



Meeting Date: 10/07/08

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other Study Session

Prepared By: Brian Pendleton, Redevelopment Services Manager *BP* Agenda Item No. I-3

Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Other (Specify) _____

DATE: October 2, 2008

TO: Community Development Commission

FROM: Curtis P. Cannon, Community Development Director *Brian Pendleton (for)*
Community Development Department

SUBJECT: Loan Purchase and Digital Equipment Agreement and Release with Oxnard Theater Group, LLC, Strand Cinemas, LLC and Oxnard Community Development Commission for Centennial Plaza and Plaza Cinemas

RECOMMENDATION

That the Community Development Commission approve and authorize the Chairman to sign a Loan Purchase and Digital Equipment Agreement and Release (A-7108) in the total amount of \$870,500 with Oxnard Theater Group, LLC ("OTG"), Strand Cinemas, LLC ("Strand") and the Community Development Commission ("CDC") and approve a special budget appropriation in the amount of \$870,500 for Centennial Plaza and Plaza Cinemas.

DISCUSSION

Pursuant to provisions contained in the RiverPark Owner Participation Agreement ("OPA"), Shea Properties II, LLC has paid the CDC \$1 million of the \$9 million in funding for use in the Merged R-108/Central City Revitalization Project Area. A Downtown Assistance Plan utilizing the remaining \$8 million as contemplated in the OPA and related agreements will be considered at a later date.

The terms of the recommended Agreement and use of \$870,500 of the \$1 million in funds is as follows:

- Theater Lease Shortfall Amount – Within thirty (30) days following the effective date of this Agreement, the CDC shall purchase a Promissory Note ("Note") in the amount of \$670,500 between Strand the lender and San Carlos the borrower for downtown theater lease payments OTG made on San Carlos's behalf between October 2005 and October 2006.
 - San Carlos will be obligated to repay the \$670,500 Note plus future interest to the CDC. Repayment terms remain unchanged.
- Digital Equipment Upgrade – CDC shall reimburse San Carlos for reasonable costs and expenses for installation of equipment to upgrade the theater to a digital format up to \$200,000. The Executive Director and Community Development Director shall be authorized to approve

the reimbursements upon receipt of payment request(s) from San Carlos with reasonable back up of costs and expenses.

- OTG and Strand release the City, CDC and Shea Properties II, LLC from any claims against the CDC regarding the lease payments OTG made on behalf of San Carlos and potential existing claims related to the City's decision to allow a theater to be located in the RiverPark Specific Plan Area.

The assignment document for the Note shall be in form approved by CDC Counsel.

FINANCIAL IMPACT

The special budget appropriation will appropriate up to \$870,500 of the \$1,000,000 in funds received from Shea Properties II, LLC for use in funding the Agreement.

- Attachment #1: Loan Purchase and Digital Equipment Agreement and Release
#2: Request for Special Budget Appropriation
#3: Promissory Note

Note: The Loan Purchase and Digital Equipment Agreement and Release has been provided to the Community Development Commission. 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.

LOAN PURCHASE AND DIGITAL EQUIPMENT AGREEMENT AND RELEASE

This Loan Purchase and Digital Equipment Agreement and Release ("Agreement") is entered into effective _____, 2008 ("Effective Date") by and among Strand Cinemas, LLC, a California limited liability company ("Strand"), Oxnard Theater Group, LLC, a Delaware limited liability company ("OTG"), and the Oxnard Community Development Commission ("Commission").

