



Meeting Date: 4/26/11

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

Prepared By: Curtis P. Cannon *CC* Agenda Item No. **0-2**

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

**DATE:** April 20, 2011

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

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

**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. 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 an 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 #3. 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

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

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.

**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. It is also noteworthy that the Loan Agreement includes Payments in Lieu of Taxes (“PILOT”) due to the tax exempt status of the development entity. Given the uncertain future of tax revenues to continue redevelopment resulting from State budget deficits, PILOT is given priority in the distribution of residual receipts to the Commission. The lawfulness of this structure and its relationship to the tax-exempt status of the project is addressed in Attachment No. 4. Attachment No. 4 also contains responses to a number of City Council questions concerning this 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.

**f. LMIHF.** Section 33334.3(j) of the California Health and Safety Code limits the use of Low and Moderate Income Housing Funds (“LMIHF”) to the financial “gap” required to maintain affordability taking into account the reasonable availability of private or commercial financing. As depicted in the table below, the Sonata Apartments project entails layered financing from a number of sources. Most notably, the LMIHF contribution amounts to less than 25% of total financing which represents the difference between total costs and the typical 75% loan-to-value threshold imposed by commercial lenders. Moreover, without LMIHF and repayment on the basis of residual receipts, the project could not be made affordable, thus satisfying the requirements of H&S Code Section 33334.3(j). Since the amount of LMIHF is well below 50% of the total source and amount of funds, the findings required under 33334.3(j) are not necessary and have been removed from the recommendation contained in the previous staff report.

<b>Funding Sources</b>	<b>Sonata Apartments Proposal</b>	
Tax Credits	\$ 9,925,701	60%
Permanent Loan	\$ 2,840,000	17%
Deferred Developer Fees	\$ 837,321	5%
Deferred Interest		
City/CDC (LMIHF)	\$ 3,000,000	18%
<b>Total</b>	<b>\$ 16,603,022</b>	<b>100%</b>

**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
- #4: Response to Questions from Councilmembers

Note: Attachments #2 & #4 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.