City of Sacramento
City Council

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

Meeting Date: **1/17/2012** **Report Type:** Consent

Title: (Pass for Publication) Township 9 Development Agreement Amendment (P11-050)

Report ID: 2012-00033

Location: Richards Blvd between North 5th and North 7th Streets, District 3

Recommendation: 1) Review: a) a Resolution approving a previously certified Environmental Impact Report; b) an Ordinance approving the third amendment to the Township 9 Development Agreement (City Agreement No. 2007-1081; and 2) pass for publication the Ordinance title as required by the Sacramento City Charter 32c to be adopted January 24, 2012.

Contact: Gregory Bitter, Principlal Planner, (916) 808-7816, Community Development Department

Presenter: None

Department: Community Development Dept / Parks & Recreation Department
Division: Planning
Dept ID: 21001221

Attachments:

1- Description/Analysis
2- Background for P11-050
3- CEQA Resolution for P11-050
4- Ordinance for P11-050
5- Exhibit 1 to Ordinance (DA Amendment for P11-050)
6- Exhibit A (Legal Description) of Exhibit 1 (DA Amendment for P11-050)
7- Exhibit B (Form Turnkey Agreement) of Exhibit 1 (DA Amendment for P11-050)
8- Township 9 PUD Schematic Plan.

City Attorney Review
Approved as to Form
Sheryl N. Patterson
1/4/2012 11:14:01 AM

City Treasurer Review
Reviewed for Impact on Cash and Debt
Janelle Gray
12/23/2011 11:16:17 AM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 1/3/2012 4:17:06 PM

Eileen Teichert, City Attorney Shirley Concolino, City Clerk Russell Fehr, City Treasurer
John F. Shirey, City Manager

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Description/Analysis

Issue: The Developer of the Township 9 project desires to undertake development of the parks for the project in lieu of paying the Park Development Impact Fee (PDIF), which is allowed under City Code Chapter 18.44. The applicable PDIF obligation is currently $7.970 million based on the number of housing units and commercial development, which spread over the 9.59 park acreage provides funding for park development at $831,091 per acre. However, the Developer's budget for the costs for development of the first two parks would meet the entire project's PDIF obligation. In order to insure that all of the project's parks are developed, the Developer has agreed to accept a lower PDIF credit for the first two parks and to establish a phasing schedule for development of the remaining parks under the terms of the Third Amendment to the Development Agreement.

The Developer's cost estimate for construction of all of the project's parks is $12.6 million. The difference between the PDIF obligation and the park development budget is due to the special design elements in the PUD Guidelines, such as fountains and other water features, decorative paving, more hardscape than turf, utilities, and adding fill to create usable park space next to the American River Parkway levee. Also, some of these park development costs would not be eligible for PDIF credit.

The development of the first two parks, the 7th Street Median Park and Riverfront Park, is estimated to cost approximately $8.1 million. However, the amount of PDIF credit is set at $5.3 million based on the PDIF $831,091 per acre allocation. This amount equates to a PDIF fee for 1,671 dwelling units. The Development Agreement provides that since these parks are being built before the housing is constructed, the Developer will not be subject to any future Park Development Impact Fee increases for the first 1,671 units. The cost to develop these two parks is being funded with a grant from the state under the Proposition 1C program. The Developer is obligated to build affordable housing as a condition of this grant program.

The Third Amendment to the Township 9 Development Agreement also allows for the option for the Developer (and any successor in ownership of the property) to construct the remaining park improvements in accordance with the PUD Guidelines or pay the applicable PDIF.

In addition, the Amendment allows for modification of the City's standard park development Credit/Reimbursement or "Turnkey" Agreement to eliminate the requirement to post a letter of credit or other performance guarantee when the park is being constructed with grant funds controlled by the City, such as is the case for the first two parks, and to eliminate the liquidated damages penalty for delays in completion of the park construction if the City exercises its right to withhold issuance of occupancy permits under the Development Agreement. Until the housing is occupied, a delay in completion of the park to serve such housing would be inconsequential. .

Policy Considerations: The Township 9 project was approved on August 28, 2007 and found to be consistent with the City's General Plan and the goals, policies, standards, and objectives of the Richards Boulevard Area Plan and the Central City Community Plan. The Township 9 project continues to be consistent with the City's 2030 General Plan and served as an example of desired development for the recently approved River District Specific Plan.

Environmental Considerations: On August 28, 2007, the City Council certified the EIR for the Township 9 Project and adopted the Mitigation Monitoring Plan, and made Findings of Fact and approved a Statement of Overriding Considerations (Resolution No. 2007-641). The proposed amendment to the Development Agreement does not change the approved development plan. Therefore, the proposed action will not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects considered in the approved EIR. In addition, there are no changed circumstances or new information of substantial importance which would require reevaluation of the EIR or issuance of an Addendum. Pursuant to CEQA Guidelines Section 15162, a subsequent EIR or mitigated negative declaration is not required.

The Township 9 EIR is available at the Community Development Department's webpage located at the following link: http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/

Sustainability: The City has adopted a Sustainability Master Plan to complement the City's General Plan. This was done to ensure that the City set the standard for the practices of sustainability within its own organization as well as becoming a model for any construction projects within the City. The Township 9 Project was recently recognized under the California Sustainable Strategies Pilot Program as one of five statewide Gold Catalyst Projects. Catalyst projects are ones that demonstrate a commitment to sustainable communities and innovative strategies designed to: (i) increase housing supply and affordability; (ii) improve jobs and housing relationships; (iii) stimulate job creation and retention; (iv) enhance transportation modal choices; (v) preserve open space and agricultural resources; (vi) promote public health; (vii) eliminate toxic threats; (viii) address blighted properties; (ix) reduce greenhouse gas emissions; and (x) increase energy conservation and independence.

Commission/Committee Action: On November 17, 2011, the Planning Commission forwarded to the City Council the recommendation for approval by a vote of seven ayes and zero nays (one absent and one vacancy).

Rationale for Recommendation: Staff recommends the Council approve the proposed Third Amendment to the Township 9 Development Agreement, based on the findings listed in the attached ordinance. Staff finds that the proposed amendment is consistent with the policies of the General Plan, the Central City Community Plan and the River District Specific Plan, as well as the Park Development Impact Fee code requirements.

Financial Considerations: This action has no fiscal impacts to the City's general fund or special funds.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report. The Developer is required to construct the improvements with the Proposition 1C grant funds using the City's standard contracting practices, which includes ESBD requirements.

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Background

The Township 9 project (P06-047) was approved by the City Council on August 28, 2007. (Ordinances 2007-069 through -071, Resolutions 2007-641 through -645) The City Council certified the Environmental Impact Report and Mitigation Monitoring Plan, approved a Development Agreement, amended the Richards Boulevard Area Plan Facility Element, amended the Richards Boulevard Special Planning District, approved rezones for the site, approved the Township 9 Planned Unit Development Guidelines and Schematic Plan, and approved a Tentative Map. The project allowed for a high density mixed use development of approximately 2,350 residential units, 840,000 square feet of office, and 146,000 square feet of retail uses on 65± gross acres.

On February 24, 2010, the Planning Director approved a Plan Review for the Township 9 Light Rail Station and Scale House relocation projects (P09-054). On February 24, 2010, the Preservation Director approved a request to move and remodel a historic structure (Scale House) in preparation for the new light rail station (PB09-081).

On August 10, 2010, the Council approved the Township 9 Parks Master Plan (Resolution 2010-474), which included a master plan for the 7th Street Median Park, Riverfront Park, Central Park and the mew, transit plaza and parkways within project; but did not include a master plan for each paseo park. Each developer of parcels containing a paseo will be required to design it in concert with the surrounding development.

On November 18, 2010, the Planning Commission approved a PUD Guidelines Amendment and Subdivision Modifications (P10-036) for the previously approved Township 9 project by adjusting the Vine Street right of way and changing prior Tentative Map conditions to allow recreational easements in lieu of fee simple ownership and reconfigure the location and shape of the park paseo on Lot 11.

On June 30, 2011, the Planning Director approved a Plan Review for the Township 9, Lot 11 Development (P11-002) to allow the construction of a 261,403 square foot residential mixed use building with 180 affordable housing units and 12,500 square feet of ground floor retail.

The developer is now requesting an amendment to the Development Agreement to address parkland construction obligations.

Public/Neighborhood Outreach and Comments: The proposed amendment to the DA does not impact the current development entitlements for the site. This proposal was not subject to an early routing to neighborhood groups, however the public notice for the

Planning Commission's meeting was routed to all property owners within a 500 foot radius of the project site. Any modifications to the existing entitlements will be subject to early review.

Project Design

The approximately 65-acre Township 9 site is generally bounded by Richards Boulevard to the south, the American River to the north, North 5th Street to the west, and North 7th Street to the east. There are 13 parcels on the project site that were reconfigured with approval of the tentative map. Surrounding land uses consist of the American River to the north, industrial uses to the south, and industrial and office uses to the east and west. A copy of the land use plan is provided as Attachment 2. The following summaries each of the project's land use elements:

Residential Uses. The project includes apartments, condominiums, townhomes, and live/work units. Buildings would range from 2 to 15 stories with a maximum height of 180 feet. Approximately 2,350 residential units would be developed.

Office Uses. Approximately 839,628 square feet of office uses would be developed on lots 13, 14, and 17. The tallest structure under would be a 15-story, 235-foot-tall office building (with ground-floor retail) on lot 13.

Retail and Restaurant Uses. Retail uses would be located in the ground floor of residential buildings and would include a mix of restaurant uses such as coffee and sandwich shops, fast-food establishments, and bars. Other neighborhood-serving uses such as hair salons, dry cleaning, small grocery stores, flower shops, and office-type services would also be provided. Retail/restaurant uses proposed total approximately 146,194 square feet.

Parking Facilities. Parking facilities would include parking structures and may also include subgrade parking. The project would include approximately 5,389 parking spaces and meets the City Code requirements. It is anticipated that the project would make use of joint parking arrangements where parking required for one parcel could be provided on an adjacent or adjoining parcel within the project site. On an interim basis, parking requirements for individual parcels could be met through the use of temporary surface parking that would be provided on-site on adjacent lots within the project site as well as off-site on adjacent parcels located outside of the project boundaries.

Parks and Open Space. The project would include approximately 9.59 acres of public parks and approximately 3,920 square feet of private open spaces. Public open spaces would include urban parks and plazas, and parkways. Including the adjacent natural open space along the American River results in a total of 27 acres of parks and open

spaces to serve the residents and employees. Private open spaces would consist of central courtyards that would serve as common open space for residential buildings. Although these courtyards would probably not be open to the public, they would serve residents as relief from the higher density nature of the project.

Landscaping. Proposed on-site landscaping would include trees, shrubs, groundcover and/or turf and irrigation within street planter areas, medians, paseos and parks. Landscaped areas may include water features such as fountains.