RECITALS

- A. The Commission and RiverPark A, LLC, a Delaware limited liability company ("RiverPark A"), have entered into a Fourth Amendment to Owner Participation Agreement ("Fourth Amendment to OPA") effective as of November 20, 2007, and maintained in the records of the City Clerk of the City of Oxnard as Agreement No. A-5965. The Fourth Amendment to OPA amends an Owner Participation Agreement dated as of June 12, 2001 (the "Original OPA"), which previously had been amended three times (the three amendments are referred to as "First Three Amendments"). The Original OPA and the First Three Amendments provide for the development of a "Site" defined in the Original OPA with commercial, retail, hotel, office and residential development. "OPA" as used herein shall mean the Original OPA together with the First Three Amendments and Fourth Amendment to OPA.
- B. In connection with the OPA, Commission and RiverPark A entered into that certain Agreement Containing Covenants Affecting Real Property dated June 12, 2001 ("Original Agreement Containing Covenants"). The Original Agreement Containing Covenants was amended by (i) that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 19, 2002 ("First Amendment to Agreement Containing Covenants"), (ii) that certain Second Amendment to Agreement Containing Covenants Affecting Real Property dated as of February 1, 2005 ("Second Amendment to Agreement Containing Covenants"), and (iii) that certain Third Amendment to Agreement Containing Covenants Affecting Real Property dated on or about August 23, 2007 ("Third Amendment to Agreement Containing Covenants"). The Original Agreement Containing Covenants, together with the First Amendment to Agreement Containing Covenants, Second Amendment to Agreement Containing Covenants, and Third Amendment to Agreement Containing Covenants are referred to herein collectively as the "Agreement Containing Covenants".
- C. The City of Oxnard ("City"), RiverPark A, and RiverPark B, L.L.C., a Delaware limited liability company, entered into that certain Development Agreement dated as of August 27, 2002, as amended by that certain First Amendment to Development Agreement dated as of December 14, 2004, and by that certain Second Amendment to Development Agreement dated as of June 24, 2007 (collectively, the "Development Agreement").
- D. RiverPark A has transferred a portion of the Site (the "SP II Property") and has assigned certain of its rights and obligations under the OPA and Development Agreement with

respect to the SP II Property to Shea Properties II, a Delaware limited liability company ("SPII"). The SP II Property is described in the Fourth Amendment to OPA and a site plan depicting the SP II Property is attached to the Fourth Amendment to OPA as Attachment No. 20.

- E. Pursuant to the Fourth Amendment to OPA, the Commission agreed, upon the occurrence of certain conditions, to provide financial reimbursement up to \$12,000,000 for certain costs related to public improvements in connection with the development of the SP II Property. Under the terms of the Fourth Amendment to OPA, SP II as successor-in-interest to RiverPark A is, among other things, obligated to pay nine million dollars \$9,000,000 to the Commission to be used in the City's Merged Downtown Renewal Project Area.
- F. Pursuant to the Fourth Amendment to the OPA, SP II is obligated to make to Commission a one time payment in the amount of one million dollars (\$1,000,000) ("One Million Dollar Payment") of the nine million dollar (\$9,000,000) sum referenced above within thirty (30) days following the occurrence of certain conditions. The One Million Dollar Payment has been paid to the Commission by SP II. None of the One Million Dollar Payment is part of the Downtown Payment (as defined in the Fourth Amendment to OPA).
- G. The Commission is to use the One Million Dollar Payment in the City's Merged Downtown Renewal Project Area.
- H. On November 26, 2002, the Commission entered into a Disposition and Development Agreement with Strand and San Carlos Cinemas, Inc., a California corporation ("San Carlos"). The DDA was amended by a First Implementation Agreement dated April 6, 2004. The foregoing agreements collectively are referenced to herein as the "DDA."
- I. Pursuant to the DDA, Strand purchased certain property in downtown Oxnard (the "Property") from the Commission. The Property has been developed with a multiplex movie theater (the "Theater"), retail and restaurant complex commonly known as Centennial Plaza (the "Phase 1 Project").
- J. Strand, as lessor, and San Carlos, as lessee, entered into a written lease dated December 22, 2003 (as it may be amended from time to time to the extent permitted in the DDA, the "Theater Lease") for the Theater. The DDA provides, among other things, that the Commission will guarantee minimum monthly rent payments (up to a maximum monthly amount) and costs for insurance, taxes and CAM charges under the Theater Lease (collectively, "CAM Charges"), as more particularly set forth in the DDA. These guaranty payments are to be used for debt service on the Property and to fund other lender-required accounts as needed. Strand conveyed title to the Phase I Project to OTG and, pursuant to the DDA, the Commission approved such conveyance.

