

Meeting Date: July 17, 2007.



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 (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Richard R. Bryan

Agenda Item No. 0-1

Reviewed By: [Signature] City Manager

[Signature] City Attorney Finance

SW

Other (Specify)

DATE: June 27, 2007

TO: City Council
Community Development Commission

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

Curtis P. Cannon

Matthew Winegar, Development Services Director
Development Services Department

[Signature]

SUBJECT: Third Amended Owner Participation Agreement (OPA) and Amendments to Related Documents, Assignment and Assumption Agreement of Development Agreement and OPA, and Hotel Option Agreement for the RiverPark Project Located Adjacent to and North of the Highway 101 Freeway, Adjacent to and East of the Santa Clara River, and West of Vineyard Avenue

RECOMMENDATION

That City Council:

1. Approve the form of the Assignment and Assumption Agreement for the Development Agreement (A-6128).
2. Authorize the Mayor to execute the Assignment and Assumption for the Development Agreement (A-6128) upon the Mayor's review and approval of the designated Assignee upon legal formation of the Shea RiverPark assignee entity.

That Community Development Commission (CDC):

1. Approve and authorize the Chairman to execute a Third Amendment to Owner Participation Agreement (A-5965) between the CDC and RIVERPARK A, LLC that authorizes relocating the hotel from a 12 acre site to a 5 acre site and extending the hotel completion date.

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2. Approve and authorize the Chairman to execute a Third Amendment to Agreement Containing Covenants Affecting Real Property (A-5966) between the CDC and RiverPark A, LLC.
3. Approve the form of the Assignment and Assumption Agreement for the OPA (A-5965).
4. Authorize the Chairman to execute the Assignment and Assumption for the OPA (A-5965) upon the Chairman's review and approval of the designated Assignee upon legal formation of the Shea RiverPark assignee entity.
5. Approve and authorize the Chairman to execute an Option Agreement for Purchase of Real Property and Joint Escrow Instructions (A-5965) between the CDC and RIVERPARK A, LLC that enables the CDC to assume title to the hotel site in the event of developer default.

DISCUSSION

RiverPark is a 700-acre mixed use community located in the northwest portion of the City. Existing project entitlements include an OPA and two amendments thereto, Development Agreement (DA) and one amendment thereto and a Specific Plan. The Specific Plan consist of 13 Planning Areas. Existing entitlements authorize 900,000 square feet of commercial space and a 320 room hotel on 12 acres in Planning Area C. A portion of the Specific Plan area is located within the Historic Enhancement and Revitalization of Oxnard (HERO) Redevelopment Area.

Shea RiverPark Commercial Developers I, LLC (SRCD) is under contract to purchase approximately 80 acres from RiverPark A, LLC. SRCD desires to relocate the hotel from Planning Area C to Planning Area D in order to: (a) maximize retail efficiencies in Planning Area C, and (b) improve the potential synergistic relationship between hotel and "lifestyle" shopping uses in Planning Area D. SRCD is in the process of creating a new Assignee to assume RiverPark A's obligation under the OPA and DA as related to the 80 acres of RiverPark Commercial Centers being created.

RiverPark A is requesting City Council and CDC approval to modify existing entitlements to accomplish the following: (a) reduce the size of and relocate the hotel from the 12 acre Planning Area C site to a five acre site within Planning Area D, (b) extend the date for completion of the hotel until 2014, and (c) develop Planning Area C for a retail center. A Land Use Plan is included as Attachment #1, a Commercial Center and Hotel Site Plan is included as Attachment #2 and an Existing and Proposed Hotel Location Site Map is included as Attachment #3.

The August 14, 2006 Fiscal Impact Analysis prepared by CB Richard Ellis concluded the proposed plan for the RiverPark Commercial center, which incorporates the proposed hotel relocation, would be expected to generate \$4.2 million in stabilized annual revenue to the CDC/City. This represents an increase of approximately \$700,000 above the original entitled plan. Over a 25-year period the CDC/City is expected to receive \$29 million more than the entitled plan envisioned.

