REPORT TO COUNCIL
City of Sacramento

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915 I Street, Sacramento, CA 95814-2671
www. CityofSacramento.org

Consent
November 8, 2005

Honorable Mayor and
Members of the City Council

Subject: Fee Credit Reimbursement Agreement Between the City of Sacramento and College Marketplace LLC for future construction of recreational facilities in the College Square Planned Unit Development.

Location/Council District: Southeast corner of Bruceville Road and Cosumnes River Boulevard, Council District 8.

Recommendation: Adopt a resolution to (1) approve the attached *Fee Credit Reimbursement Agreement By and Between the City of Sacramento and College Marketplace LLC for Phase I of the College Square Planned Unit Development* (*Agreement*) to provide for the reimbursement of the Developer(s) Credits for future construction of recreational facilities made within Phase I development of the College Square Planned Unit Development (PUD) and (2) designate a fund balance of $252,996 in the Quimby Act Fund 710 for future reimbursement to the Developer(s) after construction and approval of qualifying facilities within Phase I of the College Square PUD.

Contact: Janet Baker, Park Development Manager, 808-8234

Presenters: Not Applicable

Department: Parks & Recreation

Division: Park Planning, Design & Development

Organization No: 4725

Summary:

College Square is a 53-acre PUD on the southeast corner of Bruceville Road and Cosumnes River Boulevard in South Sacramento (Attachment 1). Staff recommends that Council approve the attached agreement with the College Marketplace LLC (the Developer) for privately owned and maintained recreational improvements within Phase I development of the PUD and designate a fund balance of $252,996 from Fund 710 for probable future reimbursements to the Developer as per the *Agreement* (Exhibit A).

Committee/Commission/Council Action:

The City Planning Commission approved the Tentative Map for the College Square development on December 11, 2003. Legislative entitlements for this project, including a General Plan Amendment, a Community Plan Amendment, a Rezone, a Planned Unit Development Designation, and an Inclusionary Housing Plan were approved by City Council on January 27, 2004.

Background Information:

In December 2003, City of Sacramento Planning Commission approved the tentative map for College Square PUD. In January 2004, City Council approved legislative entitlements and certified the Environmental Impact Report for this PUD.

College Square is a proposed PUD that includes 33 parcels of residential and commercial use on 52.55 net acres of land. The Phase I development of this PUD includes the construction of 132 senior and 352 multi-family residential units, and 270,256 square feet of retail and office commercial space by the Developer(s). Based on these numbers, the Developer(s) is required to pay approximately $1,686,643 in Quimby Act Fund Fees (Fees). City Ordinance 16.64.100 provides for credits against the required Fees if the Developer(s) builds and maintains certain privately owned open space and/or recreational facilities, such as swimming pool(s), recreation building(s), and court area(s), to serve the residential parcels.

Staff recommends that Council approve the *Agreement* and designate a fund balance of $252,996 for subsequent years' expenditures.

Financial Considerations:

Funding for this credit reimbursement will be from parkland dedication fees paid to Quimby Act Fund 710 from the Developer(s) for the College Square PUD project at the filing of the Final Map. The designated fund for the future fee credit will be in the amount of 15% of the overall Fees. No additional funding is required. Should the Developer(s) not receive reimbursement of fees within five years, then the Developer(s) waives any right to reimbursement and City shall retain such funds (as stated in the *Agreement*).

Environmental Considerations:

An Environmental Impact Report was certified and a Mitigation Monitoring Plan approved by City Council on January 27, 2004. Approval of this *Agreement* is not an action subject to CEQA.

Policy Considerations:

Providing Parks and Recreation facilities is consistent with the City's strategic plan to achieve sustainability and liveability and to expand economic development throughout the City.

The decision to either accept land dedications or accept "in lieu" fee payments for Quimby obligations are made by the City. In this case, funding is needed to complete the purchase of the City's designated 20-acre community park site on Shasta Avenue which is why the fee option was chosen. College Square is north of the park site location. The acquisition of Shasta Park site is a priority for the City and is a highly ranked project in the Parks and Recreation Programming Guide. In addition, the College Square development will include private recreational amenities for the residents.

Emerging Small Business Development (ESBD):

There are no consultants or contractors on this project.