- K. In connection with the Phase I Project, Strand received a loan from Temecula Valley Bank, N.A. ("Original Lender") in the amount of fifteen million dollars (\$15,000,000) ("Original Loan"). In connection with the Original Loan and pursuant to the DDA, the Commission, Original Lender, and Strand entered into that certain Guaranty of Lease dated April 6, 2004 ("Original Guaranty") and Commission, Original Lender, Strand, and San Carlos entered into that certain Deposit Agreement dated April 6, 2004 to implement the provisions of the Original Guaranty ("Deposit Agreement").
- L. To provide funds to OTG to refinance the Original Loan, Nomura Credit & Capital, Inc. ("Refinance Lender") made a loan of fifteen million six hundred thousand dollars (\$15,600,000) to OTG ("Refinance Loan"). In connection with the Refinance Loan and pursuant to the DDA, the Commission executed that certain Guaranty of Lease dated as of June 30, 2006 in favor of Refinance Lender ("Replacement Guaranty") and Commission, OTG, Ventura Pacific Capital Management (Manager of the Theater), Refinance Lender, Strand and Wells Fargo Bank, N.A. executed that certain Cash Management Agreement dated as of June 30, 2006 to implement the provisions of the Replacement Guaranty ("Cash Management Agreement"). The benefits of the Guaranty have been transferred by Refinance Lender to Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Wachovia Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-C27 (the "Loan Assignee").
- M. In connection with the Refinance Loan, the Original Guaranty was terminated and replaced by the Replacement Guaranty and the Deposit Agreement was terminated and replaced by the Cash Management Agreement.
- N. During an approximate twelve (12) month period commencing October 2005 and ending October 2006, San Carlos failed to pay its monthly rent payment obligations and/or CAM Charges under the Theater Lease a total of eight (8) months in the total sum of six hundred seventy thousand five hundred dollars (\$670,500) ("Theater Lease Shortfall Amount"). As a result, San Carlos executed and delivered to Strand that certain Promissory Note dated October 31, 2006 and made in the principal amount of the Theater Lease Shortfall Amount (the "Note").
- O. Despite the existence of the Theater Lease Shortfall Amount, neither Original Lender under the Original Guaranty and Deposit Agreement nor the Replacement Lender or Loan Assignee under the Replacement Guaranty and Cash Management have made demand for payments to the Commission. Strand, OTG, and San Carlos contend that the Theater Lease Shortfall Amount is payable by the Commission as guarantee payments under the Original Guaranty and the Replacement Guaranty or otherwise.
- P. OTG, Strand (as the sole member of OTG) and San Carlos have informed the Commission that certain rehabilitation of and capital improvements to the Theater are necessary.

- Q. At the time the DDA was entered into, the City had in place Ordinance 2466 ("Ordinance No. 2466") which, in part, prohibited the development of multiplex movie theaters in the City except in the central business district zone. Section 705 of the DDA provides, in part: "To the extent permitted by law, so long as the Theater Lease Guarantee is in effect, the Commission shall cooperate with the Developer in preserving Ordinance 2466 in full force and effect." OTG, Strand and San Carlos have informed the Commission that the existence of Ordinance No. 2466 constituted a material factor in Strand's and San Carlos' decision to enter into the DDA and to develop and operate the Phase I Project.
- R. 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 "New Ordinance"). The New Ordinance permits the development of multiplex theaters in a portion of the SP II Property, as well as in the central business district zone, thereby allowing SP II to develop a multiplex theater on a portion of the SP II Property.
- S. On July 24, 2007, the City Council approved Ordinance 2744 authorizing a Second Amendment to the RiverPark Development Agreement (the "RiverPark Second Amendment") permitting the location of a multiplex theater within Planning Area D of the RiverPark Specific Plan (the "RiverPark Theater").
- T. Pursuant to that certain Assignment and Assumption Agreement dated July 22, 2008, entered into by and between SP II and Riverpark Collection, LLC, a Delaware limited liability company ("Riverpark Collection") ("Assignment Agreement"), *inter alia*, SP II has assigned to Riverpark Collection and Riverpark Collection has assumed rights and obligations under the OPA and Agreement Containing Covenants pertaining to 64.825 acres of the SP II Property ("Collection Property"), including, without limitation, the obligation to pay the Downtown Payment to the Commission. A portion of the Collection Property is intended to be developed with the RiverPark Theater.
- U. Strand, San Carlos and OTG have informed the Commission that they believe the Commission has not cooperated with them in keeping Ordinance No. 2466 in full force and effect and that Strand, San Carlos and OTG allege they have been damaged and will be damaged because of this failure of cooperation and the opening of the RiverPark Theater.
- V. Commission does not acknowledge that it has acted in breach of the DDA or caused or will cause damage to Strand, San Carlos or OTG. The Commission, however, has a strong interest in and desire to foster the economic growth of the downtown area and the success of the Theater.
- W. Moreover, the parties hereto desire to compromise their differences to the extent set forth in this Agreement so as to avoid litigation, and do so without admitting liability,

expressly disclaiming the same, and while continuing to dispute the validity of the other's claims and defenses.