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Amendments to the OPA and related documents, and a Hotel Option Agreement are necessary in order to implement the requested modified project. Key points in the amended and new documents are:

- The existing 12-acre hotel site in Planning Area C will be relocated to a 5-acre site in Planning Area D.
- RiverPark A will be required to:
 - Obtain a building permit, present satisfactory evidence of financing and commence construction of the hotel by December 31, 2011.
 - Diligently prosecute the hotel construction to completion by December 31, 2014.
- If RiverPark A defaults, the CDC has the right to obtain title to the hotel site for \$1 through the hotel option.
- The CDC has 6 months from a default to exercise the hotel option and take title to the hotel site.
- Upon exercising the hotel option and obtaining title, the CDC has 2 years to commence construction of a hotel. Similarly to RiverPark A, the CDC will have three years from commencement to complete construction.
- During the CDC's two-year period to commence construction, the CDC may "put" the hotel site to RiverPark A with 90 days written notice, at which time the developer has to either:
 - Buy the hotel site from the CDC for full fair market value for uses permitted under applicable laws, taking into considerations the Retail Covenants; or,
 - Give up all rights to acquire and develop the hotel site.
- If the CDC does not commence construction of a hotel by the end of the 2-year period, RiverPark A can, for a subsequent 2-year period, buy the property from CDC at full fair market for uses permitted under applicable laws, taking into considerations the Retail Covenants.
- In the event during the 2-year period the developer does not acquire the hotel site then SCRCD will give up any right to acquire and develop the hotel site.
- If the Third Amendment to the OPA is approved, the CDC and RiverPark A will enter into an agreement (that is mutually agreeable) containing covenants restricting retail use of the hotel parcel (Retail Covenants). In the event a hotel is not built, future proposed retail uses could directly (negatively) impact RCC tenants who have committed or are contemplating commitments to the proposed Project. Therefore it is proposed a covenant would "run with the land" on the Hotel parcel prohibiting (a) retail establishments selling prepackaged food items, groceries, prepackaged alcohol for off-premises consumption but excluding a hotel gift shop or hotel convenience store of less than 2,500 square feet, (b) a movie theater complex and (c) other retailers or restaurants that SRCD requests and are approved by the CDC's Executive Director at his or her sole discretion on a case-by-case basis.

Key changes to the delivery of the RiverPark Commercial Center are:

- Extended commercial component commercial delivery dates.

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- A combined total of 395,000 square feet of commercial will be completed no later than December 31, 2009.
- A combined total of 425,000 square feet of commercial will be completed no later than December 31, 2010.
- A combined total of 680,000 square feet of commercial will be completed no later than December 31, 2012.
- Certificates of occupancy shall not be issued for a cumulative total of 1,735 market-rate dwelling units before certificates of occupancy have been issued for 140 affordable very low income rental units, 84 affordable housing units and 395,000 square feet of commercial development.
- Certificates of occupancy shall not be issued for a cumulative total of 2,339 market-rate dwelling units before certificates of occupancy have been issued for an additional 82 affordable housing units and 425,000 square feet of commercial development.
- Certificates of occupancy shall not be issued for a cumulative total of 2,413 market-rate dwelling units before certificates of occupancy have been issued for an additional 86 affordable housing units and 680,000 square feet of commercial development.

On July 16, 2002, the City Council adopted Resolution No. 12,209 upholding the Planning Commission's decision certifying the Environmental Impact Report (EIR No. 00-03)(State Clearinghouse No. 2000051046) and adopting findings of fact, statement of overriding considerations and mitigation monitoring and reporting program for the RiverPark Specific Plan. Environmental impact evaluations included Specific Plan hotel and commercial areas. An addendum to EIR No. 00-03 states that the impacts of Specific Plan project are unchanged due to proposed modified project not creating any change in the Specific Plan size, land uses, or intensity of the development.

FINANCIAL IMPACT

Approving the recommendation will not create a financial impact.