Respectfully Submitted by: _____
Janet Baker, Park Development Manager

Approved by: _____
ROBERT G. OVERSTREET II
Director of Parks & Recreation

Recommendation Approved:

_____
ROBERT P. THOMAS
City Manager

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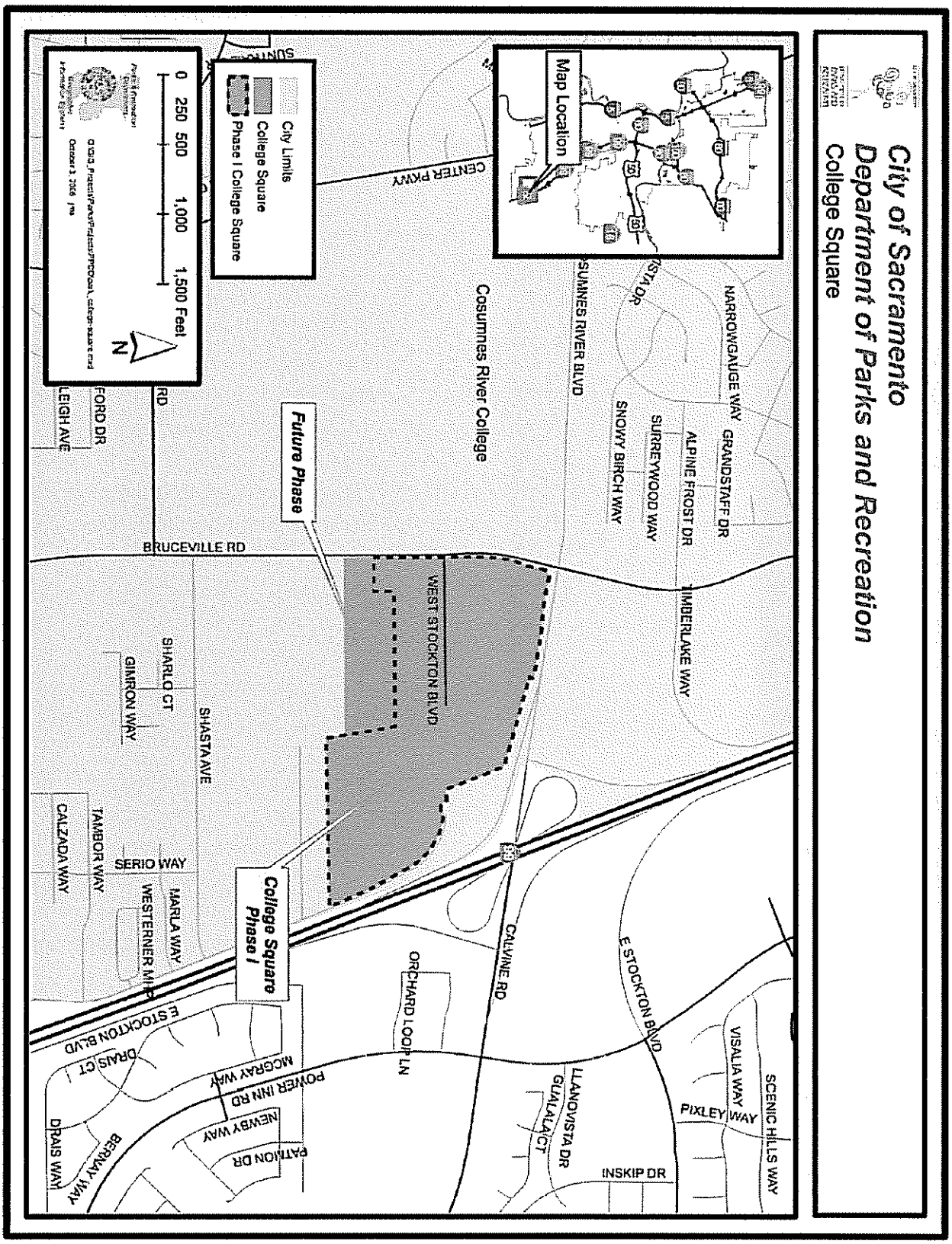
ATTACHMENT 1 – PROJECT LOCATION MAP



RESOLUTION NO. 2005-XXXX

Adopted by the Sacramento City Council

November 8, 2005

APPROVE THE "FEE CREDIT REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND COLLEGE MARKETPLACE LLC FOR PHASE I OF THE COLLEGE SQUARE PLANNED UNIT DEVELOPMENT" TO PROVIDE FOR THE REIMBURSEMENT OF CREDITS AFTER CONSTRUCTION AND APPROVAL OF QUALIFYING FACILITIES;

AND

DESIGNATE A FUND BALANCE OF $252,996 FROM THE QUIMBY ACT FUND 710 FOR FUTURE REIMBURSEMENT OF CREDITS FOR QUALIFYING RECREATIONAL FACILITIES MADE TO PHASE I OF THE COLLEGE SQUARE PLANNED UNIT DEVELOPMENT.

