

Supplemental Material

For

City of Sacramento

City Council
Financing Authority
Housing Authority
Redevelopment Agency

Agenda Packet

Submitted: 3/11/10

For the Meeting of:

- Additional Material
- Revised Material

TITLE: TOWNSHIP 9 PROPOSITION 1C GRANT AGREEMENTS

**THIS REPORT HAS BEEN REVISED AND UPDATED. PLEASE
REPLACE THIS REPORT IN ITS ENTIRETY.**

Contact Information:

RACHEL HAZELWOOD, 808-8645
JIM RINEHART, 808-7223

Please include this supplemental material in your agenda packet. This material will also be published to the City's Internet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604, (916) 808-7200.



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Staff Report
March 16, 2010

**Honorable Mayor and
Members of the City Council**

Title: Agreement: Township 9 Proposition 1C Grant Agreements

Location/Council District: District 1, River District

Recommendation: Adopt a Resolution: 1) establishing the Township 9 Infill Infrastructure Capital Improvement Project (B18219000); 2) establishing a \$30 million capital grant (Fund 3704) revenue and expenditure budget in B18219000 to be funded with the Proposition 1C grant funds; 3) approving an Assignment Agreement for the Proposition 1C Infill Infrastructure Grants for the Township 9 Project to Capitol Station 65, LLC; and 4) approving a Loan Commitment to Township 9 Sacramento L.P. for the St. Anton Affordable Housing Parking Garage.

Contact: Rachel Hazlewood, Senior Project Manager (808-8645)
Sheryl Patterson, Senior Deputy City Attorney (808-7292)

Presenters: Rachel Hazelwood

Department: Economic Development

Division: Downtown Group

Organization No: 18000

Description/Analysis

Issue: In 2008 and 2009, the City was awarded Proposition 1C Infill Infrastructure grants from the State Department of Housing and Community Development (HCD) for the Township 9 project. Part of the HCD grants provides funds for project infrastructure and part is in support of the affordable housing project. This action establishes a Capital Improvement Project (CIP) revenue and expenditure budget for the grant funds. It also approves two agreements to convey the City's interests in the grants. An Assignment Agreement would assign the City's grant interest in the infrastructure funding to the property owner and developer, Capitol Station 65, LLC. A Loan Commitment would convey the City's grant interest in the parking garage component to the affordable housing developer, Township 9 Sacramento L.P. (St. Anton).

The City, on behalf of the Township 9 project, requested an allocation of \$30 million in Proposition 1C funds as a Qualified Infill Area. In June, 2008, the City was awarded \$19.1 million (round one) and in July, 2009, the City was awarded the additional \$10.9 million (round two) funding. The City has executed the grant agreement with HCD for the round one award and is expected to execute the grant agreement for the second round award shortly. The terms of the grant agreements for round one and round two are the same with the exception of the number of market-rate and affordable housing units required to be developed. At the time the grant applications were approved, the City Council authorized the City Manager to execute the HCD Proposition 1C grant agreements for the Township 9 project. The proposed actions would implement the round one grant agreement by allocating funding for the authorized improvements to be constructed by the respective developers.

The Proposition 1C grants were awarded for specified infrastructure improvements and for the parking garage that is to be constructed as an integral part of the affordable housing project. The specific improvements to be funded with the Proposition 1C grant funds are listed in the Background, Attachment 1.

The HCD grant agreement allows the City to provide the Proposition 1C grant funds to Capitol Station 65, LLC as the grant subrecipient for the infrastructure projects and to Township 9 Sacramento L.P. as the grant subrecipient for the affordable housing parking garage improvement. St. Anton has requested that the City separately loan its portion of the Proposition 1C grant proceeds. This loan would be forgiven over its 55 year term; the developer would not be obligated to repay the loan proceeds except in the event of a default.

The combined \$30 million in HCD grants will provide \$22.8 million to fund infrastructure improvements, including streets and utilities, the light rail station and park development. For the affordable housing project, the Proposition 1C funding will cover the \$7.2 million cost to construct the parking garage.

In addition to the Proposition 1C funding, prior actions of the City Council in support of the Township 9 project have provided \$2.2 million in CIP funding for the reconstruction of North 7th Street (Resolution No. 2008-283) and \$1.1 million in Community Development Block Grant-Recovery Act (CDBG-R), stimulus funding, for building demolition (Resolution No. 2009-321). The CDBG-R funds are being reprogrammed in the CDBG Action Plan amendment to support the infrastructure improvements needed to serve the affordable housing units.

The City previously allocated \$3 million in Housing Trust Funds (Resolution No. 2009-225) for construction of the housing units and St. Anton intends to seek additional SHRA loans in the amount of approximately \$2.1 million, depending on the final cost estimates and availability of other funding sources. SHRA will identify other housing funds which could be made available for this project to the extent additional gap financing is required.

Policy Considerations: The recommendation is consistent with the City Council direction and actions regarding the Proposition 1C grant applications for the

Township 9 project on March 18, 2008 (Resolution No. 2008-164) and on March 10, 2009 (Resolution No. 2009-147). The recommendation is also consistent with the City's Smart Growth Principles, the River District Redevelopment Implementation Plan, the 2002 Infill Strategy and the transit-supportive housing policies in the 2030 General Plan.

Environmental Considerations:

California Environmental Quality Act (CEQA): The environmental impacts of construction of the infrastructure improvements, the affordable housing project, and the market-rate housing, which are the subject matters of the agreements referenced in this report, were included in the Township 9 Project Environmental Impact Report (EIR), which was certified on August 28, 2007 (Resolution No. 2007-641). There have been no project changes or new information of substantial importance which would require reevaluation of the EIR for compliance with CEQA to support the proposed actions.

Sustainability Considerations: The improvements to be funded with the Proposition 1C grant funds have been reviewed for consistency with the goals, policies and targets of the City's Sustainability Master Plan and the 2030 General Plan. The improvements comply with many of the goals, in particular Goal Number Six - Urban Design, Land Use, Green Building and Transportation specifically by reducing dependence on the private automobile by providing efficient and accessible public transit and transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy City.

Commission/Committee Action: NA

Rationale for Recommendation: The Township 9 project is a major infill and transit-oriented development project, with 15% of the housing to be built for low and very low income households (179 affordable units plus one manager unit) per the requirements of the Proposition 1C HCD grants. It is expected to promote increased transit ridership in Sacramento. The Proposition 1C HCD grants will fund a portion of the infrastructure needed for the housing development, the future light rail station on Richards Boulevard, Riverfront Park, the North 7th Street Parkway and the parking garage for the affordable housing project.

Financial Considerations: The Township 9 infrastructure (light rail station, streets, utilities and park facilities) is estimated to cost \$27.6 million. The two Proposition 1C HCD grants will help fund \$22.8 million of these costs. In addition, under the project's traffic mitigation obligations, the developer has to dedicate the land for the light rail station and track alignment to Regional Transit at no cost. The following table outlines the funding for the infrastructure project.

Township 9 Infrastructure			
City Funding			
<u>Project Number</u>	<u>Fund Name / Number</u>		<u>Budget</u>
B18219000	Other Capital Grant (Prop 1C)	3704	22,800,000
T15088800	Measure A	2001	2,200,000
Subtotal City Funding:			25,000,000
Other Funding Sources			Budget
SHRA	CDBG-R	2700	1,100,000
TBD	Developer Funding	3702	1,500,000
Subtotal Other Funding:			2,600,000
Total Township 9 Infrastructure Funding:			<u>\$27,600,000</u>

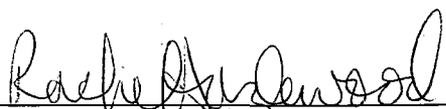
For the affordable housing project, the total cost for the 180 unit project is estimated at \$37.6 million (see table below). The developer, St. Anton, will seek tax credits and a 4% bond allocation totaling \$22.4 million. The City has already allocated \$3 million in housing trust funds for this housing project. The round one Proposition 1C grant will fund \$7.2 million of these costs for the parking garage under a loan agreement. Up to an additional estimated \$2.1 million may be needed for the financing gap.

