



REPORT TO COUNCIL City of Sacramento

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

Consent
November 27, 2007

Honorable Mayor and Members of the City Council

Title: Agreement: Le Rivage Hotel Loan

Location/Council District: 4350 Riverside Blvd., Sacramento / Council District 4

Recommendation: Adopt a **Resolution:** 1) authorizing the City Manager to loan Captain's Table Hotel, LLC \$430,540 from the Convention Center Fund,(Fund 419) to ensure the payment of all remaining City development fees; and 2) authorizing the City Manager to execute loan documents for a \$430,540 loan to Captain's Table Hotel, LLC for the project.

Contact: Sheri Smith, Economic Development Project Manager, 808-7204; James R. Rinehart, Citywide Economic Development Manager, 808-5054

Presenters: n/a

Department: Economic Development Department

Division: Citywide

Organization No: 4453

Description/Analysis

Issue: The Le Rivage project has been in process for over 15 years and has overcome a multitude of hurdles over the years (See Attachment 1). Early in the process an agreement was made to grandfather the hotel into a fee deferral program that was being developed at the time. It was agreed that some development fees would be deferred past certificate of occupancy. A fee deferral program was developed for large projects with bonding capacity but was never developed for small business and the agreement to grandfather this project was never codified. In the absence of a fee deferral program, the best way to honor this long standing commitment is with a market-rate, secured loan for payment of all remaining development fees.

This loan will allow Le Rivage Hotel to maintain its construction schedule and gain its Temporary Certificate of Occupancy in December. The proposed source of the loan is the Convention Center Fund contingency that is attributable to user fees.

The Hotel is estimated to pay annually: interest on the loan of \$30,000, Transit Occupancy Tax of \$750,000 , Property Tax of \$206,000, and Sales Tax from Scott's Seafood Grill and Bar of \$387,000 annually. The loan has a maximum four year term to match the construction lender's term but is expected to be repaid in less than two years when the project converts to permanent financing.

Policy Considerations: This project supports the City of Sacramento's Economic Development Strategy of development of new business and by creating approximately 150 new jobs. The hotel, restaurant, and marina serve to improve the waterfront and promote the City's policy objective of making Sacramento the most livable city in America.

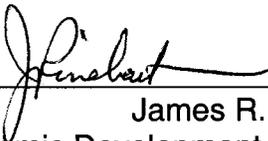
Environmental Considerations: This project is subject to the environmental review process as part of the approval of its development application.

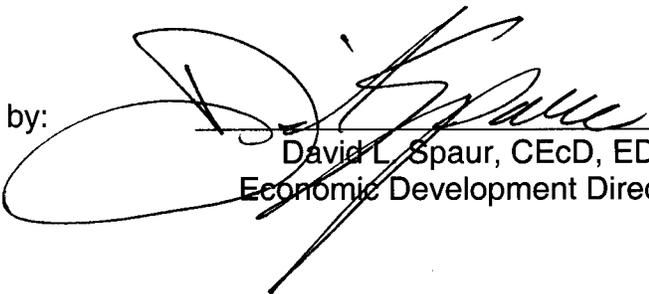
Rationale for Recommendation: The City finds that the project will be of general benefit to the public. In addition to a boutique hotel on the waterfront, the project directly improves riverfront public spaces with construction of a public restroom, bike storage lockers, public drinking fountain, and improvements to the bike trail. This project estimates paying an annual average of \$750,000 in Transit Occupancy Tax over the first four years and increases to over \$1,000,000 in year eight. Le Rivage is also anticipated to generate \$206,000 in property taxes as well as a projected sales tax of \$387,000 from Scott's Seafood Grill and Bar in the first year alone. Providing this secured loan to ensure the completion of the project has an immediate economic benefit to the City of Sacramento.

