



Meeting Date: 3/22/11

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 (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other: <u>Public Hearing</u>

Prepared By: Curtis P. Cannon K.H. for Agenda Item No. **I-5**

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other N/A

DATE: March 15, 2011

TO: City Council
Oxnard Community Development Commission

FROM: Curtis P. Cannon, Community Development Director [Signature]
Community Development Department

SUBJECT: Second Amendment to Affordable Housing Loan Agreement and Memorandum of Understanding Regarding Lot 17A (collectively the "MOU") and Sonata Apartments Acquisition, Predevelopment and Permanent Loan Agreement ("Sonata Loan Agreement")

RECOMMENDATION

That City Council and Community Development Commission:

1. Approve and authorize the Mayor and the Chairman as to the MOU, to execute the MOU and Sonata Loan Agreement, in substantially the form presented in Attachments #1 and #2, with such non-substantive changes as may be approved by the City Attorney, and direct the Community Development Director (or designee) to execute a Local Financing Commitment Letter, evidencing the City's approval for benefit of obtaining tax credits, in a form acceptable to the City Attorney.
2. Re-Authorize the previous appropriation of funds and expressly limit the City's obligation to the total amount of \$3,000,000 from the Low and Moderate Income Housing Fund ("LMIHF") for the development and construction of 53 affordable housing involving Lots 3, 11, 12, 16 and 17 of Districts A and D of the RiverPark Specific Plan within the HERO Redevelopment Project.
3. Authorize the City Manager and Community Development Director (or designees), with approval from the City Attorney, and the Executive Director and Community Development Director, with approval from General Counsel on behalf of the Commission to prepare, revise and sign all documents necessary and appropriate to carry out and implement the MOU and Sonata Loan Agreement, and to administer the City's obligations, responsibilities and duties pursuant to those documents.

4. Find, pursuant to Section 33334.3(j) of the California Health and Safety Code that: (i) other means of private or commercial financing are not reasonably available to the Project; and (ii) based on substantial evidence, the use of LMIHF is necessary because a good faith attempt has been made to obtain commercial or private means of financing, but such financing is not available at the same level of affordability and quantity.
5. Authorize the Chief Financial Officer to establish necessary accounts and budgets in accordance with these recommendations.

DISCUSSION

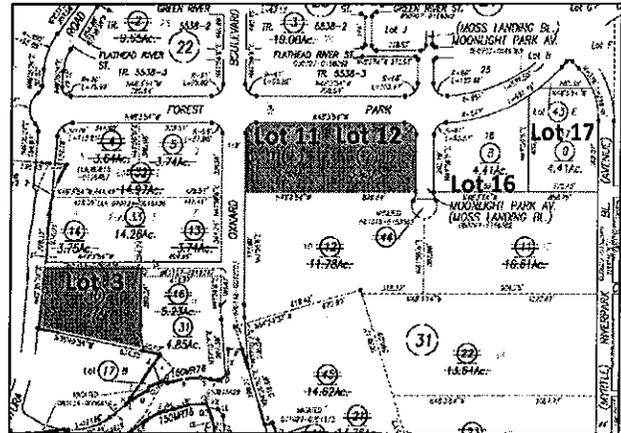
At its meeting of July 21, 2009 (and subsequently modified on December 15, 2009), the Oxnard Community Development Commission ("Commission") approved three separate pre-development loans for E.D. LLC/KHOC, LLC (and related entities; collectively the "Developer") totaling \$3 million for the Resonate and Mosaic Apartment projects located within RiverPark (collectively the "Predevelopment Loan"). The Predevelopment Loan provides for the planning and design of dwellings affordable to persons and low and moderate income ("Affordable Units") including costs associated with real estate taxes, professional design services, entitlement management, civil engineering, plan check and permit fees. The affordable housing requirement arises from an impending amendment to the RiverPark Specific Plan Amendment ("SPA"), which if approved, would allow for an additional 304 dwellings at RiverPark.

Following the Commission's action on December 15, 2009, the Developer has partnered with a non-profit affordable housing sponsor ("American Communities") to construct, own and operate the Affordable Units. American Communities is well versed in procuring federal and state tax credits in order to develop such housing and has an extensive resume in this regard. Since its inception in 2000, American Communities has financed and developed a total of 10 housing tax credit communities totaling 587 units valued in excess of \$150 million. All of these developments utilized some combination of housing tax credits, tax exempt bond financing, HOME Investment Partnerships Program (HOME) funds, Community Development Block Grants (CDBG), the Affordable Housing Program (AHP), and local affordable housing trust funds.

The Predevelopment Loan has enabled the Developer to complete the assemblage of land, prepare design-development documents and process entitlement applications preparatory to developing the Affordable Units. Approximately \$1.35 million in loan proceeds have been expended for this purpose. It is now requested that the balance of loan proceeds be transferred to Sonata at RiverPark Partners, L.P., a newly formed limited partnership ("Sonata Partners"), to physically develop a 53-unit affordable apartment project on a portion of Lot 17 in RiverPark ("Sonata Apartments"). To implement this arrangement, two sets of documents have been drafted: (i) Second Amendment to Affordable Housing Loan Agreement (A-7204) and Memorandum of Understanding Regarding Lot 17A (collectively the "MOU"); and (ii) Sonata Apartments Acquisition, Predevelopment and Permanent Loan Agreement ("Sonata Loan Agreement"). These documents accompany this memorandum as Attachments #1 and #2, respectively, and principal features are summarized below:

a. Transfer of Obligations. The underlying purpose of the MOU is to substitute the existing Predevelopment Loan for a new Acquisition, Predevelopment and Permanent Loan specific to the development of Sonata Apartments. The Developer will not be released from its obligations to provide Affordable Units until a variety of conditions precedent to the loan transfer have been satisfied. Furthermore, the MOU expressly provides that the Developer will not be relieved of its affordable housing obligations by virtue of the Second Amendment. In the event that the SPA allows a larger number of market rate units than currently requested, or if the RiverPark Owner Participation Agreement provides a more rigid time frame for delivery of the Affordable Units, these obligations would continue to apply.