- Attachment #1 - Land Use Plan: Permitted Uses
#2 - Commercial Center and Hotel Site Plan
#3 - Existing and Proposed Hotel Locations Site Map
#4 - Assignment and Assumption- Development Agreement
#5 - Third Amendment to Owner Participation Agreement with RiverPark A, LLC
#6 - Third Amendment to Agreement Containing Covenants Affecting Real Property
#7 - Assignment and Assumption of OPA and Related Documents
#8 - Hotel Option Agreement

Note: Drafts of the Third Amendment to Owner Participation Agreement, Third Amendment to Agreement Containing Covenants Affecting Real Property, Assignment and Assumption of OPA and related documents, Covenants Affecting Real Property, Hotel Option Agreement and Assignment and Assumption of Development Agreement have been provided to the CDC and

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Third Amended Owner Participation Agreement
Page 5

City Council. Copies of the drafts are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on the Monday before the meeting.

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RIVERPARK LAND USE PLAN: PERMITTED USES

Land Use Plan Date: February 14, 2002

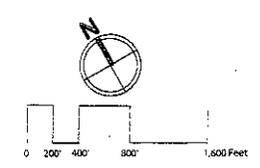
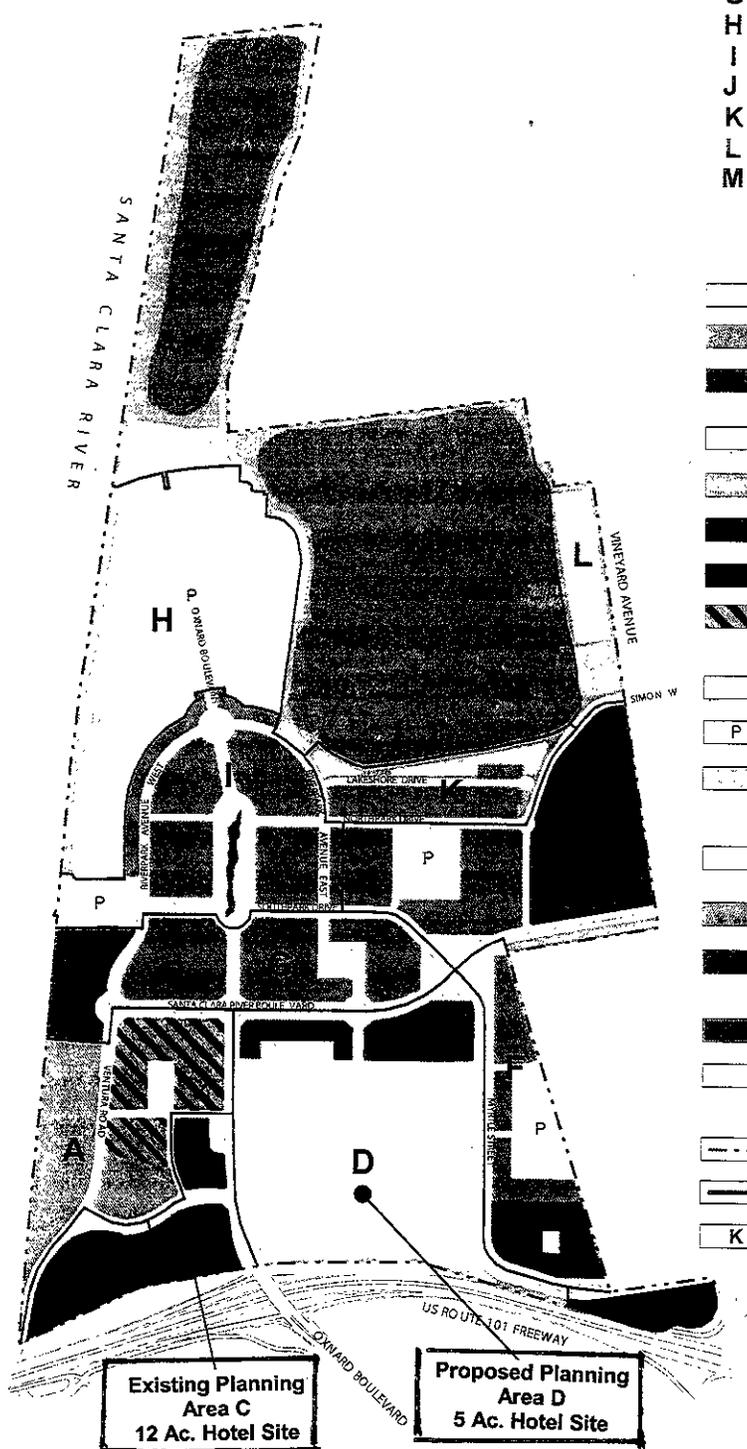
Planning Districts

