

**SUMMARY REPORT PURSUANT TO  
SECTION 33433  
OF THE  
CALIFORNIA COMMUNITY REDEVELOPMENT LAW  
ON A  
DISPOSITION AND DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE  
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT  
AND  
GARDEN GROVE MXD, LLC.**

The following Summary Report has been prepared pursuant to Section 33433 of the California Health and Safety Code. This report sets forth certain details of the proposed Disposition and Development Agreement ("Agreement") between Garden Grove MXD, LLC ("Developer"), and the Garden Grove Agency for Community Development ("Agency").

The Agency has assembled approximately 10.3 acres of land located at 12721, 12621, and 12591 Harbor Boulevard ("Agency Property"). The Agreement requires the Agency to convey Agency Properties to the Developer for the subsequent development of a Water Park Hotel or Hotel with a minimum of six hundred (600) rooms, with an expansion of up to two hundred (200) additional rooms, with up to three (3) acres of indoor and/or outdoor water park as a component to the Hotel, and approximately eighteen thousand (18,000) square feet of retail, including one (1) or more restaurants and a parking structure ("Project"). The transaction also requires the Agency to provide financial assistance to the Developer to effectuate the development of the Project.

The following Summary Report is based upon information contained in the Agreement and is organized into the following seven sections:

- I. **Salient Points of the Agreement:** This section summarizes the major responsibilities imposed on the Developer and the Agency by the Agreement.
- II. **Cost of the Agreement to the Agency:** This section details the total cost to the Agency associated with implementing the Agreement.
- III. **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted under the Redevelopment Plan:** This section estimates the value of the interests to be conveyed determined at the highest use permitted for the Agency Property and the requirements imposed by the Redevelopment Plan.
- IV. **Estimated Reuse Value of the Interests to be Conveyed:** This section summarizes the valuation estimate for the Agency Property based on the required scope of development and other conditions and covenants required by the Agreement.

- V. **Consideration Received and Comparison with the Established Value:** This section describes the compensation to be received by the Agency and explains any difference between the compensation to be received and the established highest and best use value of the Agency Property.
- VI. **Blight Elimination:** This section describes the existing blighting conditions on the Agency Property, and explains how the Agreement will assist in alleviating the blighting influence.
- VII. **Conformation with the AB1290 Implementation Plan:** This section describes how the Agreement achieves the goals identified in the Agency's adopted AB 1290 Implementation Plan.

This report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

## **I. SALIENT POINTS OF THE AGREEMENT**

### **A. Project Description**

The Project includes approximately six hundred (600) rooms with an expansion of up to two hundred (200) additional rooms, with up to three (3) acres of indoor and/or outdoor waterpark, approximately eighteen thousand (18,000) square feet of retail, including one (1) or more restaurants and a parking structure ("Project"). The Project shall include water elements, hardscape/streetscape, monument signage, and lighting. All square footage and room counts are approximate and may be adjusted based on current market conditions subject to approval by both parties. The terms of the phasing of the Project are to be determined.

### **B. Developer Responsibilities Under the Agreement**

The Agreement requires the Developer to accept the following responsibilities:

1. The Developer shall deposit with the Agency a good faith deposit in the sum of Fifty Thousand Dollars (\$50,000). If the Developer terminates the negotiation for any reason, then the Agency will keep the good faith deposit. Upon the Developer commencing construction on the Developer improvements, the good faith deposit shall be refunded to the Developer.
2. The Developer has agreed to accept possession of the Site on the closing date on an "as is" basis.
3. The Developer shall have the right of access to the Agency Property, and to the Third Party Property for the purpose of making necessary or appropriate inspections, including geological, soils and/or additional environmental assessments. If Developer determines that there are hazardous materials in, on, under or about the Agency Property,

including the groundwater, or that the Agency Property is or may be in violation of any Environmental Law, or that the condition of the Agency Property is otherwise unacceptable to Developer, then the Developer shall notify the Agency and Escrow Holder prior to the Due Diligence Date.