BACKGROUND:

A. In December 2003, City of Sacramento Planning Commission approved the tentative map for College Square Planned Unit Development.

B. In January 2004, City Council approved legislative entitlements and certified the Environmental Impact Report for this Planned Unit Development.

C. City Ordinance 16.64.100 provides for credits against the required Quimby Act fees if the Developer builds and maintains certain privately owned open space and/or recreational facilities to serve the residential parcels.

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

Section 1. Approve *Fee Credit Reimbursement Agreement By and Between the City of Sacramento and College Marketplace LLC for Phase I of the College Square Planned Unit Development* to provide for the reimbursement of credits to College Marketplace LLC after construction and approval of qualifying facilities within Phase I of the College Square Planned Unit Development.

Section 2. Approve designating a fund balance of $252,996 in the Quimby Act Fund 710 for future reimbursement of credits to College Marketplace LLC when conditions stipulated in the agreement are met for future construction of qualifying recreational facilities within Phase I of the College Square Planned Unit Development.

EXHIBIT A: REIMBURSEMENT AGREEMENT

FEE CREDIT REIMBURSEMENT AGREEMENT

By and Between

THE CITY OF SACRAMENTO
a California municipal corporation

and

COLLEGE MARKETPLACE LLC
a California limited liability company

for

PHASE I OF THE COLLEGE SQUARE PLANNED UNIT DEVELOPMENT (P00-147)

Dated: _____

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FEE CREDIT REIMBURSEMENT AGREEMENT

THIS FEE CREDIT REIMBURSEMENT AGREEMENT (this "**Agreement**"), is dated for reference purposes only as of _____, 2005, and is entered into by and between THE CITY OF SACRAMENTO, a California municipal corporation ("**City**") and COLLEGE MARKETPLACE LLC, a California limited liability company ("**Developer**"), who agree as follows:

ARTICLE 1. GENERAL.

1.1. Project Property. Developer is developing Phase I of a certain real property located at the southeast corner of Bruceville Road and Cosumnes River Boulevard in the City of Sacramento (the "**City**"), County of Sacramento (the "**County**"), California (the "**State**") (the "**Phase I Property**"), as shown on the College Square parcel map (the "**Parcel Map**"), a copy of which is attached as **Exhibit A**.

1.2. Residential Parcels. Phase I Developer or Developer's successors in interest intend to develop Parcels 17, 26, 29, 30 and 31, (the "**Residential Parcels**") as a total of 484 units of housing (the "**Housing Units**") consisting of multi-family structures.

1.3. Park and Recreation Fees

1.3.1. Requirement to Pay. Pursuant to City Ordinance 16.64.010 et seq, as a condition to filing the final map of the Phase I Property (the "**Final Map**"), Developer will be required to pay approximately $1,686,643 in fees for park or recreational purposes (the "**Fees**").

1.3.2. Credit. City Ordinance 16.64.100 provides for credits against the required fees (the "**Credits**") if Developer builds certain open space or recreational facilities serving the Residential Parcels.

1.4. Purpose. The purpose of this Agreement is to provide for the reimbursement to Developer of the Credits after payment of the Fees, recordation of the Final Map and construction and approval of qualifying facilities

1.5. Effective Date. The Effective Date of this Agreement shall be the date on which it is signed by the last party to sign it and deliver it to the other party.

ARTICLE 2. REIMBURSEMENT.

2.1. Qualifying Facilities. Developer intends to construct privately owned and maintained swimming pools, recreation buildings and court areas (the "Qualifying Facilities") serving the residential units which will be eligible for Credits of up to 15% of the Fees or a total of $252,996 pursuant to City Ordinance 16.64.100. Developer may construct the Qualifying Facilities in phases and receive a proportionate share of Credits. (E.g. a swimming pool, recreation building and court area constructed for approximately a third of the overall area's housing units is eligible to receive approximately one-third of the Credits.) The Qualifying

Facilities will be constructed in accordance with City, State and Federal building codes and standards including those pertinent to disabled access. Qualifying Facilities are to remain in said recreational uses and shall be maintained to the City's standards in perpetuity.