b. Siting of Units. The current Predevelopment Loan provides flexibility in the siting of the Affordable Units on all or part of Lots 3, 11 and 12. The newly drafted MOU and Sonata Loan Agreement, on the other hand, attach the entire obligation onto Lot 17. To accomplish this, Lots 16 and 17 Property will be reconfigured by means of a lot line adjustment whereby a new Lot 17A will be created and dedicated solely for the development of Sonata Apartments. The anticipated reconfiguration appears as Attachment #4. Upon obtaining City approval of the lot line adjustment, the Developer will convey Lot 17A Property to Sonata Partners.



c. Affordable Unit Computation. Under the current Predevelopment Loan, the number of Affordable Units required is linked to the outcome of the impending SPA. At a minimum, the Developer is obligated to provide 28 affordable units. Under the proposed MOU and Sonata Loan Agreement, the minimum number of required Affordable Units is set at 53 dwellings (21 units for very low income, and 16 each for lower and moderate income households). This figure represents 15% of the total number of dwellings planned for the Resonate and Mosaic Apartment projects (e.g., 15% x 352 = 53) on Lots 3, 11 and 12. Should the SPA authorize a higher number of units, the Developer would be required to comply with applicable inclusionary requirements beyond those satisfied by Sonata Apartments.

SPECIFIC PLAN UNIT ALLOCATION	Current Adopted Specific Plan (Unit Base)		Proposed Specific Plan Amendment (Total Units)	
	District A	District D	District A	District D
Lot 3 Property	40		132	
Lot 11 Property		75		110
Lot 12 Property		75		110
Lot 16 Property		75		146
Lot 17 Property		75		146
Lots 4, 5, 7 & 8	400		400	
Total	440	300	532	512

d. Loan Structure. Under the proposed MOU and Sonata Loan Agreement, the \$3 million Predevelopment Loan would be converted from short-term financing to a long-term installment loan. The Agreement provides that Sonata Partners assume the entire amount of indebtedness, even though only \$1.65 million in loan proceeds remains to be disbursed. In short, no additional funds would be pledged by the Commission beyond the \$3 million it has already allocated to the project.

e. **Successor Authority.** The City Council and Commission entered into a Cooperation Agreement on January 18, 2011, as further clarified on March 8, 2011, by adoption of Resolution Nos. 13,351 and 147, respectively (collectively the "Accord"). By authority of the Accord, the City is obligated and authorized to continue the implementation of redevelopment within the Ormond Beach, Southwinds, Downtown Revitalization, Central Community Revitalization and HERO Project Areas (individually referred as "Project Area" and collectively as the "Project Areas"). However, the City's responsibility is expressly limited to the assets and revenues available to the Commission that have been, or in the future will be, transferred to the City. Pursuant to the Accord, the MOU transfers and assigns the Commission's financial interests in the project to the City, while the City's name has been substituted in place of the Commission in the Sonata Loan Agreement.

ENVIRONMENTAL IMPACT

An Environmental Impact Report ("EIR") was prepared for the Historic Enhancement and Revitalization of Oxnard ("HERO") Project Area under the provisions of the California Environmental Quality Act of 1970, amended ("CEQA"), and was certified by the Planning Commission and City Council in 1997 at the time of adoption of the HERO Redevelopment Plan. In accordance with CEQA Section 21090 and CEQA Guidelines Sections 15180, 15162 and 15163, no subsequent EIR or supplement to the EIR need be prepared for the First Amendment to the Loan Agreements and no further documentation is required under CEQA.

FINANCIAL IMPACT

In July of 2009, the Commission approved a special budget appropriation in the amount of \$3 million from the Housing Set-Aside fund balance for the Loan Agreements. No new funds are being requested in connection of the MOU or Sonata Loan Agreement.

CC/el

- Attachment 1: Second Amendment to Affordable Loan Agreement and MOU Regarding Lot 17A
2: Sonata Partners Loan Agreement
3: Lot 17A Configuration

Note: Attachment #2 has been provided to City Council under separate cover. Copies for review are available at the Help Desk in the Library after 6:00 p.m. on Thursday prior to the Council meeting and in the City Clerk's Office after 8:00 a.m. on Monday prior to the Council meeting.