Financial Considerations: The Convention Center Fund (Fund 419) receives funding from the Transient Occupancy Tax (TOT) and User Fees associated with the operation Convention Center facility. The TOT cannot be used for the purpose of a loan per City Code. Only revenue attributable to user fees can be used for this purpose. The Convention Center Fund contingency (Fund 419) has sufficient funding, attributable to User Fees, to fund a loan of \$430,540 to Captain's Table Hotel, LLC.

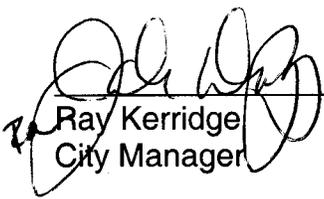
The loan at 7 percent interest will earn \$2,511 in interest per month, which is approximately 2 percent higher than the Pool A rate the money is currently earning. The 7 percent interest rate is 236 basis points above the London Interbank Offered Rate (LIBOR) and is nearly 1 percent higher than current rates for permanent hotel financing. There is no revenue loss to the City of Sacramento by providing this loan which is secured with a recorded Deed of Trust.

Emerging Small Business Development (ESBD): None

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

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

Recommendation Approved:


Ray Kerridge
City Manager

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|---------------------------|----------------------|----|----|
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**Attachment 1
Background**

Le Rivage Hotel is an upscale hotel nearly complete with construction on Sacramento's waterfront on Riverside Avenue south of Miller Park and the Docks Area (see Attachment 2 - Site Map). This boutique hotel boasts 100 luxury suites ranging in size from 440 to 1,300 square feet. On-site amenities will include nine meeting, banquet, and reception rooms with a combined space of 10,600 square feet. The hotel features "Spa LaLe", a 1,600-square-foot spa with four treatment rooms, as well as a fitness center, pool, outdoor spa, bocce ball courts, water taxi, limousine service, seaplane tours, and yacht parking. Le Rivage will offer four-star dining at the popular "Scott's Seafood Grill and Bar".

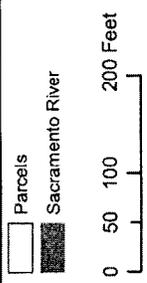
The Le Rivage project has been in process for over 15 years and has overcome a multitude of hurdles over the years. Early in the process an agreement was made to grandfather the hotel into a fee deferral program that was being developed at the time. It was agreed that some development fees would be deferred past certificate of occupancy. A fee deferral program was developed for large projects with bonding capacity but was never developed for small business and the agreement to grandfather this project was never codified. In the absence of a fee deferral program, the best way to honor this long standing commitment is with a loan to the developer, Captain's Table Hotel, LLC.

The loan will be made from the Community Center Fund Contingency and be secured with a recorded Deed of Trust, will be at market rate interest, and will be repaid at the conversion to permanent financing which is expected to occur in less than two years. The interest rate is set at seven percent (7%) which is approximately two percent (2%) higher than the Pool A rate the fund is currently earning.

This loan will allow Le Rivage Hotel to gain its Temporary Certificate of Occupancy in December and open for the holiday season. In addition to being a beautiful waterfront asset, the hotel provides immediate economic benefit to the City of Sacramento. Le Rivage is projected to pay an average of \$750,000 per year for the first four years in Transit Occupancy Tax and increasing to over \$1,000,000 per year by year eight. The hotel will also generate approximately \$206,000 in property tax and \$387,000 in sales tax from the restaurant per year.

LOCATION MAP

Attachment 2



Le Rivage Site Map

LOAN AGREEMENT

This Loan Agreement ("Agreement") is made as of November ____, 2007 and is entered into by and between the **CITY OF SACRAMENTO**, a municipal corporation (the "City"), and **CAPTAIN'S TABLE HOTEL, LLC**, a California limited liability company ("Borrower").

The parties agree as follows:

1. The Loan.

A. Subject to and upon the terms and conditions of this Agreement, the City will make a loan (the "Loan") to Borrower in the principal amount of \$430,540.30.

