Meeting Date: 04/22/08

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	■ Public Hearing
☐ Other _____	☐ Other _____

Prepared By: Brian D. Pendleton, Redevelopment Services Manager Agenda Item No. L-1

Reviewed By: City Manager City Attorney Finance Other N/A

DATE: April 9, 2008

TO: City Council
Community Development Commission
City of Oxnard Financing Authority

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

SUBJECT: **Ground Lease, Parking Facility Management Agreement, Acquisition Agreement and Issuance of Redevelopment Tax Allocation Bonds, Series 2008 for an Approximate Five Hundred (500) Space Public Parking Structure and Other Public Improvements at 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. Adopt a resolution entitled "Resolution of the City Council of the City of Oxnard Approving the Sale, Issuance, and Delivery by the Oxnard Community Development Commission of Not More Than $13,500,000 in Principal Amount of Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008, and Making Certain Determinations Relating Thereto".

2. Approve a special budget appropriation in the amount of $12 million to allocate Bond (defined below) proceeds in the approximate amount of $9.9 million and HERO fund balance in the amount of $2.1 million to an approximate 500-space public parking structure and other public improvements at the RiverPark Project in Fiscal Year 2007-08.

3. Authorize the Mayor, City Manager, and Community Development Director, on behalf of the City, to each sign all documents necessary and appropriate to carry out and implement the Ground Lease, the Parking Facility Management Agreement, and the Acquisition Agreement, and to administer any City obligations, responsibilities, and/or duties to be performed thereunder.

That the Community Development Commission (CDC):

1. Adopt a resolution entitled "Resolution of the Oxnard Community Development Commission Authorizing the Sale, Issuance, and Delivery of Not More Than $13,500,000 in Principal Amount of Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (Hero) Project Area Tax Allocation Bonds, Series 2008, and Approving Certain Documents and Authorizing Certain Actions in Connection Therewith".

2. Approve a special budget appropriation in the amount of $12 million to allocate Bond proceeds in the approximate amount of $9.9 million and HERO fund balance in the amount of $2.1 million to an approximate 500-space public parking structure and other public improvements at the RiverPark Project for Fiscal Year 2007-08.

3. Approve and authorize the Chairman to execute a Ground Lease between the CDC and Shea Properties II, LLC for an approximately 500-space public parking structure.

4. Approve and Authorize the Chairman to execute a Parking Facility Management Agreement between the CDC and Shea Properties II, LLC for an approximately 500-space public parking structure.

5. Approve and Authorize the Chairman to execute an Acquisition Agreement between the CDC and Shea Properties II, LLC for an approximately 500-space public parking structure and other public improvements.

6. Authorize the Chairman, Executive Director, and Community Development Director, on behalf of the CDC, to each sign all documents necessary and appropriate to carry out and implement the Ground Lease, the Parking Facility Management Agreement, and the Acquisition Agreement, and to administer the CDC's obligations, responsibilities, and duties to be performed thereunder.

7. Make the three determinations regarding the Bonds set forth below in the Section entitled "Bond Determinations".

That the City of Oxnard Financing Authority adopt a resolution entitled "Resolution of the Governing Board of the City of Oxnard Financing Authority Authorizing the Execution and Delivery of a Contract of Purchase With Respect to Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008, and Authorizing Certain Actions in Connection Therewith".

DISCUSSION

RiverPark is a 700-acre mixed-use community located in the northwest portion of the City. Existing project entitlements include RiverPark OPA (defined below), Development Agreement (DA) and two amendments thereto, and a Specific Plan. The Specific Plan consists of 13

Planning Areas. Existing entitlements authorize 900,000 square feet of commercial space including a regional lifestyles shopping center that features an upscale grocery store, theater complex, and 320-room hotel. A portion of the Specific Plan area is located within the Historic Enhancement and Revitalization of Oxnard (HERO) Redevelopment Area and is considered a vital component to its success.

The First Amendment to the Memorandum of Understanding (MOU) and Fourth Amendment to the OPA were approved by the City and CDC on November 20, 2007, and addressed discussions among RiverPark, Downtown Centennial Plaza theater developers and operator, the City, and CDC regarding the RiverPark theater. Approved terms included:

- CDC will provide $12 million in funding from HERO to Shea Properties II, LLC through periodic reimbursements for costs associated with the construction of public improvements, including an approximately 500-space public parking structure, certain related streets and roadways, and utility and other ancillary improvements related to the streets and roadways, all located within the boundaries of the City and HERO. The periodic reimbursements will be made on not more than a monthly basis following written payment requests from Shea Properties II, LLC, which must be submitted with all required supporting documentation.
- Shea Properties II, LLC will provide the CDC with $9 million in funding for the Merged R-108/Central City Revitalization Project Area.

The CDC will continue its on-going negotiations with the Centennial Plaza theater developers and operator and intends to formally consider agreement(s) with those parties at a later date. The purpose of the agreement(s) is to implement a Downtown Assistance Plan as contemplated in the First Amended MOU.

