

Meeting Date: August 7, 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: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) SW

**DATE:** July 31, 2007

**TO:** City Council/Community Development Commission

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

*[Handwritten signature: Brian D. Rendell (for)]*

**SUBJECT:** Memorandum of Understanding (A-5965) for the Development of the RiverPark Project Located Adjacent to and North of the 101 Freeway, Adjacent to and East of the Santa Clara River, and West of Vineyard Avenue

**RECOMMENDATION**

That the City Council approve and authorize the Mayor to execute the Memorandum of Understanding (A-5965) among the City, CDC and RiverPark A relating to development of the RiverPark Project.

That the Community Development Commission (CDC) approve and authorize the Chairman to execute the Memorandum of Understanding (A-5965) among the City, CDC and RiverPark A relating to development of the RiverPark Project.

**DISCUSSION**

Developers of the main RiverPark commercial project, known as The Collection, have proposed a lifestyles shopping center which also features a theater complex as an anchor. The project is considered a vital component to the success of the Historic Enhancement and Revitalization of Oxnard (HERO) Redevelopment Project.

The proposed Memorandum of Understanding (MOU) addresses discussions among RiverPark, downtown Centennial Plaza theater developers and operator, the City and CDC regarding the potential impacts a RiverPark theater may have on the downtown theater project. The MOU provides that the parties will negotiate in good faith to enter on or before October 1, 2007 a Fourth Amendment to the RiverPark OPA containing the following terms:

1. The CDC will provide \$12 million in financing to be used for the construction of public infrastructure, parking facilities and improvements that would support the RiverPark commercial project in accordance with the Community Redevelopment Law (Health & Safety Code §§ 33000 *et seq.*).
2. RiverPark A will pay to the CDC \$9 Million to be used by the CDC for the purpose of implementing a Downtown Assistance Program to be developed by the CDC.

As a material part of the MOU, the RiverPark A is required to indemnify the City and CDC against claims of the developers and operator of the downtown theater that permitting development of a theater in the RiverPark Specific Plan area is a breach of the CDC's Disposition and Development Agreement with the downtown theater developer and operator.

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

#### **FINANCIAL IMPACT**

Approving the recommendation will not create a financial impact.

Attachment #1 - Memorandum of Understanding (A-5965)

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into in the County of Ventura, State of California, by and between the Oxnard Community Development Commission, a public body, corporate and politic (the "Commission"), the City of Oxnard, a California municipal corporation (the "City") and RiverPark A, L.L.C., a Delaware limited liability company ("Participant"). The Commission, City and Participant may be referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

This MOU is made and entered into on the basis of the following facts and understandings of the Parties hereto:

A. WHEREAS, the Commission and Participant have entered into that certain Owner Participation Agreement dated June 12, 2001, as amended by that certain First Amendment to the Owner Participation Agreement dated November 19, 2002, as further amended by that certain Second Amendment to the Owner Participation Agreement dated December 14, 2004, and as further amended by that certain Third Amendment to the Owner Participation Agreement dated \_\_\_\_\_, 2007 (as amended, collectively the "OPA"); and

B. WHEREAS, subject to approval of the Commission in accordance with the terms of the OPA, Participant intends to convey a portion of the property that is subject to the OPA (the "Property") to a commercial developer to develop a retail, lifestyle, and entertainment project commonly known as the RiverPark Collection (the "Project") pursuant to the OPA. The Project is a vital component to the success of the Historic Enhancement and Revitalization of Oxnard (HERO) Redevelopment Project; and

C. WHEREAS, the City, Participant, and RiverPark B, LLC, have entered into that certain Development Agreement dated August 27, 2002, as amended by that certain First Amendment to Development Agreement dated \_\_\_\_\_ 2004 (as amended, collectively the "Development Agreement"), for the development of the Project; and

D. WHEREAS, Participant desires to include a multiplex motion picture theater in the Project; and

E. WHEREAS, on July 24, 2007, the City Council of the City ("City Council") adopted Ordinance No. 2742, an Ordinance of the City Council of the City of Oxnard, Amending Section 16-331 of the City Code and Repealing Part 5 of Ordinance No. 2466 Relating to the Location of Multiplex Motion Picture Theaters (the "Ordinance"); and

F. WHEREAS, on July 24, 2007, the City Council approved the first reading of an ordinance proposing a Second Amendment to the Development Agreement to (i) include the Ordinance as an "Applicable Rule" under the Development Agreement, and (ii) acknowledge

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that multiplex motion picture theaters are permitted in Planning Area D of the RiverPark Specific Plan (the "Development Agreement Amendment"); and

