FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

and

GARDEN GROVE MXD, LLC

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FIRST AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

This **FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT** (this "Agreement") dated for purposes of identification only as of April 13, 2010 (the "Date of this Agreement"), is entered into by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), and **GARDEN GROVE MXD, LLC**, a Colorado corporation (the "Developer").

RECITALS

A. The Redevelopment Plan for the Garden Grove Community Project was approved and adopted by the City Council of the City of Garden Grove by Ordinance No. 1339, as amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232; said ordinances and the Redevelopment Plan as so approved and amended (the "Redevelopment Plan") are incorporated herein by reference. The property within the geographical boundaries of the Redevelopment Plan are described in the Redevelopment Plan and are referred to as the "Project Area."

B. The Agency and Developer entered into that certain Disposition and Development Agreement dated May 12, 2009 ("DDA") and now wish to amend and restate the DDA in its entirety.

C. The property which is the subject of this Agreement is approximately eleven and seven tenths (11.7) acres located within the boundaries of the Project Area and is comprised of certain property owned by the Agency ("Agency Property") and commercial property currently owned by a third party ("Third Party Property"). The Agency Property and Third Party Property are shown on the Site Map (Exhibit A) and legally described in the Legal Description (Exhibit B) (the "Site").

D. The Developer has proposed a water park hotel on the Site consisting of a minimum of six hundred (600) rooms and a water park (the "Water Park Hotel" or "Hotel"), with a possible expansion of up to two hundred (200) additional rooms ("Hotel Expansion"), and approximately 18,000 square feet of retail, including one (1) or more restaurants (the "Retail/Restaurant Component"), as more specifically described in the Scope of Development (Exhibit C) (collectively, the "Developer Improvements"). In addition, the Developer will construct an approximately 1200 space Parking Structure on behalf of the Agency or City ("Parking Structure").

E. The Agency and the Developer desire by this Agreement, and subject to its terms and provisions to amend and restate the DDA in its entirety so as to (1) provide for the Agency to (a) sell the Site to the Developer in accordance with the terms contained herein, (b) pay the Covenant Consideration, (c) provide for the construction and acquisition of the Parking Structure, (d) accommodate, if economically feasible and legally permissible, the financing of the Parking Facility, and (e) construct the Agency Improvements, and (2) for the Developer to (a) purchase the Site, and (b) construct and operate the Developer Improvements.

F. The development and operation of the Project on the Site, as provided in this Agreement, is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws. Without limiting the foregoing, development and operation of the Project will result in substantial benefits to

the City and Agency, which includes (i) elimination of blight, (ii) job creation and enhanced revenues to the City resulting from construction and operation of the Project, including property taxes, sales taxes, and transient occupancy taxes, and (iii) enhanced marketability that is likely to extend out-of-town leisure and convention visitors' lengths of stay in the City as a result of additional attractions and high-quality retail shopping and dining opportunities.

NOW, THEREFORE, the Agency and the Developer hereby agree as follows:

100. INTRODUCTORY PROVISIONS

101. Definitions. Capitalized terms within this Agreement shall have the meanings set forth below, or if not defined in this Section 101, shall have the meaning ascribed thereto when such terms are first used herein:

"2008-2009 Differential" means the difference in the TOT Rate imposed by the City of Anaheim in fiscal year 2008-2009 (15%) and the TOT Rating imposed by the City of Garden Grove in fiscal year 2008-2009 (13%) which difference is two percent (2%).

"Agency" means the Garden Grove Agency for Community Development, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law, and any assignee of or successor to its rights, powers and responsibilities.

"Agency Director" means the executive director of the Agency, or his designee.

"Agency Improvements" is defined in Section 301.2.

"Agency Improvement Costs" is defined in Section 301.2.

"Agency Property" means that certain property shown as Agency Property on the Site Map and described in the Legal Description.

"Agency's Conditions Precedent" is defined in Section 205.1.

"Agreement" means this Disposition and Development Agreement by and between the Agency and Developer, including all exhibits.