- X. The Commission desires to cooperate with OTG and San Carlos and continue to support the Theater as provided herein for the consideration provided herein.
- Y. In consideration of the foregoing facts, Commission has negotiated with Strand and OTG and has determined that a portion of the One Million Dollar Payment shall be distributed as provided in this Agreement.
- Z. This Agreement is not intended to be the Downtown Agreement pertaining to the Downtown Assistance Program as both terms are defined and described in the Fourth Amendment to OPA.
- AA. Section 205.d. of the OPA (as added by the Fourth Amendment to OPA) provides, in part, ". . .if the Commission and/or the City have entered into any agreement with Strand, OTG or San Carlos that provides a release to the City and/or Commission from claims that are the subject of the Release, but such agreement does not also release Participant from such claims, then Participant shall have no obligation to pay to the Commission the Downtown Payment until such time as Participant receives a release identical to that received by the City and/or Commission."
- BB. In accordance with and pursuant to Section 105.2 of the OPA (as amended by the Second Amendment to the OPA), Participant as used in the provision of Section 205.d of the OPA referenced in Recital AA. means and refers to Riverpark Collection.

AGREEMENT

Considering the foregoing recitals and for good and valuable consideration, the receipt of which is hereby acknowledged, Commission, Strand and OTG agree as follows:

1. Theater Lease Shortfall Amount and Note Assignment. Within fifteen (15) days following the Effective Date, (i) the Commission shall pay to OTG the Theater Shortfall Amount and concurrently (ii) Strand and/or OTG, as applicable, shall assign to Commission, without recourse, all of its/their rights under and interest in the Note (other than its/their right to collect interest thereon accrued but unpaid as of the date of assignment). Commission and OTG agree that Commission's payment of the Theater Shortfall Amount shall not constitute a part of "Developer Gross Revenues," as that term is defined in the Attachment No. 8 to the DDA.
2. Digital Equipment Upgrade. As additional consideration, Commission shall reimburse San Carlos for reasonable costs and expenses for rehabilitation of the Theater for installation of equipment necessary to provide capital improvements to upgrade the Theater to a digital format for film viewing as reasonably acceptable to the Community

Development Director ("Digital Equipment Upgrade") in a total aggregate not to exceed amount of Two Hundred Thousand Dollars (\$200,000), as follows:

- a. Subject to subsection c., below, upon completion of the Digital Equipment Upgrade in accordance with the terms and conditions of this Agreement, prior to being obligated to make any payment pursuant to this Section 2, San Carlos shall submit a payment request to the Community Development Director, together with reasonable back up, for costs and expenses reasonably incurred in the installation and construction of the Digital Equipment Upgrade. The payment request shall be subject to the review and reasonable approval of the Community Developer Director or designee.
- b. Subject to subsection c., below, upon the Commission's Executive Director, the Community Development Director or designee's approval of the payment request, the Commission shall reimburse San Carlos a total aggregate not to exceed amount of Two Hundred Thousand Dollars (\$200,000) for costs and expenses reasonably incurred in the installation and construction of the Digital Equipment Upgrade.
- c. As a condition precedent to receiving any portion of the Two Hundred Thousand Dollars (\$200,000), San Carlos must:
 - (i) Reasonably satisfy Commission's Executive Director that with regard to the Capital Equipment Upgrade, San Carlos has complied with all applicable laws, including, without limitation and as applicable, all laws with regard to prevailing wages; and
 - (ii) If so required by the Executive Director of Commission, agree in a duly executed writing delivered to the Commission to the following: "San Carlos agrees to and shall defend, indemnify and hold harmless the Commission, the City, and their respective officers, employees, agents, contractors and consultants from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the property on which the Phase I Project is located and which shall be directly or indirectly caused by or based on the Digital Equipment Upgrade or any of San Carlos's activities under this Agreement, whether such actions or inactions thereof be by San Carlos or anyone directly or indirectly employed or contracted with by San Carlos or whether such damage or injury shall accrue or be discovered before or after the termination of this Agreement. San Carlos shall not be responsible for (and such indemnity shall not apply to) property damage or bodily injury

to the extent caused by the negligence of the Commission or its officers, employees, agents, contractors and consultants.”