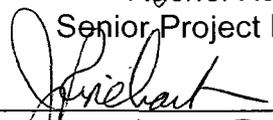
Township 9 Housing (Estimated)			
City Funding			
<u>Project Number</u>	<u>Fund Name / Number</u>		<u>Budget</u>
B18219000	Other Capital Grant (Prop 1C)	3704	7,200,000
Other Funding Sources (not budgeted through the City)			Budget
Tax Credits/Bond Loan		Private	22,400,000
Housing Trust Funds		SHRA	3,000,000
Developer Funding		Developer	2,900,000
Other Housing Funds (TBD)		SHRA	<u>2,100,000</u>
Subtotal Other Funding:			30,400,000
Total Township 9 Housing Funding:			<u>\$37,600,000</u>

The City is the recipient of the Proposition 1C grants and is responsible for delivery of the infrastructure improvements and the market rate and affordable housing units. HCD recognizes in the grant agreements that the City will delegate its obligations to Capitol Station 65, LLC, as the master developer and to Township 9 Sacramento L.P. as the affordable housing developer under the Assignment Agreement and the loan; however, the City is ultimately responsible for the performance of its grant subrecipients. HCD will record a covenant on the property to insure that the grant obligations can be enforced against existing and future property owners. The City's Assignment Agreement includes performance bonds, indemnity obligations and

other remedies in the event of a default by Capitol Station 65, LLC. The \$7.2 million loan to Township 9 Sacramento L.P. for the parking garage will not close until SHRA determines that the affordable housing project has secured all of the funding required and is ready to proceed into construction.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: 
Rachel Hazlewood
Senior Project Manager

Approved by: 
James R. Rinehart
Director of Economic Development

Recommendation Approved:

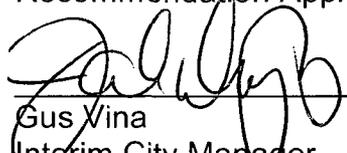

Gus Vina
Interim City Manager

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Attachment 1

Background

The Proposition 1C funding is provided by HCD for specified improvements necessary for development of both the affordable and the market rate housing which are part of the Township 9 project. The Proposition 1C grant funds would be used for the following Township 9 project components:

Infrastructure Improvements

Proposition 1C Round One Grant Scope of Work:

1. North 7th Street Light Rail Station - Demolition of the existing buildings and improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.
2. Richards Boulevard - Improvements along Richards Boulevard, between North 5th Street and North 7th Street, and demolition of existing improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.
3. North 7th Street/Parkway - Reconstruction and expansion of North 7th Street between Richards Boulevard and the American River Parkway, including demolition of existing improvements, site preparation, installation of underground utilities including sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signalization, signage, striping, landscaping, site furniture, and water features.
4. Internal Streets "D", "E", and "F" - As shown on the approved tentative map as necessary to support development of the affordable housing project, including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.
5. Riverfront Drive – Preliminary improvements to Riverfront Drive, between North 5th Street and North 7th Street, including site preparation and grading.

Proposition 1C Round Two Grant (\$10.9 million) Scope of Work:

6. Internal Streets "D", "E", and "F" - Completion of residential streets, including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.
7. Riverfront Drive – Completion of improvements to Riverfront Drive, including site preparation, grading and the installation of underground utilities including sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, landscaping, and site furniture.

8. Riverfront Park – Development of the park abutting the levee, including site preparation, grading excavation and soil import, and the installation of underground utilities including sewer, water, and storm drain, curb, gutter, sidewalk, paving, signage, striping, landscaping, site furniture, water features and dry utilities.

Affordable Housing Project (180 units)

HCD Round One Grant Scope of Work:

1. Parking Garage – Construction of a 180 space structured parking garage designed to support the housing units to be located above the garage.

RESOLUTION NO. 2010-

Adopted by the Sacramento City Council

ESTABLISHING A CAPITAL IMPROVEMENT PROJECT AND A REVENUE AND EXPENDITURE BUDGET FOR THE TOWNSHIP 9 INFILL INFRASTRUCTURE PROJECT, APPROVING AN ASSIGNMENT AGREEMENT FOR TOWNSHIP 9 INFILL PROPOSITION 1C HCD GRANTS WITH CAPITOL STATION 65, LLC, AND APPROVING THE LOAN COMMITMENT WITH TOWNSHIP 9 SACRAMENTO L.P. FOR THE AFFORDABLE HOUSING PARKING GARAGE

BACKGROUND

- A. The Township 9 project is a catalyst, transit-oriented, mixed-use development project located in the River District along Richards Boulevard between North 5th Street and North 7th Street. The Township 9 project will include a total of 2,350 housing units, of which 179 units will be affordable to low, very low and extremely low income households, and approximately 800,000 square feet of office, and 150,000 square feet of neighborhood serving commercial uses. The Township 9 project will be served by the first phase of the Downtown-Natomas-Airport light rail line, with a station at Township 9 along Richards Boulevard. The City Council approved the entitlements for the Township 9 project for the property owner, Capitol Station 65, LLC, on August 28, 2007.
- B. On March 18, 2008 (Resolution No. 2008-164), the City Council approved submittal of an application to the State Department of Housing and Community Development (HCD) for an Infill Infrastructure Grant under the Proposition 1C program on behalf of the Township 9 project as a Qualified Infill Area under HCD's grant regulations. In June of 2008, HCD awarded the City \$19.1 million in Infill funding for the Township 9 project.
- C. On March 10, 2009 (Resolution No. 2009-147), the City Council approved submittal of a second application to HCD for the Township 9 project for an additional Infill grant because the project was not awarded the full amount of its eligibility during the first round of applications. In July of 2009, HCD awarded the City an additional \$10.9 million in Proposition 1C Infill funding for the Township 9 project.
- D. The Proposition 1C grants will fund certain streets, utilities, and parks needed for development of the Township 9 project (collectively "Improvements"), a parking garage that is an integral part of the affordable housing project ("Parking Garage"), and preparation of the light rail station site and related station improvements ("Light Rail Station").

- E. The City has executed the HCD agreements for the initial \$19.1 million Proposition 1C grant and anticipates execution of the agreements for the second \$10.9 million Proposition 1C grant shortly. Some of the same infrastructure and park improvements are to be funded under both grants.
- F. Capitol Station 65, LLC ("Master Developer") has prepared preliminary design plans for the Improvements and desires to commence construction of the Improvements and the Light Rail Station in the near future in order to meet the milestone and disbursement deadlines in the Proposition 1C grant agreements. Commencement of construction of the market-rate housing components of the Township 9 project would occur thereafter. The City desires to assign its rights and obligations under the Proposition 1C grants to the Master Developer to allow for the Proposition 1C funding to be made available to pay for the Improvements and the Light Rail Station and Master Developer desires to assume such obligations.
- G. Master Developer has entered into an option and development agreement with Township 9 Sacramento L.P. ("Affordable Housing Developer") to transfer title to parcels 11A and 11C as shown in the Township 9 Tentative Master Parcel Map for development of the 180 unit affordable housing project. The Master Developer will undertake the off-site improvements needed for development of these parcels with the initial Proposition 1C grant. The Master Developer consents to City loaning a portion of the initial Proposition 1C grant to the Affordable Housing Developer to fund the costs of the Parking Garage.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Township 9 Infill Infrastructure Project (B18219000) is hereby established as a new Capital Improvement Project.
- Section 2. A \$30 million revenue and expenditure budget for the Township 9 Infill Infrastructure Project (B18219000) to be funded with the Proposition 1C grant funds (Fund 3704) is hereby established.
- Section 3. The Township 9 Infill Grant Assignment and Assumption Agreement ("Assignment Agreement") whereby \$11.9 million is to be provided to Capitol Station 65, LLC to fund the Improvements and the Light Rail Station in accordance with the terms of the initial Proposition 1C grant agreement, as the grant subrecipient for the Infrastructure Project, is hereby approved. The City Manager, or his designee, is authorized to execute in the Assignment Agreement, which is attached as Exhibit 1, and to execute any documents that may be required for implementation of the Proposition 1C grant, including authorizing HCD to make direct payments to Capitol Station 65, LLC, subject to City's approval of each draw request.
- Section 4. The City Manager, or his designee, is authorized to execute an amendment to the Assignment Agreement with Capitol Station 65 LLC to