**SECOND AMENDMENT TO
AFFORDABLE HOUSING LOAN AGREEMENT
AND
MEMORANDUM OF UNDERSTANDING REGARDING LOT 17A**

This SECOND AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT ("Second Amendment") and MEMORANDUM OF UNDERSTANDING REGARDING LOT 17A ("Lot 17A MOU"), is entered into as of _____, 2011, by and among the OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("Commission"), CITY COUNCIL OF CITY OF OXNARD, a municipal corporation ("City") E.D., LLC, a California limited liability company ("ED"), KOH, LLC, a Delaware limited liability company ("KOH"), E.D. 2, LLC, a California limited liability company ("ED 2"), KOH 12-17, LLC, a California limited liability company ("KOH 12-17"), and Sonata at Riverpark Partners, L.P., a California limited partnership ("Sonata Partners") with reference to the following facts:

RECITALS

- A. ED and KOH are the owners of that certain real property located in the City more particularly described in Attachment 1, Exhibit A which is attached hereto and incorporated herein by this reference ("Lot 3 Property").
- B. ED 2 is the owner of that certain real property located in the City more particularly described in Attachment 1, Exhibits B-1 and B-2 which are attached hereto and incorporated herein by this reference ("Lot 11 Property" and "Lot 16 Property," respectively).
- C. KOH 12-17 is the owner of that certain real property located in the City more particularly described in Attachment 1, Exhibits C-1 and C-2 which are attached hereto and incorporated herein by this reference ("Lot 12 Property" and "Lot 17 Property," respectively).
- D. ED, KOH, ED 2, and KOH 12-17 may be referred to herein individually by name and collectively as the "Developer".
- E. The Lot 3 Property, the Lot 11 Property, the Lot 12 Property, the Lot 16 Property, and the Lot 17 Property may be referred to herein individually by name or as "Lot" and collectively as the "Property" and is depicted in Attachment 2, Exhibit A incorporated herein by this reference.
- F. The Property is within the Historic Enhancement and Revitalization of Oxnard ("HERO") Redevelopment Project Area and is subject to the provisions of the Redevelopment Plan for the HERO Redevelopment Project approved and adopted by the City Council of the City of Oxnard on April 7, 1998 by Ordinance No. 2462, as amended ("Redevelopment Plan").

- G. In furtherance of the Redevelopment Plan, Commission, ED and KOH entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, and subsequently modified by a First Amendment approved on December 15, 2009 (collectively the "ED/KOH Loan Agreement"). The ED/KOH Loan Agreement, as modified, is incorporated herein by this reference. The ED/KOH Loan Agreement provides for a loan from Commission to ED/KOH in the amount of \$1,250,000 to pay a portion of predevelopment costs for the Affordable Units (as defined in the ED/KOH Loan Agreement) required in connection with the development of the Lot 3 Property, subject to all of the terms and conditions of the ED/KOH Loan Agreement.
- H. In furtherance of the Redevelopment Plan, Commission and ED 2 entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, and subsequently modified by a First Amendment approved on December 15, 2009 (collectively the "ED 2 Loan Agreement"). The ED 2 Loan Agreement, as modified, is incorporated herein by this reference. The ED 2 Loan Agreement provides for a loan from Commission to ED 2 in the amount of \$875,000 to pay a portion of predevelopment costs for the Affordable Units (as defined in the ED 2 Loan Agreement) required in connection with the development of the Lot 11 Property, subject to all of the terms and conditions of the ED 2 Loan Agreement.
- I. In furtherance of the Redevelopment Plan, Commission and KOH 12-17 entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, and subsequently modified by a First Amendment approved on December 15, 2009 (collectively the "KOH 12-17 Loan Agreement"). The KOH 12-17 Loan Agreement, as modified, is incorporated herein by this reference. The KOH 12-17 Loan Agreement provides for a loan from Commission to KOH 12-17 in the amount of \$875,000 to pay a portion of predevelopment costs for the Affordable Units (as defined in the KOH 12-17 Loan Agreement) required in connection with the development of the Lot 12 Property, subject to all of the terms and conditions of the KOH 12-17 Loan Agreement.
- J. The ED/KOH Loan Agreement, ED 2 Loan Agreement and KOH 12-17 Loan Agreement, as modified, may be referred to herein individually by name and collectively as the "Loan Agreements." Under provisions of the Loan Agreements, a First Draw totaling \$1,350,000 has been disbursed to ED and KOH to pay for predevelopment costs. Commission and Developer now desire to amend the Loan Agreements to allow all Affordable Units required under the Loan Agreements to be developed on the hereinafter defined Lot 17A Property instead of developing the Affordable Units, in whole or in part on the Lot 3 Property, Lot 11 Property or Lot 12 Property.
- K. Developer is presently processing an amendment to the RiverPark Specific Plan, which, if approved, would allow for an additional 304 dwellings on the Property. Depending upon the outcome of the Specific Plan Amendment ("SPA"), Developer will be responsible for providing between 0 and 46 units for persons and families of low and moderate income that are affordable to such households under operative provisions of the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*; "Affordable Units"). As consideration for the Loan Agreements, the Developer's

obligation to provide Affordable Units ranges from 28 to 53 dwellings, depending upon the outcome of the SPA.

