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DEPARTMENT OF
FINANCE

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 14
915 I STREET
SACRAMENTO, CA
95814-2685

BETTY MASUOKA

APPROVED
BY THE CITY COUNCIL

AUG 21 1990

OFFICE OF THE
CITY CLERK



July 30, 1990

916-449-5736

DIVISIONS:
ACCOUNTING
BUDGET
REVENUE
RISK MANAGEMENT

CONTINUED

FROM 8-15-90
TO 8-21-90

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: REPORT BACK ON FISCAL IMPACT OF THE PROPOSED "LOT A"
PRE-DEVELOPMENT AGREEMENT ON THE CITY PARKING ENTERPRISE
FUND

SUMMARY

On July 24, 1990, the Sacramento Housing and Redevelopment Agency (SHRA) presented a Pre-development Agreement to the Joint Budget and Finance & Transportation and Community Development Committee for the Capitol Mall Site - Lot A. This report provides specific information on the potential impact the agreement could have on the finances of the City Parking Authority/Enterprise and recommends that Council provide SHRA with direction on expenditure controls to use during the initial phases of the project.

In summary, the agreement would cause the Parking Authority to pay a minimum of \$500,000 in one-time demolition and utility relocation costs. It has been assumed that these costs will be netted against the purchase proceeds to be received from Parcel 1, therefore these costs have not been included in the most current parking fund balance projections. If demolition and the escrow closing (with the City receiving \$9.0 million from the sale of Parcel 1) occur during the same fiscal year, as currently planned, there will be no adverse fiscal impacts.

If the demolition and close of escrow occur in different fiscal years, the City would be required to deal with the cash flow shortage. Furthermore, there are various conditions in the agreement that could expose the City to financial risks which cannot be accurately defined at this time. One example is the costs of addressing any toxic problems associated with the site. As the

agreement is currently written, the Parking Authority could pay for the costs in excess of \$500,000 associated with a cleanup operation if approved by Council. In order to provide the Council with some control over unanticipated expenditures, staff is recommending the adoption of certain expenditures controls.

BACKGROUND

SHRA, acting as an Agent for the City, has negotiated a Pre-development Agreement with the Capitol Mall Partners (Rockefeller & Associates Realty, L.P., and McCuen Properties). This agreement was reviewed by Council on July 24, 1990. At that time Council directed City staff to provide an assessment on how the Agreement would impact the Parking Fund. This report addresses these impacts in two parts. The first part relates to the costs of the Agreement that are known at this time. The second part addresses costs that are unknown at this time, but may eventually impact the Parking Fund.

Costs that will be paid by the City

One of the terms of this agreement is for the City to pay for the demolition and removal of the existing parking garage, plus relocation of various utilities. The estimated cost for these items is \$500,000. It is reasonable to assume that these costs will be incurred. The impact of these expenditures is described below.

The schedule for demolishing Lot A is connected with the close of escrow for Parcel 1. The current schedule is for escrow to open in October 1990 and close in March 1992. While escrow is open the Developer will have to obtain approvals on design review, TSM plans, construction documents, financing, contractors, and building permits. The City is scheduled to close the facility 150 days prior to the close of escrow, with SHRA performing the demolition, at City expense, 120 days prior to the close of escrow.

The timing of the escrow closing will determine how the City manages the fiscal impact of the demolition costs. At the close of escrow the City will receive \$9,000,000 from the sale of Parcel 1. These funds will be used to defease the parking authority bonds, reimburse SHRA for closing costs, and reimburse the City for demolition costs. Therefore, if the escrow closes in the same fiscal year that the demolition costs are incurred, the Parking Fund could absorb the costs. If the escrow closes in a different year than when the demolition costs are incurred, the City could either defer a non-safety related Capital Project scheduled for the same year as demolition, use some of the parking contingency (fund balance), or schedule a rate increase of approximately 5% to provide the necessary revenue to cover the demolition costs.

It is staff's current view that a rate increase would be required only as a last resort if there are substantial delays in the close of escrow, or if the Developer pulls out of the deal after the demolition is completed and the Developer's \$900,000 security

deposit does not cover all expenses incurred by SHRA and outside parties. In the event that this worst-case scenario develops, deferral of a capital project and use of the contingency will probably negate the need for a rate increase.

Unknown Costs that may be Paid by the City

The Pre-development Agreement also makes reference to other agreements that will come before Council in the next few months. The language in the initial drafts of these agreements place responsibility on the City for the following expenditures:

- * Third party costs associated with the development - Estimated at \$686,000 for Parcel 1 and \$236,000 for Parcels 2 and 3.
- * Costs associated with utility relocations, demolition in excess of the current \$500,000 estimate. There is no estimate for this item.
- * Potentially the costs associated with toxic cleanup in excess of \$500,000 if the Council so chooses.
- * Guarantee of an interest rate of 8.7% on the Developer's Option Deposit of \$2.8 million. If the City is at some time required to return the Option Deposit to the Developer, the City would be responsible for the payment. To the extent that a portion of the deposit had been spent and/or if interest earnings are less than 8.7% the City will be required to make up the difference.

It is impossible to project what the final costs will be for the items described above. In order to keep the City Council informed of these costs as they are realized, and the associated impacts on the City, staff recommends that Council direct the Agency staff to incorporate the following guidelines in the Lot A Transfer Agreement:

1. Third Party costs for Parcel 1 shall be defined and limited in terms of scope and cost. The current budget for these costs is \$686,000. These costs will be reimbursed from the sale proceeds from Parcel 1. Attached is a list which defines eligible third party expenditures. Any increase in the scope or cost of these third party costs must be pre-approved by City Council.
2. The budget for costs related to the demolition, and utility relocation associated with Lot A will be \$500,000. These costs will be reimbursed from the sale proceeds from Parcel 1. Any cost increases must be pre-approved by the City Council.
3. The scope of the Third Party costs associated with Parcels 2 and 3 will be defined in the Transfer Agreement. These costs will be reimbursed from the Option Agreement deposit. No other

costs will be reimbursed to the Agency from this deposit without prior Council approval.

4. The Option Deposit to be paid by the Developer for Parcels 2 and 3 shall be held by the City and disbursed only upon approval by the City Council.

FINANCIAL DATA

This report advises the Council that there will be City expenditures associated with the Capitol Mall - Lot A proposal, and that there may be some financial impact to the City, presumably on the Parking Fund depending on the timing of the close of escrow on Parcel 1. These potential impacts are described above in the Background section.

