



July 11, 2007

TO: Planning Commission

FROM: Matthew G. Winegar, Development Services Director

SUBJECT: RiverPark Development Agreement Amendment

A handwritten signature in black ink, appearing to be 'MGW', located to the right of the 'FROM' line.

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RECOMMENDATION

That the Planning Commission recommend to the City Council an amendment to the RiverPark Development Agreement to permit the location of a multiplex theater in the commercial district of the RiverPark Specific Plan.

DISCUSSION

On July 10, 2007, the City Council amended the City Code to limit the location of multiplex theaters to the Central Business District and the RiverPark Commercial District. The developer of the RiverPark Shopping Center (The Collection) seeks a Development Agreement Amendment to permit the construction of a multiplex theater. The right to development would require that building permits be obtained by December 31, 2011.

ENVIRONMENTAL DETERMINATION

The proposed amendment is categorically exempt from CEQA. Any actual theater proposal would be evaluated in the context of the RiverPark Specific Plan and Environmental Impact Report.

MGW:sae

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Oxnard
305 West Third Street
Oxnard, California 93030
Attn: City Clerk

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the "Second Amendment") is made in Ventura County, California as of June __, 2007, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "City") and **RIVERPARK A, L.L.C.**, a Delaware limited liability company ("RiverPark A"), and **RIVERPARK B, L.L.C.**, a Delaware limited liability company ("RiverPark B"). RiverPark A and RiverPark B shall be collectively referred to as the "RiverPark Developers".

RECITALS

A. The City, RiverPark A and RiverPark B entered into that certain Development Agreement dated as of August 27, 2002 (the "Development Agreement").

B. On or about _____ 2004, the City, RiverPark A, RiverPark B, E.D., LLC, a California limited liability company ("E.D."), KOH, LLC, a Delaware limited liability company ("KOH"), and RP PROPERTIES LLC, a California limited liability company ("RPP") entered into that certain First Amendment to Development Agreement (the "First Amendment") to add additional properties to the Development Agreement and to add E.D., KOH, and RP as parties to the Development Agreement and allocate certain rights, duties, and obligations amongst and between the various parties.

C. Since the parties entered into the Development Agreement and First Amendment, the RiverPark Developers have been in full compliance with the terms, conditions, and obligations of the Development Agreement as amended.

D. The RiverPark Developers are seeking to amend the Development Agreement so that the Development Agreement will incorporate certain changes to the City's Municipal Code regarding the location of multiplex theaters within the City and to clarify that a multiplex theater may be developed within the area commonly known as Planning District D of the RiverPark Specific Plan area.

E. The City and the RiverPark Developers each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in

accordance with the provisions of the Development Agreement as amended by this Second Amendment.

F. The Planning Commission of the City (the "Planning Commission") and City Council have each given notice of their intention to consider this Second Amendment, have each conducted public hearings thereon pursuant to the relevant portions of the Government Code, and have each found that the provisions of this Second Amendment are consistent with the City's 2020 General Plan for development within the City (the "General Plan"), City zoning ordinances, and the RiverPark Specific Plan. The City Council has also specifically considered the impacts and benefits of this Second Amendment upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Second Amendment is beneficial to the residents of the City and is consistent with the present public health, safety, and welfare needs of the residents of the City and the surrounding region.

G. On July __, 2007, the Planning Commission held a duly noticed public hearing wherein the Planning Commission recommended approval of this Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this Second Amendment by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the RiverPark Developers agree as follows:

Section 1. The following sentence is added to the end of Section 1.2 of the Development Agreement:

"Notwithstanding the foregoing or anything to the contrary contained herein, the term "Applicable Rules" shall also include the provisions of Ordinance No. ____, enacted by the City on July __, 2007, which permits the location of a multiplex theater within Planning Area D of the Specific Plan; provided, however, that if no ~~Certificate of Occupancy~~ **building permit** has been issued for a multiplex theater within Planning Area D of the Specific Plan by December 31, 2010, then Ordinance No. ____ shall not be considered an Applicable Rule."

Section 2. Section 8(a) of the Development Agreement is amended to read as follows:

Permitted Uses. The Developer agrees that the Project shall be developed in accordance with the Specific Plan. The City acknowledges and agrees that the Multiplex motion picture theaters are a similar use to the "Retail/Entertainment" uses listed in the table in Section 2.5.2.4 of the River Park Specific Plan and are considered acceptable for development in Planning Area D of the River Park Specific Plan Area."

Section 3. Miscellaneous Provisions.

(a) **Entire Agreement.** Except for the Development Agreement, as previously amended by the First Amendment, which this Second Amendment amends, this Second Amendment represents the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Second Amendment.

(b) **Section Headings.** The section headings contained in this Second Amendment are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) **Counterparts.** This Second Amendment and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(d) **Waiver.** No waiver of any provision of this Second Amendment shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(e) **Severability.** If any part of this Amendment is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Second Amendment or the Development Agreement, as previously amended, that it amends. The other parts of this Second Amendment and the Development Agreement, as previously amended, that it amends shall remain in effect as if this Second Amendment had been executed without the invalid part. The parties intend and desire that the remaining parts of this Second Amendment and the Development Agreement, as previously amended, that it amends continue to be effective without any part or parts that have been declared invalid. If, for any reason, the Second Amendment does not take effect, then the provisions of the Development Agreement, as previously amended, shall remain in full force and binding upon the parties to the Development Agreement, as previously amended.

(f) **No Reliance on Other Parties.** All parties to this Second Amendment declare that, prior to the execution of this Second Amendment, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Second Amendment and making the decision to execute it. The parties each represent and acknowledge that in executing this Second Amendment, they do not rely on and have not relied on any representation or statement not set forth herein made by any other party to this Second Amendment or their representative legal counsel with regard to the subject matter, basis or effect of this Second Amendment.

(g) **Construction.** The provisions of this Second Amendment shall be liberally construed to effectuate its purpose. The language of this Second Amendment shall be construed according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Second Amendment and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural and vice versa.

(h) **Successors and Assigns.** This Second Amendment shall be binding on and shall inure to the benefit of the parties and their respected legal representatives, successors, and assigns.

(i) Governing Law. The validity and interpretation of this Second Amendment shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(j) Authorizations. All individuals executing this and other documents on behalf of the parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entity so indicated. Each signatory shall also indemnify the other parties to this Second Amendment and hold it harmless from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized.

(k) Effective Date. After this Second Amendment has been signed by authorized representatives of each of the parties hereto, this Second Amendment shall become effective on the date on which the ordinance approving this Second Amendment becomes operative under Government Code section 36937.

(l) Definitions. All terms not specifically defined in this Second Amendment shall have the meanings ascribed to them in the Development Agreement, as previously amended.

(m) Impact of Second Amendment on Development Agreement. Unless otherwise specifically amended by this Second Amendment, all provisions of the Development Agreement, as previously amended, shall remain in full force.

(n) Recordation of this Second Amendment. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Second Amendment in the Official Records of the County within ten (10) days after the mutual execution of this Second Amendment.

IN WITNESS WHEREOF, the parties to this Second Amendment have each executed this Second Amendment as of the date first written above.

[Signatures on following pages]