B. All obligations of Borrower under the Loan shall be evidenced by and subject to the terms of a certain Promissory Note of even date herewith in the principal amount of the Loan, executed by Borrower concurrently herewith, (the "Note"). This Agreement and the Note are collectively referred to as this Agreement.

C. The Loan evidenced by the Note shall be secured by that certain deed of trust executed by Borrower and of even date herewith (the "Deed of Trust"). The Deed of Trust encumbers that certain property described in Exhibit A attached hereto and incorporated herein by this reference, and commonly known as 4350 Riverside Blvd., Sacramento, CA 95822 ("Property") on which Borrower is constructing a hotel project. The financing for such construction is provided by a loan the repayment of which is secured by a deed of trust in first position on the Property ("Construction Loan"). Upon completion of the construction, Borrower intends and has loan commitments to replace the Construction Loan with permanent financing ("Permanent Loan").

D. The Loan proceeds shall not be distributed to Borrower, but will be applied to certain amounts due and owing to the City.

E. Within thirty (30) days of Borrower replacing the Construction Loan with the Permanent Loan, Borrower shall pay to City all principal and accrued interest due and owing under the Loan.

2. Representations and Warranties.

A. Borrower is duly formed limited liability company and validly existing under the laws of the State of California, is qualified to do business in California, and has full power to execute, deliver and perform this Agreement.

B. The execution, delivery and performance of this Agreement are not in conflict with any law, indenture agreement, or undertaking to which Borrower is a party of by which Borrower is bound or affected.

C. Borrower has obtained all required licenses and is in good standing in, and where required has qualified under and complied with the fictitious name statute of, each jurisdiction in which Borrower is doing business.

D. Borrower has a 100% fee simple ownership interest of Property. The Property is improved commercial property.

E. Each of the documents provided by Borrower to City pursuant to section 4 (a Document) is an original (executed, if applicable) or a true and correct copy. Each person executing a Document on behalf of Borrower has full authority to do so, any person executing a Document on behalf of a person or entity other than Borrower has full authority to do so, and by such execution, the Document has become the valid and binding obligation of the person or entity on behalf of which such Document was executed. Each signature is the true and valid signature of the person whose signature is purports to be.

3. Covenants. Until full and final payment of all sums outstanding under this Agreement, Borrower shall, unless City waives compliance in writing:

A. Promptly give written notice to the City of (a) all litigation affecting the Property, (b) any substantial dispute that may exist between Borrower and any governmental regulatory body or law enforcement authority concerning the Property, and (c) any event which is or, with notice or lapse of time, or both, would be an Event of Default.

B. Promptly supply to City any and all financial records and information, including tax returns, concerning Borrower's affairs as City may request from time to time hereafter, and shall promptly notify City of any material adverse change in Borrower's financial condition and of any condition or event which constitutes a breach of or an Event of Default under this Agreement, the Note or the Deed of Trust.

C. Be at all times hereafter solvent and able to pay Borrower's debts (including trade debts) as they mature.

D. Maintain and preserve Borrower's existence and all rights, privileges and franchises now enjoyed, and keep all Borrower's properties in good working order and condition.

E. Maintain and keep in force such insurance as required by the Deed of Trust.

F. Comply at all times with all laws, rules, regulations, orders and directions of any governmental authority relating to or concerning the Property including, but not limited to, all laws, rules, regulations, orders and directions relating to the handling, treatment and disposal of toxic substances, wastes and Hazardous Material on, under or about the Property and shall maintain all necessary authorizations and permits.

G. Not create, assume or suffer to exist any security interest, lien (including the

lien of an attachment, judgment or execution) or encumbrance securing a charge or obligation on the Property, unless approved by City in writing.

H. Not dispose, sell, assign, or otherwise transfer its ownership interest in the Property.

I. At Borrower's expense, furnish to the City a tax delinquency reporting service designated by the System.

4. Conditions Precedent to the Loan: Borrower shall deliver or cause to be delivered to City the items listed in this Section. The obligation of City to make the Loan is subject to receipt by City of each of these items prior to loan closing.