provide an additional \$10.9 million in Proposition 1C grant funding for the Improvements in accordance with the terms of the second Proposition 1C grant agreement, once that HCD grant agreement has been fully executed.

Section 5. The Township 9 Affordable Housing Loan Commitment, whereby a total of \$7.2 million in Proposition 1C grant funding (the "Loan") is to be provided to Township 9 Sacramento L.P. to fund the Parking Garage that is to be built to serve the 180 unit affordable housing project in accordance with initial Proposition 1C grant agreement, is hereby approved. The Loan terms are to include interest on the principal at the current market rate, but payment is to be forgiven over a term of fifty five (55) years as long as the housing remains affordable in accordance with the recorded HCD covenant. The City Manager, or his designee, is authorized to execute the Loan Commitment, which is attached as Exhibit 2. Subject to City Attorney approval, the City Manager, or his designee, is authorized to negotiate the terms and conditions of the Loan agreement, execute the Loan documents with Township 9 Sacramento L.P. or its affiliate, enter into subordination agreements and perform similar lender functions, and to execute any documents that may be required for implementation of the Proposition 1C grant for the Township 9 affordable housing project, including authorizing HCD to make direct payments to Township 9 Sacramento L.P. or its affiliate, subject to City's approval of each draw request.

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Exhibit 1 – Assignment Agreement

Exhibit 2 – Loan Commitment

Exhibit 1

**ASSIGNMENT AND ASSUMPTION AGREEMENT
PROPOSITION 1C INFILL INFRASTRUCTURE PROGRAM GRANT
TOWNSHIP 9 PROJECT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") is made and entered into as of this _____ day of _____, 2010 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and CAPITOL STATION 65 LLC, a limited liability company (hereinafter the "DEVELOPER"). CITY and DEVELOPER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

A. **Project Site.** The Township 9 project is located on 65 acres of land which lie north of Richards Boulevard between North 5th and North 7th Streets in the River District area of the City of Sacramento (the "Project Site"). DEVELOPER owns the land encompassing the Project Site, referred to as Assessor Parcel Numbers 001-0020-003, -019, -034, -036, -041, -044, -045, -046, and 001-0200-012, -013 and -034 (the "Property").

B. **Development Project.** On August 28, 2007, the City Council approved certain entitlements for development of 2,350 housing units, 839,628 square feet of office, 147,000 square feet of retail, 5,389 off-street parking spaces and 27 acres of parks and open space at the Project Site based on the development scenario B that was evaluated in the environmental impact report (the "Development Project"). By Resolution No. 2007-643 and Ordinance No. 2007-071, the City Council approved the Township 9 Planned Unit Development ("PUD") Schematic Plan and PUD Design Guidelines (collectively "PUD Plan and Guidelines") to specify the development standards and design requirements for the Development Project, and rezoned the Property consistent with the PUD Schematic Plan.

C. **Tentative Map.** On August 28, 2007, by Resolution No 2007-644, the City Council approved the tentative map to authorize subdivision of the 65 acre Project Site into 36 parcels, to require the construction of infrastructure improvements which are needed for the Development Project, and to impose certain requirements before a final map for a parcel can be recorded ("Tentative Map"). The requirements include compliance with the entitlements, PUD Plan and Guidelines and CEQA Mitigation.

D. **Environmental Mitigation.** On August 28, 2007, by Resolution No. 2007-641, the City Council certified the environmental impact report ("EIR"). As part of the EIR certification, the City Council adopted mitigation measures and approved a mitigation monitoring plan for the Development Project (collectively "CEQA Mitigation").

E. **Development Agreement.** On August 28, 2007, by Ordinance No. 2007-069, CITY and DEVELOPER entered into a contract (Agreement No. 2007-1081, the Development Agreement") to vest certain rights of DEVELOPER and to impose certain obligations in regards to the Development Project. The Development Agreement was amended on September 3, 2008 to include and clarify termination and lender notice and cure rights (Agreement No. 2007-1081-1). Under the Development Agreement, DEVELOPER agreed to dedicate the land for the light rail station and to undertake the design

and construction of all park improvements under a turnkey agreement.

F. **North 7th Street Reconstruction Agreement.** On May 13, 2008, by Resolution No. 2008-283, the City Council authorized allocating \$2.2 million for the North 7th Street Reconstruction Project. CITY and DEVELOPER entered into the North 7th Street Reconstruction Project Agreement (Agreement No. 2008-0407), whereby CITY is to pay DEVELOPER \$2.2 million to fund a portion of the costs for reconstruction and widening of North 7th Street, from Richards Blvd to the American River Parkway, and DEVELOPER is to design and reconstruct the street in compliance with specified CITY procedures, specifications, codes and standard contract provisions.

G. **Proposition 1C Grant.** CITY has been awarded a grant by the State Department of Housing and Community Development ("HCD") under Proposition 1C, the Housing and Emergency Shelter Act of 2006, pursuant to the Infill Infrastructure Grant Program Guidelines, (the "Proposition 1C Grant") to fund certain improvements which are part of the Development Project. The grant was approved in June, 2008 for \$19.1 million and the CITY has executed the grant agreement. The Proposition 1C Grant Agreement, defined in Section 2A, below, authorizes state funding for the DEVELOPER's costs to design and construct certain streets, utilities, parks and building demolition projects, the QIP Parking Garage (as defined in Recital H., below), and the North 7th Street light rail station improvements, which are referred to therein as the "Infrastructure Project." The Infrastructure Project, with the exception of the QIP Parking Garage, is collectively referred to herein as the "Public Improvements." With the exception of the North 7th Street light rail station improvements, CITY is to take title to the Public Improvements after completion of construction by DEVELOPER.

H. **Affordable Housing Project.** A condition in the Proposition 1C Grant Agreement is the development of a specified amount of affordable housing, referred to as the "Qualifying Infill Project" or "QIP," as well as the development of 397 market rate housing units ("Additional Housing Development") at the Project Site on Parcels 3A, 3B, 4 and 12 consistent with the PUD Plan and Guidelines. The QIP, based on the commitment under the Proposition 1C Grant Agreement, is for 90 units to be constructed as one apartment building located on Parcel 11C (1.8 acres), with an estimated cost of \$23 million. The Proposition 1C Grant Agreement is to fund the parking garage portion of this apartment building in the amount of \$7.2 million (the "QIP Parking Garage"). The QIP Parking Garage will be privately owned and is not part of the Public Improvements referred to herein.

