

## FOURTH AMENDMENT TO OWNER PARTICIPATION AGREEMENT

This FOURTH AMENDMENT TO OWNER PARTICIPATION AGREEMENT ("**Fourth Amendment to OPA**") is entered into in Ventura County, California, by and between the OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Commission**"), and SHEA PROPERTIES II, LLC, a Delaware limited liability company (Shea Properties II, LLC, together with its permitted successors and assigns under the Amended OPA (as defined herein) is referred to herein as "**SP II**").

### RECITALS

A. Commission and RiverPark A LLC, a Delaware limited liability company, ("**RiverPark A**") entered into that certain Owner Participation Agreement dated as of June 12, 2001 (the "**Original OPA**"). The Original OPA was amended by (i) that certain First Amendment to Owner Participation Agreement dated as of November 19, 2002 ("**First Amendment to OPA**"), (ii) that certain Second Amendment to Owner Participation Agreement dated as of December 14, 2004 ("**Second Amendment to OPA**"), and (iii) that certain Third Amendment to Owner Participation Agreement dated on or about August 7, 2007 ("**Third Amendment to OPA**") (the Original OPA, together with the First Amendment to OPA, the Second Amendment to OPA, and the Third Amendment to OPA, are referred to herein collectively as the "OPA"). The OPA provides for Participants' (as defined in the OPA) acquisition and development of certain real property (the "Site," as defined in the OPA) into a first quality commercial, retail, hotel, office and residential project, all as more particularly described in the OPA and the RiverPark Specific Plan (the "**Specific Plan**"). All defined terms not specifically defined herein shall have the meanings ascribed to them in the OPA.

B. In addition, in conjunction with the development of the Site, RiverPark A and RiverPark B, LLC, a Delaware limited liability company ("**RiverPark B**") intend to develop or cause to be developed certain adjacent real property more commonly known as "**RiverPark B Property**" pursuant to the Specific Plan and that certain Development Agreement by and between the City of Oxnard ("City") and RiverPark A and RiverPark B dated as of August 27, 2002, recorded in the Ventura County Recorder's Office as Document number 02-216450, as amended by that certain First Amendment to Development Agreement dated as of December 14, 2004, recorded in the Ventura County Recorder's Office as Document number 20041223-0339920, and as further amended by that certain Second Amendment to Development Agreement dated as of July 24, 2007, recorded in the Ventura County Recorder's Office as Document number 20070826-00163617-0 (collectively, the "**Development Agreement**").

C. RiverPark A has transferred a portion of the Site and assigned certain of its rights and obligations under the OPA with respect to such portion of the Site to SP II, on which SP II intends to develop a mixed use commercial center (the "**SP II Property**").

D. Commission and SP II now desire to amend the OPA through this Fourth Amendment to OPA to provide for, among other things, the financing of additional public improvements by Commission that will be developed in conjunction with development of the SP II Property and a contribution to be made by SP II to Commission for the Merged Downtown Renewal (R-108) and Central City Revitalization Project Area (the "**Merged Project Area**"). The OPA, as amended by this Fourth Amendment to OPA, shall be referred to herein as the

"Amended OPA". All references in the OPA to "Amended OPA" shall mean and refer to such term as redefined in this Fourth Amendment to OPA.

## COVENANTS

Based upon the foregoing Recitals and for good and valuable consideration, the receipt of which is hereby acknowledged by both parties, Commission and SP II agree that the OPA shall be amended as follows:

1. A new Section 204 of the OPA is hereby added to read as follows:

“§204. Facilities Reimbursements.

a. Since the date of the Second Amendment to OPA, the City is imposing certain additional requirements on SP II to develop public infrastructure and improvements in relation to the redevelopment of the SP II Property (the "Facilities", which are defined and described more fully in Attachment 19 hereto; however, any items included in such list of Facilities, or portions thereof, may be removed by SP II from such list in SP II's sole judgment to provide that the total cost of the Facilities equals as closely as possible Twelve Million Dollars (\$12,000,000) without falling below Twelve Million Dollars (\$12,000,000)). One such additional requirement is that, subject to certain conditions, SP II must construct a parking structure (the "**Parking Facility**", which is defined and described more fully in Attachment 19 hereto). SP II and Commission acknowledge and agree that, due to the extraordinary and substantial project costs related to the Facilities, which are being required by the City as a condition of entitlement, the redevelopment of the SP II Property as contemplated under this Amended OPA would not be feasible in the absence of SP II's agreement to initially pay or cause the payment of such costs and Commission's agreement to reimburse a portion of such costs, as specified and subject to the limitations set forth in this Amended OPA and that certain Acquisition Agreement to be entered by and between Commission and SP II relating to the construction of the Facilities (the "**Acquisition Agreement**").

