, they generally need to syndicate the Project. That is to say, they sell 99.9% of the Project to an investor while maintaining control as managing member of the limited liability company. The investor, generally a corporation and usually a financial institution, is making a passive investment in order to be eligible for the tax credits. The Agency, through FOT a related non-profit entity, will be the developer, manager and eventually will be in a position to regain control of the Fox Theater Property. Because the investor, Bank of America in this case, is passive, they want guarantees that they will receive the tax credits and other benefits that are anticipated from the Project. The attached resolutions, authorize amendments to the DDA as well as other documents. The other documents will include guarantee(s) made by the Agency to the investor.

KEY ISSUES AND IMPACTS

When the Project was approved, the Agency and FOT were negotiating with several financial institutions, investors and other tax credit entities. The Agency and FOT selected a team and are negotiating with Bank of America, the National Trust Community Investment Fund, LLC and the CSDC New Markets Fund, LLC (Charter School Development Center). The terms required by the lenders and investors include guarantees and environmental indemnities that had not been fully detailed when the Project was approved. While there are risks involved in providing the guarantees, the Agency is taking many precautions to minimize any adverse impacts. Staff has discussed the risks and the history of other investments with FOT's consultants, outside counsels, and tax credit accountant. Negotiations with the tax credit investors over the details of the guarantees have not been concluded as of the date this report was written, but approval of authority for the guarantees is necessary at this time in order meet a closing date of early December 2006. An addendum has been made to the "33433 Report", the report required under

Section 33433 of the Community Redevelopment Law portion of the California Health and Safety Code, prepared for the July 18, 2006 DDA public hearing. The addendum concludes that the revisions to the DDA -- modifications and additions to the Agency's guarantees and financial assistance related to the HTC and NMTC – do not contemplate additional costs or significantly change the costs of the DDA for the Agency. The Amendment and original "33433 Report" are on file with and available in the City Clerk's Office.

Historic Tax Credits

Risk: In order to be eligible for Historic Tax Credits, the Project must receive final ("Part 3") certification from the National Park Service ("NPS") that the Project has been completed in accordance with historic preservation plans and specifications approved in advance by NPS ("Part 2"). Further, the developer will not be able to make any future changes or modifications to the Project that would deviate from the plans and specifications approved by NPS. Not receiving final Certification or making changes and modifications that jeopardize the Property's status as a certified historic structure would jeopardize the Project's HTC or the eligibility of the developer to claim HTC.

History: The principal risk to Historic Tax Credit projects has been that such projects are not able to secure enough financing to complete the work required to obtain final certification by the State Historic Preservation Office and the National Park Service. Although staff could not find any good sources for statistics on HTC projects that failed to receive final certification for HTC, based on anecdotal information, the number is extremely low.

Protections: In July the Agency provided the additional funding required to complete the Project according to the NPS approved plans and specifications. Beginning construction of the Project will not be allowed until the requirements for the NPS ("Part 2") certification and all necessary financing, including contingency, are in place. Further, while entities controlled by FOT will manage the Project, consultants, architects, the tax credit investor, the commercial lender, and Agency staff will be overseeing the construction. In addition, the construction contract is with a reputable, larger construction firm (Turner Construction) and will be a guaranteed maximum price contract. The Project budget provides for a construction contingency. The Project now will receive more HTC than originally anticipated which will be used to further increase the construction contingency. The consultant and staff are seeking other grants and funds to increase the available contingency. All subleases for space at the Project will prohibit any changes to the Project that would jeopardize NPS certification.

New Markets Tax Credits

Risk: New Markets Tax Credits require that the completed Project operate as a "qualified active low-income community business". Leasing real property, as is contemplated for the Fox Theater Project, qualifies as a "qualified active low-income community business". Actions that may disqualify the Project include operation of (1) a massage parlor; (2) a hot tub facility; (3) a suntan facility; (4) a country club; (5) a racetrack or other facility used for gambling; (6) a store which sells alcoholic beverages for consumption off premises; (7) a business which develops or holds intangibles for sale or license; (8) a private or commercial golf course; or (9) a farm, all as described in Treasury Regulations Section 1.45D-1(d)(4).

History: The NMTC program is still relatively new and there is little evidence of projects that were disqualified.

