

ORDINANCE NO. 2012-002

Adopted by the Sacramento City Council

January 24, 2012

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 January 24, 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.

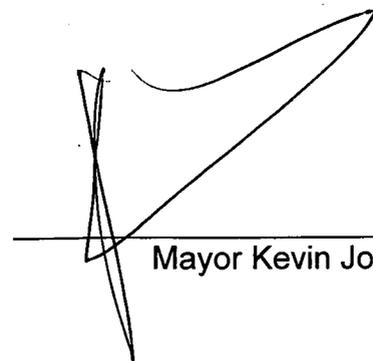
The City Council hereby approves the *Third Amendment to Development Agreement for Township 9 Project*, City Agreement No. 2007-1081, a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the City Manager to sign on the City's behalf, on or after the effective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

Adopted by the City of Sacramento City Council on January 24, 2012 by the following vote:

- Ayes: Councilmembers Ashby, Cohn, D Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.
- Noes: None.
- Abstain: None.
- Absent: Councilmember Robert King Fong.



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

Passed for Publication: January 6, 2012
Published: January 17, 2012
Effective: February 22, 2012

Exhibit 1 – Third Amendment to City Agreement No. 2007-1081

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
7 th 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:

<u>Park/Open Space</u>	<u>Acreage</u>	<u>Cost</u>
Riverfront Park	5.40	\$ 4,487,894
7 th 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	<u>0.32</u>	<u>\$ 265,949</u>
	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]