b. Therefore, in order to effectuate the redevelopment of the SP II Property and to achieve the public purposes of the Redevelopment Plan, subject to all of the terms and conditions of this Amended OPA, in addition to the financing and reimbursement obligations of Commission under the OPA, Commission shall, on a monthly basis as set forth in Section 204(e) reimburse SP II, during the Second Reimbursement Term only (defined below), for the Actual Costs (defined below) of the Facilities ("**Facilities Reimbursements**") as specified below, not to exceed the Maximum Facilities Reimbursement Amount (as defined below). Commission shall have no obligation to reimburse SP II pursuant to this Section 204 except as specified from the sources of funds set forth herein, and subject to the terms and conditions set forth herein and in the Acquisition Agreement. The "**Second Reimbursement Term**" as used herein shall mean the period beginning on the Effective Date of this Fourth Amendment to OPA (as defined below) and ending on April 7, 2044.

For this purposes of this Section 204, the term "Actual Cost" means all direct and substantiated costs incurred by SP II to construct or install a Facility, including without limitation costs for planning, design, engineering, supervising and inspecting (including construction management services at a rate not to exceed five percent (5%) of the "hard" cost of construction), and constructing and installing such improvements, all plan check, inspection,

other fees and charges payable to the City or the Commission, and payment, performance, or maintenance bond and insurance premiums related thereto, and legal fees incurred by SP II related to construction of the Facilities.

c. Conditions and Restrictions for Facilities Reimbursement. Any Facilities Reimbursement shall be used only for reimbursement of the Actual Costs of the Facilities that are constructed and/or installed in accordance with prevailing wage requirements pursuant to Labor Code Section 1720 and the Acquisition Agreement. Commission's obligation to pay the Facilities Reimbursement shall be limited as follows:

1. The maximum aggregate total amount of all Facilities Reimbursements payable by Commission during the Second Reimbursement Term for Actual Costs shall not exceed Twelve Million Dollars (\$12,000,000) (the "**Maximum Facilities Reimbursement Amount**").

2. Commission's obligation to make Facilities Reimbursements to SP II shall be limited to the Second Reimbursement Term, Commission shall have no obligation to make any Facilities Reimbursement after the end of the Second Reimbursement Term.

3. If Commission receives positive recommendations to do so from Commission's financial consultants and bond counsel retained by Commission for the proposed bond issue, and subject to Section 204(c)(8) hereof, Commission shall, consistent with its legal and fiduciary obligations, consider approving, as soon as reasonably possible after the date of this Fourth Amendment to OPA, the issuance and sale of tax exempt bonds or similar instruments (the "**Bonds**") secured by tax increment revenues generated by the HERO Redevelopment Area for the purpose of generating net proceeds sufficient to pay all or a portion of the Maximum Facilities Reimbursement Amount. If Commission determines not to consider the issuance of the Bonds at a public hearing, then Commission shall provide to SP II the reasons for Commission's decision in writing and all supporting non-confidential documentation. In no event shall the Commission have any obligation to issue or sell the Bonds. If requested by the Commission, SP II shall, separate from any other advance or payment to Commission pursuant to this Amended OPA, prior to issuance of the Bonds, advance to Commission the amounts reasonably necessary for the Commission's consultants, the Commission's bond counsel, and other costs of issuance related to the Bonds approved by the Commission in writing (the "**Bond Costs**"), with such Bond Costs being reimbursable to SP II from Bond proceeds to the extent legally permissible and to the extent advanced by SP II, within thirty (30) calendar days after the date of issuance of the Bonds. Bond Costs shall specifically exclude any fees or costs paid or payable to SP II or any related entity or any of its principals, partners, members, agents, employees, attorneys, or consultants. Such reimbursements shall be separate from any other payment to SP II pursuant to this Amended OPA and shall not be included as part of the Maximum Facilities Reimbursement Amount.

4. Commission's reimbursement obligation shall be a special limited obligation of Commission, payable solely from the Bond proceeds (if any) and ad valorem property tax increment revenue allocated to and received by Commission pursuant to Section 33670(b) of the California Health and Safety Code, as said statute may be amended from time to time, by application of the one percent (1%) tax levied against real property as permitted by Article XIII A of the California Constitution, from the HERO Redevelopment Area.