4. The Developer shall pay the recording cost of the Grant Deed and other closing documents, one-half (1/2) the premium for the CLTA Policy, the additional premium for the ALTA Policies and Endorsements, if any, half of the escrow fees charged by the Escrow Agent, and Developer's share of prorations.
5. The Developer shall retain operational control over the management, development and construction of the Developer Improvements (subject to the right of non-managerial members, partners, or shareholders, as applicable, to exercise voting rights with respect to so-called "major decisions") and the Developer has not less than five percent (5%) interest in profit and losses in the Project.
6. The Developer shall construct and maintain, at its expense, one or multiple parking structures to accommodate required parking which will serve the Project. The parking structure shall remain open and available to the public.
7. The Developer shall submit, within the time frame set forth in the Schedule of Performance, and the Agency Director or his designee shall approve, within the time periods set forth in the Schedule of Performance, preliminary building elevations, final building elevations, construction drawings, landscape plans, and related documents required for the development of the Agency Property. The City shall have the right to review and approve all Construction Drawings. In addition to processing Construction Drawings through the City, the Agency shall have the right to review and approve the Construction Drawings as to their compliance with the description of Developer Improvements as set forth herein, and their consistency with the approved Design Review and the Land Use Approvals.
8. The Developer shall, at its sole cost and expense, secure any and all land use and other entitlements, and approvals which the City may require for the construction and operation of the Developer Improvements, design review by the Agency and/or any other entitlements, permits or approvals required by any other governmental agency.
9. The Developer shall submit the Construction Drawings, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement, which are the obligation of Developer within the times established therefore in the

Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing by Developer and the Agency Director.

10. The Developer shall submit to the Agency for the reasonable approval by the Agency's Director actual cost for the Developer Improvements, which sets forth the proposed Development Cost in reasonable detail. The Agency may, at its cost, obtain an evaluation of the proposed Development Budget from an independent construction cost estimator, and may consider such independent evaluation in evaluating and approving the Development Budget.
11. The Developer shall obtain and maintain as well as its contractor or contractors covering all activities relating to construction of Developer Improvements at the Agency Property until the issuance of the Release of Construction Covenants a comprehensive general liability insurance in the amount no less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate for claims arising out of bodily injury, personal injury and property damage. Coverage will include contractual, owners, contractors' protective policy and products and completed operations. In addition, an excess policy in an amount of Four Million Dollars (\$4,000,000) covering the same terms and conditions will remain in force during the term of the Project.
12. The Developer shall obtain and maintain comprehensive automobile liability insurance in the amount of One Million Dollars (\$1,000,000), combined single limit per occurrence (bodily injury and property damage liability) and will remain in force during the term of the Project.
13. The Developer shall obtain and maintain workers' compensation insurance as required by law and will remain in force during the term of the Project.
14. The Developer shall submit to Agency evidence that Developer has equity capital and/or a lender commitment from an institutional lender for the construction of the Developer Improvements.
15. The Developer shall carry out the design, construction and operation of the Project in conformity with all Governmental Requirements.
16. The Developer shall build the improvements and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements

of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements.

17. The Developer will provide Agency with the twenty (20) hotel room nights per year, including water park passes associated therewith free of charge, and will allow the Agency to use the conference and/or banquet facilities and services at the Hotel on at least three (3) occasions per year (an "occasion" means an event lasting up to two (2) days) at a fifteen percent (15%) discount from the lowest rate charged during the past twelve (12) months on a space available basis, excluding services or goods provided by third parties.
18. The Developer shall construct all on-site landscape and hardscape improvements as well as the off-site landscape and hardscape improvements adjacent to the Agency Property, between the Property Line and the back of curb. All such improvements shall be constructed in accordance with the Harbor Boulevard Streetscape Improvement Plan (InternationalWest Landscaping Theme). Improvements include the west side of Harbor Boulevard from the most south boundary portion of the Agency Property to the most north boundary portion of the Agency Property.
19. The Developer shall complete the first phase of the Developer improvements within twenty-four (24) months after commencement of construction.
20. The Developer shall be responsible for utility installations for the Project and hookups to public utility lines. All utility service for the Project shall be installed underground or concealed within buildings and any mechanical, electrical, fire sprinkler or plumbing equipment that may be at ground level shall be aesthetically screened except where not permitted by the Garden Grove Municipal Code.