In addition, Council is advised that there are some financial risks that the City will assume for unknown costs. Staff provides recommended guidelines for SHRA to follow in order to place some controls against these unanticipated costs.

It is currently planned that all expenditures required of the City will be reimbursed from either the proceeds from the sale of Parcel 1, or the Developer Option Deposit for Parcels 2 and 3.

The total purchase price for LOT A is \$11.8 million. For Parcel 1 the proceeds will be \$9.0 million less; \$500,000 in demolition and utility relocation costs, \$686,000 in third party costs reimbursed to SHRA, approximately \$6.5 million to defease existing debt issues by the Parking Authority. This would leave \$1,314,000 that could be returned to the Parking Fund if there are no unanticipated expenditures. The proceeds from Parcels 2 and 3 will be \$2.8 million less; third party costs reimbursed to SHRA (estimated at \$236,000), expenditures necessary to guarantee an 8.75 percent investment earning on the deposit if the deposit must be returned to the developer (\$0 to \$200,000 depending on market conditions).

POLICY CONSIDERATIONS

The current Pre-development Agreement requires the City (Parking Fund) to share in the financing of the Capitol Mall - Lot A project (demolition and utility relocation costs) along with sharing in the financial risks associated with the project (unknown costs associated with third party agreements, toxic removal, and overruns in the demolition and utility relocation costs). If the Council wishes to remove the City Parking fund from any participation in the project, or exposure to financial risks, then SHRA can be directed to renegotiate the proposed Pre-development Agreement.

A future policy decision will be required to address the use of the net proceeds (if any) from the parcel 1 and the Option Deposit for Parcels 2 and 3. Staff will report back at a later date with recommendations in this area. The assumption at this time,

however, is to isolate these funds until all City costs associated with Lot A are identified and funded.

RECOMMENDATION

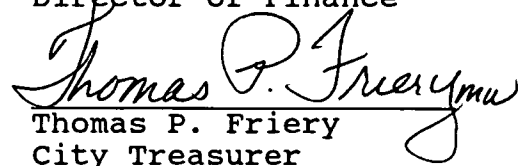
It is recommended that Council direct the Agency staff to incorporate the following guidelines in the Lot A Transfer Agreement between the City and SHRA:

1. Third Party costs for Parcel 1 shall be defined in terms of scope and cost. The current budget for these costs is \$686,000. These costs will be reimbursed from the sale proceeds from Parcel 1.
2. The budget for costs related to the demolition, utility relocation, and toxic removal associated with Lot A will be \$500,000. These costs will be reimbursed from the sale proceeds from Parcel 1.
3. The scope of the Third Party costs associated with Parcels 2 and 3 will be defined in the Transfer Agreement. These costs of \$236,000 will be reimbursed from the Option Agreement deposit. No other costs will be reimbursed to the Agency from this deposit without prior Council approval.
4. The Option Deposit to be paid by the Developer for Parcels 2 and 3 shall be held by the City and disbursed only upon approval by the City Council.

Respectfully submitted,



Betty Masuoka
Director of Finance



Thomas P. Friery
City Treasurer

RECOMMENDATION APPROVED:


Walter J. Slipe
City Manager

August 14, 1990
All Districts

CAPITOL MALL (Lot A) EXPENDITURES
(Third Party Expenses)

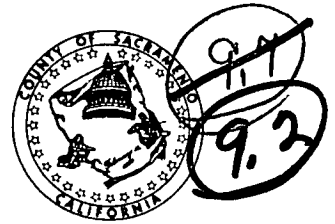
<u>Specific Task/ Consultant</u>	<u>Amount Expended</u>
Aerial Survey	\$ 1,280
Blueprinting	1,700
Proposal Book presented to ULI Advisory Panel	1,800
Expenses associated with initial Urban Land Institute (ULI) Panel visit	1,650
Urban Land Institute Study	84,000
300 copies of ULI Study	900
Appraisal of Site (David E. Lane, Inc.)	6,000
Design and Printing of Request for Qualifications (RFQ) Brochure and Development Offering Package (Request for Proposals (RFP)) (Rhoda McKnight Design)	16,960
Real Estate/Financial Counseling Services (Williams-Kuebelbeck & Assoc., Inc.)	33,940
Real Estate/Financial Feasibility Counseling Services per Hotel Development (Laventhol & Horwath)	21,690
Design Review Counseling Services (Kaplan, McLaughlin and Diaz)	5,000
Preparation of an Environmental Impact Report (EIR) (Nichols-Berman)	122,335
Phase I Hazardous Waste Testing of Site (including Site Survey Map) (Harding Lawson Associates)	22,400
Updated Appraisal of Site (David E. Lane, Inc.)	1,160
Consultant Services in Negotiation of a Disposition and Development Agreement (DDA) (Andrew Plescia Co.)	24,950

<u>Specific Task/ Consultant</u>	<u>Amount Expended</u>
Appraisal of Lot A per City Council Stipulations (David E. Lane, Inc.)	13,172
Appraisal of Lot A per City Council Stipulations (Clark Wolcott, Inc.)	15,513
Subdivision Map (Tom O. Morrow, Inc.)	2,200
Legal Counsel DDA Negotiations (Dwight Moore)	24,000
Preparation of Presentation Material (including slides)	<u>485</u>
Expenses to Date	<u>\$401,135</u>
Escrow (closing costs) for Parcel 1	\$ 30,000
Additional Legal Counsel Services (REA, etc.)	30,000
Linkage Study (incl. Public Infrastructure Improvements to Area)	50,000
Construction Monitoring Parcel 1 (2 yrs.)	<u>175,000</u>
Future Anticipated Expense Parcel 1	<u>\$285,000</u>
Escrow (closing costs) for Parcels 2 & 3	\$ 30,000
Real Estate/Financial Counseling Services (Hotel Agreement Evaluation Parcel 3)	30,000
Construction Monitoring Parcels 2 & 3	<u>175,000</u>
Future Anticipated Expenses Parcels 2 & 3	<u>\$235,000</u>
 TOTAL EXPENSES	 <u>\$ 925,000</u>

LotAExp



**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**



July 24, 1990

City Council
and
Redevelopment Agency
and
Parking Authority
of the
City of Sacramento
Sacramento, CA 95824

Honorable Members in Session:

SUBJECT: Approval of Predevelopment Agreement ("PDA") with Capitol Mall Partners for the Development of the Capitol Mall Site ("Lot A")

SUMMARY

Approval is hereby requested of the Predevelopment Agreement ("PDA") between the Redevelopment Agency of the City of Sacramento ("RACS") and Capitol Mall Partners (Rockefeller & Associates Realty, L.P., and McCuen Properties), which would establish the terms and conditions for the Disposition and Development Agreement for Parcel 1 and the Option Agreement for Parcels 2 and 3, between the RACS and Capitol Mall Partners ("CMP") for the development of the Capitol Mall Site ("Lot A"). Approval is also requested from the Parking Authority of the City of Sacramento of the Predevelopment Agreement.