5. SP II shall not be in material default beyond any applicable cure period of any obligation under this Amended OPA or the Acquisition Agreement.

6. In the event that Commission reasonably determines from time to time that the Maximum Facilities Reimbursement Amount is less than the amount that Commission reasonably determines would be necessary to pay, through completion, all remaining costs of development and construction of the Facilities, then SP II shall provide to Commission security in the amount of such deficiency in a form and from an issuer reasonably satisfactory to Commission. Commission acknowledges that any one of a surety bond naming Commission as obligee, a letter of credit naming Commission as beneficiary, a guarantee in favor of Commission, or cash (collectively the "**Acceptable Securities**") would be acceptable to Commission, and, if security is required, SP II, in its sole discretion, may provide security in any one of the Acceptable Securities or any other security that is in a form and from an issuer reasonably acceptable to Commission. SP II shall also satisfy any additional requirements regarding such security contained in the Acquisition Agreement. Upon completion of the construction of the Facilities or if Commission determines that security is no longer required because the Maximum Facilities Reimbursement Amount would be sufficient to pay, through completion, all remaining costs of development and construction of the Facilities, then Commission shall immediately return and/or release the security to SP II. Until such security is provided, Commission shall have no obligation to make any Facilities Reimbursement; however, any such Facilities Reimbursements withheld by Commission pursuant to this Section 204(c)(6) shall be paid by Commission to SP II upon SP II providing the security required by this Section 204(c)(6).

7. The Commission shall have no obligation to make any Facilities Reimbursements until Commission and SP II have executed the Acquisition Agreement in a mutually agreeable form and with respect to the Parking Facility until Commission and SP II have executed a mutually agreeable Parking Facility Ground Lease and Parking Facility Management Agreement (collectively the "**Parking Agreements**") or during any period in which SP II is in material default of any of SP II's obligations under the Parking Agreements. Any Facilities Reimbursements related to the Parking Facility incurred by SP II either prior to mutual execution of the Parking Agreements or during a period of material default shall be held by Commission until such time as such the parties have mutually executed the Parking Agreements or SP II cures the default, as applicable, at which time Commission shall pay to SP II any Facilities Reimbursements that had been withheld by Commission pursuant to this Section 204(c)7.

8. As a condition precedent to the issuance and sale of the Bonds, SP II shall be obligated to submit to Commission evidence, which shall be subject to the reasonable satisfaction of Commission, that the development and construction costs of the Facilities will not exceed Twelve Million Dollars or, if necessary, provide the security required by Section 204(c)6.

9. All of SP II's payment obligations of Section 205 of this Amended OPA that have accrued have been satisfied.

10. The Commission's obligation to pay the Facilities Reimbursements shall be subordinate to the Commission's existing bonded indebtedness and bond issuance(s), the Bonds, and the refunding or refinancing thereof and any future bonds the Commission may

issue and the bonded indebtedness incurred in connection therewith, provided that at the time of issuance of any such future bonds: (i) the Commission reasonably determines that such issuance and indebtedness will not materially adversely affect the Commission's ability to perform its payment obligations under this Section 204 based on a fiscal report prepared by a qualified independent fiscal consultant, and (ii) the Commission provides full documentation of such determination, including without limitation any reports relied upon by Commission, to SP II. The Commission's obligation to pay the Facilities Reimbursements under this Section 204 is not and shall not be construed as a "pledge" of property tax revenues for purposes of Section 33671.5 of the California Health and Safety Code.

11. SP II acknowledges and agrees that the Commission shall not be obligated to make payments under both the Public Improvement Reimbursement and the Facilities Reimbursement for the same public improvements.

d. SP II agrees that it shall be responsible, at its sole cost and expense, for the cost of the Facilities in excess of the Maximum Facilities Reimbursement Amount.

e. Monthly Progress Payments. Commission shall pay to SP II monthly progress payments of the Facilities Reimbursement in accordance with the terms and conditions of the Acquisition Agreement. Commission shall have five (5) business days from the date of receipt of SP II's request for payment (a "**Payment Request**") to determine whether such Payment Request includes all information required by the Acquisition Agreement. Commission shall provide SP II with written notice within such five (5)-day period containing a detailed description of what additional information is required under the Acquisition Agreement, if any, and any failure of Commission to provide such written notification to SP II within such five (5)-day period shall be deemed to be a determination by Commission that no such additional information is required; provided, however, that a "**CDC Payment Request Notice**" is attached to the front of any Payment Request in at least 14 point bolded font which reads:

"Failure to provide written notification to SP II within five (5) business days after receipt of this Payment Request shall be deemed to be a determination that the Payment Request is complete.

