



Meeting Date: 12/19/06

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 Study Session

Prepared By: Suzanne Quitoriano, Redevelopment Project Manager *SK* Agenda Item No. 0-1
 Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *SW* Other (Specify) _____

DATE: December 13, 2006

TO: Community Development Commission

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

SUBJECT: Budget Appropriation for Lease Guarantee Payment on behalf of and as a Loan to Oxnard Theater Group, LLC and San Carlos Cinemas, Inc. for Downtown Theater Pursuant to Disposition and Development Agreement approved November 26, 2002 ("DDA")

RECOMMENDATION

That the Community Development Commission approve a special budget appropriation of \$61,300 from the Central City Revitalization Project Area, recognizing \$61,300 worth of interest revenue and appropriating it for one lease guarantee payment on behalf of and as a loan to Oxnard Theater Group, LLC and San Carlos Cinemas, Inc. for the Downtown Theater Project pursuant to the DDA and loan agreement contained therein.

DISCUSSION

Background

On November 26, 2002, the Community Development Commission ("CDC") approved the DDA with Strand Cinemas, LLC, and San Carlos Cinemas, Inc., providing for the development of a movie theater complex with retail shop space in Downtown. CDC-owned property plus the former Bank of America property between "A" and "B" and Fourth and Fifth Streets was identified as the location for the project.

Today, the project now known as Centennial Plaza is largely constructed and operational. The first phase of the project, "Plaza Cinemas" a 14-screen state-of-the-art movie complex, opened in August 2005 along with Subway, Thai Peru, Cold Stone Creamery, Starbucks, and Capriccios. The first phase will be completed with the addition of Casa Escobar and 5th Street Steakhouse and Seafood. The ownership of the first phase was transferred from Strand Cinemas, LLC to Oxnard Theater Group, LLC. The second phase facing "A" Street, will provide additional space for restaurants and/or retail shop space and will begin construction in 2007 and is still currently owned by Strand Cinemas, LLC.

In approving the project, the CDC demonstrated its on-going commitment to implementing the Redevelopment Plan for Downtown. The project also marks the beginning of what has become a comprehensive revitalization effort for the Downtown with new entertainment, shopping, and dining opportunities along with new or rehabilitated office uses and residential development. As part of these revitalization efforts, the City and CDC have completed several important public infrastructure upgrades and initiated a facade improvement program for Downtown property owners and merchants. In July 2005 the City-owned four-level, 450-space public parking structure on the corner of Third and "B" Streets opened. The structure is used for movie theater patrons, visitors to Downtown businesses, and civic center parking. The structure also contains the City's Security Operations Center ("SOC") staffed by the Police Department and private security personnel. Additional public improvements completed include alleyway reconstruction, surface parking lot improvements, and nostalgic streetlights. Implementation of the Downtown Oxnard Street Tree and Sidewalk Replacement Program will begin in January 2007.

New restaurant activity includes La Dolce Vita at Heritage Square and Ruby's Café on Oxnard Boulevard. The Olson Company is nearing completion of Heritage Walk, a 12-unit townhome development at Seventh and "A" Streets, which includes the Downtown's first live/work units. Cabrillo Economic Development Corporation has broken ground on a 28-unit "for sale" townhome project, and renovation of the Boys and Girls Club is underway. Two additional properties, the "Swift Building" at the corner of Fourth & "B" Streets and the Social Security Office, are in the planning stages of redevelopment.

Additionally, a strong majority of the Downtown property owners recently voted (80 percent affirmative vote) for the renewal of the Oxnard Downtown Management District ("ODMD"), a property-based business improvement district ("PBID"). This indicates their approval of the PBID's recent accomplishments and shows the strong support to continue the special assessments for another five years (2006-2011) to provide additional Downtown maintenance services, security services, marketing and promotions, and a dedicated staff to implement and oversee these programs.

The DDA, Lease Guarantee, and Loan Agreements

The DDA sets forth the requirements for the sale of the CDC's property to Strand Cinemas, LLC for purposes of constructing a movie theater complex. Pursuant to the DDA, a promissory note in the amount of \$800,000 was executed by Strand Cinemas, LLC ("Purchase Price Promissory Note") for the purchase of CDC-owned property located at the northwest corner of Fifth and "A" Streets (a portion of the current movie theater complex). The Purchase Price Promissory Note is payable at five years' interest only, and 20 years' principal and interest.

In accordance with the DDA, it was required that Strand Cinemas, LLC obtain private lender construction and permanent financing. In order to obtain private financing for the project, a lease guarantee from the CDC was necessary. Pursuant to the DDA, Strand Cinemas, LLC must pay the CDC \$1 Million consideration for the 25-year lease guarantee evidenced by a promissory note ("Lease Guarantee Consideration Promissory Note") payable at five years' interest only, and 20 years' principal and interest. Even though the property on which the first phase was constructed (including the movie theater) was conveyed to Oxnard Theater Group, LLC, Strand Cinemas, LLC remains the party obligated to make payments under the Purchase Price Promissory Note and the Lease Guarantee

Consideration Promissory Note. Strand Cinemas, LLC is the sole member of Oxnard Theater Group, LLC.