- A** Mixed Use/Office District
- B** West Peripheral Commercial District
- C** Convention/ Hotel District
- D** Town Square Commercial District
- E** East Peripheral Commercial District
- F** Vineyards Neighborhood District
- G** Village Square Neighborhood District
- H** RiverPark Crescent Neighborhood District
- I** RiverPark Loop Neighborhood District
- J** RiverPark Mews Neighborhood District
- K** Lakeside Neighborhood District
- L** Public Facility District
- M** Water Storage/Recharge Basins & Storm Water Control District

Land Use Legend

- Residential: Low Medium (6-9 D.U./Ac.)
- Residential: Medium (9-15 D.U./Ac.)
- Residential: High (15-20 D.U./Ac.)
- Commercial: Regional
- Commercial: Office
- Commercial: Convention/ Hotel
- Commercial: Retail/ Office
- Mixed Use: Residential: High/ Commercial: Office
- Open Space: Park Space
- Open Space: Neighborhood Parks
- Open Space: Landscaped Buffer
- Open Space: Miscellaneous: Dry Swales/ Detention Basins
- Open Space: Miscellaneous: Water Storage/ Recharge Basins
- Open Space: Miscellaneous: Water Feature
- Schools/ Community Park
- Public Facilities
- Specific Plan Area
- Planning District Boundary
- Planning District Designation

RiverPark Development, LLC
 2000 W. Martin Parkway
 Suite 100
 Denver, Colorado 80202
 2.11.1