Two Rivers Trail and Levee Improvements. The existing American River levee would be adapted to accommodate park improvements adjacent to the Two Rivers Trail, a bicycle trail that runs between I-5 and SR 160. The existing trail and proposed park facilities would provide public access to the river. The Township 9 project would not change the grade of the trail, which currently runs along the top of the levee. The levee improvements would be accomplished through grading operations that would place earthen fill against the existing levee that gently slopes away from the levee toward Richards Boulevard. The goal of this improvement is to minimize the visual and physical barrier of the levee and make the waterfront accessible to the public. The final alignment and design elements have been planned with City input.

Transit Space. The project includes an allowance for a light rail transit station and tracks to be constructed by Sacramento Regional Transit District. A 60-foot-wide easement over the south edge of lots 13, 14, and 17 has been offered for dedication under an agreement with Regional Transit. The air rights above the transit station and tracks area have been reserved by the landowner to allow for the possibility of structures being constructed above these improvements.

Development Agreement Amendment

One of the entitlements approved in August of 2007 was a Development Agreement (City Agreement No. 2007-1081). It provided for the developer to dedicate the land needed for the RT light rail station and eliminated the requirement for special permits based on a building's size (over 40,000 sq. ft.) given the detailed PUD design guidelines. Thereafter, the Development Agreement was amended to provide for notice of defaults and cure rights for the Developer's lender and the second amendment addressed the developer's obligation to maintain the stormwater vaults to the manufacturer's specifications until City's acceptance of those improvements. The second amendment also provided for City's acceptance of the paseo park lots and the transit plaza park lot as an exclusive recreational easement rather than in fee. The

Planning Commission on November 18, 2010 approved a modification of the tentative map conditions to incorporate this change.

The proposed Third Amendment would address the timing for the park development and the obligation of the developer to design and construct the 7th Street Median Park and Riverfront Park under the terms of a special form of the turnkey agreement under the Park Development Impact Fee program. The developer would receive credits for 1,671 housing units, and those credits would remain unchanged for the term of the development agreement (September 27, 2027) even if the PDIF fee is increased. Since the first two parks will have been built before the housing units that the parks serve, the inflationary PDIF increase to cover park development cost inflation would not be needed. The Third Amendment also establishes a phasing schedule for development of the remaining Project parks.

The applicant has coordinated with the City Attorney's Office to complete this amendment to the DA.

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RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE TOWNSHIP 9 DEVELOPMENT AGREEMENT AMENDMENT PROJECT (P06-047)

BACKGROUND

A. On August 28, 2007, pursuant to the California Environmental Quality Act (Public Resources Code §21000 *et seq*. ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 *et seq*.), and the City of Sacramento environmental guidelines, the City Council certified an environmental impact report (EIR) and, having reviewed and considered the information contained in the EIR, adopted findings of fact and findings of overriding consideration, adopted a mitigation monitoring program, and approved Township 9 (Project).

B. The Township 9 Development Agreement Amendment Project (P06-047) proposes to amend the development agreement to provide that the developer will undertake development of two of the parks for the project in lieu of paying the Park Development Impact fee.

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

Section 1. The City Council finds as follows:

A. On August 28, 2007 pursuant to the California Environmental Quality Act (Public Resources Code §21000 *et seq*. ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 *et seq*.), and the City of Sacramento environmental guidelines, the City Council certified an environmental impact report (EIR) and, having reviewed and considered the information contained in the EIR, adopted findings of fact and findings of overriding consideration, adopted a mitigation monitoring program, and approved the Township 9 project (P06-047) (Project).

B. The Township 9 Development Agreement Amendment Project proposes to modify the previously approved Project as follows to allow the developer to develop park sites in lieu of paying the Park Development Impact Fee.

C. Staff has determined that the proposed changes to the original Project do not require the preparation of a subsequent EIR.

Section 2. The City Council has reviewed and considered the information contained in the previously certified EIR for the Project, the previously adopted findings of fact and findings of overriding consideration, and all oral and documentary evidence received during the hearing on the Project Modification. The City Council finds that the previously certified EIR constitutes an adequate, accurate, objective, and complete review of the proposed Project Modification and finds that no additional environmental review is required based on the reasons set forth below:

A. No substantial changes are proposed by the Project Modification that will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

B. No substantial changes have occurred with respect to the circumstances under which the Project Modification will be undertaken which will require major revisions to the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

C. No new information of substantial importance has been found that shows any of the following:

1. The Project Modification will have one or more significant effects not discussed in the previously certified EIR;

2. Significant effects previously examined will be substantially more severe than shown in the previously certified EIR;

3. Mitigation measures previously found to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the Project Modification; or

4. Mitigation measures which are considerably different from those analyzed in the previously certified EIR would substantially reduce one or more significant effects on the environment.

Section 3. Based on its review of the previously certified EIR for the Project, the previously adopted findings of fact and findings of overriding consideration, and all oral and documentary evidence received during the hearing on the Project Modification, the City Council finds that the EIR reflects the City Council's independent judgment and analysis, certifies the EIR for the Project Modification, and readopts the findings of fact and findings of overriding considerations.

Section 4. The mitigation monitoring program for the Project as previously adopted remains in effect and applies to this approval. The mitigation monitoring program has been adopted and implemented as part of the Project. The mitigation monitoring

program meets the requirements of CEQA Section 21081.6 and the CEQA Guidelines section 15091.

Section 5. Upon approval of the Project, the City's Environmental Planning Services shall file or cause to be filed a Notice of Determination with the Sacramento County Clerk and, if the project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to section 21152(a) of the Public Resources Code and the State EIR Guidelines adopted pursuant thereto.

Section 6. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

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ORDINANCE NO.

Adopted by the Sacramento City Council

APPROVING THIRD AMENDMENT TO DEVELOPMENT AGREEMENT FOR TOWNSHIP 9 PROJECT

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Incorporation of Agreement.

This ordinance incorporates by reference the *Development Agreement for Township 9 Project,* City Agreement No. 2007-1081, (the "Original Agreement') between the City of Sacramento ("City") and Capitol Station 65 LLC, ("Landowner").

Section 2. Hearing before the Planning Commission.

On November 17, 2011, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning Commission conducted a noticed public hearing on an application to amend the Original Agreement by (i) establishing a phasing schedule for development of the Township 9 Project parks, (ii) addressing the Park Development Impact Fee Credit under City Code Chapter 18.44 for Landowner's development of the North 7th Street Median and Riverfront Parks, and (iii) modifying the City's form Credit/Reimbursement Agreement or "turnkey agreement" for park development when Township 9 parks are constructed with grants funds assigned by City to Landowner. During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the proposed amendment.

Section 3. Hearing before the City Council; Findings.

On _____, 2012, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the application to amend the Original Agreement. During the hearing, the City Council received and considered evidence and testimony concerning the proposed amendment. Based on the information in the application and the evidence and testimony received at the hearing, the City Council finds as follows:

(a) The proposed amendment to the Original Agreement is consistent with the City's general plan and the goals, policies, standards, and objectives of any applicable specific or community plan.

(b) The proposed amendment will facilitate Landowner's development of the property subject to the amendment, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the applicable specific or community plan.

(c) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.

(d) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.

(e) Landowner will participate in all programs established or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.

(f) Landowner has made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.

Section 4. Approval and Authorization.

The City Council hereby approves the *Third Amendment to Development Agreement for Township 9 Project,* City Agreement No. 2007-1081, a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the City Manager to sign on the City's behalf, on or after the effective date of this ordinance, the *Third Amendment to Development Agreement for Township 9 Project*.

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Exhibit A – Third Amendment to Development Agreement for Township 9 Project

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No Fee Required: Recording benefits the City of Sacramento, a government entity, per Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street, 1st floor
Sacramento, CA 95814

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

for

TOWNSHIP 9

Project No. P06-047

Between CITY OF SACRAMENTO

and

CAPITOL STATION 65 LLC

_____, 2012

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
TOWNSHIP 9 PROJECT

This Third Amendment to Development Agreement (this "Third Amendment") is entered into as of __ day of _____, 2012 ("Effective Date") by and among the CITY OF SACRAMENTO, a California municipal corporation ("CITY"), and CAPITOL STATION 65, LLC, a California limited liability company ("LANDOWNER"), pursuant to the authority of Government Code section 65864 *et seq*. and CITY Code Section 18.16.130. CITY and LANDOWNER are sometimes collectively referred to herein as the "Parties" or in the singular as "Party" as the context requires."

RECITALS

This Third Amendment is entered into upon the basis of the following facts, understandings, and intentions of the CITY and LANDOWNER:

A. Property - CITY and LANDOWNER entered into that certain Development Agreement, as defined herein, conveying specified rights to develop the certain real property located within the City of Sacramento, County of Sacramento, State of California, and more particularly described in Exhibit A to the Development Agreement (the "Property"), which is attached hereto. The Property consists of lands designated as Assessor Parcels Nos. 001-0020-003, -019, -034, -036, -041, -044, -045, -046, 001-0200-012, -013, and -034 and is approximately 65 gross acres in size.

B. Development Project - On August 28, 2007, CITY approved subdividing the 65 acres into 36 lots to allow for development of the Property for the Township 9 Project, which consists of approximately 2,350 residential units, 839,628 sq. ft. of office and 146,194 sq. ft. of retail uses, and parks and open spaces (the "Project"). The Project includes 12 park sites located adjacent to certain lots as shown in the Land Use Plan included in the PUD Guidelines and on the Tentative Map, which park sites and adjacent lots are referenced herein.

C. PUD Guidelines – As part of the CITY approvals of the Project, Planned Unit Development Design (PUD) Guidelines were adopted (Resolution No. 2007-643), which included preliminary/conceptual design features for each park site, preservation of the American River parkway open space, street median parkways and the transit plaza.

D. Parks Master Plan – On August 10, 2010, CITY approved the Township 9 Parks Master Plan (Resolution 2010-474), which included a master plan for parks, mews, the transit plaza and parkways within Project, but did not include a master plan for each paseo park. Each developer of parcels containing a paseo will be required to design it in concert with the surrounding development. Individual parks, mews, the transit plaza and parkways will be dedicated by LANDOWNER to CITY upon completion under the terms of a "turnkey agreement" in the form as approved by the City Council, which terms may be modified for parks developed with grant funds assigned by CITY as described herein.

E. Tentative Map - Under the conditions imposed on the approval of the Tentative Map for the Project (Resolution No. 2007-644), as modified by the Planning Commission by its Record of Decision for P10-036 dated on November 18, 2010, condition number 91 allows the LANDOWNER the option to construct the parks and open spaces under the CITY's standard turnkey agreement in lieu of paying Park Development Impact Fees (PDIF) in accordance with City Code Chapter 18.44. For the reasons set out herein, CITY desires that LANDOWNER (and its successors in interests in ownership of the Property) be required to develop the 7th Street Median Park and Riverfront Park under the terms of a modified turnkey agreement.

