



Meeting Date: 04/18/06

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Suzanne Quitoriano, Redevelopment Project Manager *SQ* Agenda Item No. N-2
 Reviewed By: City Manager *[Signature]* Holmberg City Attorney *[Signature]* Finance *[Signature]* Other N/A

DATE: March 21, 2006

TO: Community Development Commission

FROM: Curtis P. Cannon, Community Development Director *Curtis P. Cannon*
Community Development Department

SUBJECT: Exclusive Negotiation Agreement with Oxnard Plaza Associates, LLC for Planning and Possible Development of the Marketplace in Downtown Oxnard

RECOMMENDATION

That the Community Development Commission (“CDC”) approve and authorize the Chairman to execute the Exclusive Negotiation Agreement (“ENA”) with Oxnard Plaza Associates, LLC (“OPA”) Agreement No. A-6682 for the planning and possible development of the Marketplace in Downtown Oxnard, located approximately south of Fourth Street, east of “C” Street, west of “A” Street, and north of Sixth Street.

DISCUSSION

The CDC approved and executed a Disposition and Development Agreement (“DDA”) on January 7, 2003, with Strand Cinemas, LLC for development of the theater project and potential planning and development of the Marketplace in Downtown Oxnard. During the exclusive negotiating period, the members of Strand Cinemas formed a real estate LLC called Oxnard Plaza Associates (“OPA”) to create, promote, and develop the Marketplace referenced in the DDA. Pursuant to the DDA, the First Prior ENA, and the Second Prior ENA, OPA has caused studies to be performed or commenced and has carried out other activities with the City and private property owners for acquisition of properties. OPA wishes to continue to pursue development of the Negotiation Area (defined below) to promote the Downtown Theater Project as a part of Downtown Oxnard and to solidify and strengthen the link between the Downtown Theater Project, Plaza Park, and other areas defined below, all by creating compatible development and promoting tenancies which compliment each other and which contribute to the optimum development of other areas in Downtown Oxnard.

The Negotiation Area shall be:

1. The property that extends from the northern terminus of Plaza Park to Fourth Street (including North Fifth Street), between “B” and “C” Streets (excluding the Carnegie Museum) ;

00075

2. The property whose boundaries begin on the south side of Fifth Street to Sixth Street, between "B" and "C" Streets;
3. The property whose boundaries begin on the south side of Fifth Street to Sixth Street, and from "B" Street to the middle of the alley located approximately 150 feet east of "B" Street; and
4. The property (commonly known as the "Swift Building") at the southeast corner of Fourth Street and "B" Street, extending from the corner southward up to the Centennial Plaza property, and extending eastward to (and including) the City alley that bisects the Swift Building property from the Woolworth's Building property.

The Negotiation Area shall specifically exclude all of the following:

1. Publicly-owned property being used for civic, library, or other governmental uses; and
2. Property already under negotiation by or agreement with the City and/or the Commission as of the Effective Date of this Agreement, a list of which the Commission shall provide the Developer upon the Commission's execution of this Agreement.

The DDA provided for an exclusive period of negotiation with respect to developing a Downtown Oxnard Marketplace. The period of exclusive negotiation set forth in the DDA and the subsequent ENA's ("First Prior ENA" and "Second Prior ENA") and their extension periods have expired. Due to the expiration of the terms and extension periods, OPA is requesting another period of exclusive negotiation for 14 months plus the ability to extend the ENA for an additional 180 days. An additional automatic extension of the Negotiation Period shall be granted for the amount of time necessary to complete the diligent processing of the subject environmental impact report ("EIR").