Failure to approve or disapprove this Payment Request within ten (10) calendar days after this Payment Request being complete or deemed complete shall be deemed to be a determination that the Payment Request is approved in its entirety."

Any further information provided by SP II in response to such a written notice shall be reviewed and approved by Commission within a further five (5) business day period in accordance with the same procedures set forth in the preceding sentence. Once the Payment Request is complete or deemed complete, Commission shall have ten (10) calendar days to review the Payment Request to confirm in writing that the items and amounts contained therein are consistent with the Acquisition Agreement. Commission shall provide SP II with written notice within such ten (10)-day period containing a detailed description of any objections to any items claimed in such Payment Request, and, if a CDC Payment Request Notice was included with the Payment Request, any failure of Commission to provide such written notification to SP II within such ten (10)-day period shall be deemed to be a determination by Commission that all items and amounts contained in the Payment Request are acceptable. Commission shall pay to SP II all undisputed charges contained in any Payment Request within twenty-five (25) days after the end of the ten

(10) day review period. Charges initially disputed in good faith by Commission within such ten (10) day period, and then later determined to be due and owing to SP II, shall be paid to SP II within twenty-five (25) days after resolution of the dispute, plus interest calculated in the manner set forth below from the date that is twenty-five (25) days following the date of Commission's initial dispute. Any monthly progress payments not made prior to the expiration of such twenty-five (25) period shall accrue interest at the lesser of (1) the "prime" lending rate of Bank of America or (2) the maximum amount permitted by law. Any interest paid by Commission to SP II pursuant to this Section 204(e) shall not be counted toward or be considered a part of the Maximum Facilities Reimbursement Amount. Any disputes regarding Payment Requests or monthly progress payments shall be resolved in accordance with the alternative dispute resolution procedure set forth in the Acquisition Agreement."

2. A new Section 205 of the Amended OPA is hereby added to read as follows:

"§205. SP II Payment Obligation.

a. 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 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.

b. Commission intends to establish a plan (the "**Downtown Assistance Program**") to provide continued assistance and support to the Downtown Cinema. As a condition precedent to any obligations under the Downtown Assistance Program, the City and Commission shall enter into an agreement with Strand, OTG and San Carlos regarding the implementation of the Downtown Assistance Program (the "**Downtown Agreement**"), which Downtown Agreement shall provide, *inter alia*, for a release, in a form reasonably acceptable to the City, Commission, and SP II, 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 Ordinance No. 2742, an Ordinance of the City Council of the City of Oxnard, Amending Section 16-331 of the City Code, the Second Amendment to Development Agreement dated as of July 24, 2007, and this Amended OPA (the "**Release**").

c. Within thirty (30) days following the later of the following events to occur: (1) full execution of this Fourth Amendment to OPA; (2) full execution of a First Amendment to that certain Memorandum of Understanding by and between the City, Commission, and RiverPark A, LLC in a form mutually agreeable to Commission and RiverPark A, LLC; (3) full execution of the Acquisition Agreement; and (4) full execution of the Parking Agreements, SP II shall make a one-time payment to Commission in the amount of One Million Dollars (\$1,000,000) for use by Commission in the Merged Project Area; provided, however, that notwithstanding the foregoing and regardless of whether all of the events under Section 205(c) have occurred, SP II shall make such one-time One Million Dollar (\$1,000,000) payment to Commission no later than the Cinema Opening Day (as defined below).

d. Within thirty (30) days after the latest to occur of payment by Commission of all of the Facilities Reimbursements due hereunder (in an amount not to exceed the Maximum Facilities Reimbursement Amount) and payment by Commission to SP II of interest required to be paid to SP II pursuant to this Amended OPA, if any, (collectively, the "Downtown Payment Conditions Precedent"), SP II shall make a one-time payment to Commission in the amount of Eight Million Dollars (\$8,000,000) (the "Downtown Payment"). The Commission shall use the Downtown Payment in the Merged Project Area.