F. State Grant Requirements - LANDOWNER is undertaking construction of some of the Project's parks and open spaces (7th Street Median and Riverfront Park) as part of the infrastructure improvements funded with a grant from the State Housing and Community Development Department (HCD) with Proposition 1C proceeds. In addition, CITY, on LANDOWNER's behalf, may be awarded a Proposition 84 park grant to further assist in funding the costs of development of Riverfront Park and relocation of the Two Rivers Trail in order to reduce the share of Proposition 1C funds for this park or to further enhance the park's design features, as well as additional grants for these and other parks within the Township 9 Project. The assignment of these grant funds requires the LANDOWNER to develop those parks and open spaces under a turnkey agreement. However, some of the performance security requirements in the CITY's standard PDIF turnkey agreement are not needed, since CITY will control the disbursement of the grant funds to pay for these parks and open space improvements.

G. PDIF Obligations and Credits - CITY is unwilling to grant PDIF credits to LANDOWNER for all of its eligible park and open spaces costs for the 7th Street Median Park and Riverfront Park because the costs would exceed the PDIF requirement due to the fact that there are design elements which are considered extraordinary improvements, such as water features or decorative paving. These extraordinary design elements are being undertaken by LANDOWNER at its option based on the Parks Master Plan and PUD Guidelines prepared by LANDOWNER and approved by City. In particular, if PDIF credits were issued for all of the costs incurred by LANDOWNER for the initial phases of park improvements, there would be insufficient remaining PDIF funding obligations to cover the costs to complete development of the remaining parks and open space improvements for the Project. CITY intends to grant PDIF credits to LANDOWNER for all of its eligible park and open spaces costs for the other parks in the Township 9 Project, provided that the PDIF credit for each such park shall be limited such that (i) the remaining PDIF obligation for the Township 9 Project is not less than the cost of developing the remaining parks and (ii) the PDIF credit for the Township 9 Project on a cumulative basis does not exceed the total PDIF obligation for the Township 9 Project.

H. Development Agreement Amendment - CITY and LANDOWNER entered into that certain *Development Agreement for Township 9 Project No. P06-047 by and between the City of Sacramento and Capitol Station 65 LLC*, effective on the effective

date of City of Sacramento Ordinance No. 2007-069. The purpose of this Third Amendment is to bind LANDOWNER and all successors in interest in the Property to (i) develop the 7th Street Median Park and Riverfront Park for the Project in accordance with the Parks Master Plan and PUD Guidelines, (ii) determine that such development will meet the PDIF requirements for a set amount of housing units, and (iii) provide for modifications to the CITY's standard PDIF "turnkey" or credit/reimbursement agreement for park development by LANDOWNER. This Third Amendment imposes a new mandatory obligation for the LANDOWNER to develop the 7th Street Median Park and Riverfront Park and sets the PDIF credit by housing units; so it is a substantive change to the Development Agreement and requires public hearings, review and approval of the Planning Commission and City Council, and adoption by means of an ordinance.

I. Prior Amendments - The Development Agreement was previously amended. The First Amendment provided for notice of defaults and cure rights for LANDOWNER's lender and the Second Amendment provided for LANDOWNER to maintain the stormwater vaults to the manufacturer's specifications until CITY's acceptance of those improvements. In addition, the Second Amendment provided for CITY's acceptance of the dedication of the paseo park lots and the transit plaza park lot as an exclusive recreational easement rather than in fee, and the Tentative Map was modified to incorporate this change. These changes to the Development Agreement were not substantive in nature and did not require review or approval by the Planning Commission or City Council in accordance with City Code Section 18.16.130.

NOW, THEREFORE, pursuant to Section 14 of the Development Agreement, and the authority contained in Sacramento City Code Section 18.16.130 and Government Code Section 65868, and for good and valuable consideration, receipt and sufficiency of which is hereby acknowledge, and of the mutual covenants and promises of the Parties contained herein, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

AGREEMENT

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the definitions given in the Development Agreement. The term "Development Agreement" as used herein shall mean the *Development Agreement for Township 9 Project No. P-06047 by and between the City of Sacramento and Capitol Station 65 LLC*, (Agreement No. 2007-1081) approved by Ordinance No. 2007-069 and recorded in Book 20071128, Page 0973 of the Official Records of Sacramento County, as amended under the First Amendment dated September 3, 2008 (Agreement No. 2007-1081-1) recorded in Book 20080917, Page 0530 and the Second Amendment dated September 1, 2010 (Agreement No. 2007-1081-2) recorded in Book 20101116, Page 1925.

2. Effective Date. The effective date of this Amendment to the Development Agreement (the "Third Amendment Effective Date") shall be the date that the ordinance which is enacted to approve this Third Amendment becomes effective.

3. Third Amendment. The following amendments to the Development Agreement shall be effective as of the Third Amendment Effective Date:

A. Section II A, Park and Open Space Development Phasing, of Exhibit M, Special Conditions, of the Development Agreement shall be amended to read as follows:

"A. **Park and Open Space Development.** With regard to development of the Township 9 parks and open spaces, CITY and LANDOWNER agree as follows:

1. Phasing - Public parks and open spaces (collectively "parks") shall be developed concurrently with the housing units and commercial development on the adjacent lots so that these Public Facilities are available for use prior to, or no later than, when the housing units and offices are ready for occupancy. Park landscaping requires a reasonable period of time for growth to be established before it can be accessed by the public. Therefore, CITY retains the right to refuse to issue occupancy permits for housing units and commercial development on the adjacent lots as set out below until construction of each park has been completed and is available to serve the Project residents and occupants when the housing units and offices are first occupied.

a. To implement the foregoing phasing provision for the initial phase of Project development, LANDOWNER shall develop the following parks concurrent with development on the adjacent lots:

a. For 7th Street Median Park, execute a Turnkey Agreement prior to issuance of the first building permit for any housing units on lot 11, and substantially complete prior to issuance of the first occupancy permit for a housing unit development on said lot.

b. For Riverfront Park (lot 2), execute a Turnkey Agreement prior to issuance of the first building permit for any housing units on lots 1A, 1C, 3, 4 or 5B, and substantially complete prior to issuance of the first occupancy permit for a housing unit development on said lots.

b. To implement the foregoing phasing provision for the later phases of Project development, LANDOWNER may develop the following parks in accordance with the specified schedule in the Turnkey Agreement for that park, or pay the Park Development Impact Fees (PDIF) in accordance with City Code Chapter 18.44 in effect at the

time building permits are issued for development on the adjacent lots. For parks that are to be constructed by LANDOWNER, the following phasing schedule shall apply:

i. For Transit Plaza, execute a Turnkey Agreement prior to issuance of the first building permit for development of lot 13 or 14, whichever lot is developed first, and substantially complete prior to issuance of the first occupancy permit for development on said lot.

ii. For Central Park (lot 9), execute a Turnkey Agreement either (i) before issuance of the first building permit for any housing units on lot 8A or 8C, whichever lot is developed first, or (ii) before the building permit is issued for the 1501st housing unit within the Project; and substantially complete prior to issuance of the first occupancy permit for development on said lot or the 1501st housing unit, as applicable.

iii. For Park Blvd Median South, execute a Turnkey Agreement prior to commencement of construction of the adjacent portion of Park Blvd and substantially complete prior to CITY's acceptance of that portion of Park Blvd street improvements.

iv. For Park Blvd Median North, execute a Turnkey Agreement prior to commencement of construction the adjacent portion of Park Blvd and substantially complete prior to CITY's acceptance of that portion of the Park Blvd street improvements.

v. For the Mew between New A Street and Riverfront Drive, execute a Turnkey Agreement prior to issuance of a building permit for development of lot 3 or 4, whichever lot is developed first, and substantially complete prior to issuance of the first occupancy permit for development on said lot, as applicable.

vi. For each Paseo, execute a Turnkey Agreement prior to issuance of the first building permit for any housing units on the adjacent lot(s), develop as one complete park space, and substantially complete prior to issuance of the first occupancy permit for a housing unit on the said adjacent lot(s). The lot 7 paseo is adjacent to lots 7A and 7C. The lot 8 paseo is adjacent to lots 8A and 8C. The lot 11 paseo is adjacent to lots 11A and 11C. The lot 12 paseo is adjacent to lots 12A and 12C. The lot 15 paseo is adjacent to lots 15A and 15C. The lot 16 paseo is adjacent to lots 16A and 16C.

2. Development Process – LANDOWNER shall develop the 7th Street Median Park and the Riverfront Park under the terms of the Agreement Relating to Design and Construction of Park Improvements for Township 9 Project (the "Township 9 Turnkey Agreement" or "Turnkey Agreement"), which is attached as Exhibit B and incorporated herein by this reference. The terms set out in Township 9 Turnkey Agreement shall apply to development of other parks LANDOWNER may choose to build without the requirement to post a letter of credit or other performance guarantee, in addition to the contractor performance and payment bonds, if developed by LANDOWNER with grant funds assigned by CITY and in consideration of the limitation on issuance of occupancy permits until the park is substantially completed as set out herein. The master plan for each park must be approved before the park may be developed under the Township 9 Turnkey Agreement.

3. Park Development Impact Fees – In recognition that LANDOWNER (and its successors in interest in the Property) will be obligated to develop 7th Street Median Park and the Riverfront Park in accordance with the foregoing phasing schedule, the provisions in the Township 9 Turnkey Agreement, and the minimum development costs set out in Section A.4.b below, LANDOWNER shall not be required to pay Park Development Impact Fees (PDIF) in accordance with City Code Chapter 18.44 for 1,671 housing units because such obligation will have been met by means of LANDOWNER undertaking development of the 7th Street Median Park and the Riverfront Park rather than CITY.

   Notwithstanding any increase in the PDIF CITY may adopt in the future, the PDIF credit for LANDOWNER's development of the 7th Street Median Park and the Riverfront Park shall be 1,671 housing units for the term of this Development Agreement. Thereafter, the PDIF credit may be adjusted by CITY to account for increases in the PDIF after the Effective Date of this Third Amendment.

   For the remaining housing units and office and retail development within the Township 9 Project, LANDOWNER shall either (i) develop the park according to the phasing schedule set forth in Section A.1,above, and meet the minimum development costs set out in Section A.4.b, below, and receive the applicable PDIF credit, or (ii) pay the required PDIF upon issuance of a building permit, all in accordance with City Code Chapter 18.44 in effect at the time of park development or building permit issuance, as applicable. LANDOWNER's election must occur prior to issuance of a building permit for development on the adjacent lots as referenced in the

phasing schedule in Section A.1.b, above. If LANDOWNER elects to pay the PDIF for a development project in-lieu of building the adjacent park as set out in the foregoing phasing schedule, in that event CITY will use the PDIF proceeds to develop the park once sufficient PDIF funds have been collected from the Township 9 Project. If LANDOWNER elects to build the park in accordance with the foregoing phasing schedule, the PDIF credit for that park shall be specified in the Turnkey Agreement with regard to the number of housing units and commercial development determined by the eligible costs of the park development and the PDIF rate in effect at the time of approval of the Turnkey Agreement.