A. This Loan Agreement, the Note, the Deed of Trust, a Hazardous Substances Certificate and Indemnity Agreement (the "Indemnity") of even date herewith, and a corporate authorization providing that the Borrower is authorized to enter into this Agreement, each validly executed by authorized signatories on behalf of the Borrower.

B. A Borrowing Authorization in form acceptable to City, validly executed by each authorized member of Borrower.

C. An ALTA form of original deed of trust title guaranty policy, obtained at Borrower's expense and issued by a company acceptable to City ("Title Company"), in form reasonably satisfactory to the City, together with such endorsements as the City may reasonably require, in the amount of the Loan, guaranteeing the Loan to be a junior lien in second position, free and clear of all exceptions except as may be expressly approved by the City and its legal counsel.

D. An MAI appraisal of the Property prepared by an appraiser of the City's choosing and prepared at the expense of Borrower, which appraisal shall be subject to approval of the City and its counsel.

E. A copy of each and every land use entitlement and Federal, State and local permit authorizing the use and construction of the improvements on the Property.

F. A copy of the Borrower's most recent real estate tax bill relating to the Property establishing that the Property is separately assessed for real estate taxation purposes.

G. Satisfactory evidence of fire and extended coverage insurance for the full replacement cost of the improvements and including rent abatement insurance issued by insurers reasonably satisfactory to the City and showing standard mortgage clauses in the City's favor.

H. Satisfactory evidence of insurance coverages required by the Deed of Trust.

I. A copy of Borrower's Operating Agreement, certification that Borrower is a

California limited liability company in good standing, and other, additional documents relative to Borrower's formation and/or legal status.

J. A report demonstrating that there are no asbestos-related or hazardous or toxic materials on the Property and the fitness of the mechanical and structural attributes of the Property and the improvement. The report shall be based on a physical inspection of the Property and shall be prepared by consultants chosen or approved by City and at Borrower's expense. The inspection and report is to be completed prior to funding. In this regard, City shall have the right at Borrower's expense to require reports beyond a phase I report, if in its sole judgment such a report is warranted under the circumstances.

5. Events of Default: The occurrence of any or more of the following events shall constitute an Event of Default under this Agreement and, at the option of City, shall make all obligations of Borrower to City under or in respect of this Agreement immediately due and payable, without notice of default, presentment, or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character:

A. Borrower fails to pay any sum due under this Agreement.

B. Any representation, statement, report or certificate made or delivered by Borrower, or any of Borrower's officers, tenants, employees or agents, to City pursuant to this Agreement, the Deed of Trust, or the Borrower's Certificate is not true and correct in any material respect.

C. Borrower fails to comply with any material term, provision, condition, covenant or agreement in this Agreement, the Deed of Trust, or Indemnity and the continuation of such default for twenty (20) days after notices thereof given Borrower by City (or if such default is not reasonably curable within such twenty (20) day period, if Borrower fails to commence the cure within such twenty day period or thereafter fails to diligently and continuously prosecute the same to completion).

D. Borrower fails to comply with any material term, provision, condition, covenant or agreement contained in this Agreement, the Deed of Trust, or the Indemnity and reasonably believes such failure by Borrower: (i) is not curable; or (ii) requires City to take immediate action to protect the value of any right, assignment, lien or security interest granted to City under this Agreement or the Deed of Trust (as in the case of an emergency).

E. Borrower commences a proceeding under any provision of the federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including, but not limited to, assignments for the benefit of creditors, formal or informal moratoriums, compositions or extension with some or all creditors (hereafter collectively referred to as "Insolvency Proceeding").

F. An Insolvency Proceeding is commenced against Borrower.

G. Any governmental regulatory authority takes or institutes action which, in the opinion of City, will adversely affect Borrower's ability to pay Borrower's obligations under this Agreement.