LAND USE PLAN: PERMITTED USES

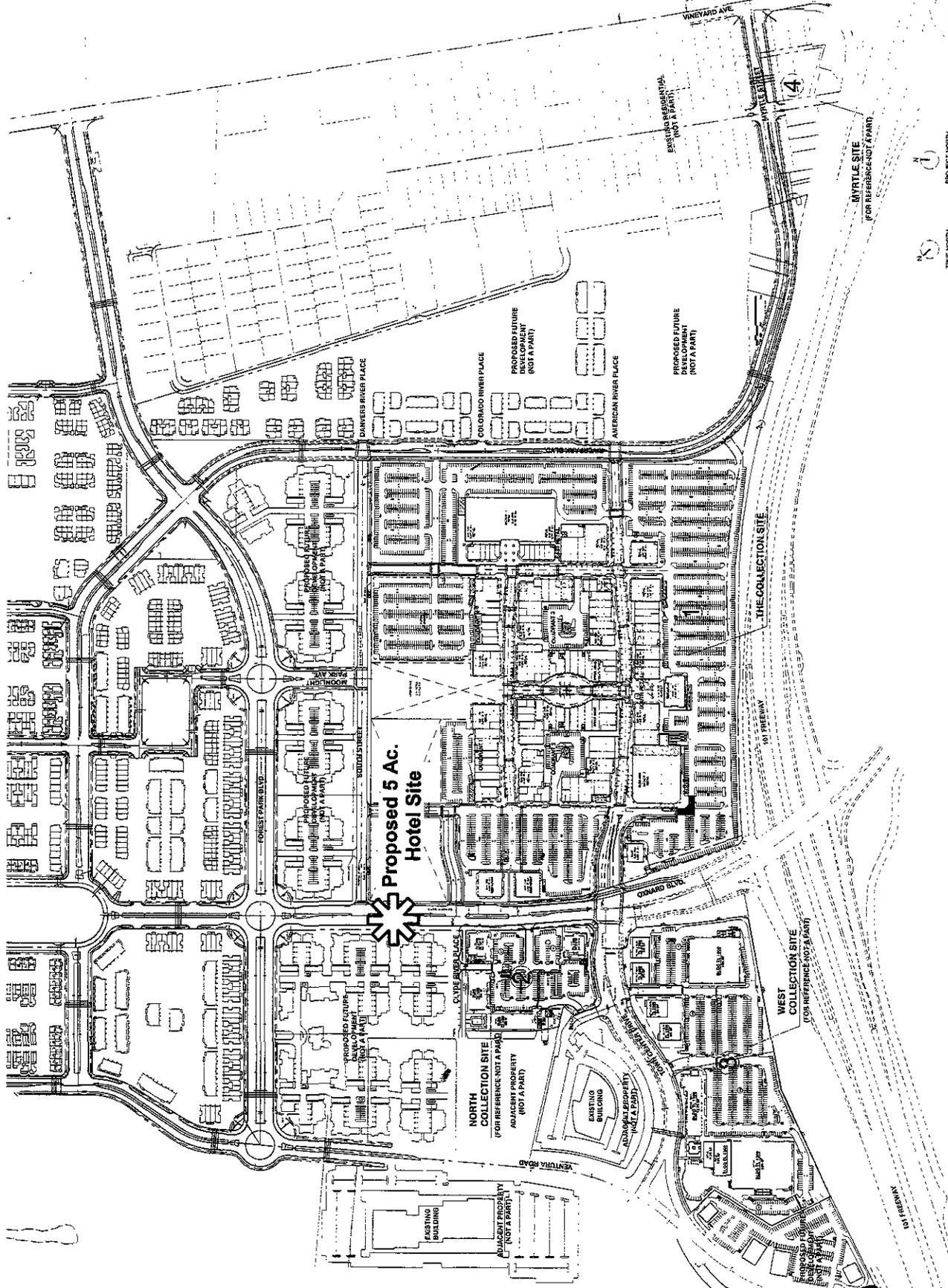
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RiverPark Specific Plan

Land Use Plan Date:
February 14, 2002

Specific Plan Date:
February 14, 2002

COMMERCIAL CENTER AND HOTEL SITE PLAN



REVISED FEB-28, 2007
 DAC SUBMITTAL February 15, 2007

SHEET A1.3 - THE COLLECTION - ALL SITES (FOR REFERENCE ONLY)

ALCON CONSULTING
 1111 Riverpark Road, Suite 200
 Westlake Village, CA 91362
 Phone (818) 774-2300 Fax (818) 774-2398
 www.alconconsulting.com

HUITZIG
 1111 Riverpark Road, Suite 200
 Westlake Village, CA 91362
 Phone (818) 774-2300 Fax (818) 774-2398
 www.huitzig.com

HUITZIG
 1111 Riverpark Road, Suite 200
 Westlake Village, CA 91362
 Phone (818) 774-2300 Fax (818) 774-2398
 www.huitzig.com

