REPORT TO COUNCIL
City of Sacramento

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

Consent
June 26, 2007

Honorable Mayor and
Members of the City Council

Title: Public Improvement Reimbursement Agreement for the Rivage Hotel

Location/Council District: 4350 Riverside Blvd / Council District 4

Recommendation: Adopt a **Resolution** authorizing the City Manger to execute the Public Improvement Reimbursement Agreement with Captains Table LLC (aka Rivage Hotel) for the reimbursement of costs related to the design and construction of an off-site water line for an amount not to exceed $265,468.

Contact: Micah Runner, Senior Project Manager: 808-5448

Presenters: n/a

Department: Economic Development

Division: Citywide

Organization No: 4453

Description/Analysis

Issue: The Rivage Hotel has been in process for over 15 years and has overcome a multitude of hurdles over those years. There is insufficient water pressure in and around this project that impact the City's ability to provide adequate fire protection. City funding of the project is needed because the timing of the installation of the Improvements is critical to the completion of the project, i.e., tie-in to the fire system.

Policy Considerations: This project supports the City of Sacramento goals by increasing revenue and providing 150 new jobs to residents. This is a first class hotel and marina that will provide an excellent choice for the lodging and dining needs of Sacramento residents and visitors. The City of Sacramento also supports such projects to make Sacramento become the most Livable City in America. Approval of the subject recommendation serves to promote this City policy objective and furthers the economic growth of the City of Sacramento.

Environmental Considerations: This project is subject to the environmental review process as part of the approval of its development application.

Rationale for Recommendation: The City finds that the project will be of general benefit to the public. City funding of the project is needed because the timing of the installation of the improvements is critical to the completion of the project, i.e., tie-in to the fire system. The installation of the public improvements by a private contractor will also reduce the interference with local traffic caused by project construction. The installation requires traffic coordination at both ends of Riverside Blvd. and 25th Street and Riverside Blvd. and Captain's Table Road to keep traffic flowing for residents and contractors. The timing of the work requires start and stop intervals more suitable for private contractors to accommodate and schedule. This request would program a portion of the Economic Development transportation and utility funds (XO07) to the public infrastructure requirements of this project in exchange for developer's commitment to proceed with the project subject to the terms and conditions of this agreement. This is a $25 million project and will create 150 new jobs for City residents.

Financial Considerations: The funds for the public improvements will be made from this project are available in the Economic Development Capital Improvement Project (number XO07). There is sufficient funding in XO07 for the reimbursement of costs in an amount not to exceed $265,468.

Emerging Small Business Development (ESBD): Not Applicable

Respectfully Submitted by: _____
James R. Rinehart
Citywide Development Manager

Approved by: _____
David L. Spaur, CEcD , EDFP
Economic Development Director

Recommendation Approved:

_____
Ray Kerridge
City Manager

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Attachment 1

BACKGROUND:

The Rivage Hotel has been in progress for over fifteen years since the developer first filed the original application. The scope of this project includes a 100 room hotel, a premier restaurant, a new marina and out door riverfront amenities. There have been substantial obstacles for the developer to overcome to build this project and have significantly impacted the development by both time and money.

On December 15, 2004, the Zoning Administrator extended the Special Permit Modification of P03-064 to permit the construction of an 83,618 square foot, 100 room hotel, including a restaurant and other amenities. The action was taken under Z04-344 and contains the condition that the project includes the Original Conditions and Findings of Fact previously approved for P03-064.

The conditions of approval for P03-064 require the construction and installation of certain public improvements and around the project site to serve the project. Pressure testing of the fire waterlines in the neighborhood surrounding the project indicated low water pressure. The Improvements include the installation of a larger 12" waterline under Riverside Boulevard on the east side of Interstate 5, to a connection at the corner of Riverside Boulevard and Captain's Table Road.

The new connection will charge the existing 8" fire waterline with improved water pressure that will provide greater fire protection in the surrounding neighborhood which includes older wood framed, high density apartments and HUD housing. Because the hotel is new construction, the Developer could have used modern construction methods to boost water pressure without installing a new fire waterline. However, to improve the water pressure for the overall area the City preferred that the new waterline be constructed as part of the Hotel development.

PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT

**(Captain's Table Hotel, LLC,
Riverside Blvd and Captain's Table Road)**

THIS AGREEMENT ("**Agreement**") dated for reference purposes only as of February 12, 2007, is by and between the CITY OF SACRAMENTO, a municipal corporation of the State of California (the "**City**") and CAPTAIN'S TABLE HOTEL, LLC, a California limited liability company ("**Developer**"). The City and Developer are sometimes individually referred to as a "Party" or collectively referred to herein as the "Parties."

