



Meeting Date: 12/15/09

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:

Prepared By: Curtis Cannon, Community Development Director ^{K.H. (for)} Agenda Item No. I-3
 Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other N/A

DATE: December 3, 2009

TO: Community Development Commission

FROM: Curtis P. Cannon, Community Development Director ^{Kimberly Hamer (for)}
Community Development Department

SUBJECT: RiverPark Affordable Housing Loan Agreements

RECOMMENDATION:

That Community Development Commission ("Commission"):

1. Approve and authorize the Chairman or Community Development Director ("Director") to execute a First Amendment to Affordable Housing Loan Agreement (A-7204) with E.D. LLC/KOH, LLC, E.D. 2, LLC and KOH 12-17, LLC, in substantially the form presented to the Commission with such non-substantive changes as may be approved by the Director and Commission General Counsel.
2. Authorize the Director or designee to prepare, revise and sign all documents necessary and appropriate to carry out and implement the Affordable Housing Loan Agreement and First Amendment thereto, and to administer the Commission's obligations, responsibilities and duties to be performed hereunder.

DISCUSSION

At its meeting of July 21, 2009, the Commission approved three separate predevelopment loan agreements for E.D. LLC/KOH, LLC, E.D. 2, LLC and KOH 12-17, LLC (collectively the "Developer") totaling \$3 million from Housing Set-Aside Funds for the Resonate and Mosaic Apartment projects located within RiverPark (collectively the "Loan"). The Loan provides for the planning and design of dwellings affordable to persons of 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. An impending amendment to the RiverPark Specific Plan ("SPA"), if approved, would allow for an additional 304 dwellings at

RiverPark. The number of Affordable Units resulting from the SPA would range from 24 to 53 dwellings on the Resonate and/or Mosaic Apartment project sites. In no event would the number of Affordable Units be less than 24.

The purpose of the First Amendment is to provide flexibility as to the computation of Affordable Units relative to the SPA and use of funds, the siting of the Affordable Units and the real property to be used as collateral to secure each Loan, the disbursement of Loan proceeds for predevelopment costs that are inseparable from the planning and design of unrestricted dwellings, and similar changes necessary and appropriate to facilitate continued implementation of the RiverPark project. To accomplish these objectives, the amendment request would entail revisions to each of the 3 Loan Agreements, Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions), Promissory Note, and Notice of Affordability Restrictions on Transfer of Property. The principal changes affecting these documents, in the order they generally appear in Attachment #1, provide as follows:

- a. **Affordable Unit Computation.** The number of Affordable Units required is linked to the outcome of the impending SPA and number of Loan Draws. At a minimum, the Developer would be obligated to provide 24 Affordable Units (computed as 15% of the incremental increase in the number of units proposed under the SPA; $15\% \times 162 = 24$). In exchange, the Developer would have access to 45% of the \$3 million Loan in the Phase 1 Draw. If the SPA is approved and the Developer exercises the Phase II Loan Draw, the number of Affordable Units shall be computed as 15% of the total number of dwellings authorized for the Resonate and Mosaic Apartment projects (e.g., $15\% \times 352 = 53$).
- b. **Loan Draws.** The \$3 million Loan would be disbursed in two distinct increments (“Loan Draws”). The Phase 1 Loan Draw, equal to 45% of the total \$3 million Loan authorization (equal to the percentage of Affordable Units required under Phase 1 compared to the total potential number under Phase 2: $24 \text{ units} / 53 \text{ units} = 45\%$), would become available to the Developer immediately upon the execution of the First Amendment and satisfaction of conditions precedent (e.g., document recordings, title insurance, etc.). The Phase II Loan Draw, encompassing the balance of the \$3 million Loan authorization, would become available after action on the SPA, if approved.
- c. **Unit Siting.** The Affordable Units, in all or part, may be located on Lots 3, 11 and 12. This provides flexibility in the land planning and design process and may result in a stand-alone affordable housing project. Any change in siting that is not otherwise approved in connection with the SPA would be subject to the City’s design review and entitlement process. The size and interior features of Affordable Units, when not constructed on the same site with unrestricted market rate dwellings, need not be the same as or equivalent to those in non-restricted units in the project so long as they are of like size relative to numbers of bedrooms and bathrooms.
- d. **Loan Collateral and Disbursement.** The Developer may pledge all or part of Lots 3, 11 or 12 for Loan collateral so long as Loan coverage and security is equal or better than what the current

Loan Agreements provide. In addition, where predevelopment costs for the Affordable Units are inseparable from costs associated with the non-restricted dwellings (as in the case where the project is planned, designed and constructed as an integral whole on the same site), then the Loan proceeds shall be disbursed on a prorated basis as to that percentage that the Affordable Units represent of the total number dwellings developed as part of the project.

- e. **Implementing Details.** In order to implement the First Amendment, further modification in Loan documentation will be necessary. Most notably, one or all three owners of Lots 3, 11 and 12 may opt to transfer and consolidate their Affordable Unit obligations onto one of these three properties. In such event, the authority to utilize Loan proceeds will need to be transferred to the site on which the Affordable Units are to be located, as well as entitling the transferring owner full access to its respective share of Loan proceeds. This scenario will require further revision to the Loan documents, and the First Amendment delegates administrative authority to the Director and Commission General Counsel to implement these changes.

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 nor 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 First Amendment.

CPC/el

Attachment 1: First Amendment to Affordable Loan Agreement

Note: Attachment #1 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.