OPA has made significant progress during the prior negotiation periods, including the following:

Property Acquisitions

1. Strand Cinemas Site
2. 315 North Fifth Street
3. 319 West Sixth Street
4. 338 South and 548 South Fifth Street
5. 400 South "B" Street
6. 884 South "A" Street
7. Ninth and "A" Streets

North Plaza Planning Accomplishments

1. Pre-Application before City Council September 2005
2. DDRRC initial project review October 2005
3. EIR initiated March 2006, expect completion First Quarter 2007
4. Planning Set architectural and Site Civil Studies being finalized for submittal Second Quarter 2006

Planning Studies and Reports

To date, OPA indicates that they have expended over \$21 million on behalf of the redevelopment area described in the DDA, the subject of the exclusive negotiating rights. The approximate funds expended are broken down as follow:

- | | |
|---|--------------|
| 1. Theater: | \$16,150,816 |
| 2. Swift Site: | \$ 768,118 |
| 3. North Plaza: | \$ 1,709,526 |
| 4. South Plaza: | \$ 2,074,490 |
| 5. Downtown Studies: | \$ 377,556 |
| 6. APN # 202-0-183-100 &
APN # 202-0-183-070 | \$ 235,505 |

Completed

1. Jerde Downtown Study
2. Thomas Consultants Study
3. RNT Preliminary North Plaza Massing and Plans
4. North Plaza Color Renderings
5. LHA Studies
6. Soils Report
7. Phase I Environmental Report

In Progress

1. Traffic Impact Report
2. Site Hydrology

FINANCIAL IMPACT

None.

Attachment No. 1 – Exclusive Negotiation Agreement

00077

EXCLUSIVE NEGOTIATION AGREEMENT

This EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is made and entered into in the County of Ventura, State of California, effective this 20th day of March, 2006 ("Effective Date"), by and between the OXNARD COMMUNITY DEVELOPMENT COMMISSION ("Commission"), and OXNARD PLAZA ASSOCIATES, LLC ("Developer"), with respect to the following facts:

RECITALS

- A. Commission, Strand Cinemas, LLC and San Carlos Cinemas, Inc. entered into that certain Disposition and Development Agreement dated January 7, 2003 ("DDA") for development of a theater in downtown Oxnard (the "Downtown Theater Project").
- B. Section 702 of the DDA provided for an exclusive period of negotiation with respect to developing a Downtown Oxnard Marketplace, as more particularly set forth in Section 702 of the DDA.
- C. Pursuant to Section 702 of the DDA, the period of exclusive negotiation set forth in Section 702 of the DDA has expired.
- D. On July 8, 2003, Strand Cinemas, LLC and the Commission entered into a subsequent Exclusive Negotiation Agreement ("First Prior ENA") providing an additional period of exclusive negotiation.
- E. On January 6, 2004, Strand Cinemas, LLC and the Commission entered into an extension of the First Prior ENA. Pursuant to the First Prior ENA (as extended), the period of exclusive negotiation set forth in the First Prior ENA has expired.
- F. On August 3, 2004, Developer and the Commission entered into another subsequent Exclusive Negotiation Agreement ("Second Prior ENA") providing an additional period of exclusive negotiation.
- G. Pursuant to Section 702 of the DDA, the First Prior ENA, and the Second Prior ENA, Developer has caused studies to be performed or commenced and has carried out other activities with the City and private property owners for acquisition of properties.
- H. The Developer wishes to continue to pursue development of the Negotiation Area (defined below) to promote the Downtown Theater Project as a part of downtown Oxnard and to solidify and strengthen the link between the Downtown Theater Project, Plaza Park, and other areas defined below, all by creating compatible development and promoting tenancies which complement each other and which contribute to the optimum development of other areas in downtown Oxnard.

- I. The Commission and Developer both desire to enter into this Agreement to enter into another period of exclusive negotiation with respect to the Negotiation Area for the development of a Downtown Oxnard Marketplace, pursuant to all of the terms and conditions of this Agreement. It is the parties intent that this Agreement shall supersede in their entireties Section 702 of the DDA, the First Prior ENA and the Second Prior ENA.