4. Development Costs - As of the Third Amendment Effective Date, the Project's PDIF obligation based on the approved Township 9 PUD was $7.970 million, but LANDOWNER's cost estimate for development of the parks and open spaces in accordance with the Parks Master Plan and PUD Guidelines was $12.612 million as follows:

Riverfront Park	$ 5,600,000
7th Street Median	$ 2,562,000
Transit Plaza	$ 500,000
Paseos (6)	$ 1,800,000
Mew	$ 300,000
Central Park	$ 1,550,000
Park Blvd Median	$ 300,000
TOTAL	$ 12,612,000

However, CITY has not verified LANDOWNER's cost estimates and certain costs to prepare each park and open space site for development (such as roadways, utilities, and grading, relocation of Two Rivers Trail and open space subject to flooding) are not eligible PDIF expenses and certain design features are enhancements beyond CITY standards. Therefore, in order to insure that LANDOWNER meets the PDIF requirements through development of the parks and open spaces, the following provisions shall apply:

a. LANDOWNER shall provide CITY, 30 days prior to the time of final acceptance of each park and open space improvement, copies of all contractor invoices to verify the actual costs incurred in order to receive PDIF credits.

b. The cost for development of each park and open space improvement shall not be less than the applicable CITY cost per acre using the total project PDIF at the time of approval of each Turnkey Agreement; however, CITY and LANDOWNER

may mutually agree to adjust the PDIF cost allocation among the Project parks based on the development costs set out in each Turnkey Agreement. As of the Third Amendment Effective Date, this amount was $831,091 per acre based on the 9.59 acres to be developed as parkland and a total estimated PDIF of $7,970,167. The park acreages set out below are approximate and the actual amount of parkland to be dedicated will be based on the final subdivision maps. The minimum development cost for each park and open space improvement based on the current PDIF per acre cost is as follows:

Park/Open Space	**Acreage**	**Cost**
Riverfront Park	5.40	$ 4,487,894
7th Street Median	1.00	$ 831,091
	Subtotal:	$ 5,318,985
Transit Plaza	0.32	$ 265,949
Paseos (6)		
Lot 7A/7C	0.23	$ 191,151
Lot 8A/8C	0.24	$ 199,462
Lot 11A/11C	0.19	$ 157,907
Lot 12A/12C	0.18	$ 149,596
Lot 15A/15C	0.24	$ 199,462
Lot 16A/16C	0.18	$ 149,596
	Subtotal:	$1,313,123
Mew	0.48	$ 398,924
Central Park	0.81	$ 673,184
Park Blvd Median	0.32	$ 265,949
	TOTAL:	**$7,970,416**

c. In no event shall the total costs incurred by LANDOWNER for development of all of the Project's parks and open spaces be less than the current PDIF obligation of $7.970 million, as adjusted by the annual inflation factor set forth in Section 18.44.120 of the City Code. However, expenses which would not be eligible for PDIF credit shall be omitted from this calculation, including as set forth in Tentative Map condition 81, for relocation of the Two Rivers Trail. Eligible expenses would be determined after completion of construction of each park based on the actual costs incurred. Eligible expenses may include the costs for higher quality materials, equipment and finishes than CITY standards, development of the amenities in the approved master plan for each park, and the

park design features as shown in the PUD Guidelines. CITY's approval of the eligible expenses for each park shall not be unreasonably withheld, conditioned or denied. However, in no event shall LANDOWNER receive PDIF credit which either (i) results in a remaining PDIF obligation which is less than the cost of developing the remaining parks, or (ii) the PDIF credit on a cumulative basis would exceed the total PDIF obligation for the Project.

d. The foregoing park and open space development costs, based on the per acre allocation of the PDIF obligation, includes 17.9% for CITY administration, plan review and construction inspection costs, so the minimum LANDOWNER construction cost per park and open space improvement would be net of the CITY costs. The LANDOWNER's obligation to pay CITY's actual costs if LANDOWNER develops the parks and open space improvements is set out in the Township 9 Turnkey Agreement.

5. Effect of Amendment. Except as expressly modified by this Third Amendment, the Development Agreement as previously amended, including all of the entitlements for the Township 9 Project as referenced in the Development Agreement and as they may have been amended, modified or supplemented, shall continue in full force and effective according to its terms and conditions. CITY and LANDOWNER hereby ratify and affirm all of their respective rights and obligations under the Development Agreement. In the event of any conflict between this Third Amendment and the Development Agreement, this Third Amendment shall control.

6. Construction. CITY and LANDOWNER have both been represented by counsel in the preparation of this Third Amendment and no presumption or rule that ambiguity shall be construed against the drafter shall apply to the interpretation or enforcement hereof.

7. Entire Agreement. This Third Amendment represents the entire agreement of the Parties relating to the subjects contained herein. No oral or written statement, representation, or agreement relating to the subjects contained herein but not included within this Third Amendment shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

8. Authority. The persons signing below represent that they have the authority to bind their respective party and that all necessary approvals have been obtained.

9. Effect of Agreement Upon Title to Property. This Third Amendment shall be recorded with the Sacramento County Recorder. In accordance with the provisions of Government Code Section 65868.5, from and after the time of recordation of this Third Amendment, the Development Agreement as amended shall impart such notice thereof

to all persons as is afforded by the recording laws of the State of California. The burdens of this Third Amendment shall be binding upon, and the benefits of this Third Amendment shall inure to, all successors in interest to the Parties to the Development Agreement and all successors in interest in ownership of the Property.

10. Counterparts. This Third Amendment may be executed in one or more counterparts, and all of the counterparts shall constitute one and the same agreement, notwithstanding that all Parties hereto are not a signatory to the same or original counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Third Amendment as of the date first set forth above.

CITY:
CITY OF SACRAMENTO,
a California municipal corporation

By: _____
John Dangberg
Assistant City Manager

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST

By: _____
City Clerk

LANDOWNER:

CAPITOL STATION 65, LLC,
a California limited liability company

By: _____
Scott Syphax
Chief Operating Officer

[ATTACH NOTARY ACKNOWLEDGMENTS]

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Exhibit A
Property Legal Description

EXHIBIT A

Order Number: 0192-2842195
Page Number: 13

LEGAL DESCRIPTION

Real property in the City of SACRAMENTO, County of SACRAMENTO, State of CALIFORNIA, described as follows:

PARCEL A:

PARCEL NO. 11, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M. CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, PAGE 28.

EXCEPTING THEREFROM THE EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM; INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USES OF THE LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING, OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC COMPANY, A DELAWARE CORPORATION, RECORDED JANUARY 6, 1959, IN BOOK 3972, PAGE 893, OFFICIAL RECORDS.

APN: 001-0200-013

PARCEL B:

PARCEL NO. 13, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

APN: 001-0020-045 AND 001-0020-003

PARCEL C:

ALL OF PARCEL NO. 10, AND A PORTION OF THOSE LANDS DESIGNATED "SOUTHERN PACIFIC COMPANY" AS BOTH ARE SHOWN ON THAT RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY IN BOOK 26 OF SURVEYS, AT PAGE 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE BOUNDARY OF SAID PARCEL NO. 10, NORTH 71°44'05" WEST 300.00 FEET, AND NORTH 18°29'45" EAST 1686.64 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, LEAVING THE BOUNDARY OF SAID PARCEL NO. 10,

NORTH 18°29'45" EAST 18.66 FEET; THENCE, SOUTH 83°27'58" EAST 173.72 FEET TO A POINT IN THE WESTERLY BOUNDARY OF PARCEL NO. 13 AS SHOWN ON SAID RECORD OF SURVEY AND IN THE EASTERLY LINE OF SAID LANDS; THENCE, ALONG THE WESTERLY BOUNDARY OF SAID PARCEL NO. 13, AND THE EASTERLY LINE OF SAID LANDS, THE FOLLOWING SEVEN COURSES.

(1) SOUTH 66°05'14" WEST 39.03 FEET, (2) ALONG THE ARC OF A 291.00 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 49°27'53" EAST 52.02 FEET TO A POINT OF COMPOUND CURVATURE, (3) ALONG THE ARC OF A 749.44 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 41°15'58" EAST 80.28 FEET TO A POINT OF COMPOUND CURVE, (4) ALONG THE CHORD WHICH BEARS SOUTH 20°49'47" EAST 155.02 FEET, (5) ALONG A NON-TANGENT LINE, SOUTH 18°29'45" WEST 1471.54 FEET, (6) SOUTH 71°30'15" EAST 15.00 FEET, AND (7) SOUTH 18°29'45" WEST 62.08 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 13 AND TO THE NORTHERLY LINE OF RICHARDS BOULEVARD, AN 80.00 FOOT PUBLIC ROAD GRANTED TO THE COUNTY OF SACRAMENTO BY DEED RECORDED IN BOOK 1178 OFFICIAL RECORDS AT PAGE 312; THENCE, ALONG THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, NORTH 71°44'05" WEST 66.95 FEET TO THE MOST SOUTHERLY CORNER OF PARCEL NO. 11 AS SHOWN ON SAID RECORD OF SURVEY; THENCE, LEAVING THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, AND ALONG THE BOUNDARY OF SAID PARCEL NO. 11, NORTH 18°29'45" EAST 475.00 FEET, AND NORTH 71°44'05" WEST 5.00 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL NO. 10; THENCE, ALONG THE BOUNDARY COMMON TO SAID PARCEL NO. 10 AND SAID PARCEL NO. 11, SOUTH 18°29'45" WEST 475.00 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 1989 IN BOOK 890215 PAGE 916, OFFICIAL RECORDS.

EXCEPTING FROM THAT PORTION DESIGNATED "SOUTHERN PACIFIC COMPANY", ALL MINERALS AND MINERAL RIGHTS, INTERESTS, AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER GRANTOR OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION, RECORDED JUNE 30, 1989 IN BOOK 890630 PAGE 5102, OFFICIAL RECORDS.