RECITALS

A. Property. Developer is the owner of that certain real property located in the City, and County of Sacramento, State of California, described as follows:

PARCELS 2 AND 3, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA ON DECEMBER 23, 2005, IN BOOK 187 OF PARCEL MAPS, PAGE 23; APN NUMBERS 016-0360-002-0000 AND 016-0360-003-0000.

B. Approvals and Project Description.

1. On December 15, 2004, the Zoning Administrator extended the Special Permit Modification of P03-064 to permit the construction of an 83,618 square foot, 100 room hotel, including a restaurant and other amenities ("**Project**"). The action was taken under Z04-344 and contains the condition that the Project include the Original Conditions and Findings of Fact previously approved for P03-064.

2. The conditions of approval for P03-064 require the construction and installation of certain public improvements ("**Improvements**") in and around the Project site to serve the Project.Pressure testing of the fire waterlines in the neighborhood surrounding the Project indicated low water pressure. The Improvements include the installation of a larger 12" waterline under Riverside Boulevard from the East side of interstate 5, to a connection at the corner of Riverside Boulevard and Captain's Table Road. The work necessary to complete the Improvements includes saw cutting Riverside Boulevard from Captain's Table Road to the East side of interstate 5, removing asphalt, trenching for the installation of new pipe, removing existing old pipe, installing new 12" pipe, testing the system for performance, refilling the trench, compacting the refilled trench, testing the compacted refill material, re-paving Riverside Boulevard, and monitoring and stopping traffic on Riverside Boulevard during all portions of the

work. All of the work must be inspected and approved by the City. The new connection will charge the existing 8" fire waterline with improved water pressure that will provide greater fire protection in the surrounding neighborhood which includes older wood framed, high density apartments and HUD housing. Because the hotel is new construction, the Developer could have used modern construction methods to boost water pressure without installing a new fire waterline.

C. The City finds that the Project will be of general benefit to the public. City funding of the Project is needed because the timing of the installation of the Improvements is critical to the completion of the Project, i.e., tie-in to the fire system. The installation of the Improvements by a private contractor will also reduce the interference with local traffic caused by Project construction. The installation requires traffic coordination at both ends of Riverside Blvd. and 25th Street and Riverside Blvd. and Captain's Table Road in order to keep traffic flowing for residents and contractors. The timing of the work requires start and stop intervals more suitable for private contractors to accommodate and schedule. The City is willing to program at this time a portion of its Economic Development transportation and utility funds to the public infrastructure requirements of this Project in exchange for Developer's commitment to proceed with the Project subject to the terms and conditions of this Agreement.

AGREEMENT

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

1. **Public Improvements.**

Developer shall execute a contract for the construction of the Improvements.

1.1 **Public Improvements Execution.** Contracts for the construction of the Improvements shall include: (i) provisions mandating compliance with all requirements applicable to work on a "public project" under the Sacramento City Code, as well as all other applicable laws and regulations, including without limitation the payment of prevailing wages and compliance with all applicable provisions of the Americans With Disabilities Act; and (ii) bonding, insurance and indemnity provisions as may be required by the City. All work shall be performed in a good and worker like manner and shall substantially comply with any conditions, plans and specifications approved by the City.

2. **City Reimbursement for Cost of Improvements.**

2.1 Upon full completion of the construction of the Improvements, and upon City acceptance of the Improvements, Developer shall be entitled to reimbursement for a

portion of the Improvement Costs incurred by Developer for construction of the Improvements in accordance with the terms of this Agreement. The City's obligation to reimburse Developer under this Agreement shall not exceed the amount of Two-Hundred Sixty-five Thousand Four Hundred Sixty-eight Dollars ($265,468.00)(the "**Maximum Reimbursement Amount**").

2.2 Improvement Costs shall mean and include actual costs related to all contracts for the construction of the Improvements, 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, including costs for preparing budgets and estimates, planning, engineering, and design costs, engineering estimates, and plan check and construction inspection fees.

2.3 City shall not make any reimbursement payment to Developer for the Improvements under this Agreement except as provided below:

2.3.1 Upon full and final acceptance of the Improvements by City, Developer may submit to City a claim for reimbursement in a form acceptable to City containing the following:

a. All documentation substantiating the cost of the Improvements reasonably requested by the Director of City's Economic Development Department, or his or her designee (the "**Director**"). There shall be a presumption of reasonableness as to costs incurred under a construction contract entered into as a result of a call for bids by the Developer, or under a change order or approved by the Director, provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of the contract.

b. Evidence that all of the costs of the Improvements for which reimbursement is sought have been fully paid, including all lien claims. If required by and in forms acceptable to the Director, Developer shall provide such notices of completion and/or general lien releases as the Director may deem necessary to assure that payment of outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid.

