

## RESOLUTION NO. 2005-806

Adopted by the Sacramento City Council

November 8, 2005

**APPROVING 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 DESIGNATING 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.*

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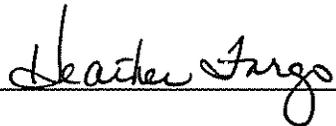
Adopted by the City of Sacramento City Council on November 8, 2005 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Mayor Fargo.

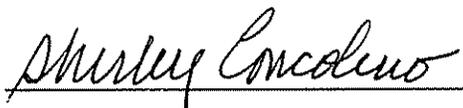
Noes: None

Abstain: None

Absent: None

  
\_\_\_\_\_  
Mayor Heather Fargo

Attest:

  
\_\_\_\_\_

Shirley Concolino, City Clerk

**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, 5<sup>TH</sup> 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