BACKGROUND

On November 21, 1989, the City Council selected Capitol Mall Partners, with certain stipulations in order to proceed to Phase III of the Lot A Developer Selection Process. This phase entailed negotiation of a Disposition and Development Agreement (DDA) for the site. (A description of the Capitol Mall Partners' proposal is attached as Exhibit "A.") On December 5, 1989, the Agency began formal negotiations with CMP and reported back to the City Council on January 30, 1990, that the Agency and CMP were in agreement with the terms of the stipulations, and that the Developer had complied with those specific sections requiring compliance by January 31, 1990. The stipulations (business terms) represented the Council's conditions for the Developer to proceed to negotiate the Disposition and Development Agreement with the Agency, and as such, represented the general business terms of the Agreement.

CONTINUED

7-24-90

FROM 07-24-90
TO 08-14-90

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Following the initial 120 days set for negotiation of the DDA, the Agency staff requested, on April 24, 1990, an additional amount of time to complete final negotiations on the terms and conditions for development of the site, and to complete preparation and finalization of all the necessary documents. At this time, negotiations and preparation of all necessary documents have been completed, and the Agency is prepared to enter into a Predevelopment Agreement ("PDA") (Exhibit "B") with CMP for development of the Capitol Mall Site (Lot A).

Pursuant to the California Environmental Quality Act ("CEQA"), the Agency cannot execute any final documents (such as a DDA) relating to the transfer and development of the Capitol Mall Site prior to the preparation and certification of an Environmental Impact Report ("EIR") for the site/project. At this time, a Draft EIR has been prepared, and public hearings have been held during the 45 day review period which closed on July 5, 1990. It is anticipated that a final EIR will be available in September, 1990, at which time the City Council will be requested to certify the EIR and to file a Notice of Determination. Following approval of the project and a 30-day statute of limitations on the EIR, the Agency and Developer will then execute the DDA for Parcel 1.

The purpose of the Predevelopment Agreement is to state that all business terms and conditions for the disposition and development of the site have been agreed upon by the Agency/City and CMP to the form of the Parcel 1 DDA (Exhibit "C"), and the Option Agreement for Parcels 2 and 3 (Exhibit "D"), and their obligation with respect to execution of the documents subsequent to the above action relating to certification of the EIR. (Since the PDA is subject to the findings of the EIR, it can be entered into prior to certification.) These documents have been placed in the Agency Clerk's office and the City Clerk's office for review.

PREDEVELOPMENT AGREEMENT

The Predevelopment Agreement consents to the Parcel 1 DDA and the Option Agreement for Parcels 2 and 3, and contains the following provisions:

- o In order to accommodate the Developer's proposal, the Parking Authority, precedent to execution of the Parcel 1 DDA, shall subdivide the site into three (3) separate "legal parcels".
- o The Parking Authority shall transfer the site to the Agency, at the request of the City, to allow the Agency, as City's agent, to enter the Parcel 1 DDA and the Option Agreement for Parcels 2 and 3 with Developer.

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- o Developer has the right to assign any interest in the PDA in compliance with the assignment provision of the Parcel 1 DDA. The Developer has restrictions on profits received from any such transfers and/or assignments as covered below.
- o The term of the PDA shall be from its execution date to termination upon subdivision of the site, certification of the EIR, and execution of the DDA or six (6) months from the execution date, whichever comes first.
- o As security for performance of Developer's obligations under the PDA, Developer will deposit with the Agency an irrevocable, standby letter of credit in the amount of \$900,000.
- o Agency shall return the deposit to Developer in the event that the City fails to certify the EIR or approve the subdivision of the site. In the event the Developer fails to take the actions required by the Developer as outlined below, the Agency/City shall retain the deposit as liquidated damages.
- o Agency shall assist Developer in obtaining from the City an executed Development Agreement, final design approval of the project, off-site parking permit, and Transportation System Management ("TSM") Plan approval.
- o If Agency defaults on Agency's/City's obligations under the PDA, the Developer shall have all rights available at law or in equity, provided that damages shall be limited to Developer's out-of-pocket expenses.

In addition to approving the PDA, the Agency, Authority and the City are being requested to consent to the terms and conditions of the Parcel 1 DDA; Option Agreement for Parcels 2 and 3, including the Parcel 2 DDA and Parcel 3 DDA; the Parcel 2 and 3 Lease which would be effective from the close of escrow on Parcel 1 to the close of escrow on Parcels 2 and 3 or until termination of the Option Agreement; and the Development Agreement (Exhibit "E") between the City and the Developer. At a future date, prior to execution of the DDA, the Agency/City will be requested to approve the transfer of the site from the Parking Authority to the Agency (Exhibit "F"); the Reciprocal Easement Agreement between Parcels 1, 2, and 3; and the Development Agreement between the City and CMP.

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PARCEL 1 DDA

The DDA for Parcel 1 spells out the business terms and conditions, along with the schedule for disposition and development of the site, as agreed upon by the Agency/City and CMP. The following is a brief synopsis of the major elements contained in the Parcel 1 DDA.

- o Authority will subdivide the property into three (3) separate legal parcels.
- o Agency, as agent for City/Authority, will begin demolition of the existing parking structure 120 days prior to the close of escrow at Parking Authority's expense.
- o Execution of DDA upon certification of EIR and following 30 day statute of limitations on the EIR.
- o Developer will lease Parcels 2 and 3 during option period, and will construct and maintain landscaping approved by the City during the life of the lease, which corresponds to the term of the Option Agreement.
- o Purchase price of Parcel 1, \$9,000,000, to be paid at the close of escrow.
- o Deposit of \$900,000 by Developer to secure performance by Developer from date of execution of DDA through close of escrow.
- o Failure of conditions precedent, after Developer has acted in good faith, or because of Agency default, Agency will return deposit.
- o If Developer fails to act in good faith, Agency shall retain deposit as liquidated damages.
- o Developer's conditions precedent to close of escrow are:
 - o Developer shall have nondiscretionary permits (building permits) and shall determine, through third party studies, that hazardous materials removal costs are less than \$500,000, which Developer shall pay. If hazardous materials removal exceeds \$500,000, the Agency may elect to pay the amount over \$500,000, or Developer can elect to pay, if Agency declines, or Developer can elect not to proceed with project.