G. WHEREAS, the Commission has provided assistance to a multiplex motion picture theater (the "Downtown Cinema") in the Central Business District zone pursuant to that certain Disposition and Development Agreement entered into by and among the Commission, San Carlos Cinemas, Inc., a California corporation ("San Carlos"), and Strand Cinemas, LLC, a California limited liability company ("Strand"), dated as of January 7, 2003, as modified by that certain First Implementation Agreement dated as of April 6, 2004 (as modified, collectively, the "DDA"). Oxnard Theatre Group, LLC, a Delaware limited liability company ("OTG"), is the successor-in-interest to, among other things, the rights and duties of Strand under the DDA pertaining to the Downtown Cinema; and

H. WHEREAS, in accordance with the DDA, the Commission desires to cooperate with OTG and continue to support the Downtown Cinema by establishing a plan to provide continued support and assistance to the Downtown Cinema (the "Downtown Assistance Program"); and

I. WHEREAS, the Parties have entered into this MOU to set forth the terms and conditions upon which the Parties would negotiate an agreement or agreements and related documents (collectively, the "Agreement") whereby Participant would provide certain assistance to the Commission, and the Commission would provide certain assistance to public infrastructure and public facilities that would support the Project, all in accordance with the Community Redevelopment Law (Health & Safety Code §§ 33000 *et seq.*).

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto hereby agree as follows:

#### MEMORANDUM OF UNDERSTANDING

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made a part of this MOU.

2. Agreement. The Parties shall negotiate in good faith to approve and enter into the Agreement containing substantially the terms described in this MOU on or before October 1, 2007. The City's or the Commission's approval of the Agreement shall be pursuant and subject to all applicable laws and any applicable City or Commission obligations. The Commission and City 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 City staff and/or Commission staff and Participant. Nothing herein is intended to prohibit the Commission or City from furnishing any information which it may be required by law to furnish to persons requesting information concerning the Commission's or City's activities, goals and matters of a similar nature.

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3. Agreement Essential Terms and Conditions. The essential terms and conditions of the Agreement shall be as follows:

3.1 The Commission shall provide financing, in addition to that already provided for in the OPA, in the amount of Twelve Million Dollars (\$12,000,000) (the "Public Financing") to be used solely for the construction of public facilities and/or public improvements (collectively, the "Public Improvements") to support the development of the Project, including without limitation public parking facilities, roads, infrastructure, public open space and other necessary public facilities and/or improvements. The Public Financing shall be payable solely from "Net Tax Increment" (as defined in the OPA) generated from the future development of the RiverPark "Site" (as defined in the OPA) ("Site Generated Tax Increment"). For purposes of the Public Financing, Site Generated Tax Increment shall exclude the portion of Site Generated Tax Increment necessary to pay the "Public Improvements Reimbursement" (as defined in the OPA) pursuant to the OPA.

3.2 Participant shall pay to the Commission Nine Million Dollars (\$9,000,000) (the "Contribution") to be used by the Commission for the purpose of implementing the Downtown Assistance Program.

3.3 The City and Commission shall enter into an agreement with Strand, OTG and San Carlos regarding the implementation of the Downtown Assistance Plan (the "Downtown Agreement"), which Downtown Agreement shall provide, *inter alia*, for a release, in a form reasonably acceptable to the Parties, by Strand, OTG and San Carlos, on behalf of themselves and their respective affiliates, successors and assigns, of any and all claims arising out of or related to the Ordinance, the Development Agreement Amendment and/or the Agreement (the "Release").

3.4 The obligation of the Commission to provide the Net Tax Increment to Participant and the obligation of Participant to provide the Contribution to the Commission shall be incurred concurrently.

3.5 Upon terms reasonably acceptable to the City and Participant, the City shall lease space in the Project in which the City shall provide and staff a police substation.

4. Indemnification.

4.1 Subject to the provisions of this Section 4, Participant agrees for itself and its successors and assigns to indemnify, protect, defend and hold harmless (a) the City and its officers and employees (the "City Indemnitees") from and against any claim, action or proceeding to attack, set aside, void or annul the City's approval or adoption of the Development Agreement Amendment and/or the Ordinance (the "Entitlement Lawsuit"); and (b) the City Indemnitees and/or the Commission and its officers and employees (the "Commission Indemnitees") from and against any claim, action or proceeding by Strand, San Carlos and/or OTG alleging or asserting breach of contract of the DDA relating to the Ordinance (the "DDA Lawsuit"). The obligations of Participant pursuant to this Section 4.1 shall be referred to herein as the "Indemnity".

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4.2 The obligations of Participant pursuant to the Indemnity shall include, without limitation, the employment of counsel reasonably approved by the City with respect to the Entitlements Lawsuit and by the Commission with respect to the DDA Lawsuit, the prosecution or defense of any such litigation, and the compromise or discharge of claims on terms reasonably acceptable to the City and/or Commission, as applicable, and the Participant, and shall apply whether any such litigation, cause of action, claim, proceeding or demand has merit. The City and the Commission each agree to give prompt notice to Participant with respect to any claim, action or proceeding initiated or threatened against the City and/or the Commission, respectively, and in no event, later than the earlier of (a) ten (10) days after valid service of process as to any filed suit, or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim, which the City and/or the Commission has reason to believe is likely to give rise to a claim for Indemnity hereunder.