Notwithstanding the foregoing, if Commission's obligation to pay the full amount of the Facilities Reimbursements due hereunder has not yet accrued (or has accrued but is not payable in whole or in part in accordance with the limitations set forth in this Section 204 or the Acquisition Agreement) and (i) SP II has diligently filed all required applications and submissions for all required City approvals for construction of the Parking Facility (including, without limitation, plan review and building permits) (the "Required Approvals") no later than April 1, 2008 and thereafter submits any and all additional documents, information, corrections, revisions and payments requested by the City within the time required by the City for such submission of additional documents, information, corrections, revisions and payments in accordance with the City's standard practices, (ii) the City has issued or approved all Required Approvals no later than June 1, 2008, and (iii) Commission has paid to SP II all required progress payments that are due and payable in accordance with Section 204(e) and the Acquisition Agreement, then within thirty (30) days after a cinema opening to the public on the SP II Property (the "Cinema Opening Day"), SP II shall pay to Commission a portion of the Downtown Payment equal to sixty-six percent (66%) of the total Facilities Reimbursements paid to SP II as of the Cinema Opening Day (the "Cinema Partial Payment"), but in no event more than Eight Million Dollars (\$8,000,000); provided, however, that if subsection (i) above has not been satisfied but subsection (iii) has been satisfied, then, notwithstanding the foregoing, SP II shall be obligated to pay to Commission the entire Downtown Payment in the amount of Eight Million Dollars (\$8,000,000) within thirty (30) days after the Cinema Opening Day. To the extent the Eight Million Dollars (\$8,000,000) has not been paid to the CDC, on the date that is nine (9) months after the Cinema Opening Day, SP II shall pay to Commission an amount equal to Eight Million Dollars (\$8,000,000) less the amount of the Cinema Partial Payment actually paid to the Commission plus interest on such amount at the rate of five percent (5%) per annum calculated from the Cinema Opening Day to the date of such payment.

Commission shall not be permitted to use any portion of the Downtown Payment to implement the Downtown Assistance Program or to primarily benefit the Downtown Cinema until such time as the Commission has entered into the Downtown Agreement; however, Commission may use the Downtown Payment to satisfy Commission obligations under the DDA (and related agreements) in effect as of the date of this Fourth Amendment to OPA.

3. The first paragraph of Section 403 of the OPA is hereby amended to read as follows:

"Except as provided in Sections 202 to 204 hereof, Participant shall bear all costs of constructing and developing the improvements on the Site and constructing all public and private on- and off-site improvements thereon or therefore as required for the development of the Site by the City through the entitlement and permitting process and any other governmental agency having jurisdiction thereover."

4. Subsection (b) of Section 501 of the OPA as it relates to the SP II Property only is hereby amended to read as follows:

"Make commercially reasonable good faith efforts to sign first-class national or regional, as applicable, credit tenants that are not currently represented in the market area to the commercial retail portions of the SP II Property. This Section 501(b) shall not apply to any portion of the SP II Property that is developed for uses other than commercial retail uses (including, without limitation, office uses or residential uses). In accordance with the Schedule of Performance, SP II shall have entered into lease agreements for the commercial retail improvements on the SP II Property with tenants/subtenants who have been preapproved in writing by the Commission Executive Director or who have first been reviewed by the Commission Executive Director in accordance with this Section 501(b). For tenants/subtenants that have not been preapproved, prior to entering into any such lease arrangement, SP II shall deliver to Commission Executive Director the identity of the proposed tenant or subtenant together with documentation reasonably satisfactory to the Commission Executive Director that the proposed tenant or subtenant meets the criteria of this Section 501(b). Commission shall have ten (10) calendar days from the date of receipt of such documentation to determine whether it includes all information required by this Section 501(b). If incomplete, Commission shall provide SP II with a written notice within such ten (10)-day period containing a detailed description of what additional information is required, if any, and any failure of Commission to provide such written notification to SP II within such ten (10)-day period shall be deemed to be a determination by Commission that no such additional information is required; provided, however, that a **"CDC Tenant/Subtenant Approval Notice"** is attached to the front of any submission to the Commission of any proposed tenant or subtenant in at least 14 point bolded font which reads:

"Failure to provide written notification to SP II within ten (10) calendar days after receipt of this tenant/subtenant submission shall be deemed to be a determination that the submission is complete.

Failure to approve or disapprove this tenant/subtenant submission within ten (10) calendar days (if for a proposed subtenant or assignee) or within twenty (20) calendar days (if for a proposed new tenant) after this tenant/subtenant submission being complete or deemed complete shall be deemed to be a determination that this tenant/subtenant submission is approved."