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- o Agency's conditions precedent to close of escrow are:
 - o Issuance of building permits.
 - o Agency approval of contractor.
 - o Agency approval of lender.
 - o Agency approval of equity, financing, and budget.
 - o Agency approval of construction contract.
 - o Agency approval of loan documents.
 - o Developer shall deliver to Agency executed lease or option to lease with CalTrans for the Pioneer Bridge site, or lease or purchase another site approved by the Agency for the off-site parking. Off-site parking spaces shall not exceed amount of off-site parking spaces required by the proposal (900 spaces).
- o Escrow/closing costs divided equally between Agency and Developer.
- o At close of escrow, Agency shall deliver:
 - o Grant Deed
 - o Executed REA (Reciprocal Easement Agreement) which will permit Agency/City to control its interest on site following build-out in place of CC & R's.
 - o Lease
 - o Option Agreement
 - o Agency Certificate of Compliance that Developer has complied with all items needed for close of escrow.
 - o Title Policy
 - o Agency's share of closing costs.
 - o Return Deposit (\$900,000)
- o At close of escrow, Developer shall deliver:
 - o Purchase Price (\$9,000,000)
 - o Security Deposit (\$1,000,000)
 - o Executed REA
 - o Executed Lease
 - o Executed Option Agreement (\$2,788,000)
 - o Executed Loan Documents
 - o Insurance Certificate
 - o Housing Payment (\$1,000,000)
 - o Housing Trust Fund in Lieu Payment (\$1,040,000)
 - o Developer's share of closing costs.
- o Agency approval of substantial changes to plans shall include:
 - o Building coverage - bulk, square footage, building coverage or floor area ratio or number of floors.

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- o Exterior - size or design or use of exterior finishing materials.
- o Facilities - pedestrian or vehicular circulation.
- o Use change.
- o In the event of Agency disapproval - arbitration.
- o Agency approvals or disapprovals within 10 business days for staff approvals and 20 business days for governing body approvals.

- o If Agency doesn't issue a Certificate of Completion, then the issuance is subject to arbitration.

- o If 90% of the project improvements are completed, Developer may take out a completion bond.

- o Transfer and assignment provisions - Agency approval must be obtained for any transfer reducing CMP's interest below 10% or changes in the managing general partner. Managing general partner means the entity in control of the design, development, construction and monetary decisions with respect to the project.

- o Any assignee or transferee shall have the ability, experience and net worth to fulfill Developer's role and obligations under the DDA as managing general partner.

- o Developer shall submit to Agency for review, not approval, except as stated above, all transfers of interest.

- o Profit limitation - Capitol Mall Partners and partners of CMP and partners of partners, as of November 21, 1989, shall have their direct and indirect profits placed into an Agency-controlled escrow account until Option on Phase II is exercised or terminated in the event of a transfer or assignment of interests in Project.

- o Off-site parking - 262 of the parking spaces in the off-site parking facility shall be available for use by the general public and maintained in accordance with the REA and TSM. Three hundred (300) on-site parking spaces shall be available for use by the general public.

- o Developer shall not sue Agency, Authority or City for the costs of remediation, treatment or removal of hazardous materials from Parcel 1.

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- o Developer shall expend 2% of total project construction costs on "Aesthetic Improvements". Aesthetic improvements owned by Developer but shall not be removed unless replaced by equal value improvement. Approval by Sacramento Metropolitan Arts Commission.
- o In implementing the City's child care program, Developer shall be required to do one of the following:
 - o Pay to the City \$300,000 (Phase I) to be used to develop or support child care facilities downtown; or
 - o Shall expend \$300,000 for the development of an on-site child care facility on Parcel 2 or Parcel 3 or an alternative site, specified by the City's Child Care Coordinator; or
 - o Pay \$300,000 to Child Action, Inc., for child care services.
- o Amendments to the Parcel 1 DDA requested by a Lender shall not affect the Scope of Development, monetary terms of the DDA or the assignment and profit restrictions. Amendment disputes are subject to arbitration.
- o Developer default - Lender shall have the right, at its option, to cure or remedy such default for 240 days. Developer has right to arbitration on default issue.
- o Parcel 1 may revert to Agency if Developer defaults and the Lender forecloses or takes a deed in lieu of foreclosure provided Agency opts to pay Lender debt.
- o Developer has 60 days to cure Agency notice of default from execution of the Parcel 1 DDA through close of escrow. Developer may take the default issue to arbitration.
- o Default by Agency remedies - Remedies available at law or equity before conveyance of Parcel 1 with damages limited to out-of-pocket expenses. Only remedy available to Developer would be for specific performance after conveyance.
- o In event that Developer defaults during construction of Project, prior to issuance of Certificate of Completion, and after Lender has foreclosed, Agency has the right to revert Parcel 1 to Agency in addition to receiving liquidated damages of \$1,000,000. In order to revert, the Agency would have to pay off Lender.

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OPTION AGREEMENT

- o Execution of Option Agreement would take place at the close of escrow for Parcel 1.
- o Developer would have a leasehold interest in Parcels 2 and 3 during the Option term.
- o Parcel 2 and Parcel 3 second phase in developing the property in accordance with the Proposal.
- o Only relationship between Parcels 1, 2 and 3 is REA upon the close of escrow for Parcels 2 and 3.
- o Developer can exercise and close escrow on Parcel 3 (hotel site) prior to exercise of the Option with respect to Parcel 2; not the reverse.
- o The option fee for Parcels 2 and 3 is \$2,788,000. The option fee and purchase price for Parcel 1 would be \$11,788,000. The \$2,788,000 plus interest would be retained by Agency if Developer did not exercise the Option.
- o The option fee accumulated interest shall be applied towards the purchase price for Parcels 2 and 3.
- o Developer's conditions precedent
 - o Hazardous waste (same as in Parcel 1 DDA)
 - o Building permit - prior to exercise of Option, Developer shall have received nondiscretionary permits (building permits).
 - o Agency shall have performed all covenants and agreements under Option.
- o Agency's conditions precedent
 - o Hotel Agreement submitted by Developer and approved by Agency eighteen months prior (mid-1995) to exercise of Option.
 - o Approval of building permits
 - o Approval of contractor
 - o Approval of lender
 - o Approval of equity, financing and project budget
 - o Approval of construction contract
 - o Approval of loan documents
 - o Off-site parking facility in place with Parcel 2 Improvements and Parcel 3 Improvements.