I. **Parking Garage Loan.** Under a separate agreement, DEVELOPER has selected St. Anton Partners LLC to serve as the Township 9 affordable housing developer for the QIP and will transfer to it ownership of Parcel 11C. The Proposition 1C Grant identifies the owner and developer of the QIP as the Housing Sub-Recipient. CITY will provide \$7.2 million of the Proposition 1C Grant Proceeds to fund the QIP Parking Garage in the form of a forgivable loan to St. Anton Partners (the "QIP Parking Garage Loan Agreement"), and the CITY may assign the loan to the Sacramento Housing and Redevelopment Agency for administration.

J. **Assignment of CITY Grants.** DEVELOPER desires to enter into this Assignment Agreement to be entitled to receive funding under the Proposition 1C Grant Agreement for the Public Improvements as specified herein, so that DEVELOPER can commence construction of the Development Project to meet the specified milestone schedules for the Public Improvements and the Additional Housing Development as set out in Proposition 1C Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Assignment Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Effective Date; Termination.** This Assignment Agreement shall commence as of the Effective Date and shall expire on the date ("Expiration Date") that both of the following conditions have been met: (i) recording of DEVELOPER's conveyance and CITY's acceptance of the Public Improvements as defined in Sections 3, 4 and 5, and (ii) DEVELOPER's completion of the North 7th Street light rail station improvements; subject to the indemnity and payment obligations that survive the termination of this Assignment Agreement as set out in Sections 6, 7 and 8. Neither Party may terminate this Assignment Agreement for its convenience prior to the Expiration Date; however, either Party may terminate this Assignment Agreement for default prior to the Expiration Date subject to the cure provisions set forth in Sections 9 and 10. DEVELOPER's obligations under this Agreement shall apply solely to actions taken on or after the Effective Date, although DEVELOPER is nonetheless entitled to reimbursements of costs incurred for the Public Improvements with the Proposition 1C Grant Proceeds, as defined in Section 2B, below, prior to the Effective Date under the Proposition 1C Grant Agreement.

2. **Assignment and Assumption.** As of the Effective Date, CITY hereby assigns and transfers to DEVELOPER any and all of CITY's rights under the Proposition 1C Grant Agreement, as defined below, and DEVELOPER hereby accepts and assumes all of the duties and obligations of CITY under the Proposition 1C Grant Agreement and shall comply with all of the terms and conditions set out therein, with the exception of the development of the QIP and the QIP Parking Garage as specified in Section 8. The Proposition 1C Grant identifies the owner and developer of the Property on which the Infrastructure Project and the Additional Housing Development will be built as the Infrastructure Sub-Recipient. DEVELOPER's entitlement to the Proposition 1C Grant Proceeds for the Public Improvements shall be subject to the approval of HCD and DEVELOPER shall have no recourse against CITY for HCD's decisions.
 - A. **HCD Grant** - The "Proposition 1C Grant Agreement" which is assigned to DEVELOPER herein contains the Standard Agreement dated October 20, 2009 and the Disbursement Agreement dated March 8, 2010 between CITY and the State Department of Housing and Community Development ("HCD") for receipt of funding in the amount of \$11.9 million under the Infill Infrastructure Grant Program for the Public Improvements which are part of the Development Project. The Standard Agreement is attached and incorporated herein as Exhibit A. The Disbursement Agreement is attached and incorporated herein as Exhibit B.
 - B. **Grant References** - The funds under the Proposition 1C Grant Agreement to be paid to DEVELOPER, either directly by HCD or through the CITY, under this Assignment Agreement are herein referred to as the "Proposition 1C Grant Proceeds."
 - C. **Partial Assignment** - Notwithstanding the foregoing assignment by CITY and assumption by DEVELOPER of the Proposition 1C Grant Agreement, the CITY remains as the named grantee and party to that agreement because HCD has not approved this Assignment Agreement and released CITY from its obligations under the Proposition 1C Grant Agreement. However, HCD has acknowledged that DEVELOPER is to serve as the Infrastructure Sub-Recipient to receive the Proposition

1C Grant Proceeds for the Public Improvements as set out therein, and HCD will accept draw requests from DEVELOPER and will pay DEVELOPER the Proposition 1C Grant Proceeds directly once CITY executes HCD's direct payee form and in reliance on CITY's plan reviews and construction inspection reports. DEVELOPER must nonetheless submit to CITY copies of all plans, draw requests, other required documents and all correspondence submitted to HCD for CITY to comply with its grant oversight obligations.

- D. **Grant Amendments** – The Parties acknowledge that HCD may be amenable to amend the Proposition 1C Grant Agreement to change the milestone schedules, to extend the grant term and/or to extend the time period for final distribution of the Proposition 1C Grant Proceeds. There may be other amendments which may be desired by either Party, or HCD may propose amendments during the term of this Assignment Agreement or thereafter during the term of the Proposition 1C Grant Agreement. Any written amendment, modification or waiver of any term or condition of the Proposition 1C Grant Agreement, which is supported by both CITY and DEVELOPER and which is approved by HCD in the form of a grant amendment or other written acknowledgment, shall become binding under the terms of this Assignment Agreement and such written amendment, modification or waiver shall be attached and incorporated into this Assignment Agreement by this reference without the need for a formal amendment. CITY shall not unilaterally amend or terminate the Proposition 1C Grant Agreement without DEVELOPER's prior written approval unless DEVELOPER is in default of its obligations under this Assignment Agreement and the applicable cure period(s) within which to cure such default set forth in Sections 9 and 10 have expired without a cure having been made.
- E. **Enforcement** – CITY and HCD shall each have the right to enforce all of the terms and conditions set out in the Proposition 1C Grant Agreement and DEVELOPER's obligations therein relating to the design and construction of the Public Improvements, including, without limitation, requirements for bonds, insurance, prevailing wages, mechanics liens, signage, assignment of contracts, indemnity, audits, and record retention. All of the rights accruing to HCD as set out in the Proposition 1C Grant Agreement with respect to the Public Improvements, including, without limitation, assumption and enforcement of the design and construction contracts, shall also accrue to CITY. DEVELOPER acknowledges and agrees that under the terms of this Assignment Agreement, CITY has the right to enforce the covenants and obligations set out in the Proposition 1C Grant Agreement on behalf of HCD, even after the Expiration Date, as provided in Sections 8 and 9, subject to the provisions of Section 10.

3. **Public Improvements.** DEVELOPER shall undertake the design and construction of the "Infrastructure Project" as specified in the Proposition 1C Grant Agreement in accordance with the scope of work and schedule set out therein.

4. **Street Improvements.** To the extent funds made available to DEVELOPER by CITY under the Proposition 1C Grant Agreement are for Public Improvements that will be owned by CITY (the "Street Improvements"), DEVELOPER shall undertake the design and construction of the Street Improvements in accordance with those terms of the Proposition 1C Grant Agreement which are applicable to the Street Improvements, the applicable CITY permits, and all of the following requirements:

- A. **CITY Standards** - Standard Specifications for Public Construction (2007), Street Design Standards, Pedestrian Friendly Street Standards, Utilities Standards, Street

Lighting and Traffic Signal Design Standards, and those other portions of the Design and Procedures Manual and the applicable provisions of the Project Delivery Manual as identified by CITY.

- B. Project Entitlements – The PUD Plan and Guidelines, Tentative Map, and CEQA Mitigation.
 - C. Other Entities - All required permits and approvals from all applicable utility companies and state and local regulatory agencies (other than CITY).
 - D. Public Works - All applicable state laws pertaining to contracting and construction of public works with public funds, including, without limitation, competitive bidding, obtaining 100% payment and performance bonds, and payment of prevailing wages.
 - E. North 7th Street Agreement – All of the terms and conditions set out in the North 7th Street Reconstruction Project Agreement shall apply to the Street Improvements. The applicable requirements and procedures include, without limitation, design and contracting, inspection, bonds, insurance, and approval of change orders. CITY shall not be obligated to approve payments for the North 7th Street improvements with the Proposition 1C Grant Proceeds in the event of a default under the CITY's North 7th Street Agreement.
5. **Park Improvements.** DEVELOPER shall undertake the design and construction of that portion of the Public Improvements which includes Riverfront Park and the North 7th Street Parkway as described in the Proposition 1C Grant Agreement (collectively the "Park Improvements"), with the Proposition 1C Grant Proceeds in accordance with the terms of the Proposition 1C Grant Agreement and the requirements set out in CITY's standard park turnkey agreement. CITY shall not be obligated to approve payments for the Park Improvements with the Proposition 1C Grant Proceeds in the event of a default under the CITY's park turnkey agreement.