Protection: Downtown Oakland is a qualified low income community and all leases and subleases shall restrict any action that jeopardizes the Landlord's status as a qualified active low-income community business, including the prohibited uses listed above. Even if the businesses at the Fox Theater do not succeed, the Project still qualifies for NMTC while the space is vacant and is not rented to an ineligible business.

It must be noted here that the Agency's guarantees will only cover the loss of tax credits triggered by the acts of FOT and its affiliates--entities controlled by the Agency and its staff. There are acts under the investor's control that can also cause recapture of the tax credits. The guaranty agreement that the Agency negotiates will not include Agency responsibility for acts under the tax credit investors' control. In addition, FOT counsel, Agency counsel, attorneys for the tax credit investors, and the outside accounting firm are all involved in assessing the legal and financial structure of the Project to better assure compliance with NMTC requirements.

Operating Cost Guarantee

The tax credit investors seek a guarantee that the Project income stream is sufficient to cover all the expenses, reserves, and debt service for the Project plus be able to provide a preferred return for the tax credit investments. The Agency essentially provided this in its July 18, 2006 resolution on the Fox Theater when it approved a guarantee of \$6.5 million for the commercial financing on the Project and a guarantee of \$3.5 million for the tax credit preferred return and buy out. The primary risk is that the businesses leasing space at the Fox Theater will not provide sufficient rent. In the case of OSA, the risk is that the income from the CBS/Viacom pledge fails because the port of Oakland or Caltrans rescind the permits for the billboard on which the OSA rent is derived. Staff believes the risk of insufficient income stream is minimal for several reasons:

- All the leases for space of the Fox Theater are "triple net" leases. This means that each of the lessees pays all of their own expenses plus a pro rata share of the landlord's expenses, including property taxes, insurance, maintenance, and other building and operating expenses. Thus, the FOT affiliate that is the landlord has little actual operational expenses.
- The financial projections for operations of the Fox Theater after completion build in a contingency.
- This guarantee only runs until the tax credit investors are bought out by FOT, which should occur after seven years of operation.

SUSTAINABLE OPPORTUNITIES

Economic

The proposed Project will contribute significantly to the elimination of blight in the Uptown District of Downtown Oakland. The private sector and the Agency are investing millions of

dollars in the area to create an arts and entertainment district. A revitalized Fox Theater will help support and complement the many projects in the area including the Forest City residential development, new housing at 24th and Broadway, new parking structures, and the streetscape improvements on Telegraph Avenue. In addition, the Project will stimulate new investment in the food and entertainment sectors, and will benefit the local labor force by providing Living Wage employment.

Environmental

The Project will preserve an historically significant structure and improve upon the physical environment in the Downtown. The Project will remove dangerous and hazardous materials from an existing building and replace them with recycled content materials and other environmentally sensitive materials. Because it is located by a BART station, the rehabilitated Project will encourage the use of mass transit and help to reduce the reliance on automobiles and the harmful emissions that they produce.

Social Equity

The Project will exceed City local hiring goals by seeking to employ 50% local and small local business enterprises. In addition, the Project will house the Oakland School for the Arts, which will train and educate students and provide them with opportunities for future employment. The Project will also promote pedestrian activity, street vitality and public safety to an area that is currently void of pedestrian activity and that has a high incidence of crime.

DISABILITY AND SENIOR CITIZEN ACCESS

The Project will comply with all applicable State and Federal accessibility laws and regulations.

RECOMMENDATION(S) AND RATIONALE

It is recommended that the Agency and the City authorize approval and execution of an 2nd Amendment to the DDA and related documents with FOT and related guarantees to banks and tax credit investors for the sale and development of the Fox Theater as a mixed use entertainment, office and school development and approve and appropriate the needed financial assistance to FOT for development of the Project. The proposed Project meets the following objectives of the Central District Redevelopment Project Five Year Implementation Plan:

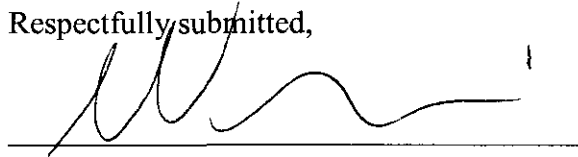
- The Project will establish the Project Area as an important cultural and entertainment center.
- The Project will provide employment and other economic benefits to disadvantaged persons living within or near the Project Area.
- The Project will restore an historically significant structure in the Project Area.
- The Project will improve environmental design in the Project Area, including creation of a definite sense of place and emphatic focal points.