3. Costs of Digital Equipment Upgrade. Except as expressly set forth in Section 2 above, the installation and construction of the Digital Equipment Upgrade shall be at no cost to either the Commission or the City.
4. Special and Limited Obligation. Commission’s payment and reimbursement obligations herein shall be special limited obligations of Commission payable solely from the \$1,000,000 paid by SP II under the Fourth Amendment to OPA. The Commission’s payment and reimbursement obligations herein are 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.
5. OTG Settlement and Release.
 - a. As of the Effective Date, OTG and each of its shareholders, owners, partners, affiliates, subsidiaries, members, successors, predecessors, assigns, directors, officers, representatives, agents, and employees (collectively, the “OTG Parties” and individually, an “OTG Party”) release and forever discharge Commission, City, RiverPark A, SP II, Riverpark Collection, and their respective legislative bodies, members, successors, predecessors, assigns, directors, officers, representatives, agents, employees, insurers, and sureties (collectively, the “Released Parties” and individually a “Released Party”) from the following claims (the “Released Claims”):
 - (i) Any and all causes of action, suits, debts, liens, liabilities, demands, damages, liquidated damages, losses, costs or expenses arising from and/or related to claims and allegations that have been made or could have been made in connection with the failure of the Commission to make payments of any portion of the Theater Lease Shortfall Amount under the Original Guaranty, Deposit Agreement, Replacement Guaranty or Cash Management Agreement, whether such causes of action, suits, debts, liens, liabilities, demands, damages, liquidated damages, losses, costs or expenses were incurred on or before the Effective Date or are incurred after the Effective Date.
 - (ii) Any and all damages, losses, costs or expenses actually incurred by the OTG Parties on or before the Effective Date (but not those incurred after the Effective Date) arising from and/or related to the claims and allegations that have been made or could have been made in connection with any of the following directly or indirectly: (A) Section 705 of the DDA; (B) the enactment of Ordinance No. 2722 or Ordinance No. 2742; (C) the OPA, including, without limitation, the Fourth Amendment to OPA; (D) the Development Agreement, including, without limitation, the

Second Amendment to Development Agreement; or (E) the decision of the Oxnard City Council to allow a theater to be operated in the RiverPark Specific Plan Area.

- (iii) The term "Released Claims" does not include, and shall not be interpreted to extend to claims of any kind to damages, losses, costs and expenses of any kind which are suffered after the Effective Date which are related in any way to any of the matters described in Section 5a(ii) above.
- b. OTG further covenants, on behalf of itself and the OTG Parties, not to file, initiate, or maintain any administrative proceeding or judicial action, as to any of the Released Claims against any of the Released Parties.
- c. OTG agrees, on behalf of itself and the OTG Parties, that this Agreement shall constitute a bar to all Released Claims, but only the Released Claims. OTG further agrees, on behalf of itself and the OTG Parties, that this Agreement shall include all claims which OTG and the OTG Parties may have against the Released Parties, except those described in Section 5a(iii) above, whether known or unknown, which exist as of the Effective Date.
- d. OTG acknowledges, on behalf of itself and the OTG Parties, that it may hereafter discover facts or law different from or in addition to those which it now believes to be true with respect to the Released Claims. OTG agrees, on behalf of itself and the OTG Parties, that the foregoing release shall be and remain effective in all respects as to, and only as to, the Released Claims notwithstanding such different or additional facts or law or any party's discovery thereof. Neither OTG nor any OTG Party shall be entitled to any relief in connection therewith, including, but not limited to any damages or any right or claim to set aside or rescind this Agreement.
- e. With respect to the foregoing matters, OTG, on behalf of itself and the OTG Parties, waives and releases all claims unknown and known and waives all rights under Civil Code §1542 (except for claims not included within the definition of "Released Claims, as provided in Section 5a(iii) above), which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

OTG acknowledges, on behalf of itself and the OTG Parties, the foregoing waiver of the provisions of California Civil Code Section 1542 was separately bargained for and expressly consents that this Agreement shall be given full force and effect in accordance with each and all of its express terms and provisions (except for claims not included within the definition of "Released Claims, as provided in Section 5a(iii) above).