The design of the Park Improvements shall be in compliance with the PUD Plan and Guidelines and Tentative Map. In addition, DEVELOPER will be required to obtain permits from the County of Sacramento and the Sacramento Area Flood Control Agency for construction of Riverfront Park along the American River Parkway and abutting the flood control levee.

6. **Indemnity.** DEVELOPER shall indemnify, defend and hold harmless CITY (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any acts or omissions of DEVELOPER (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Public Improvements under this Assignment Agreement, except to the extent arising from the active negligence or willful misconduct of CITY. DEVELOPER hereby waives and releases any and all Claims of whatever sort or nature which may arise against CITY in connection with CITY's review and inspection of the design and construction of the Public Improvements, except those resulting from the active negligence or willful misconduct of CITY.

7. **Payment of Costs.** CITY will approve DEVELOPER as the direct payee for reimbursement by HCD of DEVELOPER's Public Improvement costs under the Proposition 1C Grant Agreement. If HCD requires that draw requests under the Proposition 1C Grant

Agreement be submitted to CITY for review and approval, CITY will promptly undertake that work and forward DEVELOPER's invoices to HCD for payment. The total compensation to be requested by DEVELOPER and paid by HCD for the Public Improvements costs under the Proposition 1C Grant Agreement shall not exceed \$11.9 million.

DEVELOPER's draw requests shall comply with the requirements set out in the Proposition 1C Grant Agreement. DEVELOPER shall indemnify, defend and hold harmless CITY from and against all demands and claims filed by HCD against CITY seeking reimbursement of the Proposition 1C Grant Proceeds due to DEVELOPER's improper invoices or any other violation of any term or condition in the Proposition 1C Grant Agreement in regards to payment of the Public Improvement costs.

Except for payments to be provided to DEVELOPER under the Proposition 1C Grant Agreement and any other agreements between CITY and DEVELOPER, CITY shall have no further liability to DEVELOPER for the costs of the Public Improvements under this Assignment Agreement.

8. Housing Development. DEVELOPER acknowledges and agrees in regards to the obligation to development housing under the terms of the Proposition 1C Grant Agreement as follows:

- A. HCD Covenants - DEVELOPER acknowledges and agrees that HCD will be permitted to record a "Declaration of Restrictive Covenant for the Development of Market Rate Housing" and a "Covenant Regarding Development of Affordable Housing" (collectively the "HCD Covenants") against the specified portions of the Property as set out in the Proposition 1C Grant Agreement. CITY and DEVELOPER understand that HCD will release these covenants against that portion of the Property which is not the subject of the Proposition 1C Grant Agreement when final maps are recorded for each parcel and that the "Declaration of Restrictive Covenant for the Development of Market Rate Housing" will thereafter only remain on Parcels 3A, 3B, 4, and 12 and the "Covenant Regarding Development of Affordable Housing" will thereafter only remain on Parcel 11C.
- B. QIP Covenant - The HCD "Covenant Regarding Development of Affordable Housing" will require DEVELOPER to insure that the 90 unit affordable housing project referred to as the Qualifying Infill Project (QIP), including the QIP Parking Garage, be constructed and operated by an affordable housing developer, as selected by DEVELOPER and approved by HCD, in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. HCD has approved St. Anton Partners LLC as the Housing Sub-Recipient. CITY shall enter into the QIP Parking Garage Loan Agreement with St. Anton Partners LLC once it demonstrates that it has: (i) ownership of Parcel 11C, and (ii) all other financing commitment required to construct the QIP. The closing of the QIP Parking Garage Loan Agreement will occur simultaneously with the transfer of ownership of Parcel 11C from the DEVELOPER to St. Anton Partners LLC. The QIP Parking Garage Loan Agreement shall provide that DEVELOPER will have the right to cure any defaults of St. Anton Partners LLC and that the QIP Parking Garage Loan Agreement may be assumed by DEVELOPER in the event CITY declares a default by St. Anton Partners LLC under that loan agreement.
- C. Additional Housing Development - The HCD "Covenant Declaration of Restrictive Covenant for the Development of Market Rate Housing" will require DEVELOPER to undertake construction of the specified Additional Housing Development on Parcels

3A, 3B, 4 and 12 in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. Failure of DEVELOPER to comply with this HCD Covenant that is not timely cured within the applicable cure period(s) shall constitute a default under the Proposition 1C Grant Agreement and this Assignment Agreement and in such event a proportionate share of the Proposition 1C Grant Proceeds must be repaid by DEVELOPER in accordance with the terms of the Proposition 1C Grant Agreement.

- D. HCD Covenants Enforcement - CITY is relying on the HCD Covenants as security for DEVELOPER's compliance with the provisions in the Proposition 1C Grant Agreement regarding (i) meeting its obligations in regards to facilitating development of the QIP (i.e., transfer of Parcel 11C and under taking the Public Improvements which serve that parcel), and (ii) undertaking the Additional Housing Development after the Public Improvements are completed and the term of this Assignment Agreement expires. DEVELOPER acknowledges and agrees that under the terms of this Assignment Agreement, CITY has the right to enforce the HCD Covenants and to demand repayment of the proportionate amount of the Proposition 1C Grant Proceeds upon declaration by HCD of a default by DEVELOPER of its obligations as a Sub-Recipient for the Infrastructure Project and the Additional Housing Development under the Proposition 1C Grant Agreement. The terms of this Section 8 shall survive the termination of this Assignment Agreement and shall extend until the HCD Covenants are released or terminated by HCD from each parcel of land comprising the Property as described in the Proposition 1C Grant Agreements.
- E. Suspension of Permits During Default - If a dispute arises between HCD and DEVELOPER regarding DEVELOPER's obligations to facilitate development of the QIP and insure construction of the specified Additional Housing Development under the terms of the HCD Covenants and the Proposition 1C Grant Agreement, during the pendency of such dispute where: (i) HCD has issued to CITY a written notice of default, (ii) after expiration of any applicable cure period DEVELOPER (or its lender) has not cured the default, (iii) DEVELOPER has not obtained a time extension from HCD for construction of the Additional Housing Development, and (iv) HCD has issued to CITY a written demand for payment of all or a part of the Proposition 1C Grant Proceeds; in that event CITY may withhold approval of final maps, other discretionary entitlements and issuance of building permits for any non-residential development within that portion of the Development Project covering Parcels 3A, 3B, 4, 11C and 12 notwithstanding any contrary provision of the Development Agreement, Tentative Map, PUD Plan and Guidelines, the City Code, the Subdivision Map Act or any other applicable state or local law or regulation.

9. **Default.** After issuance of a written notice of default and expiration of any applicable cure period, any violation of any material term or condition of the Proposition 1C Grant Agreement by DEVELOPER or CITY, or the material failure of performance or a substantial and unreasonable delay in performance by either Party, including, without limitation, the voluntary or involuntary filing of bankruptcy protection or appointment of a receiver, shall be a breach under this Assignment Agreement and the non-defaulting party shall be entitled to cancel this Assignment Agreement for default and be awarded actual damages (excluding consequential damages and lost profits) and injunctive or declaratory relief.