To implement the provisions contained in the approved Fourth Amendment to the OPA, the parties have concluded negotiations and drafted the Ground Lease, Parking Facility Management Agreement, and Acquisition Agreement. Shea Properties II, LLC has acquired the commercial portions of the site from RiverPark A and is the legal entity responsible for developing the commercial portion of the site.

Key points in the new documents are:

- Shea Properties II, LLC will construct public improvements primarily consisting of a public parking structure and related street and utility improvements (collectively, the "Project"). These public improvements, once completed and accepted, will be acquired by the City/CDC.
- The City/CDC will own the public parking structure, and lease the ground for 50 years from Shea Properties II, LLC.
- At the end of 50 years the ground lease terminates and the parking structure reverts to Shea Properties II, LLC.
- Shea Properties II, LLC will be responsible for maintaining, repairing, and reconstructing the public parking structure during the term of the ground lease.

- Shea Properties, II will operate the public parking structure through the parking management agreement for 15 years. At the end of 15 years, the CDC may consider a new 15-year term.
- Shea Properties II, LLC will have the right to lease 150 spaces of the approximate 500-space public parking structure from the CDC for exclusive use.
- The CDC's ground lease rent under the Ground Lease to Shea Properties II, LLC will equal Shea Properties II, LLC rent (fair rental value) to the CDC for exclusive use of the 150 parking spaces and the fee for certain naming and signage rights under the Ground Lease. As a result, the net cost to both parties will be zero.
- The CDC will pay a $1 per year management fee to Shea Properties II, LLC under the Parking Facility Management Agreement.
- Completion of the parking structure and movie theater complex is anticipated for 2009.

Financing Plan

Staff is proposing the issuance of the Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008 (the "Bonds").

Staff proposes the issuance of the Bonds in an amount not-to-exceed $13,500,000 ($9,900,000 approximate net proceeds) secured by tax increment from the HERO Project Area plus $2,100,000 in HERO fund balance to finance construction of the Project. The Bonds will be issued on a parity basis with the CDC's outstanding 2006 Tax Allocation Bonds (the "2006 Bonds") that were used to finance various street improvements in the HERO Project Area. The $2,100,000 in HERO fund balance would be deposited into a joint bank account with Shea Properties II, LLC as the co-signer and would be used to pay a portion of the $12 million in periodic reimbursements under the Acquisition Agreement. The net proceeds of the Bonds would be used to pay the remaining periodic reimbursements under the Acquisition Agreement. Future bonds or other indebtedness of the CDC would be subordinate to the $2,100,000 in the joint bank account.

The Bonds will be structured as fixed rate bonds and will be repaid over 30 years. Debt service on the Bonds will be structured to provide level annual payments on a combined basis with the 2006 Bonds. The average annual debt service on the Bonds is estimated to be approximately $828,000.

The expected sale date of the Bonds is May 1, 2008, and the closing of the Bonds and delivery of proceeds to CDC is anticipated to occur on May 15, 2008.

Environmental Approvals

On July 16, 2002, the City Council adopted Resolution No. 12,209 upholding the Planning Commission's decision certifying the Environmental Impact Report (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. Addendum No. 5 to RiverPark

Project Final Environmental Impact Report states that the impacts of the 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.

Bond Actions

The City Resolution (Attachment No. 6) will accomplish the following:

- Authorize the CDC to issue the Bonds in an amount not to exceed $13.5 million for the HERO Project Area and determine that the Bonds are being issued to finance a redevelopment activity.
- Authorize the Mayor, Mayor Pro-Tem, City Clerk and Finance Director of the City to execute and deliver any and all documents necessary or proper to assist the CDC in the issuance of the Bonds.

CDC Resolution (Attachment No. 7) will accomplish the following:

- Determine that the Project provides "significant public benefits" (as such term is defined in Government Code section 6586).
- Approve the issuance of the Bonds in an amount not to exceed $13.5 million for the HERO Project Area.
- Approve the form of the following documents for the Bonds:
    - Indenture of Trust
    - Contract of Purchase
    - Continuing Disclosure Agreement
    - Preliminary Official Statement
- Appoint Wells Fargo Bank, National Association, as Trustee under and pursuant to the Indenture.
- Authorize the Chairman, the Vice Chairman, the Secretary and the Finance Director of the CDC to execute and deliver any and all documents necessary or proper for carrying out the issuance of the Bonds.

COFA Resolution

The COFA Resolution (Attachment No. 8) will accomplish the following:

- Approve the form of the following documents:
    - Contract of Purchase
    - Preliminary Official Statement
- Authorize the Chairman, Vice Chairman, Secretary, and Controller to execute and deliver any and all documents necessary or proper to assist the CDC in the issuance of the Bonds.

Bond Determinations

The CDC has entered into that certain Owner Participation Agreement dated as of November 15, 2000 by and between the CDC and M&H Realty Partners IV, L.P., a California limited

partnership (M&H OPA). In accordance with Sections 10.1.c and 10.5.b of the M&H OPA, the CDC's obligations under Article 10 of the M&H OPA shall be subordinate to the Bonds if the CDC can reasonably make certain determinations regarding the affect of the Bonds on the CDC's ability to perform its obligations under Article 10 of the M&H OPA. Based on data provided to the CDC by its independent fiscal consultant, which staff has reviewed, staff recommends that the CDC make the determinations relative to the M&H OPA.