THE COLLECTION
 RIVERPARK
 Oxnard, California

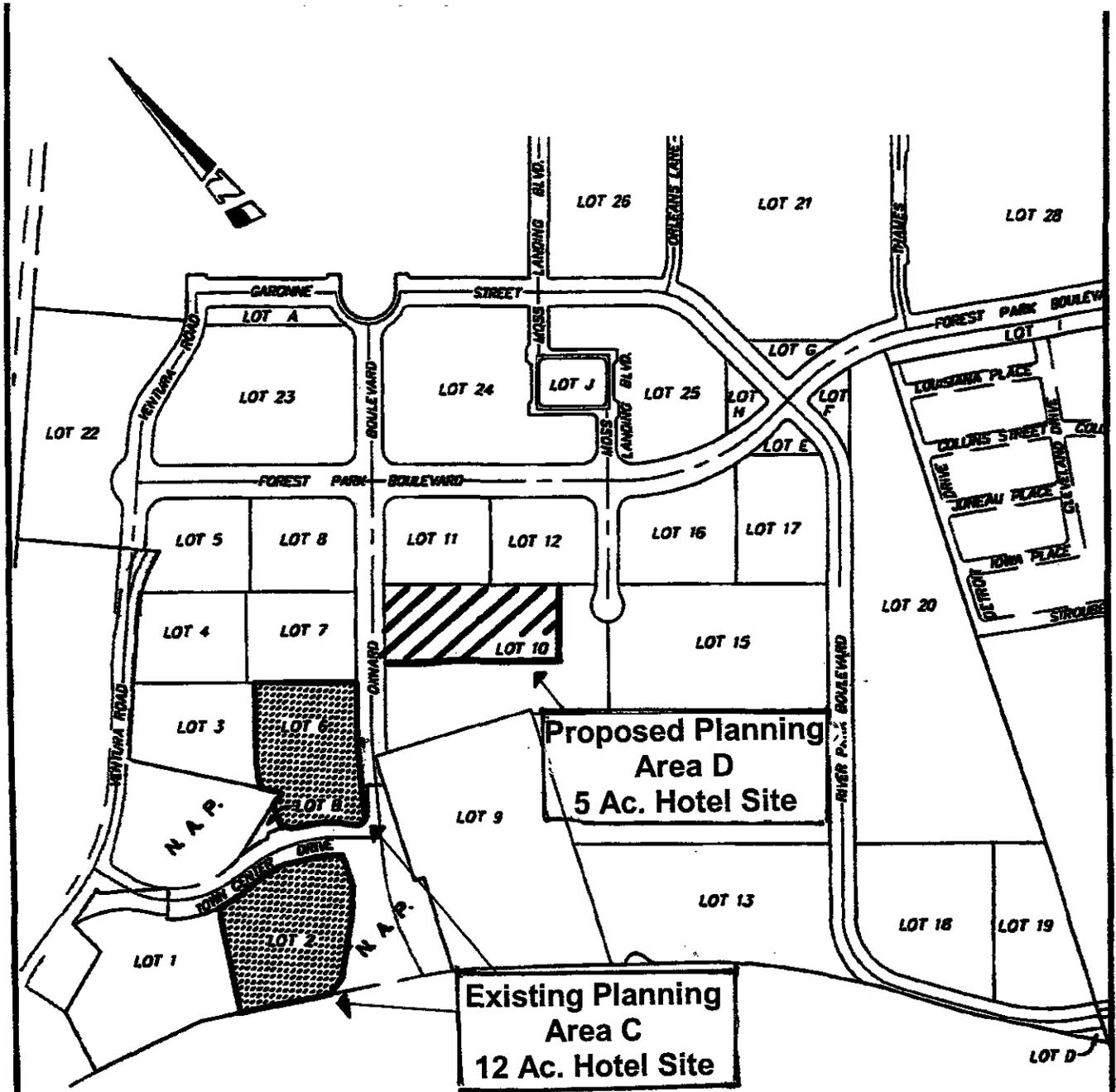
KAFI AN
 1111 Riverpark Road, Suite 200
 Westlake Village, CA 91362
 Phone (818) 774-2300 Fax (818) 774-2398
 www.kafi-an.com

Shea Riverpark Commercial Developers, LLC
 30699 Russell Ranch Road, Suite 200
 Westlake Village, CA 91362
 Phone (818) 874-2300 Fax (818) 874-2398

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ATTACHMENT **2**
 PAGE **1** OF **1**

EXISTING AND PROPOSED LOCATIONS SITE MAP



LOT 2 - 5.874 ACRES
 LOT 6 - 5.232 ACRES
 TOTAL HOTEL SITE ACREAGE: 11.106 ACRES
 Ventura Freeway US 101