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- o Term of Option Agreement is 7 years (1997) with limitations on profit the same as under Parcel 1 DDA.
- o The Option shall be exercisable as to both Parcel 2 and Parcel 3 (hotel site) together or first as to Parcel 3 and then as to Parcel 2.
- o Prior to exercise of Option, Developer must execute Parcel 2 DDA and Parcel 3 DDA.
- o Purchase prices for Parcels 2 and 3 would be as follows:

<u>YEAR</u>	<u>PARCEL 2</u>	<u>PARCEL 3</u>	<u>TOTAL</u>
1991	\$3,000,000	\$1,000,000	\$4,000,000
1992	3,000,000	1,000,000	4,000,000
1993	3,056,000	1,016,000	4,072,000
1994	3,283,000	1,094,000	4,377,000
1995	3,530,625	1,176,875	4,707,500
1996	3,795,375	1,265,125	5,060,500
1997	4,080,000	1,360,000	5,440,000

- o Escrow - closing costs would be split equally.
- o Any substantial change in plans, similar to those described for Parcel 1 DDA, must be approved by Agency, subject to arbitration.
- o Right of assignment and transfer subject to Agency approval if Developer's interest is reduced below 10%. Same provisions regarding managing general partner as in Parcel 1 DDA.
- o Developer may separately assign its interest in the Parcel 2 DDA or Parcel 3 DDA. Escrow on Parcel 2 could not close before close of escrow on Parcel 3.
- o Any transferee has to have same qualifications and financial responsibility as Developer (same as in Parcel 1 DDA).
- o Limitation on profits prior to exercise of Option or termination same as in Parcel 1 DDA.
- o Developer would not sue Agency, Authority or City for hazardous materials on Parcels 2 or 3.
- o Art in Public Places same as Parcel 1 DDA.

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- o Amendments required by a Lender shall not affect the Scope of Development on Parcel 2 and Parcel 3 nor the monetary terms of the Option, or the assignment and profit restrictions.
- o Force majeure delays provision.

DEVELOPMENT AGREEMENT

The City of Sacramento and CMP would enter into a Development Agreement pursuant to Government Code Section 65864, et. seq., which authorizes a city and an applicant for a development project to enter into an agreement whereby the planning requirements for a project may be fixed for a specific time period. The purpose of a Development Agreement is to provide a developer with a contractual right to proceed with a project. Without such an agreement, the City Council or a ballot measure could change the general plan or zoning requirements as to eliminate a proposed project at any time before the developer obtains a building permit for a project and spends a substantial amount in reliance on the permits.

The Development Agreement would be between the City and the Developer. It would vest the planning and zoning rights of the project on Parcels 1, 2 and 3. Since the Developer is being required under the DDAs to pay for housing, art, parking and child care, that other like-kind projects do not have to pay, the Development Agreement would exempt the projects from any new development fees or exactions for housing, art, child care, and parking. Other future assessments against the projects would be limited to assessments imposed on C-3 properties within the Merged Downtown Sacramento Redevelopment Area.

The term of the Development Agreement would be 15 years or until the projects are completed, whichever would occur sooner in time.

Following approval of the PDA, the following sequence of events will occur.

- o Preparation of a subdivision map dividing the site into three parcels. Approval of tentative and final map. (September 1990)
- o Certification of the Environmental Impact Report ("EIR") and filing Notice of Determination. (September 1990)

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Governing Bodies

July 24, 1990

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- o Execution of the following documents following the 30-day statute of limitations on the EIR: (October 1990)
 - o Development Agreement
 - o Parcel 1 DDA
- o Open escrow with execution of Parcel 1 DDA. (October 1990)
- o Developer requests approval of the following documents: (by March 1992)
 - o Off-site parking permit
 - o Transportation System Management ("TSM") Plan
 - o Final design of project (Design Review)
- o Agency approval of the following: (by March 1992)
 - o Contractor
 - o Lender
 - o Equity, financing and budget
 - o Construction contract
 - o Loan documents
- o Transfer of site from the Parking Authority of the City of Sacramento to Agency. (150 days prior to close of escrow)
- o Demolition of parking structure. (120 days prior to close of escrow)
- o City approval of building permits. (by March 1992)
- o Close of escrow and execution of the following documents: (by March 1992)
 - o Option Agreement for Parcels 2 and 3
 - o Lease of Parcels 2 and 3
 - o Reciprocal Easement Agreement ("REA") between Parcels 1, 2 and 3
- o Begin construction of Phase I (Parcel 1) and public improvements on Parcels 2 and 3. (March 1992)

FINANCIAL DATA

The actions proposed have no fiscal impacts other than those previously discussed and approved by Council.

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Governing Bodies
July 24, 1990
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MBE/WBE IMPACT

The Disposition and Development documents referred to contain provisions relating to MBE/WBE programs in line with Agency and City policies.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) is currently being finalized for the Capitol Mall Site (Lot A), and will be before the legislative body for action prior to adoption of the Parcel 1 DDA.

POLICY IMPLICATIONS

The actions proposed in this staff report are consistent with previously approved policy, and therefore, no policy changes are being recommended.

VOTE AND RECOMMENDATION OF COMMISSION

It is anticipated that at its meeting of July 23, 1990, the Sacramento Housing and Redevelopment Agency will adopt a motion recommending that you take the above-mentioned action. In the event they fail to do so, you will be advised prior to your July 24, 1990 meeting.

RECOMMENDATION

The staff recommends adoption of the attached resolution approving the Predevelopment Agreement ("PDA") between the Redevelopment Agency of the City of Sacramento and Capitol Mall Partners, which would establish the terms and conditions for the Disposition and Development Agreement for Parcel 1 and the Option Agreement for Parcels 2 and 3 between the Redevelopment Agency of the City of Sacramento and Capitol Mall Partners (Rockefeller & Associates Realty, L.P., and McCuen Properties) for the development of the Capitol Mall Site (Lot A); and authorizing the Executive Director of the Sacramento Housing and Redevelopment Agency to execute the Predevelopment Agreement with Capitol Mall Partners. In addition,

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

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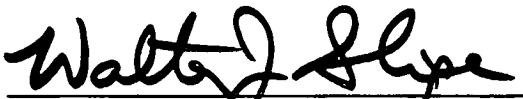
staff is recommending that the Parking Authority of the City of Sacramento and the City of Sacramento adopt the attached resolutions consenting to the Predevelopment Agreement.