2.2. Reimbursement Process.

2.2.1. Notification to City. After Developer or a successor has completed a Qualifying Facility and a certificate of occupancy for benefited Housing Units has been issued, Developer or its successor shall give City Notice of such completion and include a request for payment of the portion of the Credit attributable to the Qualifying Facility and proportionate to the number of housing units being served (the "**Reimbursement Notice**"). The Reimbursement Notice shall include a description of the Qualifying Facility and a statement of which Housing Units will be benefited by the Qualifying Facility.

2.2.2. Inspection. Within thirty (30) days after receipt of a Reimbursement Notice, City shall inspect the Qualifying Facilities to insure that they qualify for credit under City Code 16.64.100, that the extent of the credit does not exceed the value of the Qualifying Facilities, and that such Qualifying Facilities are constructed in accordance with applicable city, state and federal building requirements.

2.2.3. Payment. Within 30 days after receipt of a Reimbursement Notice and inspection and approval of the Qualifying Facilities under section 2.2.2 of this agreement, City shall pay to Developer or its successor in interest the portion of the Credits attributable to the Qualifying Facility, without interest.

2.2.4. Reimbursement Source. Any and all reimbursement funds shall be paid from the Quimby Act Fund. A fund balance shall be retained in the Quimby Act Fund sufficient to reimburse developer in the amount of the credit due for Qualifying Facilities.

2.2.5. Five Year Termination. All Qualifying Facilities must be constructed and approved by the City, and have reimbursement paid within five years of the collection of fees. Should Developer not receive reimbursement of fees within five years, then Developer waives any right to reimbursement and City shall retain such funds.

ARTICLE 3. MISCELLANEOUS.

3.1. Notices.

3.1.1. Definition. "**Notice**" means any notice, demand, request or other communication or document to be provided under this Agreement to a party to this Agreement.

3.1.2. Delivery. The Notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or such other address or telecopy number as the party may later specify for that purpose by Notice to the other party. Each Notice shall, for all purposes, be deemed given and received:

A. If given by telecopy, when the telecopy is transmitted to the party's telecopy number specified below and confirmation of complete receipt is received by the

transmitting party during normal business hours or on the next business day if not confirmed during normal business hours;

B. If hand-delivered to a party against receipted copy, when the copy of Notice is receipted;

C. If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the party; or

D. If given by any other means or if given by certified mail, return receipt requested, postage prepaid, two business days after it is posted with the United States Postal Service, at the address of the party specified below:

DEVELOPER:	**College Marketplace, LLC** Attn: Douglas M. Sutherland 1508 Eureka Road, Suite 130 Roseville, CA 95661 Telecopy No.: (916) 791-6459
CITY:	**City of Sacramento** Attn: CITY MANAGER 915 I STREET, 5TH FLOOR Sacramento, CA 95814 Telecopy No.: (916) 808-5704

3.1.3. Telecopy. If any Notice is sent by telecopy, the transmitting party as a courtesy may send a duplicate copy of the Notice to the other party by regular mail. In all events, however, any Notice sent by telecopy transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other party.

3.1.4. Receipt by Party. The provisions above governing the date on which a Notice is deemed to have been received by a party to this Agreement shall mean and refer to the date on which a party to this Agreement, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

3.1.5. Refusal. If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the Notice, the Notice nonetheless shall be considered to have been given and shall be effective as of the date provided in this Agreement. The contrary notwithstanding, any Notice given to either party in a manner other than that provided in this Agreement, that is actually received by the noticed party, shall be effective with respect to such party on receipt of the Notice.

3.2. Interpretation. The captions of paragraphs used in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Developer and City.

3.3. Time of Essence. Time is of the essence of this Agreement and of the escrow provided for herein

3.4. Attorneys' Fees. In the event either Developer or City shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to reasonable attorneys' fees to be determined by the Court. The venue for any legal action shall be in Sacramento County, California.

3.5. Integration. This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter, which are not fully expressed herein.

3.6. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

3.7. Exhibits. All exhibits to which reference is made in this Agreement are incorporated in this Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Agreement" includes matters incorporated by reference.

3.8. List of Exhibits.

Exhibit A Parcel Map

CITY:

THE CITY OF SACRAMENTO, a California municipal corporation

Dated: _____, 2005

By_____
Name: _____
Its_____

DEVELOPER:

COLLEGE MARKETPLACE LLC, a California limited liability company

Dated: _____, 2005

By_____
Douglas M. Sutherland, Member