TRACT NO. 5352-1

HUITT - ZOLLARS

Huitt-Zollars, Inc. Irvine
 430 Exchange, Suite 200, Irvine, CA 92602-1315
 Phone (714) 734-5100 Fax (714) 734-5155

'ORIGINAL HOTEL SITE'

SCALE	1"=600'
DRAWN BY	DAO
CHECKED BY	JLG
DATE	6/7/07
JOB NO.	10-1198-08

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Recording Requested by and
When Recorded Return to:

Riverpark A, L.L.C.
30699 Russell Ranch Road
Westlake Village, CA 91362
Attn: David Lauletta

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT - DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is made and entered into as of _____, 2007, by and between RIVERPARK A, L.L.C., a California limited liability company ("**Assignor**"), and _____, a _____ limited liability company ("**Assignee**").

RECITALS

A. Assignor owns that real property located in the City of Oxnard ("**City**"), County of Ventura, State of California, and more particularly described in Exhibit A attached hereto ("**Property**").

B. On the date hereof, Assignee is acquiring approximately 85 acres of the Property more particularly described in Exhibit B attached hereto (the "**Commercial Property**").

C. The City, Assignor and RiverPark B, LLC, a Delaware limited liability company ("**RiverPark B**") entered into that certain Development Agreement dated as of August 27, 2002 and recorded against the Property on September 10, 2002 as Instrument No. 2002-02164590 in the Ventura County Recorder's Office, as amended by that certain First Amendment to Development Agreement dated as of December 14, 2004 and recorded against the Property on December 23, 2004 as Instrument No. 2004-1223-0339920 in the Ventura County Recorder's Office (collectively, the "**Development Agreement**").

D. Contemporaneous with the conveyance of the Commercial Property, Assignor desires to assign to Assignee all of Assignor's rights, duties and obligations under the Development Agreement with respect to the Commercial Property only (excluding, however, Assignor's obligations with respect to the construction of and/or payment for the infrastructure specified in Sections 5.1 and 5.2 of the Development Agreement (the "**Infrastructure Obligations**"), for which Assignor shall remain responsible) (the "**Assigned Rights and Obligations**"), and Assignee desires to accept and assume Assignor's rights and obligations under the Development Agreement with respect to the Commercial Property only (excluding, however, the Infrastructure Obligations, for which Assignor shall remain responsible) (the "**Assumed Rights and Obligations**"), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the "**Commercial Property Rights and Obligations**".

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

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ARTICLE 1

ASSIGNMENT AND ASSUMPTION OF THE PROPERTY RIGHTS AND OBLIGATIONS

1.1 **Assignment.** Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Commercial Property Rights and Obligations.

1.2 **Assumption.** As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Commercial Property, excluding the Backbone Infrastructure Obligations.

1.3 **Effective Date.** For purposes of this Agreement, the "Effective Date" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Property is recorded in the Office of the Recorder of the County of Ventura; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution of the City's representatives in the form entitled City of Oxnard's Consent, attached hereto as Exhibit C.

ARTICLE 2

RIGHTS AND REMEDIES

2.1 **Assignor's Release; No Assignor Liability or Default for Assignee Breach.** Pursuant to Paragraph 32(e) of the Development Agreement, Assignor shall be released from the Development Agreement with respect to the Commercial Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Development Agreement following the Effective Date with respect to the Commercial Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor, including without limitation any remedies authorized pursuant to Paragraphs 23(c), 25.1.1 and 25.1.4 of the Development Agreement, or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Commercial Property (the "**Assignor Property**").

2.2 **No Assignee Liability or Default for Assignor Breach.** As of the Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized pursuant to Paragraphs 23(c), 25.1.1 and 25.1.4 of the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Commercial Property.

2.3 **Indemnities.**

2.3.1 Assignee shall indemnify, defend and hold Assignor harmless from and against any and all claims, damages, losses, liabilities and costs, including without limitation reasonable

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attorneys' fees, costs and disbursements, to the extent arising from or relating to any failure by Assignee, Assignee's affiliates or any of their respective employees, officers, agents, contractors, guests or invitees to comply with any or all of the Assumed Rights and Obligations or the terms and provisions of this Agreement.