The CDC has also entered into that certain Owner Participation Agreement dated as of June 12, 2001 (Original OPA), as amended by that certain First Amendment to Owner Participation Agreement dated as of November 19, 2002 (First Amendment to OPA), that certain Second Amendment to Owner Participation Agreement dated as of December 14, 2004 (Second Amendment to OPA), that certain Third Amendment to Owner Participation Agreement dated August 23, 2007 (Third Amendment to OPA), and that certain Fourth Amendment to Owner Participation Agreement dated November 20, 2007 (Fourth Amendment to OPA) (the Original OPA, as amended by the First Amendment to OPA, the Second Amendment to OPA, the Third Amendment to OPA, and the Fourth Amendment to OPA is referred to herein as the "RiverPark OPA"). In accordance with Sections 203.A.6, 203.B.4, and 204.c.10 of the RiverPark OPA, the CDC's payment obligations under Sections 203 and 204, respectively, of the RiverPark OPA shall be subordinate to the Bonds if the CDC can reasonably make certain determinations regarding the affect of the Bonds on the CDC's ability to perform its payment obligations under Sections 203 and 204 of the RiverPark OPA. The CDC payment obligations under Section 203 of the RiverPark OPA are to be paid from certain percentages of net tax increment generated from the RiverPark project. The tax increment projections prepared in connection with the Bonds were made without regard to completion of the RiverPark project. Which means there are sufficient tax increment revenues to issue and sell the Bonds even without the tax increment generated by the completed RiverPark project. Moreover, the CDC payment obligations under Section 204 of the RiverPark OPA are expected to be fully financed by the Bonds and the $2.1 million in the HERO fund balance. Based on the foregoing, staff recommends that the CDC make the determinations relative to the RiverPark OPA.

Accordingly, staff recommends that the CDC make the following three (3) determinations:

1. In accordance with Sections 10.1.c and 10.5.b of the M&H OPA, the CDC reasonably determines in good faith that the issuance of the Bonds will not adversely affect the CDC's ability to perform its obligations under Article 10 of the M&H OPA.

2. In accordance with Sections 203.A.6 and 203.B.4 of the RiverPark OPA, the CDC reasonably determines that the issuance of the Bonds will not adversely affect the CDC's ability to perform its payment obligations under the RiverPark OPA.

3. In accordance with Section 204.c.10 of the RiverPark OPA, the CDC reasonably determines that the issuance of the Bonds will not adversely affect the CDC's ability to perform its payment obligations under Section 204 of the RiverPark OPA.

FINANCIAL IMPACT

Net bond proceeds of $9.9 million and $2.1 million in HERO Project Area fund balance will be appropriated and will be used to finance the Project described herein. The $9.9 million of bond net proceeds will be appropriated to City Account No. 405-8752-827.86-02 (Project No. 088702) and the $2.1 million of HERO fund balance deposited into a joint bank account will be appropriated to City Account No. 405-8753-827.86-02 (Project No. 088702). There are sufficient funds in the HERO Fund balance to fund this request. Annual debt service payments on the Bonds will be budgeted in the HERO Project Area Fund. There will be no budget requirement for debt service in Fiscal Year 2007-08. Beginning in Fiscal Year 2008-09, average annual debt service (principal and interest) on the Bonds will be approximately $828,000. Debt service on the Bonds will be solely secured by tax increment from the HERO Project Area.

Attachment #1 – The Collection at RiverPark Offsite Public Improvements
#2 – Tax Increment Financing Elements
#3 – Ground Lease with Shea Properties II, LLC
#4 – Parking Facility Management Agreement with Shea Properties II, LLC
#5 – Acquisition Agreement with Shea Properties II, LLC
#6 – City Resolution entitled "Resolution of the City Council of the City of Oxnard Approving the Sale, Issuance, and Delivery by the Oxnard Community Development Commission of Not More Than $13,500,000 in Principal Amount of Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008, and Making Certain Determinations Relating Thereto"
#7 – CDC Resolution entitled "Resolution of the Oxnard Community Development Commission Authorizing the Sale, Issuance, and Delivery of Not More Than $13,500,000 in Principal Amount of Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008, and Approving Certain Documents and Authorizing Certain Actions in Connection Therewith"
#8 – COFA Resolution entitled "Resolution of the Governing Board of the City of Oxnard Financing Authority Authorizing the Execution and Delivery of a Contract of Purchase with Respect to Oxnard Community Development Commission Historic Enhancement and Revitalization of Oxnard (HERO) Project Area Tax Allocation Bonds, Series 2008, and Authorizing Certain Actions in Connection Therewith"
#9 – Indenture of Trust
#10 – Contract of Purchase
#11 – Preliminary Official Statement
#12 – Continuing Disclosure Agreement
#13 – Special Budget Appropriation

Note: Attachment Nos.1-13 have been provided to the City Council. Copies 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 Monday.