

DRAFT

Dated:

11/30/2007

FIRST AMENDMENT to OPERATIVE AGREEMENT

This First Amendment to Operative Agreement (this "Amendment") is being entered into, effective as of 2007, by and between the CITY OF COLUMBUS, an Ohio municipal corporation (the "City"), and CAPITOL SOUTH COMMUNITY URBAN REDEVELOPMENT CORPORATION, an Ohio non-profit corporation ("Capitol South"), pursuant to the authority of Ordinance No. 1358-2006, adopted on 2006 and Ordinance No. 1167-2007, adopted on 2007, for the purpose of amending the Operative Agreement (as hereinafter defined).

Recitals

A. The City and Capitol South are parties to a certain Operative Agreement which was entered into pursuant to the authority of Ordinance No. 1130-01, adopted on July 30, 2001 (the "Operative Agreement").

B. The City and Capitol South now wish to amend the Operative Agreement generally to effectuate the arrangements contemplated by Ordinance No. 1358-2006 (the "2006 Ordinance") and Ordinance No. 1167-2007 (the "2007 Ordinance").

NOW THEREFORE, in consideration of the arrangements provided for herein, and for other good and valuable consideration receipt and sufficiency of which are hereby acknowledged, the City and Capitol South hereby agree as follows:

1. Section 4 of the Operative Agreement is hereby deleted in its entirety and amended to read as follows:

"4. Submission of Auditor's Report. Capitol South shall submit annually, within six months after the close of its fiscal year, its auditor's reports to the Mayor and the City Council, which reports shall be certified as being in accordance with generally accepted accounting principals, consistently applied, by a firm of independent certified public accountants licensed to practice in the State of Ohio and acceptable to the City. In that regard, the City and Capitol South (i) acknowledge that, following the close of its fiscal year ending June 30, 2006, Capitol South changed its fiscal year ending date from June 30 to December 31, and (ii) agree that, with respect to the "stub" fiscal year commencing July 1, 2006 and ending December 31, 2006, the auditor's reports called for under this Section 4 need not be submitted to the Mayor or to the City Council until on or before December 31, 2007."

2. Subsection 15(b) of the Operative Agreement is hereby deleted in its entirety and amended to read as follows:

"(b) Rental Payment Schedule.

(i) For periods prior to July 1, 2006, the annual rental called for under subsection 15(a) hereof shall be due and payable in four installments on February 15, May 15, August 15 and September 30 -- with the last of such payments being due and payable on May 15, 2006. On each such February 15, May 15 and August 15, Capitol South shall pay an amount equal to the 90% of its estimated Cash Flow for its then most recently ended fiscal quarter, based upon its un-audited financial statements (the total of such three quarterly payments, the "Estimated Payment Amount"). On September 30 of each year preceding 2006, Capitol South shall pay an amount equal to (x) 90% of Cash Flow for its then most recently ended fiscal year, minus (y) the Estimated Payment Amount. Each payment called for under this subsection 15(b)(i) shall be accompanied by copies of financial statements upon which the payment is based, together with a report which sets forth the relevant Cash Flow computations.

(ii) With respect to Capitol South's "stub" fiscal year commencing July 1, 2006 and ending December 31, 2006, the annual rental called for under subsection 15(a) hereof shall be due and payable in one installment on or about June 30, 2007 and the payment shall be accompanied by copies of financial statements upon which the payment is based, together with a report which sets forth the relevant Cash Flow computations.