Respectfully submitted,



ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COUNCIL:



WALTER J. SLUPE
City Manager

Contact Person: Thomas V. Lee, Director, Community Development
440-1357

LotAPDA

RESOLUTION NO. 90-685

ADOPTED BY THE SACRAMENTO CITY COUNCIL

APPROVED
BY THE CITY COUNCIL

AUG 21 1990

OFFICE OF THE
CITY CLERK

ON DATE OF _____

**AUTHORIZING THE EXECUTION OF THE PREDEVELOPMENT AGREEMENT
RELATING TO THE CONVEYANCE AND DEVELOPMENT OF THE BLOCK
BOUNDED BY CAPITOL MALL, "L", 7TH AND 6TH STREETS**

WHEREAS, the Agency and Capitol Mall Partners ("CMP") have mutually agreed upon the terms and conditions of the Parcel 1 DDA and the Option Agreement relating to the block bounded by Capitol Mall, "L", 7th and 6th Streets, Sacramento; and

WHEREAS, prior to execution of the Parcel 1 DDA and Option Agreement, the Final Environmental Impact Report ("Final EIR") must be certified by Agency and the Property must be subdivided into three (3) separate legal parcels. The Agency and CMP propose to enter into a Predevelopment Agreement ("PDA") to formalize their agreement to such terms and conditions of the Parcel 1 DDA and the Option Agreement; and

WHEREAS, it is appropriate for the City, as the party that would be entering into the Development Agreement with CMP, to consent to the PDA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

Section 1: The City does hereby consent to the execution of the PDA by Agency and CMP.

MAYOR

ATTEST:

CITY CLERK

share\reso\LotAPDA1

FOR CITY CLERK USE ONLY

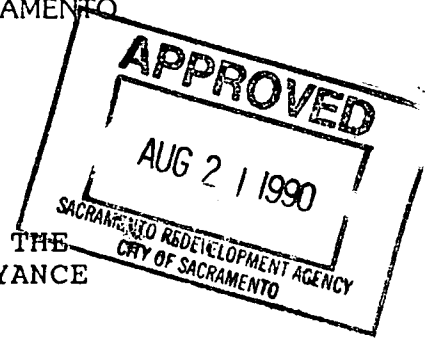
RESOLUTION NO.: _____

DATE ADOPTED: _____

RESOLUTION NO. 90-071

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF _____



AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE PREDEVELOPMENT AGREEMENT RELATING TO THE CONVEYANCE AND DEVELOPMENT OF THE BLOCK BOUNDED BY CAPITOL MALL, "L", 7TH AND 6TH STREETS

WHEREAS, Capitol Mall Partners ("CMP") and the Agency have, pursuant to the Offer to Negotiate to Purchase and Develop the Property located at Capitol Mall, "L", 7th and 6th Streets, Sacramento (the "Property"), agreed upon the terms and conditions for the Disposition and Development Agreement for Parcel 1 ("Parcel 1 DDA") of the Property, and the Option Agreement for Parcels 2 and 3 of the Property; and

WHEREAS, such Parcel 1 DDA and Option Agreement may not be executed by the Agency and CMP until subdivision of the Property into three (3) legal parcels and certification of the Final Environmental Impact Report ("Final EIR") for the development of the Property in accordance with the Parcel 1 DDA and the Option Agreement; and

WHEREAS, it is appropriate to state the agreement of the Agency and CMP as to the forms of the Parcel 1 DDA and the Option Agreement by entering into the Predevelopment Agreement recommended in the staff report for this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

Section 1: The Executive Director is authorized to execute the Predevelopment Agreement in the form recommended in the staff report for this Resolution.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

Section 2: This Resolution shall take effect upon the date of its adoption.

CHAIR

ATTEST:

SECRETARY

share\reso\LotAPDA2

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

RESOLUTION NO. 90-001

ADOPTED BY THE SACRAMENTO PARKING AUTHORITY

ON DATE OF _____

AUTHORIZING THE EXECUTION OF THE PREDEVELOPMENT AGREEMENT
RELATING TO THE CONVEYANCE AND DEVELOPMENT OF THE BLOCK
BOUNDED BY CAPITOL MALL, "L", 7TH AND 6TH STREETS

WHEREAS, the Parking Authority desires to sell its property located at Capitol Mall, "L", 7th and 6th Streets, Sacramento, (the "Property") to the Redevelopment Agency of the City of Sacramento (the "Agency") for the purpose of having the Property conveyed to and developed by Capitol Mall Partners ("CMP") in accordance with the Disposition and Development Agreement for Parcel 1 ("Parcel 1 DDA") of the Property and the Option Agreement for Parcels 2 and 3 of the Property; and

WHEREAS, the Agency and CMP have mutually agreed upon the terms and conditions of the Parcel 1 DDA and the Option Agreement; and

WHEREAS, prior to execution of the Parcel 1 DDA and Option Agreement, the Final Environmental Impact Report ("Final EIR") must be certified by Agency and the Property must be subdivided into three (3) separate legal parcels. The Agency and CMP propose to enter into a Predevelopment Agreement ("PDA") to formalize their agreement to such terms and conditions of the Parcel 1 DDA and the Option Agreement; and

WHEREAS, it is appropriate for the Parking Authority, as the owner of the Property, to consent to the PDA.

NOW, THEREFORE, BE IT RESOLVED BY THE PARKING AUTHORITY OF THE CITY OF SACRAMENTO:

Section 1: The Authority does hereby consent to the execution of the PDA by Agency and CMP.

CHAIR

ATTEST:

CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

EXHIBITS

- Exhibit A: Scope of Development for Capitol Mall Site (Lot A)
- Exhibit B: Predevelopment Agreement
- Exhibit C: Parcel 1 DDA*
- Exhibit D: Option Agreement for Parcel 2 and Parcel 3*
- Exhibit E: Development Agreement*
- Exhibit F: Transfer of Property Agreement*

*Available for review in the office of the Clerk of the Sacramento Housing and Redevelopment Agency, and the City of Sacramento Clerk's office.

LotAPDA

Exhibit "A"

SCOPE OF DEVELOPMENT FOR CAPITOL MALL SITE (Lot A)

The Scope of Development for the Project is the same as submitted by Capitol Mall Partners in their August 14, 1989, proposal. Phase I (Parcel 1) of the Project will include 600,000 gross square feet of office space and 15,000 gross square feet of retail space located in a single tower of 34 floors. The on-site parking facility for the Project will consist of 3 levels of below-grade parking, and shall contain approximately 400 to 500 parking spaces, of which approximately 190 parking spaces will be for public parking. The parking facility constructed in Phase I will be constructed to unite with the parking facility to be built in Phase II on Parcels 2 and 3.