The Party receiving such default notice shall be afforded a period of thirty (30) days following receipt of the notice within which to effectuate a cure, provided that if such default or breach cannot reasonably be cured within such thirty (30) day period and if curative action is commenced within such thirty (30) day period and is being continuously and diligently pursued by such Party, then such Party shall be given such additional period of time as is reasonably

necessary for such Party in the exercise of due diligence to cure such default or breach. During any such period, the Party charged shall not be considered in default or breach for purposes of termination of this Assignment Agreement or institution of legal proceedings. Notwithstanding the foregoing, the cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement. CITY will provide DEVELOPER and Lender with copies of any notice of default CITY receives from HCD.

10. Lender Rights. Any bank, mortgage company or other legal entity (together with its successors or assigns, collectively "Lender") that has loaned money to DEVELOPER and has a recorded a mortgage or deed of trust against the Property as of the Effective Date or thereafter shall have the following default notice and cure rights and releases from the obligations under this Assignment Agreement:

- A. Prior to Lender Possession. No Lender shall have any obligation or duty under this Assignment Agreement to construct or complete the construction of the Public Improvements, QIP or Additional Housing Development, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of DEVELOPER or DEVELOPER's successors in interest. Except as otherwise expressly provided in this Section 10, nothing in this Section 10 shall be construed to grant to Lender rights of DEVELOPER hereunder, or to limit any remedy CITY has hereunder in the event of default by DEVELOPER, including but not limited to, cancellation of this Assignment Agreement.
- B. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to (i) pay any fees or charges which are obligations of DEVELOPER under this Assignment Agreement, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof, (ii) cure any defaults under this Assignment Agreement, or (iii) repay the Proposition 1C Grant Proceeds. However, a Lender shall not be eligible to become a successor in interest to this Assignment Agreement and receive payments of the Proposition 1C Grant Proceeds or be eligible to apply for or receive entitlements or permits with respect to development of the Property for the Development Project covering Parcels 3A, 3B, 4, 11C and 12, or otherwise be entitled to develop or devote that portion of the Property to any uses or to construct any improvements thereon, other than for the QIP and the Additional Housing Development, unless and until DEVELOPER's defaults under this Assignment Agreement have been cured by Lender pursuant to the terms and conditions of Section 10D below.
- C. Notice of DEVELOPER's Default. If CITY receives notice from a Lender making a reference to this Assignment Agreement, requesting a copy of any notice of default given DEVELOPER hereunder and specifying the address(es) for service thereof, then CITY shall deliver to such Lender at such address(es) the following: (i) concurrently with service thereon to DEVELOPER, any notice given to DEVELOPER with respect to any claim by CITY that DEVELOPER has committed a default or breach; and (ii) concurrently with service thereon to DEVELOPER, any notice on the part of CITY to cancel this Assignment Agreement for default under the terms of Section 9. The foregoing includes CITY providing Lender with copies of any notice of default CITY receives from HCD.
- D. Lender's Right to Cure. With respect to any default or breach by DEVELOPER under this Assignment Agreement, CITY shall provide written notice (a "Cure Period

Expiration Notice”) to Lender, promptly upon expiration of the DEVELOPER’s cure period set forth in Section 9, specifying the nature of such default or breach and stating that DEVELOPER’s period of time within which to cure such default or breach has expired without a cure having been effectuated. Lender shall have the right to cure such default within thirty (30) days after the date of the Cure Period Expiration Notice; provided, however, if such default is susceptible to cure but cannot reasonably be cured within such thirty (30) day period and if curative action shall be commenced within such thirty (30) day period and is being continuously and diligently pursued by Lender, then Lender shall be given an additional period of time as is reasonably necessary for Lender in the exercise of due diligence to cure such default. Without limiting the foregoing, if it is necessary for Lender to obtain possession of the Property in order to cure such default, Lender shall have such additional period of time as is reasonably necessary for the Lender in the exercise of reasonable diligence to obtain possession of the Property, and such additional time as is reasonably necessary for the Lender in the exercise of reasonable diligence to cure the default. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Assignment Agreement unless such Lender shall agree in writing to perform all obligations of DEVELOPER hereunder under the terms of an assumption agreement between Lender and CITY. In the event that Lender takes possession of all or any portion of the Property and assumes the obligations of Developer hereunder, then the recourse of CITY for such obligations shall be limited to the interest of the Lender in the Property and shall not include personal recourse to Lender. Notwithstanding the foregoing, Lender’s cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY to DEVELOPER in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement.

- E. **No Impairment.** Neither DEVELOPER’s entering into this Assignment Agreement nor its default under this Assignment Agreement shall alter, defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith by the Lender and for value. This Assignment Agreement shall not prevent or limit DEVELOPER in any manner, at DEVELOPER’s sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security instrument securing financing with respect to development of the Property for the Development Project. This Assignment Agreement shall not prevent or limit Lender in any manner from pursuing foreclosure of a mortgage, deed of trust or other security instrument that is secured against the Property.

11. Governing Law and Venue. This Assignment shall be governed by and construed in accordance with the laws of the State of California. Any litigation concerning this Assignment must be brought and prosecuted in the Sacramento County Superior Court and the prevailing party shall be entitled to reimbursement of its attorneys’ fees and litigation costs.

12. Successors and Assigns. This Assignment Agreement may not be assigned by DEVELOPER without the CITY’s prior written consent; provided that this Agreement may be assigned by DEVELOPER to a Lender as collateral for Lender’s loan and, in the event that such Lender takes possession of the Property or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure if the Lender undertakes efforts to cure DEVELOPER’s defaults, and such Lender complies with all of its obligations under Section 10, above, and enters into an assumption agreement with CITY, then such Lender shall succeed to the rights of DEVELOPER under this Assignment Agreement. The obligations in this Assignment Agreement shall inure to and bind the successors and assigns of each Party and the successors in interest in the Property, and CITY may record a memorandum of this Assignment Agreement. Lender shall be an express third party beneficiary of this Assignment

Agreement.

13. Warranties and Representations. Each person who signs this Assignment Agreement on behalf of a Party warrants and represents that he or she has the capacity and legal authority to execute this Assignment Agreement for that Party and to bind that Party to the obligations imposed on it by this Assignment Agreement.

14. Notices. All notices required or provided for under this Assignment Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and DEVELOPER, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

A. Notice to the CITY:

City of Sacramento
915 I Street
Sacramento, California, 95814
ATTN: City Manager

B. Notice to DEVELOPER:

Capitol Station 65 LLC
640 Bercut Drive, Suite C
Sacramento CA 95811-0131
ATTN: Steve Goodwin

and

Scott Syphax
Nehemiah Corporation of America
640 Bercut Drive, Suite A
Sacramento, CA 95811-0131

with copies to:

Alberto Esquivel
Esquivel Real Estate, Inc.
1801 "F" Street
Sacramento, CA 95816

C. Notice to Lender:

ISIS Lending, LLC
c/o TDA
2031 Pioneer Court
San Mateo, CA 94403
ATTN: Paula Purcell

with copies to:

Cox Castle & Nicholson LLP
555 California Street, Suite 1000
San Francisco, CA 94101-1513
ATTN: Bruce E. Prigoff, Esq.

15. Survivorship. The DEVELOPER's obligations arising under this Assignment Agreement pertaining to indemnity and repayment obligations as set out in Sections 6, 7 and 8 shall survive the expiration, termination or cancellation of this Agreement.

16. Entire Agreement. This Assignment Agreement sets forth the entire understanding of each Party regarding the matters set forth herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations, whether written, oral, express or implied, in regards to the assignment and assumption of the Proposition 1C Grant Agreement and this Assignment Agreement may only be modified by another written agreement signed by the Parties.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the Effective Date.