TERMS

1. Exclusive Negotiation Regarding Downtown Marketplace.

- a. During the Negotiation Period (defined below), the Commission and the Developer agree to negotiate in good faith regarding the Developer's planning and possible development of a Downtown Oxnard Marketplace which will include residential and commercial land uses. By creating compatible development and promoting tenancies which compliment each other, and contributing to the optimum development of other areas in downtown Oxnard, the Downtown Oxnard Marketplace is intended to promote the Downtown Theater Project as a part of downtown Oxnard and to solidify and strengthen the link between the Downtown Theater Project, Plaza Park, and other areas defined below.
- b. "Negotiation Period" as used herein shall mean the period beginning on the Effective Date of this Agreement and ending sixteen (16) months after the Effective Date (subject to two possible extensions as provided in Section 6, below).
- c. The area of Downtown Oxnard covered by this Agreement (the "Negotiation Area") shall be:
 - i. The property that extends from the northern terminus of Plaza Park to Fourth Street (including North Fifth Street), between "B" and "C" Streets (excluding the Carnegie Museum);
 - ii. The property whose boundaries begin on the south side of Fifth Street to Sixth Street, between "B" and "C" Streets;
 - iii. The property whose boundaries begin on the south side of Fifth Street to Sixth Street, and from "B" Street to the middle of the alley located approximately 150 feet east of "B" Street; and
 - iv. The property (commonly known as the "Swift Building") at the southeast corner of Fourth Street and "B" Street, extending from the corner southward up to the Centennial Plaza property, and extending eastward to (and including) the City alley that bisects the Swift Building property from the Woolworth's building property.

- d. The Negotiation Area shall specifically exclude publicly-owned property being used for civic, library, or other governmental uses.
- e. A diagram generally depicting the Negotiation Area is attached hereto as Exhibit 1. and incorporated herein by reference. The parties acknowledge and agree that the Negotiation Area is smaller than previous negotiation areas.
- f. The parties agree that the object of their negotiations is to discuss the Developer's planning and possible development of the Downtown Oxnard Marketplace. The negotiations will include discussions concerning residential components of the development. Neither the City nor the Commission makes any commitment regarding its ability or desire to enter into any agreement regarding the Developer's possible development of the Downtown Oxnard Marketplace.
- g. During the Negotiation Period, the Developer shall substantially complete certain predevelopment studies and activities related to the development of the Downtown Oxnard Marketplace, which predevelopment studies and activities shall include the following:
 - i. Continue to pursue the acquisition of privately owned properties in order to finalize the design for the development of the Negotiation Area;
 - ii. In cooperation with the Commission and the City, create a focused vision to process and cause the redevelopment of Oxnard's Downtown District to fulfill the Commission's, City's and its citizens' expectation for the redevelopment of the Downtown area;
 - iii. Negotiate with the City for the acquisition of publicly owned properties within the Negotiation Area;
 - iv. Produce the Developer's development marketing strategy in the Negotiation Area subsequent to Thomas Consultants' refinement of the Negotiation Area; and
 - v. In cooperation with the City's Planning department, process an environmental impact report which shall study the potential impact(s) of the anticipated development.
- h. Nothing herein is intended to prohibit the Commission from furnishing any information concerning the Downtown Oxnard Marketplace which it may be required by law to furnish or which it would otherwise normally furnish to persons requesting information concerning the Commission's activities, goals and matters of a similar nature.

- i. Neither the City nor the Commission makes any commitment regarding its ability to acquire any portion of the Negotiation Area. Nothing contained herein shall obligate the City or the Commission to acquire any portion of the Negotiation Area. The City's or the Commission's acquisition of the Negotiation Area shall be in the City's or the Commission's sole and absolute discretion and shall be completed, if at all, pursuant and subject to all applicable laws and any applicable owner participation requirements.
- j. During the Negotiation Period, the Commission and the Developer shall negotiate the terms of a proposed disposition and development agreement between the Commission and the Developer for development of the property that extends from the northern terminus of Plaza Park to Fourth Street (including North Fifth Street), between "B" and "C" Streets (excluding the Carnegie Museum) ("North Plaza Area").
- k. In order to facilitate the earliest possible commencement of new construction activities on the North Plaza Area, the Developer intends, at Developer's sole risk and expense, to produce working drawings for development of the North Plaza Area and to submit such drawings to the appropriate departments during the Negotiation Period. The Commission agrees to cooperate with Developer in Developer's efforts to process such drawings provided that any such cooperation by the Commission shall be at no cost, expense or liability to the Commission. Nothing in this paragraph imports any obligation upon the City of Oxnard to consider any plans, specifications, drawings or maps in any manner not in compliance with City codes, resolutions and policies governing the City's planning process.
- l. The parties shall generally cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations.
- m. This Agreement is for the sole purpose of agreeing to a period of exclusive negotiation and to stipulate to the intentions of the parties thereto during the Negotiation Period. The Commission shall prepare such public notices and schedule such public hearings, in accordance with applicable law, as may be necessary for the City Council's and/or the Board of the Commission's consideration of any terms which may be agreed upon between the Commission staff and the Developer. The Developer expressly acknowledges and agrees that the Commission will not and can not be bound by any statement, promise or representation made by the Commission staff during the course of negotiations of an agreement and that the Commission may be legally bound only upon the approval of the agreement by the Board of the Commission and/or the City Council, as applicable and appropriate, in accordance with applicable law.