As part of the overall development of the Project, the Developer will construct a 900 car surface parking lot with no less than 262 public parking spaces built under the Pioneer Bridge, located at the interchange of the I-80 and I-5 freeways, or at such other site as is approved by the Agency. Access to the off-site parking lot from the Capitol Mall site will be provided by shuttle transit coaches.

The Phase I Project will include approximately 32,000 square feet of public space. The public space will include a large ground level plaza area partially covered with a trellis and designed for entertainment, dining, and public art.

Phase II of the Project will be divided between Parcels 2 and 3. The Parcel 2 Project will include approximately 200,000 gross square feet of office space and 5,000 gross square feet of retail space located in a single tower of 20 floors. The on-site parking facility for both Parcel 2 and Parcel 3 will again consist of three levels of below-grade parking. The Parcel 3 Project will include a 300-room Class A hotel, located in a single tower. The Developer has identified the hotel operator as Ritz Carlton.

LotAPDA



**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**



July 24, 1990

Budget & Finance Committee
Transportation/Community
Development Committee
Sacramento, CA

Honorable Members in Session:

SUBJECT: Agency Resolution Approving Predevelopment Agreement
with Capitol Mall Partners for the Development of the
Capitol Mall Site - Lot A

SUMMARY

The attached report is submitted to you for review and
recommendation prior to consideration by the Redevelopment
Agency of the City of Sacramento.

RECOMMENDATION

The staff recommends approval of the attached resolution
approving the acquisition and compensation determination.

Respectfully submitted,

ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COMMITTEE:

.....

SOLON WISHAM, JR.
Assistant City Manager

Attachment

PREDEVELOPMENT AGREEMENT

THIS PREDEVELOPMENT AGREEMENT ("PDA") is entered as of _____, 1990 ("Execution Date"), by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and CAPITOL MALL PARTNERS ("Developer"), a California limited partnership. Agency and Developer agree as follows:

1 Recitals. Agency and Developer enter this PDA on the basis of the following facts, conditions, covenants and understandings:

1.1 Owner and Property. The Parking Authority of the City of Sacramento ("Authority") is the owner of that certain real property ("Property") located in the City of Sacramento ("City"), State of California. The Property comprises an entire block bounded by Capitol Mall, "L" Street, 6th Street and 7th Street and is described in Exhibit A attached hereto.

1.2 Parking Structure. Authority, under the auspices of City, currently operates a parking structure on the Property, operation of which will continue during the Term, as herein defined.

1.3 Developer Selection. In 1988, City determined to sell the Property. Agency, on behalf of City, issued a Request for Qualifications relating to development

of the Property. Following a lengthy process, City chose Developer as the purchaser and developer for the Property.

1.4 Documentation of Transfer. Agency, as agent for City, and Developer have agreed upon the terms of Agency's transfer of the Property to Developer, and Developer's acquisition and development of the Property. Such terms are set forth in the Disposition and Development Agreement - Parcel 1 ("Parcel 1 DDA"), which together with its exhibits is attached hereto as Exhibit B, and the Option Agreement - Parcel 2 and Parcel 3 ("Option Agreement"), which together with its exhibits is attached hereto as Exhibit C. City and Authority consent to this PDA, the Parcel 1 DDA, and the Option Agreement by execution of this PDA.

1.5 Subdivision and Transfer. To accommodate Developer's development proposal dated August 14, 1989 ("Proposal") as accepted under Resolution No. 89-898 of City, Authority shall subdivide the Property into three (3) separate legal parcels. Authority shall transfer the Property to Agency, at the request of City, to allow Agency, as City's agent, to enter the Parcel 1 DDA and the Option Agreement with Developer. It is the intent of Authority, City, Agency and Developer that the redevelopment laws of the State of California shall not be applicable to the Property or the transfer of the Property as set forth in the Parcel 1 DDA and the Option Agreement.

1.6 Purpose of Predevelopment Agreement. In compliance with the California Environmental Quality Act ("CEQA"), Agency shall prepare and certify an environmental impact report ("EIR") before Agency and Developer execute the Parcel 1 DDA. The purpose of this PDA is to state the agreement of Agency and Developer to the form of the Parcel 1 DDA and the Option Agreement and their obligation with respect to execution of the Parcel 1 DDA, and their agreement to undertake certain obligations prior to such execution and delivery.

1.7 Benefit. Agency represents, and Developer agrees, that the development of the Property, the completion of the improvements referenced in the Parcel 1 DDA and the Option Agreement and the fulfillment generally of this PDA are (1) in the vital and best interests of Agency and the City and the health, safety, morals and welfare of the City's residents, (2) for the purpose of community improvement and welfare, and (3) in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the development of the Property is undertaken.

2 Parties to this PDA.

2.1 Developer.

2.1.1 Identification. Developer is a limited partnership organized and doing business in the State of California. Any notice given to Developer shall be given to Developer's principal office at Four Embarcadero Center, Suite 2600, San Francisco, California 94111.

2.1.2 Assignment. During the Term, any assignment or transfer by Developer of any interest in this PDA shall be in compliance with section 28 of the Parcel 1 DDA.

2.2 Agency. Agency is a public body, corporate and politic, exercising governmental functions and powers. The principal office of Agency is located at 630 I Street, Sacramento, CA 95814. Any notices given to Agency at this address pursuant to section 9.7 below shall be marked "Attention: Legal Department."

3 Term. The term ("Term") of this PDA shall commence on the Execution Date and shall terminate on the earlier of (a) accomplishment of the Prior Events, as herein defined, or (b) six (6) months from the Execution Date.

4 Deposit.

4.1 Deposit. As security for the performance of Developer's obligations under this PDA, Developer has deposited with Agency an irrevocable, standby letter of credit in the form attached hereto as Exhibit D, in the amount of \$900,000 ("Deposit"). Agency shall return the Deposit to Developer on the earlier of (a) failure of Agency to accomplish the Prior Events before the end of the Term as may be extended as set forth in section 8, or (b) upon Developer's and Agency's execution of the Parcel 1 DDA as described in section 6. In the event that Developer fails to take the actions required by Developer as set forth herein, Agency shall retain the Deposit as liquidated damages as set forth in section 4.2.