Item#: _____

ACTIONS REQUESTED OF THE AGENCY/CITY

It is recommended that the Agency and City approve the resolutions regarding the Fox Theater Authorizing the Agency Administrator to Amended the Disposition and Development Agreement between the Agency and Fox Oakland Theater, Inc.

Respectfully submitted,



Dan Vanderprieem, Director of Redevelopment,
Economic Development and Housing

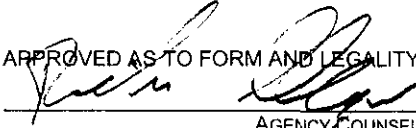
Prepared by:
Patrick Lane
Redevelopment Manager

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

2006 OCT 12 PM 1:23

APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

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. (“ORNMTC”), 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 ORNMTC 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, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
CHAIRPERSON DE LA FUENTE

NOES -

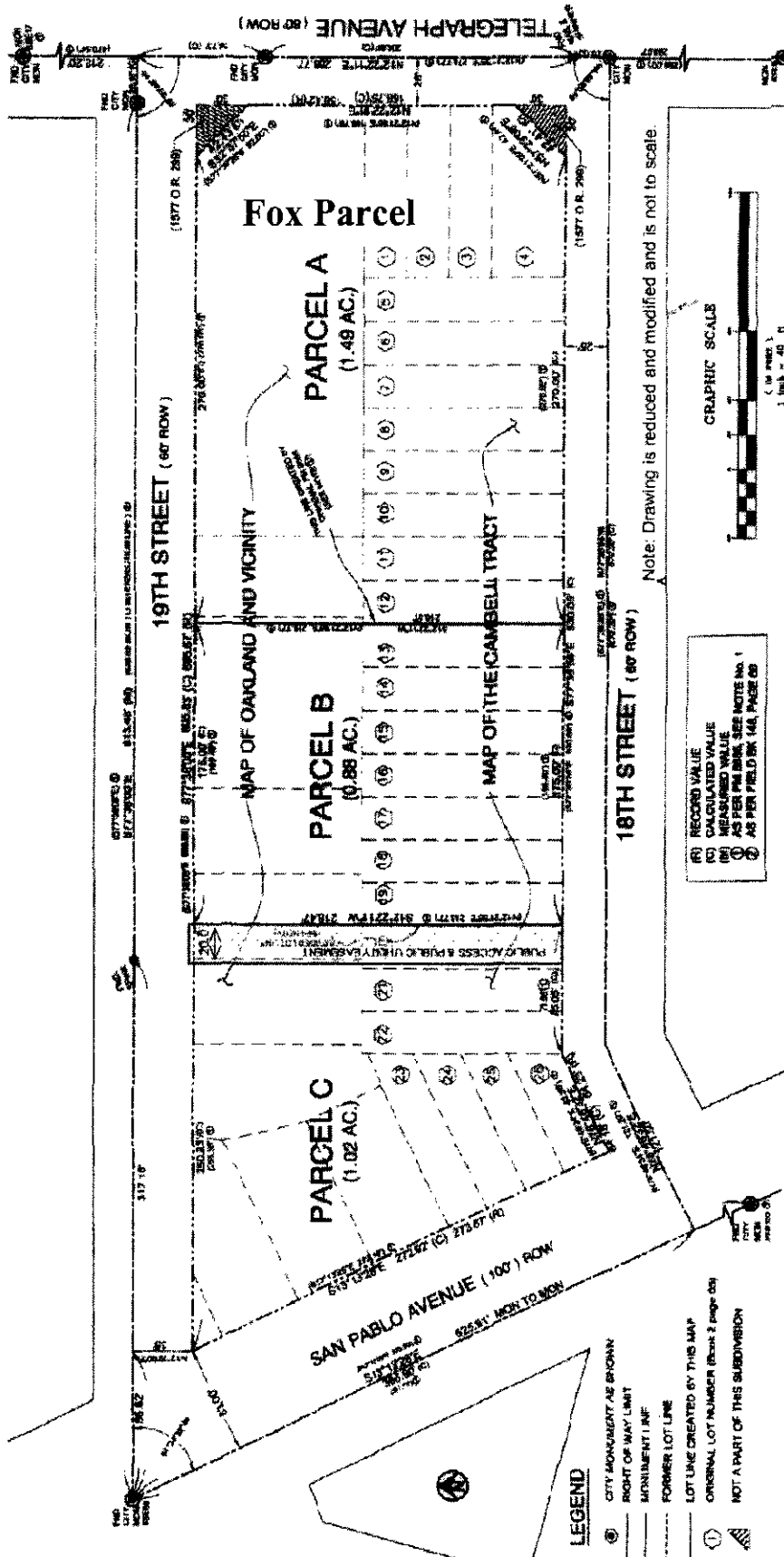
ABSENT -

ABSTENTION -

ATTEST:

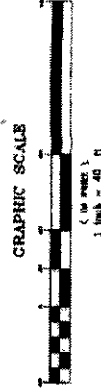
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

EXHIBIT A
PARCEL MAP



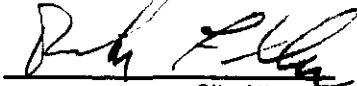
Note: Drawing is reduced and modified and is not to scale.

- (R) RECORD VALUE
- (C) CALCULATED VALUE
- (M) MEASURED VALUE
- ① AS PER THE BOOK, SEE NOTE NO. 1
- ② AS PER FIELD BK 144, PAGE 09



- LEGEND**
- ⑤ CITY MONUMENT AS SHOWN
 - RIGHT OF WAY LIMIT
 - MONUMENT LINE
 - FORMER LOT LINE
 - LOT LINE CREATED BY THIS MAP
 - ① ORIGINAL LOT NUMBER (Book 2 page 09)
 - ② NOT A PART OF THIS SUBDIVISION

OAKLAND CITY COUNCIL


City Attorney

2006 OCT 12 PM 1:23

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION AUTHORIZING AMENDMENTS TO THE OAKLAND REDEVELOPMENT AGENCY'S DISPOSITION OF THE FOX THEATER TO FOX OAKLAND THEATER, INC. (FOT), A NON-PROFIT ENTITY, INCLUDING AMENDMENTS TO THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) AND 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. ("ORNMTC") 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 \$6,500,000 whose payments will be primarily secured by a guaranteed income stream donation to Oakland School for the Arts and ORNMTC 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 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 sale 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, a renovated and restored Fox Theater would remove a significant blight, save an important historical and cultural resource, spur other economic development, provide an educational facility, add an entertainment venue, and be a benefit to the Central District, Uptown Activity Area, and the surrounding neighborhood; and