### **C. Agency Responsibilities Under the Agreement**

1. The Agency will convey the Agency Property to the Developer at no cost.
2. The Agency agrees to use its commercially reasonable efforts to acquire by negotiation the Third Party Property, subject to the terms, covenants and conditions of the Agreement and convey all Third Party Property to the Developer at no cost.
3. The Agency shall pay the recording cost of the Grant Deed and other closing documents, one-half (1/2) the premium for the CLTA Policy, half of the escrow fees charged by the Escrow Agent, and Agency's share of prorations.

4. Subject to the Agency Improvement Costs, the Agency shall have acquired the Site and relocated all occupants from the Agency Property in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation.
5. Subject to the Agency Improvement Costs, the Agency shall have demolished and cleared from the Agency Property all existing structures and improvements including foundations, remediation of any environmental hazards necessary to address any Recognized Environmental Concerns identified in a Phase II Environmental Site Assessment on the Agency Property, the proper disposal and mitigation of lead-based paint, asbestos and other environmental hazards pursuant to the requirements of the Department of Health Services in compliance with all applicable federal, state and local laws and regulations with respect to demolition and/or disposal and mitigation as described above.
6. Subject to the Agency Improvement Costs, the Agency shall complete all offsite infrastructure, including CEQA mitigation, adequate utilities and utility capacity, roadway and traffic improvements, traffic mitigation measures required by the City to accommodate the project and offsite landscape work to link the project with the existing improvements for the existing Sheraton Hotel on Harbor Boulevard south to northeast corner of the Agency Property.
7. The Agency shall deposit in account with a bank mutually acceptable to the Agency and Developer, and in the name of Developer, subject to a first priority lien of the Construction Lender the total sum of Five Million Dollars (\$5,000,000) to be utilized by Developer for payment towards the construction of the Parking Structure.
8. Subject to Budget Conformance, the Agency shall be responsible for providing all off-site infrastructure including adequate utilities and utilities capacity, roadway and traffic improvements, and traffic mitigation measures required by the City to accommodate the Project.
9. The Agency shall pay to the Developer annually for a period of ten (10) years from each hotel opening an amount equal to fifty percent (50%) of the annual transient occupancy tax (including, if applicable, fees in lieu of transient occupancy tax for time share hotels), subject to the Developer providing adequate consideration, including without limitation the items described in Agency Use of Hotel Facility and other Operating Covenants.
10. The Agency shall pay an amount equal to approximately fifty percent (50%) of the Tax Increment, Transient Occupancy Tax, and Sales Tax Revenues for a period twelve (12) years to the Developer after the commencement of operation of each hotel.

11. If the Developer imposes a Parking Structure Fee, and (i) the City imposes a Qualified BID Assessment and/or (ii) the City increases its TOT Rate so that the effect of either (i) and/or (ii) is to decrease the 2008-2009 Differential, then the Agency will pay to the Developer each year, commencing with the year the Developer first receives Covenants Consideration, and so long as, and to the extent such TOT Differential remains, but in no event later than July 9, 2032 (as may be extended if the term of the Redevelopment Plan is extended by amendment, but not longer than forty (40) years from Completion) an amount equal to the total room revenues for each such year multiplied by the difference between the 2008-2009 Differential and the TOT Differential for such year, (the "Applicable Differential"). If and to the extent the Applicable Differential becomes less than two percent (2%) either by virtue of changes in TOT Rates by the City of Anaheim and/or the City or the Qualifying BID Assessment is reduced or terminates, payment hereunder shall be adjusted accordingly. Notwithstanding the above, the Covenants Consideration shall be based on the TOT Rate of thirteen percent (13%).
12. The base year assessed value for the approximate 10.3-acre site is Two Hundred Million Dollars (\$200,000,000) (Orange County Assessors 2008 value). The Agency will share in the tax increment above 2008 property tax base value.
13. The Agency shall review and approve the hotel operator and brand or franchisor for the hotel as well as the franchise agreement or management agreement between the franchisor and Developer.
14. The Agency shall be responsible for the continuation of the Harbor Boulevard Streetscape Improvement Plan (International West Landscaping Theme) commencing from the northeast corner of the Agency Property to the southwest corner of Twintree Lane (south side of Twintree Lane) on the west side of Harbor Boulevard and includes the center median of Harbor Boulevard.
15. The Agency shall pay for and the Developer will prepare and process the tentative and final parcel map. Recently, the City has updated its General Plan in which consists an environmental document, which contemplates the proposed development.
16. As long as the Agreement, or negotiation of the Agreement, has not been terminated, the Agency shall provide the Developer the first opportunity, subject to Agency's compliance with its Owner Participation Rules, on all future development and re-development opportunities within the Community Redevelopment Project Area within the International West Resort District between Twintree Lane and Garden Grove Boulevard on the west side of Harbor Boulevard.