(iii) For periods after December 31, 2006, the annual rental called for under subsection 15(a) hereof shall be due and payable in the manner specified in this subsection 15(b)(iii). On or about August 15 of each calendar year, commencing August 15,2007, Capitol South shall pay an amount equal to 90% of its estimated Cash Flow for the first two quarters of such calendar year (i.e., January 1 through June 30), based upon its un-audited financial statements. On or about November 15 of each calendar year, commencing November 15,2007, Capitol South shall pay an amount equal to 90% of its estimated Cash Flow for the third quarter of such calendar year (i.e., July 1 through September 30), based upon its un-audited financial statements (the aggregate amount of such estimated Cash Flow payments made by Capitol South on or about August 15 and November 15 of any calendar year, the "Estimated Cash Flow Payment Amount"). On or about June 30 of each calendar year, commencing June 30, 2008,

2. Capitol South shall pay an amount equal to (x) 90% of Cash Flow for its then most recently ended fiscal year, minus (y) the Estimated Cash Flow Payment Amount. Each payment called for under this subsection 15(b)(iii) shall be accompanied by copies of financial statements upon which the payment is based, together with a report which sets forth the relevant Cash Flow computations. "

3. Section 20 of the Operative Agreement is hereby deleted in its entirety and amended to read as follows:

"20. Redevelopment Area Leases. With respect to the Redevelopment Area Leases, as the same were amended by amendments dated as of June 30, 1998, the City and Capitol South agree that this Agreement constitutes an amendment of the 1998 Agreement."

4. Notwithstanding anything to the contrary contained in the Operative Agreement as amended by Sections 1, 2 and 3 of this Amendment, and in furtherance of arrangements contemplated by the 2006 Ordinance, the City and Capitol South agree that:

A. Capitol South is authorized and directed to (i) segregate \$1,150,000 (the "Seneca Funds") from Cash Flow that, from time to time, would have been payable to the City pursuant to subsections 15(a) and (b) of the Operative Agreement, (ii) deposit and hold the Seneca Funds with the Downtown Housing Incentive Funds (as defined in the Operative Agreement) for the sole purpose of making a grant benefiting the Seneca Hotel Housing Project referenced in the 2006 Ordinance (the "Seneca Project"), and (iii) make a grant to Campus Seneca Management, Inc., the developer of the Seneca Project, upon such terms and conditions and with such safeguards as Capitol South shall deem appropriate; and

B. In the event any of the Seneca Funds have not been disbursed by Capitol South to the developer of the Seneca Project after the full performance or expiration of Capitol South's obligations under any applicable grant agreement, such un-disbursed portions of the Seneca Funds then shall be deemed Cash Flow owing to the City under subsections 15(a) and (b) of the Operative Agreement and promptly remitted by Capitol South to the City.

5. Notwithstanding anything to the contrary contained in the Operative Agreement as amended by Sections 1, 2 and 3 of this Amendment, and in furtherance of arrangements contemplated by the 2007 Ordinance, the City and Capitol South agree that:

A. Capitol South is authorized and directed to withhold \$600,100 from Cash Flow - - attributable to its fiscal year ending June 30, 2006 -- that would have been payable to the City pursuant to subsections 15(a) and (b) of the Operative Agreement and to use as much thereof as may be required to facilitate (i) the design of and land acquisition for two downtown parking facilities, (ii) the creation of a special assessment district to support the construction and/or operation of such downtown parking facilities, and (iii) the creation of one or more non- school tax increment financing districts to support the downtown parking and other initiatives, and

B. Capitol South is authorized and directed to withhold an additional \$187,900 from Cash Flow -- attributable to its fiscal year ending June 30, 2006 -- that would have been payable to the City pursuant to subsections 15(a) and (b) of the Operative Agreement and to pay the same, on behalf of the City, to the Capital Crossroads Special Improvement District for its 2007 operations.

IN WITNESS WHEREOF, the City and Capitol South have caused this First Amendment to Operative Agreement to be executed by their duly authorized officials effective as of the date first above written.

CITY OF COLUMBUS, OHIO

By: Boyce Safford, III

Its: Director of the Department of
Development

Authorized by Ordinance Nos. 1358-2006
and 1167-2007

CAPITOL SOUTH COMMUNITY
URBAN REDEVELOPMENT
CORPORATION

By: Guy V. Worley

Its: President and Chief Executive
Officer

Approved as to form:

By: Columbus City Attorney