"ALTA Policies and Endorsements" is defined in Section 203.

"Amendment/Estoppel Costs" is defined in Section 621.

"Applicable Differential" is defined in Section 408.

"Assignment and Assumption Agreement" is attached hereto as Exhibit E and incorporated herein by reference.

"Available Agency Revenues" is defined in Section 408.1(d).

"BID Assessment" means an assessment pursuant to the Property and Business Improvement District Law of 1989 which assessment is being contemplated by the City of Garden Grove and the

City of Anaheim to fund improvements to the Anaheim Convention Center and Chamber of Commerce.

"Breach" is defined in Section 501.

"Certificate of Occupancy" means a certificate of occupancy issued by the City pursuant to Section 309 of the 1997 Uniform Administration Code or any successor ordinance.

"CFD" means a community facilities district formed pursuant to Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*).

"CFD Act" means the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*).

"CFD Bonds" means bonds issued by a CFD.

"CFD Financing" is defined in Section 301.3.

"City" means the City of Garden Grove, a California municipal corporation.

"Closing" or ***"Close of Escrow"*** is defined in Section 201.5.

"Closing Date" is the date upon which conveyance of the Site is consummated in accordance with Section 201.5 hereof.

"CLTA Policy" is defined in Section 203.

"Commencement of Construction of the Parking Structure" means Commencement of Construction of the Parking Structure pursuant to validly issued building permits.

"Community Redevelopment Law" means California Health and Safety Code Sections 33000, *et seq.* as the same now exists or may hereafter be amended.

"Competing Water Park Hotel" is defined in Section 102.1(h).

"Completion" or ***"Completes"*** means the completion of construction of the Developer Improvements as evidenced by a final Certificate of Occupancy issued by the City, certification by the Project Architect and the Agency Director that the Developer Improvement are complete in accordance with the Construction Drawings and the Hotel and all its rooms are open and available to the public.

"Conceptual Site Plan" is attached hereto as Exhibit J and incorporated herein by reference and generally depicts the proposed development and use of the Site.

"Conditions Precedent" shall mean the Agency's Conditions Precedent and Developer's Conditions Precedent set forth in Section 205.

"Construction Commencement Date" means the date that is set forth in the Schedule of Performance as the date upon which the construction of the Developer Improvements, pursuant to validly issued building permits, is to commence.

"Construction Costs" is defined in Section 301.1.

"Construction Drawings" is defined in Section 302.

"Construction Financing" is defined in Section 311.1 hereof.

"Construction Lender" is defined in Section 311.

"Conveyance" means the conveyance of the Site to the Developer by Grant Deed.

"Covenants" means the covenants, obligations and promises of Developer hereunder, including without limitation the covenants, obligations and promises set forth in Section 102.2, 103, 204.2, 204.3, 304 through 309, inclusive, 400, 503 and 603, which Covenants shall survive the Closing, run with the land and be binding upon heirs, successors and assigns of Developer.

"Covenants Consideration" is defined in Section 408.

"Date of this Agreement" means the date of approval of the Agreement by the Agency.

"Declaration" means a Declaration of Covenants, Conditions and Restrictions which will be entered into by the parties prior to Closing which Declaration shall address the management, operation, rules of conduct, security and access rights and other easements with respect to the Project.

"Default" is defined in Section 501.

"Deposit" is defined in Section 201.3.

"Developer" means Garden Grove MXD, LLC, a Colorado corporation, and any affiliate, assignee or successor thereto permitted pursuant to the terms of this Agreement. Chad McWhinney has (i) at least a majority interest in Garden Grove MXD, LLC, a Colorado corporation and, (ii) subject to the customary rights of other non-managerial members, partners or shareholders, as applicable, operational and managerial control of Developer and will retain same until the issuance of Release of Construction Covenants.

"Developer Improvements" means the improvements to be constructed by Developer or by its Tenants, as more particularly described in the Recitals herein and in the Scope of Development.

"Developer/Agency Request" is defined in Section 621.