- L. In furtherance of its affordable housing obligations under the Loan Agreements, Developer intends to modify the configuration of the Lot 16 Property and Lot 17 Property (“Lot Line Adjustment”), whereby a new “the Lot 17A Property” will be created as a portion of the Lot 17 Property and dedicated solely for the development of Affordable Units required to be built under the Loan Agreements (the “Sonata Apartments”). The anticipated configuration of Lot 17A and the Sonata Apartments is depicted in Attachment 2, Exhibit B. Upon obtaining City approval of the Lot Line Adjustment, and subject to approval of this Second Amendment and Lot 17A MOU, and conditions to closing between Developer and Sonata Partners, Developer intends to convey the Lot 17A Property to Sonata Partners to develop the Sonata Apartments.
- M. The City and Commission entered into a Cooperation Agreement on January 18, 2011, as further clarified on March 8, 2011, by adoption of Resolution Nos. 13, 351 and 147, respectively (collectively the “Cooperation Agreement”). In addition, by adoption of Resolution Nos. 13, 351 and 147 and a subsequent assignment and assumption agreement to be entered/entered into by and between the City and the Commission, all assets of the Commission, including funds in the Low and Moderate Income Housing Fund, were transferred and assigned to the City. By authority of the Cooperation Agreement and the assignment of the Commission’s assets, the City is obligated and authorized to continue the implementation of redevelopment within the Ormond Beach, Southwinds, Downtown Revitalization, Central Community Revitalization and HERO Project Areas, including, without limitation, the authority to enter into this Agreement and, upon satisfaction of all conditions precedent as set forth herein, the new Acquisition, Predevelopment and Permanent Loan specific to the Lot 17A Property. However, the City’s responsibility herein and in any new Acquisition, Predevelopment and Permanent Loan specific to the Lot 17A Property is expressly limited to the assets and revenues available to Commission that have been, or in the future will be, transferred to the City.
- N. To facilitate the development of Sonata Apartments, Developer seeks approval to: (i) transfer all of its obligations to produce the Affordable Units as required under the Loan Agreements to the Lot 17A Property instead of developing the Affordable Units, in whole or in part, on the Lot 3 Property, Lot 11 Property or Lot 12 Property; and (ii) provide for substitution of the Loan Agreements for a new Acquisition, Predevelopment and Permanent Loan specific to the Lot 17A Property. The purpose for creating the Lot 17A Property and forming Sonata Partners is to enhance the prospects for obtaining tax credit financing available through the State of California for the development of the Affordable Units.

NOW, THEREFORE, COMMISSION, CITY, DEVELOPER AND SONATA PARTNERS COVENANT AND AGREE AS FOLLOWS:

1. Purpose of this Second Amendment. This Second Amendment and Lot 17A MOU is in furtherance of and is subject to requirements of the provisions of the California Community

Redevelopment Law (California Health and Safety Code Sections 33000 *et seq.*) (“CRL”) and the Redevelopment Plan, and its specific purpose is to: (i) allow all Affordable Units required under the Loan Agreements to be developed on the Lot 17A Property instead of developing the Affordable Units, in whole or in part, on the Lot 3 Property, Lot 11 Property or Lot 12 Property; (ii) provide for substitution of the Loan Agreements for a new Acquisition, Predevelopment and Permanent Loan specific to the Lot 17A Property (the “Lot 17A Loan”); and (iii) to assign Commission’s rights and obligations in the Loan Agreements to City. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreements. The affordability covenants will remain on the Lot 3 Property, Lot 11 Property and Lot 12 Property until such time as all of the Affordable Units have been completed.

Commission has certain rights and obligations (the “Rights” and the “Obligations,” respectively) with regard to the Loan Agreements. Such Rights and Obligations are described in the Loan Agreements. The Loan Agreements are incorporated herein by this reference as though fully set forth herein. Loan Agreements, as used herein, shall mean, refer to and include the Loan Agreements, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the Loan Agreements. Commission has the right and desires to assign the Rights and Obligations to City, and City desires to assume the Rights and Obligations. For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, effective as of the date of this Agreement, Commission hereby assigns all of the Rights and Obligations to City. City hereby accepts the assignment of the Rights from Commission and assumes all of the Obligations arising from and after the date of this Agreement; provided, however, that the City’s responsibility is expressly limited to the assets and revenues available to Commission that have been, or in the future will be, transferred to the City. Commission and City acknowledge that such assignment and acceptance shall not relieve Commission of its duty to comply with the Obligations, which Obligations shall remain fully enforceable against the Commission.

2. Lot 17A Loan. All of the following must be fully satisfied as conditions precedent to approval, execution and recordation of the Lot 17A Loan Agreement and associated documents contained in Attachment 3 hereto and incorporated herein by this reference:

a. Partnership Formation. All entities which comprise Sonata Partners shall be formed and be in good standing with the California Secretary of State.

b. Eligible Costs. Developer and Sonata Partners shall evidence, to the reasonable satisfaction of the City’s Director of Community Development (“Director”), that Acquisition and Predevelopment Costs attributable to the Lot 17A Property for the purpose of developing the Sonata Apartments (and as defined in the Lot 17A Loan Agreement and incurred prior to execution of the Lot 17A Loan Agreement) equals or exceeds the sum of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000).

c. Lot 17A Creation. Developer shall have lawfully created the Lot 17A Property and evidenced, to the reasonable satisfaction of Director, that the newly created Lot 17A

Property is suitable for developing all of the Affordable Units required under the Lot 17A Loan Agreement.

d. Sonata Ownership. Sonata Partners shall have acquired title to the Lot 17A Property and provided City, at the expense of Sonata Partners, an ALTA lender's policy of title insurance naming City as the insured with liability not less than the principal amount of the Lot 17A Loan, issued by an insurer satisfactory to City, excepting only such defects, liens, encumbrances, and exceptions as are approved by Director, and containing such endorsements as City may reasonably require.