APN: 001-0200-012 AND 001-0200-034

PARCEL D:

ALL THAT PORTION OF PARCEL NO. 15 AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 26 OF SURVEYS, PAGE 28, OFFICIAL RECORDS OF SACRAMENTO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 15; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE WESTERLY, NORTHERLY AND EASTERLY LINE OF SAID PARCEL NO. 15, THE FOLLOWING FIVE COURSES:

(1) NORTH 18°29'45" EAST 554.06 FEET; (2) SOUTH 77°26'30" EAST 264.77 FEET; (3) ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 276.84 FEET, SUBTENDED BY A CHORD BEARING SOUTH 29°28'30" EAST 411.25 FEET; (4) NORTH 71°30'15" WEST 3.50 FEET; AND (5) SOUTH 18°29'45" WEST 304.96 FEET; THENCE, LEAVING SAID EASTERLY LINE OF SAID PARCEL NO. 15, NORTH 71°37'15" WEST 565.33 FEET

TO THE POINT OF BEGINNING.

ALSO BEING DESCRIBED IN PROPOSED PARCEL NO. 1 IN CERTIFICATE OF COMPLIANCE RECORDED AUGUST 26, 1988 IN BOOK 880826 PAGE 1522, OFFICIAL RECORDS.

APN: 001-0020-046

PARCEL E:

ALL THAT PORTION OF SWAMP LAND SURVEY NO. 949, SACRAMENTO COUNTY SURVEYS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY EXTENSION OF THE CENTERLINE OF 7TH STREET OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL MAP OF SAID CITY, LOCATED NORTH 19°07' EAST 2351.48 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF NORTH "B" STREET OF SAID CITY OF SACRAMENTO; THENCE FROM SAID POINT OF BEGINNING, NORTH 70°53' WEST 40.00 FEET TO THE WEST LINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE NORTH 70°53' WEST 30.00 FEET; THENCE NORTH 19°07' EAST ALONG A LINE PARALLEL WITH SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE SOUTH 70°53' EAST 40.00 FEET TO SAID CENTERLINE OF SAID 7TH STREET; THENCE SOUTH 19°07' WEST 40.00 FEET ALONG SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET TO THE POINT OF BEGINNING.

APN: 001-0020-019

PARCEL F:

PARCEL NO. 9, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ALL THAT MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OF THAT MAY BE PRODUCED THEREFROM INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS, DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSOR AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF THE SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS,

SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY SAID RIGHTS, AS CONTAINED IN INDENTURE, EXECUTED BY AND BETWEEN SOUTHERN PACIFIC COMPANY, A CORPORATION OF THE STATE OF DELAWARE, GRANTOR AND BERCUT-RICHARDS PARKING COMPANY, A CORPORATION, GRANTEE, RECORDED SEPTEMBER 14, 1959, IN BOOK 3879, PAGE 344, OFFICIAL RECORDS.

APN: 001-0020-034; 001-0020-041, AND 001-0020-044

PARCEL G:

PARCEL NO. 12, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED IN BOOK 5 OF PATENTS, PAGE 609.

APN: 001-0020-036

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Exhibit B

Form of Agreement for Design and Construction of Park Improvements for Township 9 Project

AGREEMENT FOR DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS FOR TOWNSHIP 9 PROJECT _____ PARK AND PARK DEVELOPMENT IMPACT FEE CREDITS

This Agreement Relating to Design and Construction of Park Improvements for Township 9 Project ____ Park and Park Development Impact Fee Credits (this "Agreement") is entered into on _____, 2012 ("Effective Date") by and between the **CITY OF SACRAMENTO,** a charter municipal corporation ("City"), and **CAPITOL STATION 65 LLC**, a California limited liability company ("Developer"), with respect to the following facts:

RECITALS

A. Developer owns the real property described in **Exhibit A**, attached hereto, and incorporated herein by this reference ("**Property**").

B. The portion of the Property described in **Exhibit B**, attached hereto and incorporated herein by this reference, ("**Park Site**"), is intended for dedication or has been dedicated for use as a neighborhood park serving the Property (the "**Park**").

C. Development of the Property is subject to the payment of a Park Development Impact Fee ("**Park Development Fee**") in accordance with the City of Sacramento Code, Title 18, Chapter 18.44 ("Fee Ordinance"). The Park Development Fee Nexus Study (approved by Resolution No. 99-474 on August 17, 1999) as amended or supplemented, identifies the park facilities and improvements needed. The purpose is to provide funds necessary to design, construct, and install park facilities required to meet the needs of and address the impacts caused by new development.

D. The Fee Ordinance authorizes credits and reimbursements applicable to Park Development Fees owed (1) by landowners who have advanced funds for the construction of park facilities that otherwise would be paid from the revenue of the Park Development Fee, and (2) by landowners who construct park facilities that otherwise would be paid for from the revenue of the Park Development Fee.

E. Developer desires to develop the Park Site by constructing park improvements, including, at a minimum, the park improvements specified in **Exhibit C**, attached hereto and incorporated herein by this reference ("**Project" or "Project**

Improvements”). The Project Improvements specified in **Exhibit C** do not include utility and access improvements Developer is required to install under the tentative map for the Property pursuant to the provisions of the City’s Subdivision Ordinance (Sacramento City Code, Title 16).

F. Development of the Park Site will require various design services, which will be performed by either Developer or City as shown on the Park Development Task Allocation in **Exhibit D**, attached hereto and incorporated herein by this reference. The Project will be constructed pursuant to plans and specifications approved by the City and the actual costs of construction of the Project are to be the result of a bidding process approved by City as provided herein. The total cost of the Project design and construction is based on the budget amount specified in **Exhibit E**, attached hereto and incorporated herein by this reference, ("**Park Development Budget**"), which budget may be amended by agreement of the parties based on the actual design costs and the construction bid amount, and any approved change orders. However, the amount of credits may be may be less than the Project Development Budget for the reasons set out herein.

G. Subject to the credits against the Park Development Fee as provided herein, Developer is willing to perform the design services assigned to Developer in **Exhibit D**, and construct the Project, and to fund the City’s costs to oversee the Project design and construction activities (collectively the "**Project Costs,"** as further defined herein). Project Costs shall mean and include costs related to all contracts for the construction of the Project, including change orders, and costs associated with all other contracts for professional and other services necessary, in the City's judgment, to implement and complete construction, together with all planning and design costs and right of way or other acquisition costs, if any, associated with the Project. Project Costs also shall include, but not be limited to, the engineering estimates and the Project elements included therein, construction inspection fees, and whichever of the following costs or fees, if any, may be applicable: environmental documentation (whether prepared by outside consultants or City staff), City project administration, plan check and inspection fees, biological studies and mitigation measures, and costs for approvals and fees imposed by any other public agency.

H. The Project is eligible for, and the City agrees to provide credits against, the Park Development Fee for a portion of the Developer's Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement. Under the Third Amendment to the Development Agreement for Township 9 Project, Developer will receive Park Development Fee credits for a specified amount of Project Costs, which may be less than the Project Costs, in consideration that the Project Improvements include design features that are more costly than City’s park standards and to insure that the remaining amount of Park Development Fees that will be owed for subsequent development of the Property will be sufficient to cover the costs for construction of the remaining parks for the Township 9 Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, City and Developer hereby agree as follows:

ARTICLE I
DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Recitals Incorporated. The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

1.1 Design and Construction. Developer will design and construct the Project in accordance with the terms of this Agreement and convey to City the completed Park, along with all interest in real property necessary for the operation, maintenance, repair, and ownership thereof by City. The interest(s) in real property for the Park are to be conveyed to City as a fee interest or as an exclusive recreational easement in the land, as provided for in the Township 9 tentative map conditions. Developer shall also convey to City the improvements and any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements to the Park Site commonly known as "_____ Park" (approximately ____ acres) no later than_____; or within twelve (12) months of the date the City approves the construction documents, whichever is later ("Completion Date").

1.2 Design; Final Budget. The design related services are to be performed by Developer as specified in **Exhibit D** include Design Development, Construction Document Preparation, and Bid Document Preparation. Developer has selected _____as the landscape architect to perform the design services and City has approved said selection. . Developer shall perform the various Project design-related services in accordance with the following:

1.2.1 Design Development. Developer shall prepare conceptual plans for the Project, which shall include a Park site survey, a proposed park master plan and Project description illustrating the park development and all improvements at full build-out, and Project description illustrating the Project Improvements to be constructed within the budget amounts specified in **Exhibit E**, construction cost estimates for the park master plan . Developer shall provide copies of the conceptual plans to the Landscape Architecture Section, ("**LAS**") of the City, Department of Parks and Recreation ("**Department**") for its review and approval. The City agrees to use its best efforts and due diligence to review and approve such conceptual plans, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.2 Construction Document Preparation. After LAS has given its written approval of the conceptual plans under subsection 1.2.1, Developer shall

prepare and submit to the LAS construction plans and specifications for the Project Improvements, including updated construction cost estimates and construction time lines. At a minimum, Developer shall submit such plans and specifications to the LAS at the **35, 75, and 100-percent** phases of completion. The City agrees to use its best efforts and due diligence to review and approve such construction plans and specifications, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.3 **Bid Document Preparation**. After LAS has given its written approval of the construction plans and specifications under subsection 1.2.2, Developer shall prepare and submit to the LAS bid documents for the Project, based upon the City approved construction plans and specifications. The City agrees to use its best efforts and due diligence to review and approve such bid documents, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.4 **Environmental Review**. An EIR has been prepared and certified for the Township 9 Project, and the EIR included the potential impacts and mitigation measures for development of the Project Improvements. If new information or changed circumstances warrant additional environmental review as determined by the City's Environmental Services Department, in that event a consultant retained by City and/or by City staff shall prepare the environmental documentation required for development of the Park site as provided herein. If directed by City, and in accordance with all applicable legal requirements, Developer shall prepare such environmental documentation, subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and the City's Environmental Planning Services Division. The Completion Date set forth in this Agreement is based upon an assumption that no further environmental documentation will be needed for the Project. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall be extended to account for the time needed to complete the necessary environmental documentation and associated environmental approvals.

1.2.5 **LAS Approval**. LAS approval shall be evidenced by signed approval by the Senior Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review and approval of various documents by the LAS and/or the City, as described above, also may include public noticing, review, comment, and/or approval of such documents, as deemed necessary or appropriate by City.

1.2.6 **Final Budget**. Before approval of the bid documents by City, City and Developer shall review the Project Development Budget set forth in **Exhibit E** and shall establish a final budget for design and construction ("**Final Budget**"). City and Developer anticipate that the construction plans and specifications will include all of the

Project Improvements described in **Exhibit C**, but Developer shall not be obligated to construct improvements or incur Project Costs that, in the aggregate, exceed the amount of the Final Budget. The Final Budget shall include all Project Costs, including a reasonable contingency amount, shall identify the source of funding. .