## **II. COST OF THE AGREEMENT TO THE AGENCY**

The costs incurred by the Agency to implement the Agreement is Twenty Million Eighth Hundred Twenty Three Thousand Four Hundred Thirty Five Dollars (\$20,823,435) and include the cost to acquire the Site (relocation costs, demolition costs, and costs for hazardous materials abatement), CEQA documentation, site preparation, administrative costs, and the Agency costs for other public improvements.

## **III. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN**

California Health and Safety Code Section 33433 requires the Agency to identify the value of the interests being conveyed at the highest use allowed the Agency Property's zoning and by the requirements imposed by the Redevelopment Plan. The highest and best use for the Agency Properties is a large scale, hotel or entertainment oriented use.

## **IV. ESTIMATED REUSE VALUE OF INTERESTS TO BE CONVEYED**

In a report dated April 23, 2009, Horwath HTL ("Horwath"), the Agency's real estate advisor, prepared a reuse valuation analysis of the Project. Based upon the financial terms and conditions imposed by the Agreement, Horwath analysis concluded that the fair reuse value of the Agency Property has a negative Twenty Four Million Dollars (\$24,000,000) value.

## **V. CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE**

The Agreement requires the Agency to convey the Agency Property to the Developer at no cost and to provide the Developer with direct financial assistance. The Developer is required to provide public parking in a structure on the site, develop a Water Park Hotel or Hotel with a minimum of six hundred (600) rooms with an expansion of up to two hundred (200) additional rooms, with approximately three (3) acres of indoor and/or outdoor water park as a component to the Hotel, approximately eighteen thousand (18,000) square feet of retail, including one (1) or more restaurants and a parking structure. The Agency is also imposing extraordinary land use controls on the Site, i.e., the quality of the Project must be comparable to noted high-end commercial developments in the greater Los Angeles area (The Grove and the Commons at Calabasas). As indicated previously, the Horwath analysis concluded that the Agency Property has a negative land value. Thus, Horwath concluded that the consideration to be received is equal to or greater than the established fair use value.



## **VI. BLIGHT ELIMINATION**

The Agency Property, which will be used to develop the Project, is currently occupied with a non-fixed recreational vehicle park, retail store, and a vacant parcel. The development of the proposed Project on the Agency Property will eliminate blight at this location by replacing underutilized land with a new high quality hotel development.

## **VII. CONFORMANCE WITH THE AB 1290 IMPLEMENTATION PLAN**

The primary AB 1290 Implementation Plan program objective for the Garden Grove Community Project is to eliminate conditions, which negatively impact economic development of the community by acquiring, removing, consolidating and rehabilitating substandard properties. To that end, the Agency plans to convey the Agency Property to the Developer for the development of the Project.

Furthermore, the Implementation Plan also establishes a priority objective of increasing the community's economic base by encouraging new investment in the redevelopment project area. The Implementation Plan explicitly lists ensuring that optimum generation of sales tax revenues by facilitating the reuse, rehabilitation and development of commercial properties as an Agency goal. The Project, which will provide new commercial development and the subsequent of transient occupancy tax and sales tax revenues within the redevelopment project area, conforms with the Implementation Plan, and will achieve goals specifically defined in the Implementation Plan.

Project is identified in the Implementation Plan as a potential project and program for the project area. As such the completion of the Project will be in conformance with the Implementation Plan.