2.3.2 Assignor shall indemnify, defend and hold Assignee harmless from and against any and all claims, damages, losses, liabilities and costs, including without limitation reasonable attorneys' fees, costs and disbursements, to the extent arising from or relating to any failure by Assignor, Assignor's affiliates, or any of their respective employees, officers, agents, contractors, guests or invitees, to comply with any or all rights and obligations pursuant to the Development Agreement that are not assigned to Assignee by this Agreement or the terms and provisions of this Agreement, regardless of whether the claim, damages, loss, liability, or cost arose before or after the Effective Date.

2.3.3 The indemnities set forth in this Section 2.3 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 3

PERIODIC REVIEW OF COMPLIANCE

3.1 Assignor Responsibilities. Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor.

3.2 Assignee Responsibilities. Assignee shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Commercial Property, and Assignor shall have no responsibility therefor.

ARTICLE 4

AMENDMENT OF THE DEVELOPMENT AGREEMENT

4.1 Assignor. Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Commercial Property or the Commercial Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Commercial Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Commercial Property or any of Assignee's Commercial Property Rights and Obligations pursuant to the Development Agreement.

4.2 Assignee. Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Development Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Development Agreement.

ARTICLE 5

GENERAL PROVISIONS

5.1 Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier), by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee: Shea Riverpark Commercial Developers, LLC
30699 Russell Ranch Road
Westlake Village, CA 91362
Attn: _____

with copies to: **Shea Riverpark Commercial Developers, LLC**
26840 Aliso Viejo Parkway, Suite 100
Aliso Viejo CA 92656
Attn: General Counsel

Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104-1513
Attn: Margo N. Bradish, Esq.

If to Assignor: **RiverPark A, L.L.C.**
30699 Russell Ranch Road
Westlake Village, CA 91362
Attn: David Lauletta

with a copy to: Wallin, Kress, Reisman & Kranitz LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405
Attn: Kenneth D. Rozell, Esq.

Notices personally delivered shall be deemed received upon delivery. Notices delivered by certified mail as provided above shall be deemed received on actual delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Development Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 32(a) of the Development Agreement, the notice address set forth above.

5.2 Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have

been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.

5.3 Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

5.4 No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.5 Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee.

5.6 Successors and Assigns. This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

5.7 No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

5.8 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City.

5.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10 Third Party Beneficiaries. Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for Commission to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City.

5.11 Time of the Essence. Time is of the essence in the performance by each party of its obligations under this Agreement.

5.12 Authority. Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

5.13 Term. The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or termination of the Development Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Development Agreement.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

5.16 Default. Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

[remainder of page left intentionally blank – signature pages follow]

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

“Assignor”

RIVERPARK A, L.L.C.,
a Delaware limited liability company

By: RiverPark Development, LLC,
a Delaware limited liability company
its Sole Member

By: Riverpark Legacy, LLC,
a Delaware limited liability company
its Sole Member

By: Shea Riverpark Developers, LLC,
a Delaware limited liability company,
its Manager

By: Shea Homes Limited Partnership,
a California limited partnership,
its Managing Member

By: J.F. Shea Co., Inc.,
a Nevada corporation,
its General Partner

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

“Assignee”

NAME,
a _____ limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[*CORRECT SIGNATURE BLOCK TO BE PROVIDED]

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STATE OF CALIFORNIA)
)
COUNTY OF _____) ss:

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss:

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

DRAFT

EXHIBIT A

Description of the Property

DRAFT

EXHIBIT B

Description of the Commercial Property

DRAFT

EXHIBIT C

CITY OF OXNARD'S CONSENT

The City of Oxnard hereby consents to the assignment and assumption of the Commercial Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

CITY OF OXNARD,
a Municipal corporation of the State of California

By: _____
Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Gary Gillig, City Attorney