4.2 LIQUIDATED DAMAGES. AGENCY AND DEVELOPER AGREE THAT AGENCY'S ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE IF DEVELOPER FAILS TO TAKE THE ACTIONS REQUIRED BY DEVELOPER AS SET FORTH HEREIN, AND THE DEPOSIT IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGE AGENCY WOULD SUFFER. LIQUIDATED DAMAGES SHALL BE AGENCY'S SOLE REMEDY IN THE EVENT OF DEFAULT BY DEVELOPER, AND THE LIQUIDATED DAMAGES SHALL BE IN LIEU OF ALL OTHER REMEDIES AGENCY MIGHT OTHERWISE

HAVE UNDER THIS PDA OR UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, AN ACTION FOR SPECIFIC PERFORMANCE OF THIS PDA. AGENCY AND DEVELOPER WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION AND THIS LIMITATION OF REMEDIES PROVISION BY EXECUTION BELOW:

"Agency"

"Developer"

THE REDEVELOPMENT AGENCY OF
THE CITY OF SACRAMENTO

CAPITOL MALL PARTNERS

By: _____

By: _____

Its: _____

a general partner

By: _____

By: _____

Its: _____

Its: _____

By: _____

a general partner

By: _____

Its: _____

5 Prior Events.

5.1 Description. Agency's and Developer's obligation to execute the Parcel 1 DDA shall be subject to (a) Agency's preparation, approval and certification of an

environmental impact report ("EIR") under the California Environmental Quality Act ("CEQA") and (b) Authority and Agency obtaining a subdivision of the Property into three (3) legal parcels as set forth on Exhibit E attached hereto (collectively called "Prior Events"); the accomplishment of the Prior Events shall be in a form and substance reasonably satisfactory to Developer.

5.2 Time. In the event the Prior Events have not occurred by the end of the Term, and Agency and Developer have attempted to accomplish the Prior Events in good faith, all rights and obligations of the parties shall terminate and Agency shall return the Deposit to Developer. If Developer has not acted in good faith, Agency may retain the Deposit as liquidated damages. In the event Agency has not acted in good faith, Agency shall return the Deposit to Developer, and Developer shall have the rights set forth in section 7.

6 Obligations of Parties.

6.1 Obligations of Agency. Agency shall, at Agency's sole expense (a) prepare an EIR in compliance with CEQA with respect to Developer's plan for development on the Property, and (b) subdivide the Property as set forth in Exhibit E. In addition, Agency shall (a) assist Developer in obtaining from City those certain discretionary permits ("Permits") described in Exhibit F attached hereto, (b) assist Developer in having City execute the Development Agreement ("Development

Agreement") as described in the Parcel 1 DDA, and (c) assist Developer in obtaining City's approval of a transportation system management plan ("TSM").

6.2 Obligations of Developer. Developer shall, at Developer's expense, cooperate with Agency in accomplishing the Prior Events and seek to obtain City's approval of the TSM and Permits and City's execution of the Development Agreement with the assistance and cooperation of the Agency.

6.3 Execution of Documents. Following the occurrence of the Prior Events, and the passing of the periods of time for challenging the Prior Events, Developer and Agency shall execute, acknowledge and record the Parcel 1 DDA.

7 Defaults, Remedies. If either Developer or Agency fails to fulfill its obligations hereunder, the failing party shall be in default under this PDA. In the event of a default by Developer, Agency shall terminate this PDA by giving written notice of such termination to Developer, Developer shall have no further rights to purchase the Property, and Agency shall retain the Deposit as liquidated damages. Agency shall thereafter have the absolute right to enter into a disposition and development agreement, option agreement or other agreement relating to the sale and development of the Property with any other developer of Agency's choosing. If Agency defaults on Agency's obligations under this PDA, Agency shall return the Deposit to Developer, and Developer shall have all rights available at law or in equity, provided that damages shall be limited to Developer's out-of-pocket expenses in connection with the Property.

8 Delay. For the purposes of any of the provisions of this PDA, neither Agency nor Developer shall be considered in breach of, or in default on, their respective obligations under this PDA, if delay in the performance of such obligations is due to unforeseeable causes beyond the control of the party claiming the benefits of this section and without such party's fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal, state and local governments, unreasonable acts of the other parties, fires, floods, epidemics, earthquakes, quarantine restrictions, strikes, freight embargoes and unusually severe weather (as, for example, floods, tornadoes or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of such delay provided that Developer or Agency shall, within ten (10) days after the beginning of any such delay, have first notified Agency or Developer, in writing, of such delay and its cause.

9 Miscellaneous Provisions.

9.1 Applicable Law; Venue. This PDA shall be construed in accordance with the law of the State of California, and venue for any action hereunder shall be in Sacramento County, California.

9.2 Time of Essence. Time is of the essence in the performance of the respective obligations of the parties under this PDA.

9.3 Consent. Agency does hereby consent to any governmental applications Developer must process in the furtherance of this PDA. Agency further agrees to cooperate with Developer in the timely processing of any such applications.

9.4 Entire Agreement. This PDA, together with Exhibits Nos. A through F, which are attached hereto and incorporated herein by this reference, constitute the entire agreement between Agency and Developer.

9.5 Challenge. In the event that Agency, Authority, or City is sued in connection with this PDA, the Permits, the EIR, the TSM, the Development Agreement or the subdivision of the Property, Agency shall, at Agency's sole cost, vigorously defend such lawsuit; provided, however, that in the event that Developer is also named as a party to such lawsuit, Developer shall also defend itself in such lawsuit.

9.6 Cooperation. In connection with any lawsuit described above, Agency and Developer shall cooperate in the defense of such lawsuit, and Agency shall cause City and Authority to cooperate with Developer.

9.7 Notices and Demands. A notice, demand or other communication under the PDA by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address set out above, or at such other address with

respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided for a notice in this section.

In witness whereof, the parties have executed this PDA as of the Execution Date.

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

CAPITOL MALL PARTNERS, a California limited partnership

BY: _____
ROBERT E. SMITH
Executive Director

BY: McCUEN PROPERTIES, a sole proprietorship
By: _____
Peter McCuen

APPROVED AS TO FORM:

BY: _____
Agency Counsel

BY: ROCKEFELLER & ASSOCIATES REALTY, L.P.
By: _____
General Partner

The Parking Authority of the City of Sacramento ("Authority") hereby approves and consents to the terms of this PDA and all of the documents attached hereto, and Authority shall take all action required of Authority hereby.

The Parking Authority of the City of Sacramento

BY: _____
Its _____

BY: _____
Its _____

PREDEVELOPMENT AGREEMENT LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Property Description
B	Parcel 1 DDA
C	Option Agreement
D	Letter of Credit
E	Subdivision Map
F.	Permits