CITY OF SACRAMENTO
a municipal corporation

By: _____
Gus Vina
Acting City Manager

Attest:

By: _____
City Clerk

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

CAPITOL STATION 65 LLC
a California limited liability company

By: _____
Steve Goodwin
Managing Member

By: _____
Scott Syphax
Managing Member

EXHIBIT A

Standard Agreement for the Infill Infrastructure Grant Program

EXHIBIT B

Disbursement Agreement for the Infill Infrastructure Grant Program

Exhibit 2

March 17, 2010

Steven L. Eggert
Township 9 Apartments L.P.
c/o St. Anton Partners, LLC
1801 I Street, Ste 202
Sacramento California 95811

RE: Conditional Loan Commitment; Township 9 Affordable Housing Project

Dear Mr. Eggert:

On behalf of the City of Sacramento ("City"), I am pleased to advise Township 9 Sacramento L.P., a California limited partnership, ("Borrower") of the City's commitment of Seven Million Two Hundred Thousand Dollars (\$7,200,000) (the "Loan") for the purpose of financing the construction of 180 parking stalls within a parking garage serving the 180-unit housing development (the "Project"), which will be located at the Township 9 master planned development. The Project will provide 179 apartment units affordable to extremely low, very low, and low income households.

The City has also allocated Three Million Dollars (\$3,000,000) in Housing Trust Funds for the Project, which will be administered under the terms of a separate agreement between the Sacramento Housing and Redevelopment Agency ("SHRA") and Borrower. In addition to the foregoing funding commitments, it is anticipated that SHRA and the Redevelopment Agency of the City of Sacramento ("Agency") may commit additional funding for the Project.

As set out herein, the City may assign this Loan Commitment, related documentation, and its entitlement to the funding sources for the Loan to SHRA. Upon such assignment, SHRA shall make the Loan to the Borrower on the same terms and conditions as set forth in this Loan Commitment. If SHRA does not accept the assignment of this Loan Commitment, then the City shall make the Loan to the Borrower on the terms and conditions contained in this Loan Commitment. Such an assignment shall allow SHRA to provide oversight and administration of the Project construction, Loan funding, and compliance with the regulatory agreements and covenants, which require that the rents for the affordable housing units remain at the specified levels for at least 55 years from the date of the certificate of occupancy.

Background

The Township 9 master planned development is located between North 5th and North 7th Streets along Richards Boulevard in the River District. The Project is to be constructed on that certain real property referred to as parcels 11A and 11C on the Township 9 tentative map ("Property"). The City's decision to make the Loan is based on the pro-forma and sources and uses of funds provided by the Township 9 master developer, Capitol Station 65, LLC ("Master Developer"), which is based in part on the representations and information supplied by Borrower.

The Master Developer has informed the City that it has entered into an agreement with Borrower to convey the Property at a nominal cost. In addition, the Master Developer will construct the off-site street and utility improvements required for development of the Project on the Property. The Master Developer has consented to the City's decision to make the Loan to the Borrower, to the

extent such approval may be required under the agreement between the Master Developer and Borrower.

Loan Commitment Conditions

The City's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the City and to SHRA.

The Loan shall be made on standard SHRA loan document forms (the "Loan Documents") which the Borrower has been a party to in the past for other projects. No terms not in this Loan Commitment or in the standard SHRA loan document forms shall be included in the final Loan Documents without governing board approval and possibly additional environmental review. In the event of any discrepancies between terms stated in this Loan Commitment and the standard SHRA loan document forms, the terms stated in this Loan Commitment shall prevail.

Unless otherwise agreed in writing by the City in exercise of its absolute discretion, the following shall be considered conditions to City's approval of a binding financing commitment to make the Loan.

1. **LOAN COMMITMENT TERM:** This Loan Commitment will expire on March 31, 2011 if the Loan Documents have not been executed by the Borrower by that date.
2. **PROJECT DESCRIPTION:** The Project is a 180 unit apartment building and parking garage structure. The Project is to include 3 units at 30% AMI, 33 units at 50% AMI, and 143 units at 60% AMI (the "Affordable Housing Units"). The total Project cost is estimated at \$37,500,000.
3. **BORROWER:** The name of the Borrower for the Loan is Township 9 Sacramento L.P., or its affiliate which is formed for the sole purpose of development of the Project.
4. **PURPOSE OF LOAN:** The Loan is to be used by Borrower solely for the pro-rated design, development and construction costs of 180 spaces within the parking garage which is to be an integral part of the Project. The construction work to build the garage and the apartment building on the Property is referred to herein as the "Improvements."
5. **PRINCIPAL AMOUNT:** The combined principal amount of the Loan will be the lesser of (a) Seven Million Two Hundred Thousand Dollars (\$7,200,000), or (b) the actual pro-rated cost to design, develop and construct 180 spaces within the parking garage of the Project; whichever amount is less.
6. **SOURCE OF LOAN FUNDS:** The City is making the Loan from a funding program which allows for Loan disbursements based on actual costs incurred for the Improvements and subject to certain requirements which will be included in the Loan Documents. These requirements have been conveyed to Borrower and Borrower acknowledges and agrees to such requirements. Borrower also acknowledges and agrees that the City's obligation to make the Loan payments is contingent on the City's receipt of such funding and City does not guarantee the Borrower will be paid the full amount of the Loan.
7. **TERM OF LOAN:** No payments will be due and payable during the term of the Loan. The unpaid balance of the Loan will be due and payable on the Loan maturity date. The

Loan shall be assignable and shall not become due and payable in the event of a transfer of the Project to an affiliate of Borrower .

8. **INTEREST RATE:** The Loan will not bear any interest.
9. **RENTAL RESTRICTION:** Borrower acknowledges that, as a condition of the City making of the Loan, the Property will be subject to restrictions on future sales and rental rates which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.

_____ (Borrower's Initial)
10. **PREVAILING WAGES:** Borrower also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.

_____ (Borrower's Initial)
11. **ACCELERATION:** City shall have the right to accelerate repayment of the Loan in the event of a default as specified in the Loan Documents or upon sale, transfer or alienation of the Property, except as specifically provided for in the Loan Documents.
12. **SECURITY:** The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the Borrower's fee interest in the Property and Improvements, which shall be a lien upon the Property and Improvements subject only to senior liens and such other items as the City may approve in writing. The City may subordinate said deeds of trust in order to accommodate construction of the Project.
13. **LEASE AND RENTAL SCHEDULE:** The form of lease to be used for the Property and Improvements shall be subject to City's approval prior to execution. Borrower shall not deviate from the rental schedule consistent with the specified Affordable Housing Units household income levels as set out by SHRA and in Borrower's application for the Loan, without City's prior written approval.
14. **PROOF OF EQUITY:** Borrower shall provide proof of ownership of the Property which is free and clear of any mortgages or liens at the time Borrower submits the Loan application.
15. **OTHER FINANCING:** Borrower, as a precondition to the City's execution of the Loan Documents, shall procure and deliver to the City evidence satisfactory to City that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior to City's liens, and which shall be otherwise on terms and conditions acceptable to City:
 - A. Construction Loan - Financing from an institutional source or other approved sources in amounts sufficient to complete construction of the Improvements on the Property according to a scope of work as approved by City and made for a term not less than that specified in the Schedule of Performances in the Loan Documents for completion of construction, and in any event not less than the time

necessary to fulfill all conditions precedent to funding of the permanent financing.

- B. Permanent Loan - Financing from institutional sources or other approved sources, sufficient to repay the Construction Loan.

Such commitments for financing shall not require modification of the City's Loan Documents, or any term of this Loan Commitment. Such commitments shall not be based upon sources and uses of the Loan funds that are different from those approved by the City, Agency and SHRA for the Project.

16. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project and all Improvements in accordance with the Loan Documents. Borrower's evidence of available funds must include one or more of the following: (a) Borrower equity, (b) firm and binding commitments for financing the Project from financial institution(s) or from other lender(s) approved by City in its absolute discretion, and (c) Agency and SHRA loans; provided, however, that neither SHRA nor Agency is obligated by this Loan Commitment letter to make any financial contribution to the Project.
17. SOILS AND TOXIC REPORTS: Borrower must submit to City a soils report prepared by a licensed soils engineer and a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the City that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
18. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance." The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other Project lenders are sufficient, in the sole judgment of the City, to pay for the remainder of the construction in order to complete the Project as required by written agreement with the City. Should the City determine that the Loan is not "in balance," the City may declare the Loan to be in default.
19. PLANS AND SPECIFICATION: Final plans and specifications for the Project must be in accordance with this Loan Commitment letter and submitted and approved as part of the Loan application process. Final plans and specifications will be subject to City's final approval prior to execution of the Loan Documents and the disbursal of the Loan funds. Borrower must obtain City's prior written consent to any change in the approved Project plans and specifications or any material deviation in construction of the Project and the Improvements.
20. ARCHITECTURAL AGREEMENT: The architectural agreement for the preparation of the plans and specifications and other services such as construction support shall be subject to City's approval. The City may require an assignment of Borrower's interest in and to the architectural agreement as security for the Loan.

21. **CONSTRUCTION CONTRACT:** The construction contract and any change orders issued thereunder, and the contractor to be retained by Borrower to construct the Improvements shall be duly licensed and subject to City's approval. City may require an assignment of Borrower's interest in and to the construction contract as security for the Loan. Borrower shall require the general contractor, to: (a) provide performance and payment bonds or a letter of credit and the insurance coverages specified below, naming the City, State and SHRA as obliges and as additional insureds, and (b) indemnify and hold harmless the City, State and SHRA from any claims for injury or damages which may arise or be related to the construction work for the Improvements.
22. **RETENTION AMOUNT:** The City shall retain 10% of the Loan amount as retention from each disbursement, not to exceed a total of Seven Hundred and Twenty Thousand Dollars (\$720,000) of the total amount of the Loan.
23. **COST BREAKDOWN AND CONTRACTS:** Borrower shall deliver to City for its approval prior to commencement of the Project construction work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the approved Project plans and specification and the budget submitted with the Loan application. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements for City's prior approval. Borrower shall also submit copies of all bids received for each item of work to be performed, as well as copies of executed contracts and subcontracts with the selected bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to City's approval prior to close of the Loan.

24. **DISBURSEMENTS:** City shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories and Borrower's submittal of documentation supporting all requests for disbursement of Loan funds. All Loan draw requests submitted by Borrower shall include proof of the construction work completed, the actual cost for such work and evidence that payment has been made to the contractor and/or subcontractor. City shall have the right to conduct inspections of the Property to assure that the Project work was properly performed under the terms of the Loan Documents before making each disbursement of the Loan. **However, notwithstanding any provision herein to the contrary, the City shall not be obligated to make any Loan disbursement if such disbursement is not approved by the City or if a disbursement request is filed after December 31, 2011, unless a statute is enacted to extend this date .**

_____ (Borrower's Initial)

25. **COST SAVINGS.** At completion of construction of the Project, Borrower shall submit to City a cost certification prepared by a qualified, independent auditor acceptable to City, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the City, the City shall be entitled to withhold from the amount of retention then held by the City, and the Loan balance shall be reduced by the amount so withheld. The City, in its sole discretion, shall determine any reduction of the Loan based upon this cost certification and the original approved budget for the Project.

26. **START OF CONSTRUCTION:** Borrower shall commence construction of the Improvements at the earliest possible date subject to the conditions set out in this Loan Commitment, the Loan Documents and the requirements of other involved lenders, but no later than March 31, 2011.
27. **COMPLETION OF CONSTRUCTION:** Borrower shall complete the construction of the Improvements no later than the date set out in the construction schedule in the Loan Documents, and subject to any time extensions approved by City.
28. **LIABILITY INSURANCE.** Borrower shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain insurance from the following claims which may result from construction of the Project: (a) workers' compensation claims; (b) bodily injury claims; (c) claims for damage; (d) motor vehicle related claims; and (e) claims for contractual liability arising from the Borrower's obligations under the Loan. Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence and \$4,000,000 aggregate, with a deductible of not more than \$50,000. Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended).
29. **PROPERTY INSURANCE.** For the duration of Loan term, Borrower shall obtain and maintain building and personal property coverage, to the full insurable value of the Property and Improvements with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), and with such other endorsements and in such amounts as the City may reasonably require to protect the Project. In the event of damage to the Improvements and subject to the requirements of a senior lender, Borrower shall use the proceeds of such insurance to reconstruct the Project and any related public improvements.
30. **INSURANCE PROVISIONS.** Each policy of insurance required hereunder shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII , which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by City. Each policy shall contain endorsements naming City, State and SHRA as additional insureds.
31. **TITLE INSURANCE:** Borrower must procure and deliver to City a 2006 ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as City may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring City in an amount equal to the principal amount of the Loan, that City's Deed of Trust constitutes a lien or charge upon the Property and Improvements subject only to such items as shall have been approved by City. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by City.
32. **ORGANIZATIONAL AGREEMENTS:** Borrower must submit to City certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related

- filings or recorded documents and such related documents as City may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
33. **PURCHASE OF PROPERTY:** Borrower shall provide City with copies of all documents relating to Borrower's purchase of the Property.
 34. **FINANCIAL INFORMATION:** During the term of the Loan, Borrower shall deliver to City within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Before close of the Loan and during its term, Borrower must deliver to City such additional financial information as may be requested by City. City reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to City a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements, as City may request.
 35. **MANAGEMENT AGREEMENT:** Prior to execution of the Loan Documents, Borrower must submit to City any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to City's approval.
 36. **LOW INCOME HOUSING TAX CREDITS ("LIHTC"):** Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
 37. **OTHER FUNDS.** Borrower shall apply for and diligently pursue funds from every source listed in the Loan application as a source of funding for the Project and in not less than the amount of funds so listed.
 38. **DOCUMENTATION:** This Loan Commitment letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for a City transaction of this type. All documents to be delivered to or approved by City must be satisfactory to City in all respects. Borrower must promptly deliver to City any further documentation that may be required by City.
 39. **CONSISTENCY OF DOCUMENTS:** As a material obligation under this Loan Commitment, Borrower shall assure that the all other loan documents for the Project are consistent with those lenders' commitments and that such loan documents comply, in all respects, with the term of this Loan Commitment letter.
 40. **CHANGES OR AMENDMENTS:** No documents or contracts which are to be delivered to City or are subject to City's review or approval shall be modified or terminated without the prior written approval of City.
 41. **ACCEPTANCE OF THIS COMMITMENT:** Borrower's acceptance of this Loan Commitment shall be evidenced by signing and delivering to City the enclosed copy of this letter. Until receipt of Borrower's acceptance of the terms set out herein, City shall have no obligation to make the Loan. In addition, City may withdraw this Loan Commitment at any time prior to receipt of Borrower's written acceptance.

Sincerely,

Gus Vina
Acting City Manager

The undersigned acknowledges and accepts the foregoing Loan Commitment and its terms and conditions.

Dated:

BORROWER:
Township 9 Sacramento L.P.,
a California limited partnership

By: Anton Township LLC,
a California limited liability company,
its Co-General Partner

By: St. Anton Capital, LLC,
a California limited liability company,
its Sole Member and Manager

By: _____
Steven L. Eggert,
Authorized Member