H. Any default occurs under any other obligation of Borrower to City.

I. Borrower is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of Borrower's business affairs.

J. A notice of lien, levy or assessment is filed of record with respect to the Property by the United States of America, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities become a lien, whether choate or otherwise, upon the Property and the same is not paid on the payment date thereof.

K. A judgment or other claim becomes a lien or encumbrance upon the Property.

L. Any material misrepresentation exists now or hereafter in any warranty or representation made to City by Borrower or any employee, officer or agent of Borrower, or if any such warranty or representation is withdrawn by any employee, officer or agent.

M. The Property or any other property subject to a lien or security interest created by the Deed of Trust is attached, seized, subject to a writ or distress warrant, or are levied upon, or come into the possession of any trustee, receiver, controller, custodian, assignee for the benefit of creditors or any other person or entity having powers or duties of a trustee, receiver, controller, custodian or assignee for the benefit of creditors.

6. Miscellaneous

A. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

B. City will have no obligation to fund the Loan, should any representation or warranty made hereunder prove to be not true and correct, in any material respect.

C. No consent or waiver under this Agreement shall be effective unless in writing. No waiver of any breach or default shall be deemed a waiver of any breach or default thereafter occurring.

D. Borrower agrees to pay to City, on demand, all reasonable out-of-pocket expenses and attorneys fees (including allocated costs for in-house legal services) incurred by City in connection with the preparation, administration and enforcement of this Agreement. Such payment shall not exceed \$5,000 with respect to City attorney fees incurred on or prior to the funding of the Loan.

E. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. All oral negotiations or promises relating to any obligations of City to Borrower are merged in this Agreement and are superseded by the terms hereof.

F. No party shall have the right to assign all or any portion of this Agreement without the consent of the other party; provided, however, that City may sell, assign and participate all or any portion of City's rights under this Agreement to any institutional lender.

G. Any notice, demand or request required hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram or fax; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested.

If to the Borrower:

Robert Leach
Captain's Table Hotel LLC
3641 Park Drive, Suite 20-308
El Dorado Hills, CA 95762

If to the City:

City of Sacramento
Economic Development Department
Sheri Smith
1030 Fifteenth Street, Second Floor
Sacramento, CA 95814

With copy to:

c/o Paul A. Gale
Office of the City Attorney
CITY OF SACRAMENTO
915 I Street, 4th Floor
Sacramento, CA 95814

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either item (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to subsection (c) shall be deemed received on the business day immediately following deposit with the overnight courier, and if sent pursuant to subsection (d) shall be deemed received forty-eight (48) hours following deposit into the mail.

H. This Agreement shall be interpreted under California law. Jurisdiction and venue shall be appropriate in any state court within the County of Sacramento, State of California, or the federal courts located in the Eastern District of California. Borrower waives any right Borrower may have to assert the doctrine of forum non-conveniens or to object to such venue and hereby consents to any court-ordered relief. The parties hereby waive the right to trial by jury in any action or proceeding relating to this Agreement, any transaction under this Agreement and/or contemplated under this Agreement, or any other claim (including tort or breach of duty claims) or dispute howsoever arising between City

and Borrower.

I. City shall not be required to pay any expenses in connection with this transaction including but not limited to legal costs. City shall have the right to have all documentation prepared and/or reviewed by legal counsel of City's choice at the expense of the Borrower, up to a maximum amount of \$5,000. Such expense shall be paid to the City out of escrow at the closing of the Loan. In the event that the Loan does not close, for any reason, all expenses shall be paid directly to the City by Borrower.

J. It is a condition precedent of City's obligation to fund the Loan that Borrower comply with and cause satisfaction of all conditions set forth in City's escrow instructions to the Title Company, for the recording of the Deed of Trust, issuance of title insurance, and other matters referred to therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

CITY:

CITY OF SACRAMENTO

CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

BORROWER:

CAPTAIN'S TABLE HOTEL, LLC
By: Rivage Hotel, LLC, a California
limited liability company, Manager

Robert A. Leach, Manager

Robert A. Cook, Manager

APPROVED AS TO FORM:

COUNSEL FOR BORROWER

EXHIBIT A

Legal Description

Real property in the City of Sacramento, County of Sacramento, State of California, described as follows:

PARCELS 2, 3 AND 4, 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.