WHEREAS, renovation and restoring the Fox Theater is not financially feasible without the Agency's assistance and there is no other reasonable means of providing the financing available to acquire, renovate, and restore the Fox Theater; and

WHEREAS, the Agency's funding of the Fox Theater Project will assist in the elimination of blight in the Central District and the Fox Theater Project is consistent with the Redevelopment Plan; and

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

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

WHEREAS, the City 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 City has independently reviewed and considered this environmental determination, and the City 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 City 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 City of Oakland hereby finds and determines that the lease of the Property by the Agency to FOT for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase entertainment opportunities in the Central District; (2) the Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will help create a stable 24-hour community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area; and be it further

RESOLVED: That the City hereby approves the Agency's amended terms for disposition of the Property to FOT, subject to and on the terms and conditions of the amended and restated DDA, and including the guarantees for the tax credit investors and DDA amendments for those guarantees; and be it further

RESOLVED: That the City 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 the City finds that Fox Theater Project is of a benefit to the Central District and Uptown Activity Area, there are no other reasonable means of financing the Fox Theater Project except by using Agency funds, the Agency funds will assist in the removal of the blight created by the Fox Theater's present condition and the City therefore authorizes the use of Agency funds for the Fox Theater Project as a publicly-owned facility; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by City Attorney 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 of proceedings upon which the City'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 COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