- n. In the event the parties fail to execute an agreement regarding the development of the Downtown Oxnard Marketplace (including, without limitation, the North Plaza Area), neither party shall have any obligations, liability or duties hereunder.
- o. The Developer expressly acknowledges and agrees that the Commission has not agreed to fund, subsidize or otherwise assist the Developer in connection with the Downtown Oxnard Marketplace.
- p. By agreeing to enter into this Agreement, the Commission is not committing itself to or agreeing to undertake any acts or activities requiring the subsequent independent exercise of discretion by the City Council or the Board of the Commission.
- q. Upon request by the Commission not more often than monthly, the Developer shall deliver to the Community Development Director, without cost or expense to the Commission, copies of all plans, reports, studies or investigations prepared by or on behalf of the Developer with respect to the Downtown Oxnard Marketplace (including, without limitation, those prepared pursuant to subsection g., above), as well as an accounting of all costs incurred and paid by the Developer pursuant to subsection g., above. The Developer shall indemnify, defend and hold the City and the Commission, and their respective officials, representatives, directors, staff members, attorneys, consultants and employees harmless from any liabilities, including, without limitation, reasonable attorneys' fees and expenses, for payment of, or arising out of nonpayment of the cost of preparing the plans, reports, studies or investigations.

2. Limitation on Remedies for Breach or Default and Release of Claims.

- a. The Commission would not have agreed to any part of this Agreement if it were to be liable to the Developer for any amount of monetary damages or other remedies. Accordingly, the Developer acknowledges and agrees that the Developer's exclusive right and remedy upon any breach or default of the Commission under this Agreement is to terminate this Agreement.
- b. The Developer acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor."
- c. Civil Code Section 1542 notwithstanding, it is the parties' intention to be bound by the limitation on remedies set forth in this Section, and the Developer hereby releases any and all claims against the Commission for monetary damages or other legal or equitable relief, whether or not such released claims were known or unknown to the Developer as of its entry into this Agreement. The Developer

hereby waives the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect.

3. Notices, Demands and Communications between the Parties. Formal notices, demands and communications between the Commission and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by courier not affiliated with the sender at the cost of the sending party with written evidence of receipt, to the principal offices of the Commission or the Developer as designated below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate, by mail as provided in this Section.

If to Commission: 305 W. 3rd Street
Oxnard, California 93030
Attn: Community Development Director

If to Developer: 750 West Gonzales Road
Suite 120
Oxnard, California 93030
Attn: Dave O. White

4. Interpretation of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters addressed in this Agreement. In addition, each party has been given the opportunity to consult with experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose and intent of the parties to this Agreement.
5. Time of the Essence. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
6. Extension of Agreement.
 - a. EIR Extension. If the environmental impact report ("EIR") described in Section 1.g.v., above, has not been completed prior to the expiration of the Negotiation Period by the Developer and the City Planning department, and processed by them before the Planning Commission and/or the City Council (as applicable), so long as Developer has been diligently processing, and continues to diligently process, the EIR, the Negotiation Period shall be automatically extended for the amount of time reasonably necessary to complete preparation of the EIR and the processing of it before the Planning Commission and/or the City Council (as applicable).