1.3 Contract Award. After LAS has given its written approval of the bid documents, Developer shall solicit competitive bids for construction of the Project in accordance with the City approved bid documents. Developer shall issue an invitation to bid to all landscape contractors included on the current master list used by LAS for similar projects, in addition to any other contractors identified by Developer. Developer shall not request bids from fewer than three (3) contractors. Bids shall be sealed, and shall be opened in the presence of an LAS representative. Developer shall provide LAS with copies of all bids received, after which LAS shall have ten (10) working days to review the bids and the Developer's proposed selection of the successful bidder, and to either approve or disapprove the Developer's proposed selection. LAS approval shall not be unreasonably withheld. If fewer than three (3) bids are received, LAS may instruct Developer to modify the Project Improvements and/or re-bid the Project in accordance with the foregoing procedures or as otherwise directed by City. If the LAS notifies Developer of the need to modify the Project Improvements, the LAS shall provide Developer with an opportunity to review and comment on any direction by the City to modify the Project Improvements and City shall give such comments fair consideration. When satisfied with the bid, LAS shall give written notice to Developer to proceed with award of the contract, incorporating modifications required by the LAS hereunder, if any. If it is necessary to re-bid the Project, then the Completion Date shall be extended in an amount equal to the number of days consumed by having to modify the design of the Project Improvements, LAS approve of such modifications, and to re-bid the Project.

1.4 Construction. Developer covenants that the Project will be constructed in compliance with all approved plans and specifications, bid documents, modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid documents as provided herein (collectively, "**Project Plans**"), subject to change orders issued in accordance with the provisions of Section 1.7 below.

1.4.1 Representatives. Developer shall provide a site construction superintendent ("**Site Superintendent**") and the City shall provide a City project manager who will serve as their respective points of contact with respect to such construction. The designated Site Superintendent and City Project Manager are identified on **Exhibit F**, attached hereto and incorporated herein by this reference. The designations may be changed by written notice from either party.

a. The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over Developer's construction contractors

and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

b. The City Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The City Project Manager also shall have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

1.4.2 Commencement and Completion of Project. Subject to the provisions of Sections 1.2.4, 1.2.5, 1.3, 1.4.5 and 4.5 of this Agreement, including without limitation, the effect of inclement weather on Developer's ability to commence or proceed with construction, Developer shall commence the construction of the Project within three (3) months, or such longer time period as may be specified by the LAS, after the final approval of the bid documents by the LAS and thereafter shall diligently work to complete such construction in a timely and efficient manner by or before the Completion Date.

1.4.3 Inspection. Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project will be conveyed, will be permitted to inspect the Project and shall have access to the Project for this purpose at all times. City agrees to make inspectors available for inspection of the Project during such construction within not more than forty-eight (48) hours after request therefore from Developer (Sundays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans, the Inspector shall notify the City Project Manager and the Site Superintendent of such nonconformance or noncompliance, and the City Project Manager and the Site Superintendent shall jointly determine the nature of the corrective action to be taken. If the City Project Manager and the Site Superintendent are unable to agree upon the corrective action to be taken, the City Project Manager shall have authority to make such determination, with Developer having a right of appeal to the City Manager or his designee.

1.4.4 Prevailing Wages. To the extent required by the California Labor Code, Developer's contractors and subcontractors shall pay all workers on the Project not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations at the time that Developer requests bids for the Project (pursuant to Labor Code Section 1773). Copies of certified payroll shall be provided to City, on a monthly basis, as a prerequisite of Final Completion (defined below in Section 2.1.2).

1.4.5 Unforeseen Cost Increase. If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs beyond the Final Budget, and neither party voluntarily agrees to bear such cost increase, then the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget. In this latter event, Developer and

the LAS shall meet and confer in an attempt to agree upon the requisite modifications. If the parties are unable to agree, the LAS shall have the final authority to make such determination and identify Project modifications that shall bring the Project Costs within the Final Budget. The Completion Date shall be extended for a period of time equal to the number of days consumed in making modifications to the Project Improvements in order to bring the Project Costs back within the Final Budget.

1.5 Performance, Labor and Material Bonds. Developer covenants to comply with any and all applicable State and City performance and payment bonding requirements with respect to the construction of the Project. Developer shall require its contractors to provide performance and payment bonds in the amount of 100% of the contract amount with City as an additional oblige of the contractor's bonds in accordance with applicable City requirements; provided, however, that all such bonds must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if City and not Developer was contracting to construct the Project. On Final Completion (defined below in Section 2.1.2), the amount of the bonds may be reduced to reflect the remaining value of the maintenance work to be performed by Developer's contractor during the one (1)-year warranty period.

1.6 Insurance. Prior to the commencement of construction work on the Project Improvements, Developer shall furnish to City a certificate or certificates substantiating the fact that Developer or its construction contractor has taken out the insurance hereinafter set forth for the period covered by this Agreement with an insurance carrier acceptable to City in a form satisfactory to City. Each certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after City shall have received notification of such cancellation or reduction by registered mail.

The minimum insurance coverage shall be as follows: Public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, and underground hazards shall be in the amount of not less than a combined single limit one million dollars for one or more persons injured and property damage in each occurrence. The public liability and property damage insurance shall also name City as an additional insured. This insurance shall directly protect City as well as Developer and its agents. The insurer shall assume the defense of City, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of said Project by Developer or its subcontractors. The insurance policy shall expressly state that the above terms are in effect.

If Developer or its construction contractor fails to maintain such insurance, City may take out insurance to cover damages of the above mentioned classes for which City might be held liable on account of Developer failing to pay such damages, and recover the amount of the premiums for such insurance from Developer or retain such amount from any monies or Development Fee Credits which may be due Developer

under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

1.7 Contracts and Change Orders. Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Project, provided however Developer shall not be required to enter into any change orders that would increase the Project Costs beyond the Final Budget, unless an increase in the Final Budget is approved by the City as provided in this Section 1.7. All change orders shall require approval of the LAS, which shall not be unreasonably delayed, conditioned, or withheld, except as provided as follows. In the event a change order alters the Project Improvements and would increase the Project Costs beyond the Final Budget, the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5 herein. In the event the City finds in its sole discretion that the Project Improvements cannot be modified such that the Project Costs fall within the Final Budget, then City, at City's sole discretion, may disapprove of the change order or may approve an increase in the Project Costs, the Park Development Budget shall be amended to reflect the increase in such costs, and the Final Budget shall be increased by such amount.

1.7.1 Required Change Orders. Developer shall make changes that are necessary after the construction contract is awarded in order to comply with the Project Plans. Developer shall pay for all such changes, and the cost thereof shall be included in the Project Costs provided that the cost of the Project is not increased beyond the Final Budget.

1.7.2 Requested Change Orders. Developer shall make discretionary changes in the construction of the Project in accordance with the provisions of this section. As used herein, "discretionary change" means a change that is not required by the Project Plans but is requested by City after the construction contract is awarded to augment or modify the Project Improvements identified in the Project Plans.

When a discretionary change is requested by City, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request for such estimate. Upon receiving such estimate, City shall direct Developer whether to proceed with the change, and Developer shall make such change as directed by City, so long as the change would not increase the cost of the Project beyond the Final Budget or other identified funding sources. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of the Project or would extend the time for completion beyond the Completion Date.

1.8 Liquidated Damages. The actual fact of the occurrence of damages and the actual amount of damages that City would suffer if the Park is not completed by the Completion Date, are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case,

it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park and, in addition, staff and supervision costs; and the loss suffered by the public within the City by reasons of the delay in the completion of the Park to serve the public by the Completion Date, subject to Sections 1.4.2 and 4.5 herein. Accordingly, the parties hereto agree, and by execution of this Agreement, Developer understands, has ascertained, and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park within the times specified in this Agreement. The amount of the liquidated damages to be paid by Developer to City for failure to complete the Park by the date specified herein (as extended under Sections 1.4.2 or 4.5 herein, or other applicable provisions of this Agreement or law) will be $200.00 for each calendar day, continuing to the time at which the Park is physically completed. Such amount is the actual cash value agreed upon as the loss to City resulting from Developer's default. In the event Developer shall become liable for liquidated damages, City shall have the right to demand and receive from Developer liquidated damages as provided herein once liability of Developer under this section is finally determined under the provisions of Section 4.4. Notwithstanding the foregoing, no liquidated damages shall apply until the Developer or other entities undertaking development of the Township 9 project are issued a certificate of occupancy for a residential, commercial or office project for which the Park is intended to serve.

1.9 City Administrative Costs. Developer shall pay City for its costs to administer this Agreement including, without limitation, staff costs to process approval of the Park master plan and this Agreement, review design plans, review bid specifications and support the bidding and contract award process, coordinate and inspect construction of the Project Improvements, accept the Park and related property interests and enforce the warranty during the maintenance period, in the amounts and according to the payment schedule set out in **Exhibit G**. These City Administrative Costs average 17.9% of the Park Development Budget. However, with respect to the Project, the City's administration costs shall be based on the cost for the actual services provided for the City tasks as set out in **Exhibit D** in accordance with the amount set out in **Exhibit E**. A 10% annual interest charge on the amount owed shall be imposed if payment is not made within ten (10) days from the due date set out in **Exhibit G**.

ARTICLE 2.
CITY ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.0 Completion. When Developer believes the Project is complete, Developer shall provide written notice of completion to the City, requesting a walk-thorough inspection. Developer may not submit a notice of completion unless and until the turf specified in the construction specifications has been established. It shall be the responsibility of the Developer to provide the written notice of completion within such time prior to the Completion Date as reasonably estimated by the Developer, upon consultation with City, to allow for the Final Inspection (defined below) and any

corrective punch list work to be completed by or before the Completion Date. Within ten (10) business days following the date of receipt of Developer's written notice of completion, the City shall conduct a final inspection of the Project ("**Final Inspection**"). The Project shall be inspected by representatives of the City. At the Final Inspection, Developer shall demonstrate to City the operation of any system included as part of the Project, and instruct City personnel in the operation, adjustment, and maintenance of any equipment or systems included in the Project.

2.1 **Final Inspection**. If, during the Final Inspection, City determines that the Project has not been completed in accordance with the Project Plans, the City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer within ten (10) business days following the Final Inspection. If the City delivers such punch list to Developer within said ten (10) business day period, then Developer shall undertake to repair such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from the City and within ten (10) business days following such written notice from Developer, the City shall conduct another Final Inspection. If the City determines that the punch list work is complete, the City shall immediately deliver a certificate of final completion to Developer. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work. If the City fails to conduct such Final Inspection within ten (10) business days after receiving the Developer's written request for a Final Inspection, or if the City fails to deliver a punch list to Developer within ten (10) business days after conducting such Final Inspection, then the Developer will be deemed to have successfully completed the Final Inspection. Notwithstanding the foregoing, there shall not be a successful Final Inspection unless and until the City reasonably determines that the turf specified in the construction specifications has been established as evaluated under customary trade standards.

2.1.1 **Punch List Items**. Within ten (10) business days after the successful completion of the punch list work, if any, or upon a successful Final Inspection, Developer shall provide City with a Mylar copy of "as-built" record drawings with certification by a licensed civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Completion.