Once such documentation is complete, or deemed complete, Commission Executive Director shall have, with respect to new leases, twenty (20) calendar days, or, with respect to subleases or assignments, ten (10) calendar days, to review and approve or disapprove in writing to SP II the proposed tenant or subtenant based on the following criteria, and if Commission Executive Director disapproves of the proposed tenant or subtenant to state which of the following criteria the proposed tenant or subtenant does not satisfy:

1. the proposed tenant is a first-class national or regional retailer that commonly operates in:

(a) with respect to proposed tenants/subtenants in that portion of the SP II Property that is depicted on Attachment 20 as the "West Collection", first-class power and/or promotional centers in California,

(b) with respect to proposed tenants/subtenants in that portion of the SP II Property that is depicted on Attachment 20 as the "Main Collection", first-class regional or lifestyle centers in California; or

(c) with respect to proposed tenants/subtenants in that portion of the SP II Property that is depicted on Attachment 20 as the "North Collection", quality neighborhood centers in California;

2. the proposed tenant operates at least ten (10) other stores under the same trade name as that to be used at the Project;
3. the proposed tenant primarily displays and offers high quality merchandise from its stores (and does not generally operate on a discount or off-price basis);
4. the proposed tenant's use is compatible with the existing uses at the Site and would not be a prohibited use under Section 501(c) of the Amended OPA;
5. the proposed tenant provides evidence reasonably satisfactory to Commission that the proposed tenant has the financial ability to operate the type of business for which the proposed tenant is attempting to lease space in the Site; and
6. the proposed tenant will generate sales tax revenue for the Site.

If Commission Executive Director does not disapprove of the proposed tenant or subtenant in writing to SP II during such ten (10) or twenty (20) calendar day period, as applicable, and the request contained the CDC Tenant/Subtenant Approval Notice, then the proposed tenant or subtenant shall be deemed approved. Nothing herein shall limit SP II's ability to submit for review by Commission Executive Director a proposed tenant to whom Commission Executive Director has previously objected. In addition, Commission Executive Director shall have the right to approve in writing a proposed tenant or subtenant that does not satisfy one or more of the above criteria.

The provisions of this Section 501(b) shall apply only with respect to (a) new leases with tenants and (b) new subleases with subtenants or assignments of leases to assignees where SP II has the right to approve or disapprove the proposed subtenant or assignee, on the redeveloped Site; provided, however, SP II agrees that, unless agreed to in advance in writing by Commission Executive Director, no lease may allow subleases or assignments without prior review and approval by SP II except for tenant or subtenant changes resulting from (i) intracompany transfers, (ii) changes in trade or operating names, or (iii) mergers, consolidations, and sales of assets, stock and interests (and similar transactions). Commission shall not have the right to approve and this Section 501(b) shall not apply to any ancillary tenant/subtenant including but not limited to those for kiosks, food and temporary or seasonal uses."

5. Subsection (c)(2)(xiv) of Section 501 as it pertains to the SP II Property only shall be deleted in its entirety and replaced with the following:

"Except for any future residential uses expressly permitted by the Specific Plan and which have received all required City approvals, any non-retail, non-sales tax generating use, which represents, in the aggregate, more than ten percent (10%) of the total ground floor building area on any portion of the SP II Property designated as commercial retail (as described in the Scope of Development, Attachment No. 8), unless such use does not detract from the overall orientation of such portion of the SP II Property"

6. Reconfirmation of Certain OPA Covenants. SP II has made certain covenants and agreements in the OPA to construct or cause the construction of improvements in accordance with the Scope of Development (as defined in the OPA) and the Schedule of Performance (as defined in the OPA). SP II hereby reconfirms such covenants and agreements subject to any limitations related thereto set forth in the OPA. In addition, SP II has made certain covenants and agreements in the OPA to refrain from appealing, challenging or contesting the validity or amount of any tax assessment, encumbrance or lien on the SP II Property, and SP II further hereby reconfirms such covenants and agreements subject to any limitations related thereto set forth in the OPA. Nothing in this Section 6 is intended to alter any of the terms of the OPA.

7. Indemnification. SP II hereby agrees to indemnify, hold harmless and defend the Commission and the Commission Parties from and against all Claims in any manner arising out of or in connection with any act of SP II, its agents, or employees that directly or indirectly causes interest on the Bonds to become taxable, other than and specifically excluding entering into, exercising rights under, and/or performing obligations as set forth in and in accordance with this Fourth Amendment OPA, the Acquisition Agreement, and/or the Parking Agreements, including without limitation constructing the Parking Facility.