e. Loan Coverage. Sonata Partners shall have evidenced to the reasonable satisfaction of Director that the amount of the Lot 17A Loan, in combination with all other debt secured on the Lot 17A Property as allowed in the Lot 17A Loan Agreement, shall not exceed ninety percent (90%) of the fair market value of the Lot 17A Property as determined by a current appraisal of the Lot 17A Property prepared at the expense of Sonata Partners by an independent certified M.A.I. appraiser with at least ten years relevant experience who is acceptable to Director.

f. Deferred Action. Developer shall not have exercised its rights under the Loan Agreements with respect to: (i) the receipt or expenditure of any funds in connection with the Phase 2 Loan Draw as authorized in Section 2.2.b.ii. of the Loan Agreements; or (ii) the designation or re-designation of Lots upon which the Affordable Units will be developed as authorized in Section 2.2.a.v. of the Loan Agreements.

g. Loan Documentation. Sonata shall have executed and delivered to City all documents, instruments, and policies required under the Lot 17A Loan Agreement in a form acceptable to City, including but not limited to: (i) the Implementing Documents (as defined in the Lot 17A Loan Agreement); (ii) a certificate of insurance or copy of the insurance policy as required by Section 9.2; (iii) all documents relating to Sonata Partners' authorization of the Lot 17A Loan as required by Section 3.15(d); (iv) an environmental assessment of the Lot 17A Property with evidence that necessary remediation has been performed as required by Section 3.15(f); (v) a legal opinion evidencing the binding effect of the Lot 17A Agreement as required by Section 3.15(g); and (vi) an agreement duly executed and recorded by the holders of all Permitted Mortgages (as defined in the Lot 17A Loan Agreement) as required by Section 3.15(h).

h. Good Standing. There exists no default, nor any act, failure, omission or condition that would constitute a default by Developer or Sonata Partners under their respective loan agreements with City.

i. Regulatory Agreement. An amendment has been recorded to the Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions), revising the Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions) in accordance with Section 5., below.

3. Document Execution and Recordation. Immediately upon satisfying the conditions stipulated in Section 2 of this Second Amendment, Commission, City, Developer and Sonata Partners agree as follows: (i) City and Sonata Partners shall execute and record (as applicable) the Lot 17A Loan Agreement and associated documents contained in Attachment 3, and all such documents and instruments shall be recorded against the Lot 17A Property in the lien priority as required by the Lot 17A Loan Agreement (the "Lot 17 Actions"); and (ii) City and Developer shall execute and record Termination Agreements (prepared by the City Attorney) that provide for cancellation of the existing Loan Agreements referred to in Recitals G, H and I hereinabove, cancellation of the existing associated Promissory Notes, and re-conveyance of the associated Deeds of Trust. The Lot 17A Actions and Termination Agreements shall be recorded concurrently; neither shall be effective until both have been recorded. Furthermore, the revisions to the Fourth Amendment to the Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions; described in Section 5 below and hereinafter referred to as the "Fifth Amendment") will remain on the Lot 3 Property, Lot 11 Property and Lot 12 Property until such time as all of the Affordable Units required under the Fifth Amendment have been completed. Furthermore, the affordability covenants required in the Fifth Amendment will remain on the Lot 3 Property, Lot 11 Property and Lot 12 Property until such time as all of the Affordable Units required under the Fifth Amendment have been completed.

4. Timely Performance. Developer and Sonata Partners shall satisfy the conditions precedent stipulated in Section 2 of this Second Amendment and Lot 17A MOU, and shall execute the documents stipulated in Section 3, by no later than June 30, 2012. This deadline may be extended by Director in writing for good cause shown, provided that (i) a written request, fully executed by Developer and Sonata Partners, is filed with City prior to the expiration date; (ii) the request includes a statement of reasons for the time limit extension request and affirms the parties' agreement to continue and abide by the terms and conditions of this Second Amendment and Lot 17A MOU and the Loan Agreements; and (iii) such extension may not exceed ninety (90) days.

5. Revisions to the Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions) (hereinafter referred to as the "Fifth Amendment"). The Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions), attached to each Loan Agreement, is hereby revised as follows and as otherwise necessary to implement the purposes of this Second Amendment and Lot 17A MOU (as determined by the City Attorney):

a. The Recitals are hereby revised to reflect the language of the Recitals of this Second Amendment and Lot 17A MOU.

b. The language of the first two paragraphs of Section 1.a.3.1 is hereby revised to read as follows:

“3.1 Additional Affordable Housing Obligations. Commission, E.D., LLC, a California limited liability company ("ED"), and KOH, LLC, a Delaware limited liability company ("KOH"), entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, as amended by that certain First Amendment and Second Amendment dated as of

December 15, 2009, and _____, _____, respectively (collectively, the “ED/KOH Loan Agreement”), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement (“Lot 3 Property”). Commission and E.D. 2, LLC, a California limited liability company (“ED 2”), entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, as amended by that certain First Amendment and Second Amendment dated as of December 15, 2009, and _____, _____ respectively (collectively, the “ED 2 Loan Agreement”), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement (“Lot 11 Property”). Commission and KOH 12-17, LLC, a California limited liability company (“KOH 12-17”), entered into that certain Affordable Housing Loan Agreement dated as of July 21, 2009, as amended by that certain First Amendment and Second Amendment dated as of December 15, 2009, and, _____, _____ respectively (collectively, the “KOH 12-17 Loan Agreement”), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement (“Lot 12 Property”). The City is the successor-in-interest to the Commission under the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement.