- b. Discretionary Extension. In addition to the extension described in subsection a., above, the parties may extend the Negotiation Period one additional time for up to six (6) months by an agreement in writing executed by the Developer and the Commission's Community Development Director. The Community Development Director is not obligated to extend the Negotiation Period, but shall consider in his sole good faith discretion whether to do so based upon Developer's progress and the progress of negotiations.
7. Attorneys' Fees and Costs. If any action or proceeding is brought by either party against the other under this Agreement, whether for interpretation, enforcement or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney and any expert witnesses in such action or proceeding. This provision shall also apply to any post judgment action by either party, including without limitation efforts to enforce a judgment.
8. Severability. Any provision of this Agreement, which shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
9. Complete Agreement. This Agreement, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between the parties, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Agreement. Any and all previous discussions or agreements between the parties with respect to the Negotiation Area or the Downtown Oxnard Marketplace, whether oral or written, including, without limitation, Section 702 of the DDA, the First Prior ENA and the Second Prior ENA, are superseded in their entirety by this Agreement.
10. Necessity for a Writing. No amendment, change, or addition to, or waiver of termination of, this Agreement or any part hereof shall be valid unless in writing and signed by the Commission and the Developer.
11. Authority to Sign. The Developer hereby represents and warrants that the individuals executing this Agreement on behalf of the Developer have full authority to do so and to bind the Developer to perform pursuant to the terms and conditions of this Agreement.
12. Counterpart Originals. This Agreement may be executed in any number of counterparts, each of which when executed will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

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[signatures on following pages]

OXNARD COMMUNITY DEVELOPMENT
COMMISSION, a public body, corporate and
politic

Date: _____

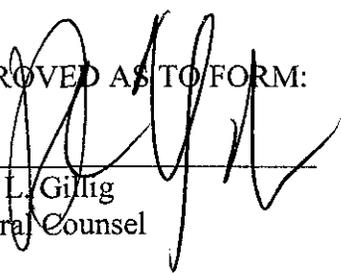
By: _____

Dr. Thomas E. Holden
Chairman

ATTEST:

Daniel Martinez
Secretary

APPROVED AS TO FORM:



Gary L. Gillig
General Counsel

[remainder of page left intentionally blank]

[signatures on following pages]

OXNARD PLAZA ASSOCIATES, LLC a
California limited liability company

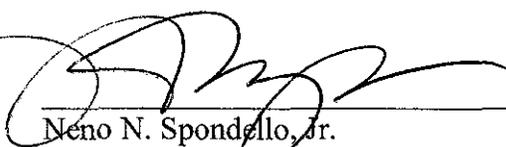
By: Plaza Development Partners, LLC, a
California limited liability company, its
member

Date: 3/28/06



Dave O. White
Its: Manager

Date: 3/28/06

By: 