8. Executive Director Authority. The Commission Executive Director has authority to act on behalf of Commission with regard to the matters contained in this Fourth Amendment to OPA except where Commission action is required by law.

9. Miscellaneous Provisions.

(a) Entire Agreement. Except for the OPA, which this Fourth Amendment to OPA amends, the Acquisition Agreement, and the Parking Agreements, this Fourth Amendment to OPA represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Fourth Amendment to OPA.

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

(c) Counterparts. This Fourth Amendment to OPA 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 Fourth Amendment to OPA 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) No Reliance on Other Parties. All parties to this Fourth Amendment to OPA declare that, prior to execution of this Fourth Amendment to OPA, 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 Fourth Amendment to OPA and making the decision to execute it. The parties each represent and acknowledge that in executing this Fourth Amendment to OPA, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Fourth Amendment to OPA or their

respective legal counsel with regard to the subject matter, basis or effect of this Fourth Amendment to OPA.

(f) Construction. The provisions of this Fourth Amendment to OPA shall be liberally construed to effectuate its purpose. The language of this Fourth Amendment to OPA shall be construed simply 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 Fourth Amendment to OPA 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.

(g) Successors and Assigns. This Fourth Amendment to OPA shall be binding on and shall inure to the benefit of the parties and their respective legal representatives, successors and assigns.

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

(i) Definitions. All terms not specifically defined in this Fourth Amendment to OPA shall have the meanings ascribed to them in the OPA.

(j) Impact of Fourth Amendment to OPA. Unless otherwise specifically amended by this Fourth Amendment to OPA, all provisions of the OPA shall remain in full force.

(k) Date of Fourth Amendment to OPA. The date of this Fourth Amendment to OPA shall be the date on which it is executed by Commission (the "**Effective Date of this Fourth Amendment to OPA**").

(l) Severability. If any term, covenant, condition or provision of this Fourth Amendment to OPA, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Fourth Amendment to OPA, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder.

(m) Non-Intended Prevailing Wage Requirements. SP II and Commission agree that the Facilities shall be constructed in accordance with applicable laws or regulations for the payment of prevailing wages for such construction. However, nothing in this Fourth Amendment to OPA shall in any way require, or be construed to require, SP II to pay prevailing wages with respect to any other work of construction or improvement within the overall development other than the Facilities, including without limitation, the development and/or construction of any portion of the development at the Site, as described in the Amended OPA (a "**Non-Intended Prevailing Wage Requirement**"). But for the understanding of the parties as reflected in the immediately preceding sentence, the parties would not have entered into this Fourth Amendment to OPA based upon the terms and conditions set forth herein. SP II and Commission have made every effort in reaching this Fourth Amendment to OPA to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These

efforts have been conducted in the absence of any existing judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Fourth Amendment to OPA shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the parties hereby agree that, in such event, this Fourth Amendment to OPA shall be reformed such that each provision of this Fourth Amendment to OPA that results in the Non-Intended Prevailing Wage Requirement will be removed from this Fourth Amendment to OPA as though such provisions were never a part of the Fourth Amendment to OPA, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Fourth Amendment to OPA as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement. Notwithstanding anything to the contrary contained herein, nothing in this Section 9(m) shall be construed or interpreted to affect or reduce in any manner or require a reformation of SP II's obligations under Sections 205(c) and 205(d). Nothing in this Section 9(m) is intended to alter or amend in any way any provisions of Section 415 of the Amended OPA.

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

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

"Commission"

COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OXNARD

By: \_\_\_\_\_  
Dr. Thomas E. Holden  
Chairman

ATTEST:

By: \_\_\_\_\_  
Daniel Martinez  
Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Gary Gillig General  
Counsel

APPROVED AS TO FORM AND CONTENT:

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Murray O. Kane Commission  
Special Counsel

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Curtis P. Cannon  
Community Development Director

*[Signatures continues on following pages]*

"SP II"