OTG Initials

OTG Initials

6. Strand Settlement and Release.

- a. As of the Effective Date, Strand and each of its shareholders, owners, partners, affiliates, subsidiaries, members, successors, predecessors, assigns, directors, officers, representatives, agents, and employees (collectively, the "Strand Parties" and individually, an "Strand Party") release and forever discharge the Released Parties from any and all actions, causes of action, suits, debts, liens, liabilities, demands, damages, liquidated damages, losses, costs or expenses, existing as of the Effective Date based upon, and only based upon, any of the Released Claims. Strand further covenants, on behalf of itself and the Strand Parties, not to file, initiate, or maintain any administrative proceeding or judicial action, as to any of the Released Claims against any of the Released Parties.
- b. Strand agrees, on behalf of itself and the Strand Parties, that this Agreement shall constitute a bar to all Released Claims, but only the Released Claims. Strand further agrees, on behalf of itself and the Strand Parties, that this Agreement shall include all claims which Strand and the Strand Parties may have against the Released Parties, except those described in Section 5a(iii) above, whether known or unknown, which exist as of the Effective Date.
- c. Strand acknowledges, on behalf of itself and the Strand Parties, that it may hereafter discover facts or law different from or in addition to those which it now believes to be true with respect to Released Claims. Strand agrees, on behalf of itself and the Strand Parties, that the foregoing release shall be and remain effective as to, and only as to, the Released Claims notwithstanding such different or additional facts or law or any party's discovery thereof. Neither Strand nor any Strand Party shall be entitled to any relief in connection therewith, including, but not limited to any damages or any right or claim to set aside or rescind this Agreement.
- d. With respect to the foregoing matters, Strand, on behalf of itself and the Strand Parties, waives and releases all claims unknown and known and waives all rights under Civil Code §1542 (except for claims not included within the definition of "Released Claims, as provided in Section 5a(iii) above), which reads:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Strand acknowledges, on behalf of itself and the Strand Parties, the foregoing waiver of the provisions of California Civil Code Section 1542 was separately bargained for and expressly consents that this Agreement shall be given full force and effect in accordance with each and all of its express terms and provisions (except for claims not included within the definition of “Released Claims, as provided in Section 5a(iii) above).

Strand Initials

Strand Initials

7. Reimbursement of Theater Lease Shortfall Amount. Without any admission by any Released Party in any way (directly or indirectly) of liability for or the validity of any claims (whether past or present claims), in the event that OTG, any OTG Party, Strand and/or any Strand Party is eligible or entitled to receive money or damages from the Commission, City, or any Released Party due either as a result of a written agreement by the Commission, City and any applicable Released Party to settle or compromise, or as a result of a final judgment of a court of competent jurisdiction pertaining to, any action, cause of action, suit, debt, lien, liability, demand, damage, liquidated damage, loss, cost or expense constituting a Released Claim, OTG shall reimburse to Commission the lesser of (a) the net present value of the Theater Lease Shortfall Amount or (b) the amount of such money or damages. The net present value of the Theater Lease Shortfall Amount shall be calculated from the date of the payment by the Commission to OTG of the Theater Lease Shortfall Amount to the date of reimbursement by OTG to the Commission of the amount due pursuant to this Section 7 using a discount rate of four percent (4%). The reimbursement by OTG to the Commission pursuant to this Section 7 shall be paid as a credit against any such amount owed (whether owed to OTG or otherwise).

8. Compromise Agreement. It is acknowledged and agreed by the parties that this Agreement is an agreement to compromise and settle disputed claims, and that nothing in this Agreement (including, without limitation, the information in the Recitals) can be used in any way (directly or indirectly) as an admission by any Released Party of liability for or the validity of any claims (whether past, present or future claims) of any party to this Agreement. It is further acknowledged and agreed by the parties that nothing in this Agreement (including, without limitation, the information in the Recitals) can be used against the Commission in any way (directly or indirectly) relative to the Commission's performance of or obligations under the Replacement Guaranty or Cash Management Agreement or any future replacement agreements thereto.

9. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement.
10. Counterparts. This Agreement 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.
11. Third Party Beneficiaries. The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the parties hereto, and not for the benefit, directly or indirectly, of any other person or entity, except that the parties agree that the City, RiverPark A, SP II and Riverpark Collection are third party beneficiaries of Sections 5 and 6 of this Agreement.
12. Successors In Interest. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, executors, estates, heirs, legatees, agents and related entities of each of the parties.
13. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.
14. Construction. The parties hereto acknowledge and agree that (a) each party hereto is of equal bargaining strength, (b) each party has consulted with such party's own, independent legal counsel, and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (c) each party and such party's legal counsel and advisors have reviewed this Agreement, (d) each party has agreed to enter into this Agreement following such review and their rendering of such advice, and (d) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.
15. Attorney Fees and Costs. Each party shall bear its own attorneys fees and costs in connection with the drafting and negotiation of this Agreement. In the event of litigation relating to or arising out of this Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all reasonable costs and expenses incurred thereby, including, but not limited to actual attorneys' fees and costs for services rendered to such prevailing party.
16. Further Documents and Acts. The parties hereto agree to execute such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, consummate or perform any of the terms, provisions or conditions of this Agreement.

17. Headings. The headings, subheadings and numbering of the different paragraphs of this Agreement are inserted for convenience and for reference only and shall not be considered for any purpose in construing this Agreement.
18. Governing Law. The rights and obligations of the parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California.
19. Authority to Execute This Agreement. Each person executing this Agreement on behalf of a party represents that he or she is authorized to execute this Agreement on behalf of that entity and to bind that entity to the terms of this Agreement.
20. Voluntary Agreement. The parties, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.
21. DDA, Replacement Guaranty and Cash Management Agreement in Full Force and Effect. All provisions of the DDA, Replacement Guaranty and Cash Management Agreement are and shall remain in full force and effect in accordance with the terms thereof.

[signatures on following pages]

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

OXNARD COMMUNITY DEVELOPMENT
COMMISSION

Date: _____

By: _____

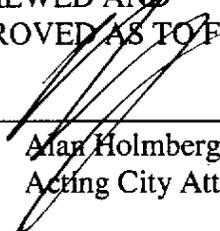
Dr. Thomas E. Holden
Chairman

ATTEST:

Daniel Martinez
Secretary Designate

REVIEWED AND
APPROVED AS TO FORM:

By: _____

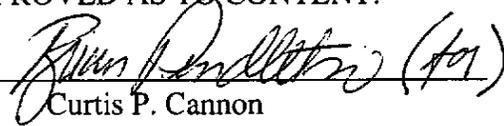

Alan Holmberg
Acting City Attorney

APPROVED AS TO FORM
AND CONTENT:
KANE, BALLMER & BERKMAN
Commission Special Counsel

By: _____

Todd C. Mooney
Authorized Signatory

APPROVED AS TO CONTENT:

By:  (for)
Curtis P. Cannon
Director of Community Development

STRAND CINEMAS, LLC

By: Plaza Development Partners, LLC, a
California limited liability
company, its Managing Member

Date: _____

By: _____
Dave O. White
Its: Manager

By: Central Oxnard Development, LLC, a
California limited liability
company, its Managing Member

Date: _____

By: _____
Neno N. Spondello, Jr.
Its: Manager

OXNARD THEATRE GROUP, LLC

By: Strand Cinemas, LLC, a California
limited liability company, Managing
Member

By: _____
Neno N. Spondello, Jr.
Its: Managing Member

CITY OF OXNARD
REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

October 7, 2008

Request is hereby made for an appropriation of total

\$ 870,500

Reason for appropriation: For the Loan Purchase and Digital Equipment Agreement and Release

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
CDC Downtown Renewal (402)	Downtown Developers Payment To R-108 402-8301-861-XXXX	200,000
	402-8301-861-XXXX	670,500
		<hr/>
	Net Estimated Change to CDC Downtown Renewal Fund Balance	<u>870,500</u>

Brian Pendleton

 Manager

REQUIRES CITY COUNCIL APPROVAL

CHIEF FINANCIAL OFFICER
James Cameron

Disposition _____

Transfer by Journal Voucher _____

Approved _____

Rejected _____

 City Manager

PROMISSORY NOTE

\$670,500.00

October 31, 2006

FOR VALUE RECEIVED, San Carlos Cinemas, Inc., a California corporation ("**Borrower**"), hereby promises to pay to Strand Cinemas, LLC, a California limited liability company ("**Lender**"), or order, in the manner and within the periods specified hereunder, the sum of Six Hundred Seventy Thousand Five Hundred and 00/100 Dollars (\$670,500.00), plus interest at the rate of five percent (5%) per annum simple interest accruing on the principal amount hereof beginning on the date hereof.