The DDA provides that the CDC make loans to Strand Cinemas, LLC and San Carlos Cinemas, Inc. when operator expenses exceed operator revenues. The specific lease guarantee and loan terms are set forth below.

1. If San Carlos Cinemas, Inc.'s revenues do not cover its lease expenses, then shortfalls are to be paid in the following order:
 - Oxnard Theater Group, LLC contributes its net adjusted cash flow on a monthly and annual basis to the extent available.
 - The CDC contributes to shortfalls in the form of a loan at five percent interest to San Carlos Cinemas, Inc., to be repaid with profits to the extent they occur.
 - The CDC lease guarantee of the above expenses is up to \$1,335,600 annually for rent plus an additional amount of \$264,000 (currently estimated) for common area maintenance fees, property tax, and insurance ("Triple Net Charges").
 - San Carlos Cinemas, Inc., pledges its net cash flow to repay the CDC for any payments made by the CDC under the CDC lease guarantee. San Carlos Cinemas, Inc.'s agreements are secured by a second priority interest in all theater equipment fixtures, funds, cash, and bank accounts.
 - If Strand Cinemas, LLC or San Carlos Cinemas, Inc., fail to develop and/or operate the theater in substantial conformance to the DDA, the CDC has a legal right under certain circumstances to reclaim ownership of the property and movie theater (referred to as "Right of Reverter").
2. Upon sale or certain financings/refinancings of the theater:
 - Strand Cinemas, LLC will pay remaining unpaid balances of principal and interest owing under the Purchase Price Promissory Note and Lease Guarantee Consideration Promissory Note.
 - Strand Cinemas, LLC will reimburse CDC guarantee payments plus five percent interest.
3. A separate agreement known as the "Cash Management Agreement" ("Agreement"), effective June 29, 2006, sets forth the obligation of the lender to request payment by the CDC for any theater rent/Triple Net Charges shortfall. Under the Agreement:
 - The CDC is required to make lease guarantee payments within 15 days of the request. If payment is not made by the CDC within 15 days, the CDC will be in default of the Agreement.
 - The CDC has the right to "cure" the default within 15 days from receipt of a notice of default and if not cured within that time period, the CDC may lose rights protecting its interests in the DDA.
 - The CDC is entitled to request documentation including, but not limited to, monthly financial statements and theater operating budgets in order to make a determination of the validity for the request for loan guarantee payment.

The annualized promissory note repayment amount (for the combined Purchase Price Promissory Note and Lease Guarantee Consideration Promissory Note) from Strand Cinemas, LLC is currently \$92,943.

Annual parking structure maintenance revenues paid by the theater operator are \$20,000. To date the CDC has received the sum of \$92,943 from Strand Cinemas, LLC for re-payment of promissory notes. Additionally, the City has received \$27,397 from San Carlos Cinemas, Inc. for parking structure maintenance fees. Therefore, total funds received to date are \$120,340.

The CDC received a formal lease guarantee request from Wachovia Bank on November 9, 2006 to pay the amount of \$61,300 to cover the theater rent and Triple Net Charges shortfall for November 2006. The lease guarantee payment was made by the CDC on December 5, 2006 in order to comply with time restrictions of the Agreement. However, a substantial amount of information has been requested from Oxnard Theater Group, LLC, Strand Cinemas, LLC and San Carlos Cinemas, Inc. for special legal council's and staff's review in order to confirm whether a proper lease guarantee request has been made and proper process followed in accordance with the DDA. Documentation that is currently under review from Oxnard Theater Group, LLC, Strand Cinemas LLC and San Carlos Cinemas, Inc. includes the following:

1. Plaza Cinemas 2005-06 Operating Budget
2. Plaza Cinemas 2005-06 Monthly Financial Statements
3. Plaza Cinemas 2007 Operating Budget

FINANCIAL IMPACT

The special budget appropriation will recognize \$61,300 worth of interest revenue and appropriate it to Account No. 401-8201-862-8821. The appropriation will be used for the lease guarantee payment on behalf of and as a loan to Oxnard Theater Group, LLC and San Carlos Cinemas, Inc. for the Downtown Theater.

Attachment: Request for Special Budget Appropriation

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

December 19, 2006

Request is hereby made for an appropriation of total \$ 61,300

Reason for appropriation: Recognize interest revenue and appropriate the lease guarantee payment to Strand Cinemas for the Downtown Theater.

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
CCRP (401)	CCRP Operations 401-8201-	
	571-7482 - Interest Income-Other	(61,300)
	862-8821 - Contractual Agreement/Loan to Private Operator	<u>61,300</u>
	Net Estimated Change to CCRP Fund Balance	<u>-0-</u>

Jim D. Rudolph

Manager

REQUIRES CITY COUNCIL APPROVAL

DIRECTOR OF FINANCE

Susan Winder

Disposition

Approved _____

Rejected _____

Transfer by Journal Voucher _____

City Manager
ATTACHMENT 1

PAGE 1 OF 1

000067