SHEA PROPERTIES II, LLC,  
a Delaware limited liability company

By: Shea Properties II, LLC,  
a Delaware limited liability company

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

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

ATTACHMENT NO. 19

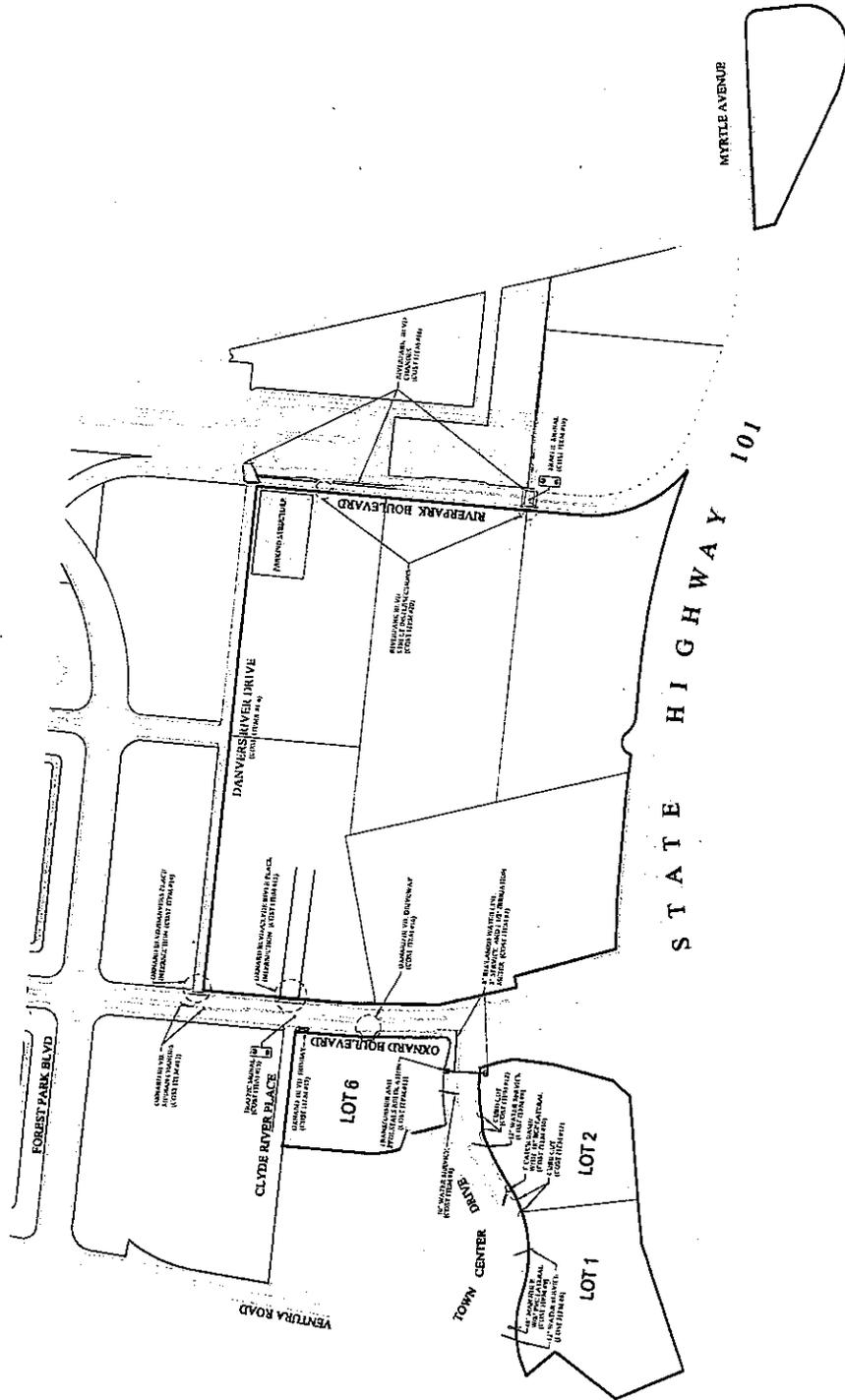
FACILITIES

1. An approximately five hundred (500) space public parking facility to be constructed in a location and in accordance with plans to be approved by the City (the "Parking Facility").
2. Other public improvements include improvements to Town Center Drive, Oxnard Boulevard, Clyde River Place, Riverpark Boulevard; and Danvers River Drive, as depicted in Exhibit I hereto.

# EXHIBIT 1 TAX INCREMENT FINANCING ELEMENTS



PREPARED BY  
**HUITZ-ZOLLARS**  
 1000 S. GARDNER AVE.  
 SUITE 200  
 DENVER, CO 80210  
 Phone (303) 433-2000 Fax (303) 433-1818



**TAX INCREMENT FINANCING ELEMENTS  
EXHIBIT ONE**

# ATTACHMENT 20 SITE PLAN OF SP II PROPERTY



PREPARED BY:  
**HUITZOLLARS**  
 10000 Highway 101, Suite 200  
 San Diego, California 92126  
 Phone (619) 441-1001 Fax (619) 441-1010