2.1.2. **Final Completion**. Final Completion shall be deemed to occur after a successful Final Inspection, the delivery of the documents and information required under Sections 1.4.4 and 2.1.1, and upon the City's acceptance of the Project (as evidenced by a written statement or letter to that effect signed by or on behalf of City), which shall occur within thirty (30) days after Developer successfully completes a Final Inspection ("**Final Completion**"). Developer shall provide City with copies of all contracts, change orders and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. The City's acceptance of the Park property and the Project Improvements

shall be evidenced by City's filing of a Certificate of Acceptance of the dedication of the Park ("**Final Acceptance**") and City's acceptance shall not be unreasonably withheld, delayed, or conditioned. Upon Final Acceptance, the Park and all Project Improvements shall become the property of City and thereafter Developer's obligations to City shall be only for warranty and indemnification as set out in sections 2.1.3 and 2.3. Developer shall (i) take any and all actions necessary to convey and vest full, complete, and clear title in the Park and all of the underlying real property interests (easement and/or fee) to City at no cost, (ii) pay the costs for escrow, title insurance and recording, and (iii) convey to City at no cost those additional property rights as may be necessary for City maintenance and access to the Park, on or before Final Acceptance. City will not formally accept the Park unless and until such title and all related property rights have been conveyed to City after Final Completion.

2.1.3 <u>Park Maintenance</u>. Developer shall maintain the Project Improvements at Developer's expense during the one (1)-year warranty period specified in Section 2.4, and City agrees to grant Developer, or its agents, any necessary right of entry permits or licenses for such maintenance work. Thereafter, City shall be responsible for all Park maintenance. For purposes of this Section 2.1.3, "park maintenance" does not include capital repairs or restoration necessitated by vandalism or acts of God. Maintenance shall meet the Park Landscape Maintenance Services General Plans and Specifications which are available from the project manager.

2.2 <u>Release of Liens</u>. Upon Final Completion, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid, including any and all lien claims. Upon request of the City, Developer shall provide lien releases under California Civil Code Section 3262(d) to assure that payment of any outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid prior to Final Acceptance.

2.3 <u>Indemnification.</u>

2.3.1 <u>Indemnification by Developer</u>. Subject to the provisions of this Section 2.3, Developer agrees and covenants to, and shall fully indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all 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 or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of the Project by any of the following: Developer, any of Developer's engineers, architects, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer, or any of Developer's engineers, architects, contractors or subcontractors. Provided, however, that Developer shall not be liable hereunder to indemnify, defend or hold harmless City and its elective and appointive boards, commissions, officers, employees and agents against Claims

alleging sole negligence, active negligence or willful misconduct of City in its functions of design review, approval, construction inspection or other acts or omissions of City in connection with the Project; provided further, that nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including without limitation immunity or defenses relating to design review and/or approval and/or construction inspection. With respect to the acts or omissions of the authorized agents of Developer's engineers, architects, contractors or subcontractors, Developer's obligations under this subsection 2.3.1 shall be limited to the acts or omissions of such agents who, under applicable principles of agency: (i) also constituted authorized agent(s) of Developer with respect to the Project; and (ii) were acting within the course and scope of such agency.

2.3.2. Indemnification Regarding Hazardous Substances. Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined in **Exhibit H,** attached hereto and incorporated herein by this reference, by any person or entity (except persons or entities acting on City's behalf or under City's control), occurring on or at any time prior to the date the Project and the associated real property interests are conveyed to City as provided in this Agreement. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws in effect at the time of such incorporation.

2.3.3 Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.3.1, above, with respect to the Project, and/or each part thereof constructed by Developer, shall expire on the date which is one year after Final Completion ("**Expiration Date**"), provided that Section 2.3.1 shall not expire and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to the Expiration Date, or which relate to (directly or indirectly) any such Claims. The indemnification and hold harmless agreement made by Developer in Section 2.3.2 shall survive the termination of this Agreement until the date which is two years after the Final Completion of the Project. Section 2.3.2 shall not expire, however, and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to such date, or which relate to (directly or indirectly) any such Claims. The provisions of this Section 2.3.3 shall apply only with respect to the indemnification and hold harmless provisions of this Agreement, and shall not affect the liability, if any, which Developer might have under applicable law to the extent Developer, is a contaminator of the Property. The provisions of this section 2.3.3 shall not apply to Claims relating to acts or

omissions occurring during the performance of Developer's maintenance obligations, pursuant to Section 2.1.3 above.

2.3.4. <u>Additional Provisions Regarding Indemnification Obligations</u>.

(a) City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6; and

(b) except as may otherwise be specifically and expressly provided in subsection 2.3.1 relating to Claims based upon allegations of sole or active negligence on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has or shall have prepared, supplied, or approved of plans and/or specifications for the Project, or has or shall have inspected or failed to inspect construction of the Project; and

(c) the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms but only to the extent allowed pursuant to Civil Code section 2782; and

(d) no specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided; and

(e) Developer shall include or cause to be included the following language, or other language approved in writing by the City, in all contracts or agreements relating to the Project with any architect, engineer or contractor (who all are identified as the "Contractor" in the following language), provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782:

> Contractor agrees and covenants to, and shall, fully indemnify, defend and hold harmless the City of Sacramento and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of that portion of the Project designed or constructed by Contractor or any of Contractor's architects, engineers, subcontractors, or any other person or entity employed by or acting on behalf of or as an authorized agent for Contractor, or any of Contractor's architects, engineers or subcontractors.

2.3.5 Waiver by Developer. In addition to Developer's obligations to indemnify, hold harmless and defend City as set forth above, Developer, its assigns, transferees and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents, in connection with Developer's design and/or construction of the Project.

2.3.6 Unknown Claims. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties hereto expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all claims as described in this Section 2.3 which the parties do not know or suspect to exist. The provisions of this Section 2.3 shall survive termination of this Agreement.

2.3.7 Indemnification by City. City further agrees and covenants to, and shall fully indemnify, defend and hold harmless Developer, and its officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment (i) to the extent arising from any City use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined in **Exhibit H**, by any person or entity (except persons or entities acting on Developer's behalf or under Developer's control), occurring on or at any time after the date the Project, and the said easements are conveyed to City as provided in this Agreement; (ii) arising from any act (including but not limited to those covered by subsection (i) immediately above) on the part of City or its agents or employees in the use and operation of the Project; or (iii) occurring on or at any time arising from any entry upon the Developer Property by City, its agents, employees or contractors, pursuant to the provisions of Article 1 of this Agreement.

2.4 Warranty. Developer hereby warrants the Project Improvements as to the materials and workmanship to be free from any defects for one (1) year following Final Completion. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief based upon any act or omission of any contractor involved in the construction or design of the Project Improvements. Notwithstanding the foregoing, Developer's warranty excludes remedy for damages or defects caused by ordinary wear and tear under normal usage, abuse, neglect, modifications not performed by Developer or its agents, vandalism, or acts of God. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the

warranty contained in this Section 2.4 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed. Should any failure of the Project Improvements or any portion thereof occur within such one (1)-year period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the twelve months of maintenance that Developer will be performing during the warranty period. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and the Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of emergency when delay would cause serious hazard to the public, City may make the necessary repairs without prior notice to Developer. In all cases of failure of a Project Improvement or portion thereof within the warranty period where City has taken action in accordance with this Section, Developer shall reimburse City for any and all costs or expenses, direct and indirect, incurred by City after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section, and City may deduct the outstanding amount from the Park Development Fee Credits (defined below) after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section.

ARTICLE 3.
PARK DEVELOPMENT FEE CREDITS

3.0 **Park Costs and Fee Credits**. For purposes of this Article 3, "Developer" shall mean **CAPITOL STATION 65 LLC** because it is the party incurring the costs of developing the Park and/or its assignee as set out in Section 3.3. Developer shall receive "Park Development Fee Credits" in the amount of $_____, which credits equal the amount of the Park Development Fee for ____ residential units in effect at the time this Agreement was executed and based on a portion of the Park Development Budget for which Developer will receive Park Development Fee Credits pursuant to the terms of the Third Amendment to the Development Agreement.

As set out in the Third Amendment to the Development Agreement, this amount of Park Development Fee Credit, which equates to the foregoing total residential units, shall not be reduced to lower the number of residential units for which the Fee credit is to be applied due to any increases in the amount of the Park Development Fee as may be imposed under the Fee Ordinance based on the inflation factor permitted under City Code section 18.44.120 or adjustments based on an updated nexus study for the term of the Development Agreement.

The Park Development Fee Credit may be applied toward the Park Development Fee that would otherwise be payable by Developer (or its assignee) with the issuance of a building permit for a residential development project located within the Township 9 PUD as further described in Section 3.3.

3.1 **Issuance of Fee Credits**. After completion of the Park construction and acceptance by City, Developer may make a written request for issuance of Park Development Fee Credits in accordance with Section 3.0 and this Section 3.1. City will determine the total amount of Park Development Fee Credits that may be issued in response to the written request in accordance with the terms of the Third Amendment to the Development Agreement. City will issue Park Development Fee Credits to Developer in an amount equal to the Park Development Fee Credits allowable under this Agreement and the Third Amendment to the Development Agreement and City's policies and procedures for issuance of the credits.

3.2 **Repayment**. If City issues Park Development Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement and City's policies and procedures for issuance of the credits, then Developer agrees to repay City the full amount of the excess within **15 days** after receiving City's written demand.

3.3 **Assignment Permitted.** Developer may assign the rights under this Agreement to take Park Development Fee Credits against the Park Development Fee to be assessed against any residential development project located within in the Township 9 Planned Unit Development (PUD) as approved on August 27, 2007 (City Resolution No. 2007-643) to any person or entity with an ownership interest in property located within the Township 9 PUD, subject to and in accordance with the terms of this Article. All assignments of the right to Park Development Fee Credits pursuant to this Article shall be subject to City's prior written consent, which consent shall not be unreasonably withheld or delayed. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval, and administration thereof to be paid for by the person or entity requesting recognition of Developer's fee credit assignment.

3.4 **Required Assumption by Assignee.** In addition to the approval of the City, any assignment shall be subject to an express written assumption by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the Park Development Fee Credit and fee reimbursement provisions, including without limitation, the obligation to pay the portion of the Park Development Fee required to cover the City's cost of administration of the Fee Program, notwithstanding the existence of any such right to Park Development Fee Credits. The assignment agreement shall contain a provision where under Developer and the assignee agree to fully and completely release and indemnify and defend City from any liability relating to the assignment of rights.

3.5 **Disputes Between Developer and Assignee.** Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer and/or any assignee and/or the City regarding the legal ownership of the rights to Park Development Fee Credits hereunder, City may disallow the use of any

Park Development Fee Credits unless and until either (i) all parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing parties the legal ownership of such rights and the manner in which such rights will be exercised.