The indebtedness evidenced by this Note is to be used by Borrower for the sole purpose of making a payment of "Base Rent," as that term is defined in Section 4.01 of that certain Oxnard Downtown Theater Project Lease dated December 22, 2003, by and between Borrower, as Tenant, and Lender, as Landlord, the interests of which have been assigned by Landlord to Oxnard Theater Group, LLC, a Delaware limited liability company (the "**Lease**").

Borrower shall make payments to Lender hereunder on April 15 of each year until the outstanding principal balance, plus accrued and unpaid interest has been paid in full, in the following amounts and subject to the following limitations:

1. Except as provided in Sections 3 and 4 below, Borrower shall pay to Lender on such date the full amount of Operator Net Adjusted Cash Flow, as defined in Attachment 8 to that certain Disposition and Development Agreement dated as of January 7, 2003 by and among Borrower, Lender and the Oxnard Community Development Commission (the "**Commission**"), as amended, for the immediately preceding calendar year in payment of the outstanding principal balance, plus accrued and unpaid interest, under this Note until the same is paid in full.

2. Except as provided in Sections 3 and 4 below, the outstanding principal balance, plus accrued interest, which remain unpaid on April 19, 2029 (the "**Maturity Date**") shall be due and payable on such date.

3. All payments due hereunder shall be made exclusively with funds from, and up to the amount of, Operator Net Adjusted Cash Flow, provided that nothing herein shall prevent Borrower, if it so chooses, and if not prohibited by any other agreement to which it is a party or by which it is bound, from using any additional sources to make payments hereunder.

4. If, on the date any payment is due hereunder, including the Maturity Date, Borrower is required to make payments to the Commission under that certain Lease Guarantee Reimbursement Promissory Note dated

Page 1 of 3

PromNote.San CarlosToStrand.10.31.06

ATTACHMENT 3

PAGE 1 OF 3

000052

April 19, 2004 executed by Borrower in favor of Commission, the amount of the payment required hereunder on such date shall be reduced by the amount of the payment due to the Commission thereunder.

Any amounts paid by Borrower hereunder shall be applied first to accrued and unpaid interest and then to current interest and then to reduce the outstanding principal balance.

Borrower may prepay the outstanding principal balance and accrued interest under this Note, in whole or in part, and other sums owed to Lender under this Note (if any), at any time without penalty.

Any amounts due and owing hereunder are payable in lawful money of the United States of America.

Upon the nonpayment of any amounts due under this Note, Borrower shall be given ten (10) days from the receipt of written notice of such default from Lender to cure such default. In the event such default is not timely cured by Borrower, in addition to any other remedy provided, Borrower shall pay the delinquent amount(s) plus an administrative charge of five percent (5%) of such amount(s) as a reasonable estimate of the administrative costs incurred by Lender for servicing the delinquent account.

Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, Lender may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Note.

Any failures or delays by Lender in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Lender in asserting any of its rights and remedies shall not deprive Lender of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

If this Note is not paid when due, Borrower promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

Upon the failure of Borrower to perform or observe any term or provision of this Note, Lender may exercise any rights and remedies it may have available

Page 2 of 3

PromNote.San CarlosToStrand.10.31.06

ATTACHMENT 3

PAGE 2 OF 3

000053

at law or in equity.

Every provision of this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction, to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

Lender may convey a beneficial interest in this Note at Lender's option to the Community Development Commission, City of Oxnard without the approval of Borrower.

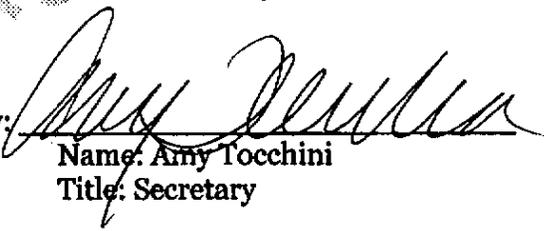
IN WITNESS WHEREOF, Borrower has executed this Promissory Note using as of the date set forth above.

SAN CARLOS CINEMAS, INC., a
California corporation

By: 

Name: Daniel F. Tocchini

Title: Secretary *PRCS*

By: 

Name: Amy Tocchini

Title: Secretary

Page 3 of 3

PromNote.San CarlosToStrand.10.31.06

ATTACHMENT 3

PAGE 3 OF 3

000054