EXCEPTING ANY PORTION OF THE LAND WITHIN THE NATURAL BED OF THE RIVER BELOW THE ORDINARY HIGH WATER MARK WHERE IT WAS LOCATED PRIOR TO ANY ARTIFICIAL OR AVULSIVE CHANGES IN THE LOCATION OF THE SHORELINE.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, BUT NOT INCLUDING WATER, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND DESCRIBED AS:

"TO BE LATER DESIGNATED AS FOUR CORNER LOTS TO BE SHOWN ON A SUBDIVISION MAP COVERING THE ACREAGE HEREIN DESCRIBED, LYING WEST OF THE RIVERSIDE ROAD AND FOUR CORNER LOTS TO BE SHOWN ON A SUBDIVISION MAP COVERING THE ACREAGE HEREIN DESCRIBED LYING EAST OF THE RIVERSIDE ROAD, EACH OF SAID EIGHT CORNER LOTS TO CONTAIN NOT LESS THAN 5000 SQUARE FEET IN AREA;" AS SET FORTH IN DEED FROM MADEL J. CATCHING TO FRANK A. SCHIRO, ET AL, DATED NOVEMBER 14, 1952, IN BOOK 2317, AT PAGE 147, OF OFFICIAL RECORDS OF SACRAMENTO COUNTY.

TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFORE AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCKED OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, EXPLORE AND OPERATE THROUGH THE SURFACE OR UPPER 100 FEET OF THE SUBSURFACE OF SAID PARCELS DESCRIBED IN THE ABOVE-MENTIONED DEED FROM MADEL J. CATCHING TO FRANK A. SCHIRO, ET AL, OR OTHERWISE IN SUCH MANNER AS TO ENDANGER THE SAFETY OF ANY HIGHWAY THAT MAY BE CONSTRUCTED ON SAID LANDS.

APN: 016-0360-002-0000 (Affects: Parcel 2), 016-0360-003-0000 (Affects: Parcel 3), 016-0360-003-0000 (Affects: Parcel 4) and 016-0360-004-0000 (Affects: Parcel 4)

RESOLUTION NO.

Adopted by the Sacramento City Council

LE RIVAGE HOTEL LOAN AGREEMENT

November 27, 2007

BACKGROUND

- A.** The Le Rivage project has been in process for over 15 years and has overcome a multitude of hurdles over the years. Early in the process an agreement was made to grandfather the hotel into a fee deferral program that was being developed at the time. It was agreed that some development fees would be deferred past certificate of occupancy. A fee deferral program was developed for large projects with bonding capacity but was never developed for small business and the agreement to grandfather this project was never codified. In the absence of a fee deferral program, the best way to honor this long standing commitment is with a loan to the developer, Captain's Table Hotel, LLC in the amount of \$430,540.
- B.** The loan will be made from the Convention Center Fund Contingency (Fund 419), attributable to User Fees, and be secured with a recorded Deed of Trust, will be at market rate interest, and will be repaid at the conversion to permanent financing which is expected to occur in less than two years. The interest rate is set at seven percent (7%) which is approximately two percent (2%) higher than the Pool A rate the fund is currently earning. The loan has a maximum four year term to match the construction lender's term but is expected to be repaid in less than two years when the project converts to permanent financing.

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

Section 1. The City Manager is authorized to loan Captain's Table Hotel, LLC \$430,540, from the Convention Center Fund (fund 419), to pay for all remaining City Development fees.

Section 2. The City Manager is authorized to execute loan documents for a \$430,540 loan to Captain's Table Hotel, LLC for the project.