3.6 City Policy and Procedure. Developer, for itself and its successors in interest to the Property, acknowledges that the credit rights hereunder do not run with the Property and that generally applicable City policies and procedures relating to assignment of Park Development Fee Credits , as such policies and procedures may be adopted or amended from time to time, shall apply to Developer and its successors in interest to the Property, provided however in the event any subsequently adopted policy or procedure is inconsistent with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. City agrees that it shall not give any Park Development Fee Credits to any subsequent purchaser or encumbrancer of any portion of the Property unless such subsequent purchaser or encumbrancer has a separate, written assignment of those credits from Developer (or a previously approved assignee thereof), which written assignment has been approved by the City in accordance with the provisions of this Article 3.

ARTICLE 4.
MISCELLANEOUS

4.0 Entire Agreement. This Agreement represents the entire agreement of the parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

4.1 Attorneys' Fees. The prevailing party in any proceedings, judicial or otherwise, brought to enforce the terms of this Agreement, shall be entitled to reasonable attorney fees and costs in prosecuting or defending such proceedings.

4.2 Notices. Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective (a) on personal delivery, (b) on the second business day after mailing by certified or registered United States Mail, return receipt requested or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the party at the address shown below:

If to City: City Manager
New City Hall, 5th floor
915 I Street
Sacramento, CA 95814

If to Developer: Capitol Station 65 LLC
Attention: Al Esquivel, Project Manager
640 Bercut Drive, Suite C
Sacramento, CA 95811

4.3 Effective Date. This Agreement shall become effective on the date all the parties have executed it.

4.4 Mediation and Arbitration.

4.4.1 Any dispute or controversy between all or a portion of the parties to this Agreement relating to the interpretation and enforcement of their rights and obligations under this Agreement shall be resolved solely by mediation and arbitration in accordance with the provisions of this Section. The mediation and arbitration procedures shall be commenced by any party to this Agreement serving a Notice of Dispute ("**Notice**") on the parties pursuant to Section 4.3. The Notice generally shall describe the nature of the dispute and specify the date of its mailing. The Notice shall require each party to notify the party serving the Notice of its intention to participate in the mediation and arbitration procedures within five (5) days of the date of mailing of the Notice. For purposes of this Section only, the party serving the Notice and all other parties indicating an intention to participate in the mediation and arbitration procedures shall be referred to herein as the "**Disputing Parties,**" and shall be the only parties entitled to participate in said procedures.

4.4.2 With respect to any dispute or controversy between Disputing Parties that is to be resolved by mediation and arbitration as provided in the foregoing subsection, the Disputing Parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. Within fifteen (15) days of the mailing of the Notice, the party serving the Notice shall attempt to employ the services of a third person ("**Mediator**") mutually acceptable to the Disputing Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Disputing Parties. The mediation shall take place within ten (10) days of the appointment of such Mediator. If the Disputing Parties are unable to agree on such Mediator, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute shall be referred to arbitration in accordance with the following subsections.

4.4.3 Any dispute or controversy between Disputing Parties that is to be resolved by arbitration as provided in the foregoing subsections shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance

with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held and conducted in Sacramento, California before one (1) arbitrator who shall be selected by mutual agreement of the parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable.

4.4.4 The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however, to the following:

a. Any referral to arbitration shall be barred after the date that institution of legal or equitable proceedings based on the subject controversy or dispute would be barred by the applicable statute of limitations.

b. The arbitrator appointed must be a former or retired judge or an attorney with at least ten (10) years experience in real property, commercial, and municipal law.

c. The Disputing Parties mutually may elect to have all proceedings involving the Disputing Parties reported by a certified shorthand court reporter and written transcripts of the proceedings prepared and made available to the Disputing Parties. If fewer than all of the Disputing Parties desire the use of a court reporter and preparation of written transcripts, then the issue of whether or not to retain a court reporter shall be submitted to the arbitrator who, in his or her sole discretion, shall determine whether such use and preparation is necessary or beneficial to the proceedings and the interests of all Disputing Parties in resolving the dispute.

d. The arbitrator shall prepare in writing and provide to the Disputing Parties factual findings and the reasons on which the decision of the arbitrator is based.

e. The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

f. The prevailing party shall be awarded reasonable attorney's fees and costs incurred in connection with the arbitration, unless the arbitrator for good cause determines otherwise.

g. Costs and fees of the arbitrator and court reporter, if any, shall be borne equally by the Disputing Parties. The cost of preparing any transcript of

the proceedings shall be the responsibility of the Disputing Party or Parties requesting such preparation.

h. The award or decision of the arbitrator shall be final and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

i. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1282 and including Section 1283.05, and successor statutes, permitting, among other things, expanded discovery proceedings shall be applicable to all disputes that are arbitrated under this Section.

NOTICE: BY INITIALING IN THE SPACE BELOW, EXCEPT AS PROVIDED ABOVE, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

City's Initials: _____ Developer's Initials: _____

4.5 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or for such longer period as may be mutually agreed upon.

4.6 Fee Ordinance. The parties rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the Fee Ordinance in effect on the date that this Agreement is approved and executed by both parties, except as the Developer's rights may be modified under the terms of this Agreement pursuant to

the Third Amendment to the Development Agreement, which was adopted by ordinance.

4.7 City Attorney Preparation Fees. Developer shall pay to City the sum of one thousand five hundred dollars ($1,500.00), representing the costs associated with the City Attorney's services in negotiating and drafting this Agreement.

4.8 Exhibits. All exhibits attached hereto are hereby incorporated by reference herein.

4.9 Relationship Between Parties. Developer and the City agree that (a) the relationship between them is, is intended to be and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private developer as to Developer and a public agency as to the City and (b) no party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other party or any of its affiliates and no party intends to ever assume such status.

4.10 No Third Party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity, which is not a party hereto, and the parties hereto expressly disclaim any such third-party benefit.

4.11 Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

4.12 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

4.13 Satisfaction of Conditions. City agrees that upon the execution of this Agreement and upon Developer's compliance with the terms and conditions herein, any general or specific tentative map conditions for the Property requiring construction of the Project covered by this Agreement shall be deemed satisfied.

4.14 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

4.15 Authority to Bind. Each person signing this Agreement warrants that it is authorized to bind its respective Party on whose behalf they sign.

4.16 Construction. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine, feminine and neuter shall include the others. Without limitation, any defined term used in the plural shall refer to

all members of the relevant class, and any defined term used in the singular shall refer to any number of the relevant class. Unless otherwise indicated, all references to sections and subsections are to this Agreement. If the day on which any party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on, or the time for performance shall be extended to, the next succeeding business day.

4.17 Time is of the Essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO,	**DEVELOPER**
By: _____	By_____
John Dangberg	Scott Syphax
Assistant City Manager	Chief Executive Officer
Dated: _____	Dated: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Senior Deputy City Attorney

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

EXHIBIT B

PARK SITE LEGAL DESCRIPTION

EXHIBIT C

PROJECT IMPROVEMENTS

EXHIBIT D

TASKS ALLOCATION

GENERAL:

Filled-in squares designate which party has agreed to take responsibility for the completion of each specified task.

SITE SPECIFIC:

City	Developer	
		A. DESIGN DEVELOPMENT PHASE
☐	☐	1. Survey of Park site (inc. topo mapping and property line verification).
☒	☐	2. Determination of park amenities (always by the City)
☐	☐	3. Preparation of master plan illustrating entire park site at buildout
☐	☐	4. Preparation of cost estimate for construction of park per master plan
☐	☐	5. Public review & approval process for master plan.

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		B. CONSTRUCTION DOCUMENT PHASE
☐	☐	1. Environmental review and documentation (if required)
☐	☐	2. Design development
☐	☐	3. Preparation of construction documents (plans & specifications)
☐	☐	4. Preparation of construction cost estimate & project timeline
☐	☐	5. Public review and approval for construction documents and specifications
☐	☐	6. Submittal and approval to Building permit (review only). Inspection not by Building Department but by Park Planning, Design & Development Division (PPDD).
		C. BID DOCUMENT PHASE
☐	☐	1. Preparation of bid documents for construction
☐	☐	2. Administer bidding process
☐	☐	3. City approval of bids and bid award
		D. CONSTRUCTION (Field Work)
☐	☐	1. Project staking
☒	☐	2. Inspection (always by the City)
☐	☐	3. Construction administration (City's project manager, and Developer's site superintendent)
☐	☐	4. Final cleanup & walkthrough (with City in attendance)
☒	☐	5. Public opening (always by the City)
☐	☐	6. Warranty administration
☐	☐	7. Title insurance and transfer to City of Sacramento
☐	☐	8. Submit labor compliance to City on a monthly basis

EXHIBIT E

PROJECT DEVELOPMENT BUDGET

EXHIBIT F

REPRESENTATIVES

City:

City of Sacramento
Landscape Architecture Section
915 "I" Street, 5th Floor
Sacramento, CA 95814
Front Desk: (916) 808-8529
Office Fax: (916) 808-8266

Project Manager:
Office Phone: (916) 808-7633

Developer:

Capitol Station 65, LLC
940 Bercut Drive, Suite C
Sacramento, CA 95811

Site Superintendent:
Office Phone:
Office Fax:

EXHIBIT G

CITY STAFF COSTS AND PAYMENT SCHEDULE

EXHIBIT H
HAZARDOUS SUBSTANCES

A. No Review, Examination or Assessment. The parties acknowledge and understand that City has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances, as defined below, on, under or around the Park Site. As between the City and Developer, any liability associated with the presence of any Hazardous Substances on, under or around the Park Site, including any interests in said property dedicated to City as provided herein, shall be governed by the indemnity provisions of this Agreement, regardless of whether any such review, examination or assessment is conducted.

B. Definitions.

(1) As used herein, the term "Hazardous Substances" means:

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFD, Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(d) Any material, waste, or substance that is

i) a petroleum or refined petroleum product,
ii) asbestos,
iii) polychlorinated biphenyl,
iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317,
v) a flammable explosive, or
vi) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the detention basin site or any of the easement areas which Developer is required to and does convey to City pursuant to this Agreement, as now or may at any later time be in

effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ *9601 et seq.];* the Resource Conservation and Recovery Act of 1976 (RC RA) [42 USCS §§ *6901 et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 USCS §§ 1251 et *seq.];* the Toxic Substances Control *Act (TSCA) (15 USCS §§ 2601 et seq.];* the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *etseq-1;* the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq,];* the Superfund Amendments and Reauthorization Act (42 USCS *§§ 6901 et seq.];* the Clean Air Act [42 USCS §§ 7401 *et seq.];* the Safe Drinking Water Act (42 USCS §§ 300f *et seq.];* the Solid Waste Disposal Act 142 USCS §§ 6901 *et seq.];* the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.];* the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.];* the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.];* the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.];* the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.];* the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.],* together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

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Figure 12 - Land Use Plan