In addition to, and without modifying, amending, limiting or in any way changing the affordable housing requirements set forth in Section 1.a.3., above, as a material part of the consideration for the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement (as applicable): as to the Lot 3 Property, ED and KOH covenant and agree for themselves, their successors, their assigns, and every successor in interest to the Lot 3 Property or any part thereof, as to the Lot 11 Property, ED 2 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 11 Property or any part thereof, and, as to the Lot 12 Property, KOH 12-17 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 12 Property or any part thereof, that for a period of fifty-five (55) years commencing upon the issuance of a certificate of occupancy by the City for the Affordable Units (as separately defined in each the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement) all of the following shall apply to the Lot 3 Property, Lot 11 Property, and Lot 12 Property (as applicable):”

c. The language of Section 1.a.3.1.a. and 1.a.3.1.s are hereby revised to read as follows:

“a. A prescribed number of dwellings developed on each Lot shall be Affordable Units as determined by operation of Section 1.3 of the Loan Agreement. As agreed upon by Developer in that certain letter agreement dated February 8, 2010, which is addressed to Commission and executed by Developer (“Letter Agreement”), at a minimum, Developer shall provide twenty-eight (28) Affordable Units (4 additional units then required by the Loan Agreement). The Letter Agreement is hereby incorporated by reference. Pursuant to the Letter Agreement, all 28 Affordable Units shall be developed and constructed on the Lot 3 Property. At Developer’s option, and subject to the prior written approval of Commission as set forth in Section 1.7: (i) all or a portion of the Affordable Units may be constructed on the Lot 3 Property, Lot 11 Property and/or Lot 12 Property; or (ii) all of the Affordable Units may be constructed on the Lot 17A Property (subject to the provisions of the Second Amendment).

s. If Director approves an alternative Affordable Housing Site in accordance with Section 1.7 of the Loan Agreement and, as a result, no Affordable Units will be developed on either the Lot 3 Property, Lot 11 Property or Lot 12 Property, then, upon written request from Developer and only following issuance by the City of certificates of occupancy for one hundred percent (100%) of the Affordable Units, Director shall execute such documents as may be necessary to release the applicable affordable housing covenants in the Fourth Amendment to this Agreement Containing Covenants from the Lots on which no Affordable Units are developed, all in such form, substance and content as approved by the City Attorney.”

6. Standing of Sonata Partners. Sonata Partners is a signatory party to this Second Amendment and Lot 17A MOU expressly for those matters covered in Sections 1, 2, 3, 4 and 9 herein; provided, further, that nothing herein shall be construed or interpreted as making Sonata Partners a party to the Loan Agreements.

7. Obligations of Developer. This Second Amendment and Lot 17A MOU shall not relieve Developer of any obligations that apply by operation of the Owner Participation Agreement (entered into by and between Commission and RIVERPARK A, L.L.C., a Delaware limited liability company, dated as of June 12, 2001, and amended from time to time; “OPA”), or the Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions; as referenced and amended in Section 5 above) including, but not limited to: (i) the number of Affordable Housing Units that Developer is required to provide; or (ii) the time period in which the Affordable Housing Units are to be developed.

8. Counterparts. This Second Amendment and Lot 17A MOU may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Second Amendment and Lot 17A MOU, which, with all attached signature pages, shall be deemed to be an original agreement.

9. Loan Agreement in Full Force and Effect. Except as otherwise expressly modified herein, the terms and conditions of the Loan Agreements shall remain unmodified and in full force and effect. From and after the effective date of this Second Amendment and Lot 17A MOU, all references to the Loan Agreements shall mean the Loan Agreements as amended by this Second Amendment and Lot 17A MOU.

10. Further Assurances. Developer and Sonata Partners shall promptly and duly execute and deliver to City and Commission such further documents and assurances and take such further action as City and/or Commission may from time to time reasonably request.

11. Effective Date. The effective date of this Second Amendment and Lot 17A MOU shall be the date that each of the following has occurred: (i) the date this Second Amendment and Lot 17A MOU is approved and executed by Commission and City; (ii) the date this Second Amendment and Lot 17A MOU is fully executed by Developer and Sonata Partners; and (iii) Developer or Sonata Partners and all other property owners in Planning District D of the Specific Plan (and Planning District A if requested by Commission General Counsel) for whose land which the “Residential: High” designation applies shall have furnished Director with a binding

written agreement (in recordable form if requested by the City Attorney) for the benefit of City allocating a sufficient number of "Residential: High" dwelling units allowed under the Specific Plan, resulting in the transfer of at least fifty-three (53) dwelling units to the Lot 17A Property.

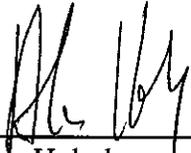
IN WITNESS WHEREOF, Commission, City, Developer and Sonata Partners have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, as of the date first set forth hereinabove.