4.3 Participant, in its sole and absolute discretion, may elect to terminate the Indemnity by providing written notice to the City and the Commission (the "Termination Notice"): (a) with respect to any Entitlements Lawsuit at any time during the pendency of the Entitlements Lawsuit; (b) with respect to the DDA Lawsuit at any time during the pendency of the DDA Lawsuit; and/or (c) at any time after December 31, 2007, if the City, the Commission, Strand, OTG and San Carlos have not entered into a Downtown Agreement containing the Release. Upon the effective date of the Termination Notice pursuant to Section 5.1 below (the "Termination Date"), (y) City shall have the right to void the Development Agreement Amendment; and (z) Participant shall have no further obligations pursuant to the Indemnity with respect to any claim, action or proceeding accruing on or after the Termination Date, regardless of whether the City voids the Development Agreement Amendment.

4.4 The provisions of this Section 4 shall survive the termination of this MOU, except as otherwise provided in the Agreement.

5. Notices.

5.1 All notices under this MOU shall be sufficiently given if delivered or mailed by registered or certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service, and addressed as follows:

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

and

Gary Gillig  
City Attorney  
300 West Third Street, Third Floor  
Oxnard, California 93030

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With copy to: Murray O. Kane, Esq.  
Kane, Ballmer & Berkman  
515 S. Figueroa St., Suite 1850  
Los Angeles, California 90071

Commission: Oxnard Community Development Commission  
305 West Third Street  
Oxnard, California 93030  
Attn: Community Development Director

and

Gary Gillig  
Commission General Counsel  
300 West Third Street, Third Floor  
Oxnard, California 93030

With copy to: Murray O. Kane, Esq.  
Kane, Ballmer & Berkman  
515 S. Figueroa St., Suite 1850  
Los Angeles, California 90071

Participant: RiverPark A, L.L.C.  
30699 Russell Ranch Road  
Westlake Village, California 91362  
Attn: David Lauletta

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

If mailed, the written notice shall be effective three (3) business days after deposit in the United States mail in the state of California as provided herein or upon earlier actual receipt by the addressee; if deposited with courier service as provided herein, the written notice shall be effective one (1) business day after deposit. Any Party may change the designated recipient for notices under this section by the giving notice of the new recipient and new address in the manner provided for herein.

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6. General Provisions.

6.1 Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

6.2 Entire Agreement. This MOU contains all of the covenants, conditions and agreements between the Parties and shall supercede all prior correspondence, agreements and understandings, both oral and written.

6.3 Modification. This MOU may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all Parties, or their respective successors in interest.

6.4 Time. Time is of the essence of every provision hereof.

6.5 Construction of Agreement. This MOU is entered into in the State of California and shall be construed and interpreted in accordance with its internal laws without reference to choice of law or conflict of law provisions. It is expressed and understood by the Parties that the language of this MOU was jointly prepared and shall therefore not be construed for or against any of the Parties.

6.6 Cooperation. Each of the Parties hereto agrees to cooperate with the other Party in undertaking any and all additional steps which may be necessary or convenient to the completion of the transactions contemplated by this MOU, including without limitation, the preparation and execution of such other and further instruments as may evidence or facilitate the same.

6.7 Headings. The headings of various paragraphs in this MOU are for convenience only and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

6.8 Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

6.9 Attorneys' Fees. In any action between the Parties hereto seeking enforcement of any of the terms and provisions of this MOU or a declaration as to the meaning hereof, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

6.10 Term. This MOU shall terminate and be of no further force and effect, except for provisions explicitly identified herein as surviving the termination of this MOU (including without limitation the provisions of Section 4, except as otherwise provided in the Agreement), upon (a) the Parties entering into the Agreement and (b) the City, Commission,

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Strand, San Carlos and OTG entering into the Downtown Agreement, provided that in any event, notwithstanding the foregoing, this MOU shall terminate no later than December 31, 2007.

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[signatures on following pages]

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IN WITNESS WHEREOF, this MOU has been executed by the Parties as of the date first written above.

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

Date: \_\_\_\_\_

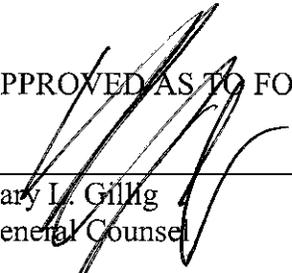
By: \_\_\_\_\_

Dr. Thomas E. Holden  
Chairman

ATTEST:

\_\_\_\_\_  
Daniel Martinez  
Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gary L. Gillig  
General Counsel

APPROVED AS TO FORM:  
Kane, Ballmer & Berkman

\_\_\_\_\_  
Special Counsel

[remainder of page left intentionally blank]

[signatures on following page]

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**“Participant”**

**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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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