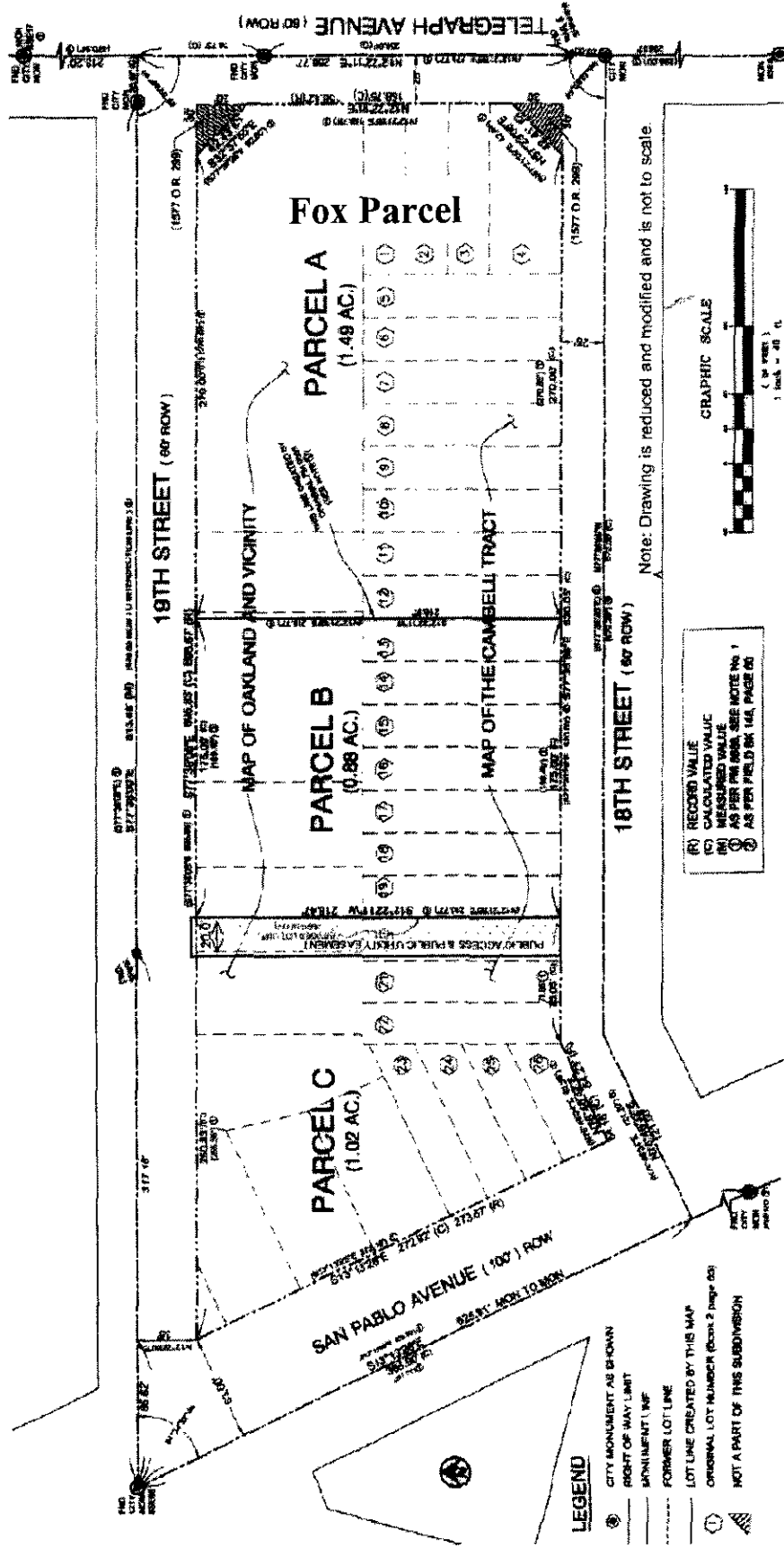
NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A PARCEL MAP



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

- (R) RECORDED VALUE
- (C) CALCULATED VALUE
- (M) MEASURED VALUE
- (1) AS PER PWD DATA, SEE NOTE NO. 1
- (2) AS PER FIELD SW. 144, PAGE 00

- LEGEND**
- CITY MONUMENT AS SHOWN
 - RIGHT OF WAY LIMIT
 - MONUMENT (M)
 - FORMER LOT LINE
 - LOT LINE CREATED BY THIS MAP
 - ORIGINAL LOT NUMBER (BOOK 2 PAGE 00)
 - NOT A PART OF THIS SUBDIVISION