COMMISSION:

OXNARD COMMUNITY DEVELOPMENT
COMMISSION

By: _____
Dr. Thomas E. Holden, Chairman

APPROVED AS TO FORM:

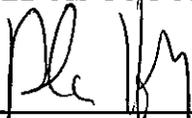
By:  _____
Alan Holmberg
General Counsel

CITY:

CITY OF OXNARD

By: _____
Dr. Thomas E. Holden, Mayor

APPROVED AS TO FORM:

By:  _____
Alan Holmberg
City Attorney

DEVELOPER:

E.D., LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

E.D. 2, LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

KOH, LLC, a Delaware limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

KOH 12-17, LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

SONATA PARTNERS:

SONATA AT RIVERPARK PARTNERS, L.P.,
a California limited partnership

By: Central Valley Coalition for Affordable
Housing, a California non-profit public
benefit corporation
Its Managing Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer
Date: _____

By: Sonata at Riverpark Developers, LLC,
a California limited liability company
Its Administrative General Partner

By: _____
Name: Frank Fonseca
Its: Manager
Date: _____

ATTACHMENT 1
SECOND AMENDMENT AND LOT 17A MOU

EXHIBITS A, B and C

Legal Descriptions

[Behind this page.]

EXHIBIT A
Legal Description – Lot 3

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 3 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-155

EXHIBIT B-1
Legal Description – Lot 11

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 11 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-065

EXHIBIT B-2
Legal Description – Lot 16

[To be Inserted from Title Report]

EXHIBIT C-1
Legal Description – Lot 12

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 12 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-075

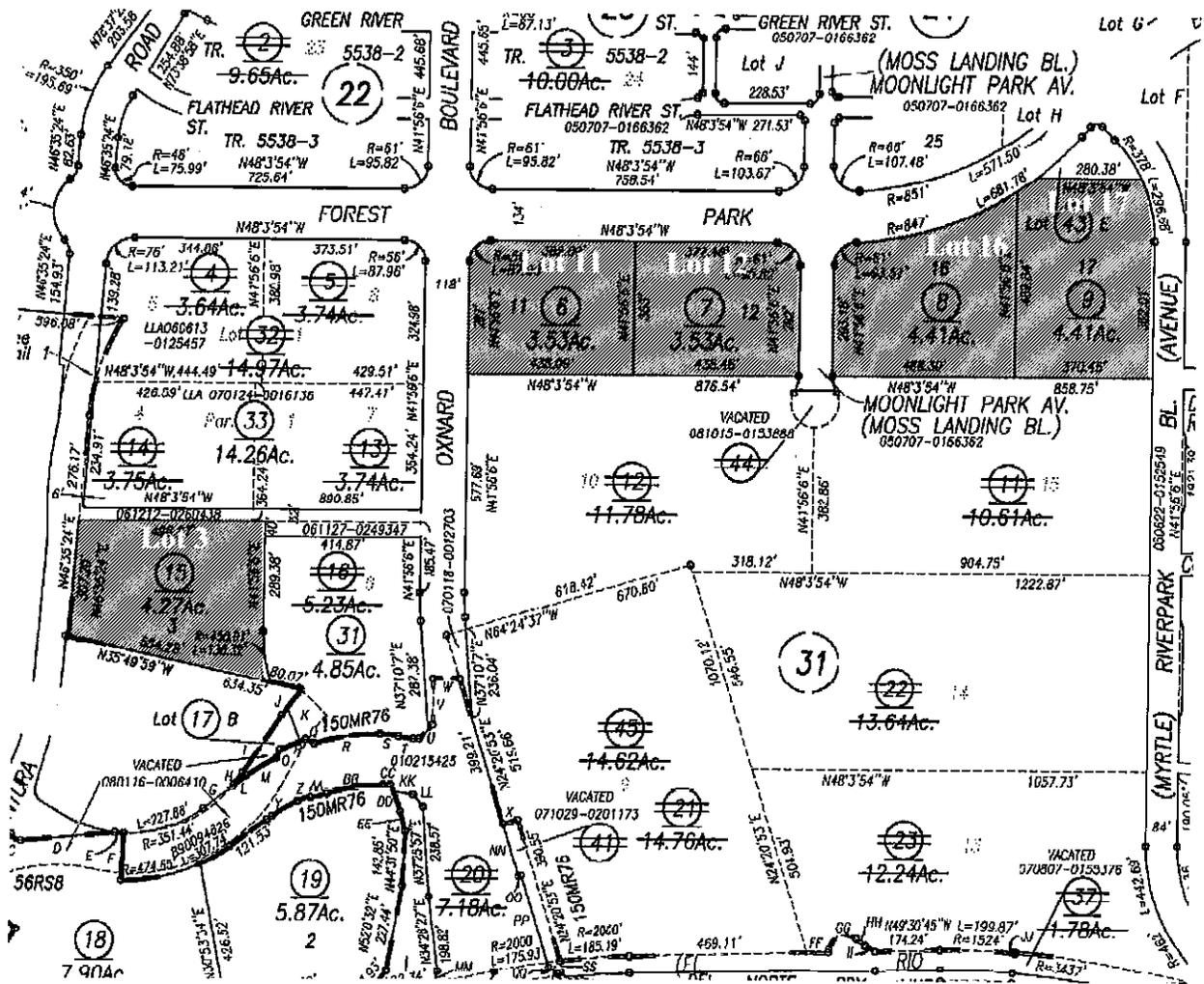
EXHIBIT C-2
Legal Description – Lot 17

[To be Inserted from Title Report]