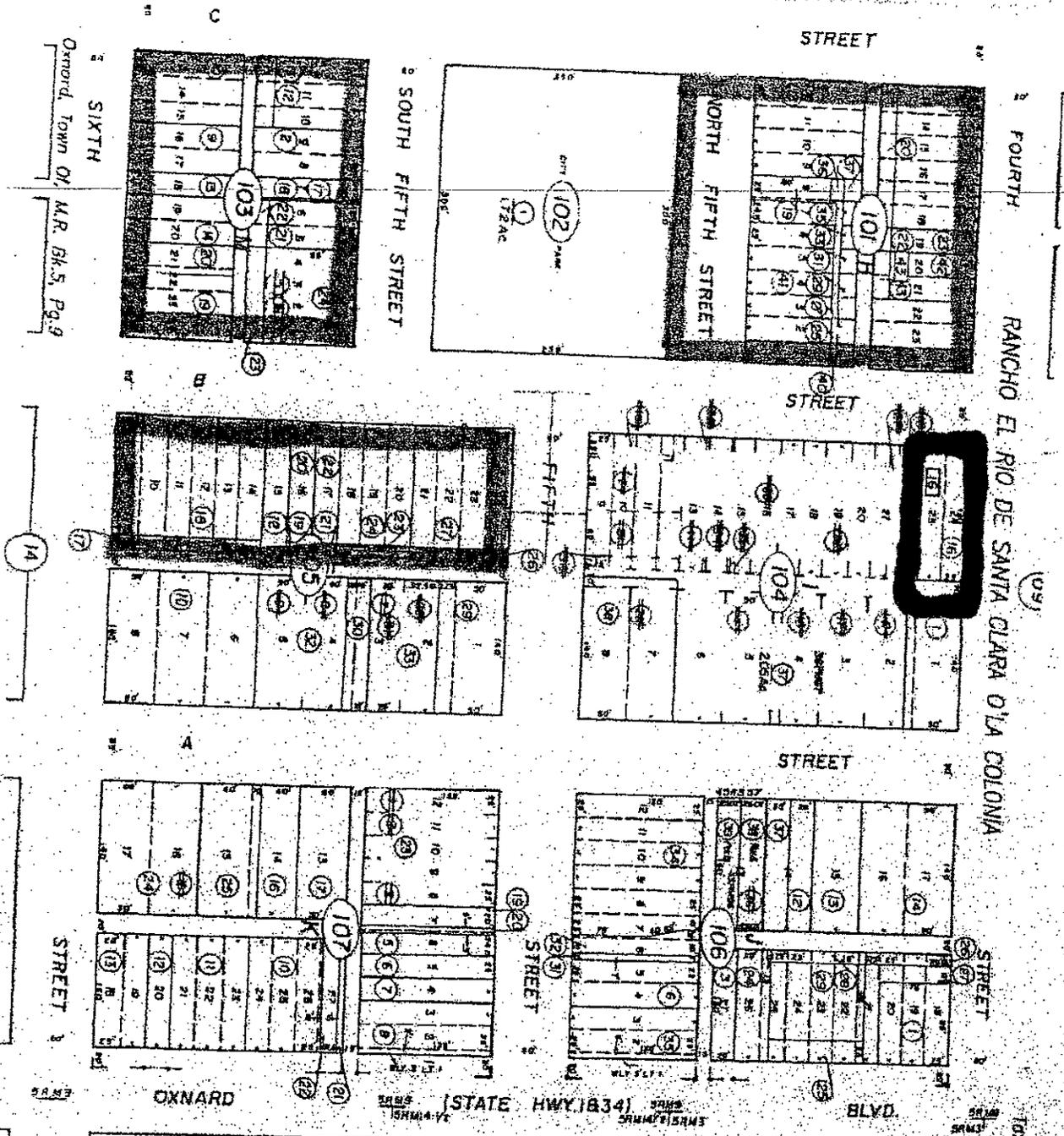
Neno N. Spondello, Jr.
Managing Member

EXHIBIT 1

GENERAL DEPICTION OF NEGOTIATION AREA

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00087



RANCHO EL RIO DE SANTA CLARA O'LA COLONIA

Oxnard Town Of, M.R. Bk. 5, Pg. 9

Box Role Area 03044

202-10

DATE	1-1-2011
REVISION	
BY	F.A. CROFT
CHECKED	ROLAND GREENE
DATE	07-28-2011
PROJECT	RECORDS PL-202-10, Parton A.
DRAWN BY	Debra County Assessor's Office

CITY OF OXNARD
Ventura County Assessor's Map.
 Assessor's Office, Ventura County
 Assessor's Office, Ventura County
 Assessor's Office, Ventura County

THE ASSessor'S MAPS ARE FOR THE USE
 OF THE PUBLIC AND ARE NOT TO BE
 REPRODUCED OR TRANSMITTED IN ANY
 FORM OR BY ANY MEANS, ELECTRONIC
 OR MECHANICAL, INCLUDING PHOTOCOPYING,
 RECORDING, OR BY ANY INFORMATION
 STORAGE AND RETRIEVAL SYSTEM, WITHOUT
 PERMISSION IN WRITING FROM THE
 COUNTY OF OXNARD.

00088