2.3.2 Director shall review the claim for reimbursement, with all supporting documentation, and make a determination, in his or her sole discretion, of the total amount of Improvement Costs that may be considered for reimbursement under this Agreement, which amount shall fairly reflect the actual cost of constructing the Improvements incurred by Developer. The Director shall notify the Developer of his or her determination, with an accounting of any costs submitted but not allowed and an explanation of why the costs were not allowed. The Director shall then authorize reimbursement of the Improvement Costs up to the Maximum Reimbursement Amount (the "**Authorized Reimbursement Amount**"). In

no event shall the Authorized Reimbursement Amount exceed the Improvement Costs as determined by the Director or the Maximum Reimbursement Amount, whichever is less.

2.3.3 No interest shall accrue on the Authorized Reimbursement Amount.

2.3.4 City shall pay Developer, in cash, the Authorized Reimbursement Amount within thirty (30) days of date the Director notifies Developer of the determination of the Authorized Reimbursement Amount.

2.4 The Developer acknowledges and agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to the Maximum Reimbursement Amount stated in section 2.1. Owner further acknowledges and agrees that the Maximum Reimbursement Amount stated in section 2.1 is not intended to be sufficient to reimburse Developer for the full cost of constructing and installing the Improvements but is a partial reimbursement only.

2.5 Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, City's general or special funds, or any other funds in the hands of City or its accounts now and in the future, except as otherwise expressly provided herein. City's obligation hereunder to provide reimbursement is limited to "Economic Development Capital Improvement Funds", to the extent funds are appropriated and available and not otherwise committed for reimbursement by the City to others.

2.6 This Agreement shall not constitute nor create any form of association, joint venture, partnership or cooperative activity of any nature between City and Developer. This Agreement shall not constitute nor create a trust, expressed or implied, for the benefit of Developer or any other party. City shall have no fiduciary duty to Developer or any other party with respect to any obligation created or anticipated by this Agreement and any funds or other source of reimbursement. The City's obligations hereunder do not constitute a legal or equitable debt, pledge, charge, lien, or encumbrance upon any of the City's property or upon its income, receipts, or revenues.

3. **Ownership of Project.** City and Developer acknowledge that the completed Improvements will be the property of the City.

4. **General Provisions.**

4.1 Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier

that guarantees next day delivery and provides a receipt, or (d) upon successful transmission by facsimile, and such notices shall be addressed as follows:

Developer: Captain's Table Hotel, LLC
3941 Park Drive
Suite 20-308
El Dorado Hills, California 95762

City: Micah Runner
Economic Development Department
City of Sacramento
1030 15th Street, Suite 250
Sacramento, California 95814

4.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. This Agreement may not be assigned by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor which the City deems relevant in the circumstances.

4.3 Amendments. This Agreement may be amended or modified only by a written instrument signed by the City and Developer.

4.4 Governing Law. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California.

4.5 Merger of Prior Agreements. The Agreementcontains any and all representations, warranties, and covenants made by the City and Developer and constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.

4.6 Interpretation of Agreement. The section and other headings of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other gender and neuter. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

4.7 Unavoidable Delay. If the performance of any act required of the City or Developer is directly delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party shall be excused from performing that act for the period of time equal to the period of time of the delay. If the City or Developer claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of that fact within (10) days after the beginning of the claimed delay.

4.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

4.9 Effective Date. As used in this Agreement, the term "Effective Date" shall mean the date on which both Developer and City have fully executed this Agreement.

4.10 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

4.11 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEVELOPER/OWNER:
Captain's Table Hotel, LLC,
a California limited liability company

By: Robert A. Leach
Title: Managing Member

By: Robert A. Cook
Title: Manager

APPROVED AS TO FORM:

By: _____
Deputy City Attorney

ATTEST:

_____
City Clerk

CITY OF SACRAMENTO:

By: _____

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL FOR THE PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT WITH CAPTAIN'S TABLE LLC. FOR THE RIVAGE HOTEL

BACKGROUND

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

Section 1 The City Manager is authorized to execute the Public Improvement Reimbursement Agreement with Captain's Table LLC in an amount not to exceed amount of $265,468.