ATTACHMENT 2

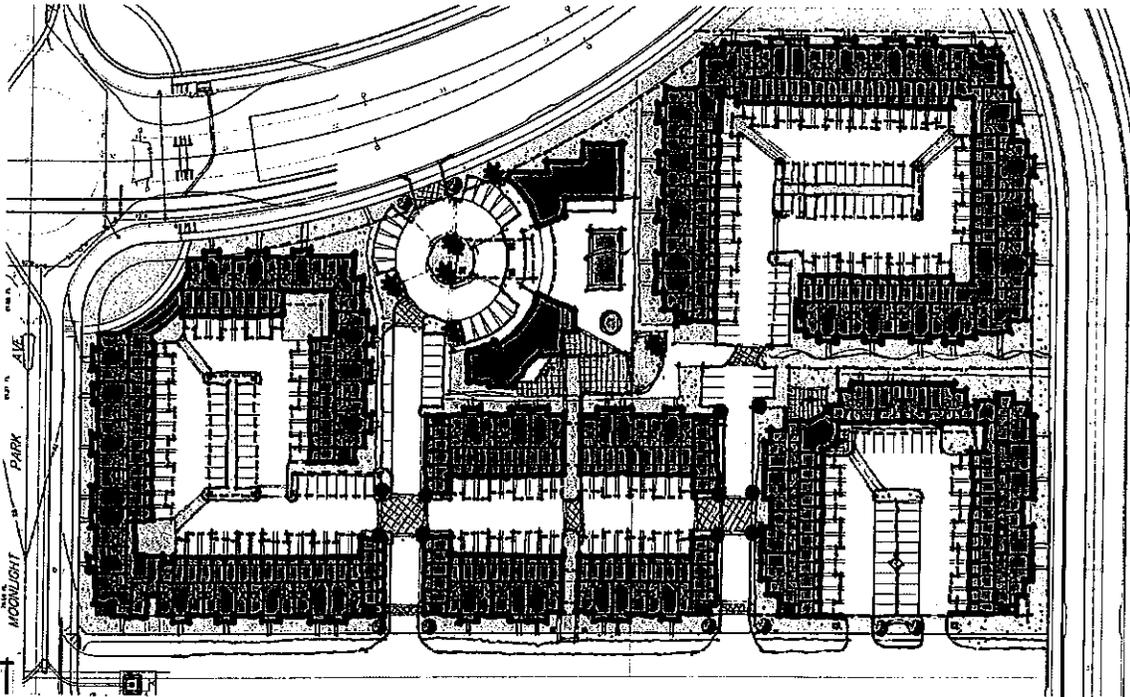
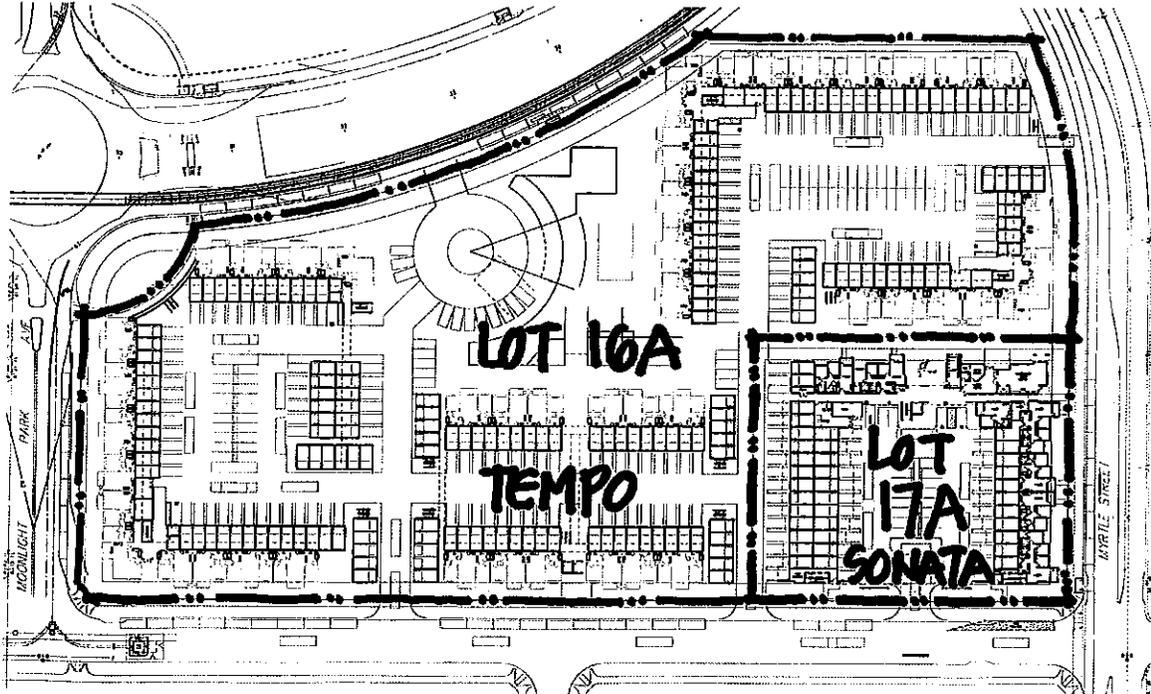
SECOND AMENDMENT AND LOT 17A MOU

Exhibit A: Property Map



ATTACHMENT 2
SECOND AMENDMENT AND LOT 17A MOU

Exhibit B: Lot Line Adjustment



ATTACHMENT 3
SECOND AMENDMENT AND LOT 17A MOU

LOT 17A LOAN AGREEMENT

Including Exhibits A through I

[To be Inserted]

ATTACHMENT 3

LOT 17A CONFIGURATION