"Developer's Conditions Precedent" is defined in Section 205.2.

"Development Agreement" means a development agreement pursuant to Government Code Section 65864 *et seq*.

"Due Diligence Date" means thirty (30) days following the later of (a) Date of this Agreement or (b) the date the Agency has fee title to all of the Site.

"Enforced Delay" is defined in Section 602.

"Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 USC §§ 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended (42 USC §§ 6901 *et seq.*), the Toxic Substances Control Act (15 USC §§ 2601 *et seq.*), the Insecticide, Fungicide, Rodenticide Act (7 USC §§ 136 *et seq.*), the Superfund Amendments and Reauthorization Act (42 USC §§ 6901 *et seq.*), the Clean Air Act (42 USC §§ 7401 *et seq.*), the Safe Drinking Water Act (42 USC §§ 300f *et seq.*), the Solid Waste Disposal Act (42 USC § 6901 *et seq.*), the Surface Mining Control and Reclamation Act (30 USC §§ 1201 *et seq.*), the Emergency Planning and Community Right to Know Act (42 USC §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 USC §§ 655 and 657), the California Underground Storage of Hazardous Substances Act (Health and Safety Code §§ 25280 *et seq.*), the California Hazardous Substances Account Act (Health & Safety Code §§ 25300 *et seq.*), the Porter-Cologne Water Quality Act (Water Code §§ 13000 *et seq.*), together with any amendments of or regulations promulgated thereunder and any other federal, state, and local laws, statutes, ordinances, or regulations now in effect that pertain to occupational health or industrial hygiene.

"Escrow" is defined in Section 201.5.

"Escrow Agent" is defined in Section 201.5.

"Franchisor" is defined in Section 103.6.

"Franchise Agreement" is defined in section 103.6.

"Furniture, Fixture and Equipment" or ***"FF&E"*** means movable furniture, fixtures or other equipment that have no permanent connection to the structure of a building or utilities within the Hotel, as well as operational supplies. More specifically, furniture, fixtures and/or equipment would include decorative items, window treatments, casework, furnishings & accessories, furniture, data communications equipment, voice communications equipment, audio visual communications equipment, electronic surveillance equipment, electronic detection and alarm equipment, commercial equipment, foodservice equipment, entertainment equipment, athletic & recreational equipment, collection and disposal equipment. Operational supplies include all supplies needed for the operation of the hotel, such as stationery, computer equipment and accessories, guestroom TV's and mounts, alarm clocks in rooms, linen, pillows, maids' carts and supplies, trash cans, all items for the hotel restaurant, bar, banquet and conference facilities (including china, utensils, glasses, etc.).

"Governmental Requirement(s)" means all valid and enforceable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Site, including, without limitation, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation (to the extent applicable), Labor Code Sections 1770 *et seq.*, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

"Grant Deed" means a grant deed in the form of Exhibit F attached hereto and incorporated herein by reference, by which the Agency shall convey fee title to the Site to Developer.

"Hazardous Materials" means any toxic substance, material, or waste which is now regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Law and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity. "Environmental Laws" shall mean "Environmental Laws" means all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*

"Holder" is defined in Section 311.2.

"Hotel" or ***"Water Park Hotel"*** means the 600 room hotel (potentially expanded to 800 rooms) and the water park constructed on the Site as part of the Developer Improvements in accordance with Section 301.1.

"Hotel Expansion" is defined in Recital D.

"Indemnify" means indemnify, defend, pay for and hold harmless.

"Indemnitees" means the Agency and the City, and their respective representatives, officers, employees and agents.

"Insurance" is defined in Section 306 *et seq.*

"Land Use Approvals" is defined in Section 303.

"Legal Description" means the legal description of the Site attached hereto as Exhibit B and incorporated herein by reference.

"Liabilities" means liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines, and monetary sanctions), giving rise to losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees) of any kind or nature and for any damages, including damages to property or injuries to person, including accidental death, (including reasonable attorneys' fees and costs in connection therewith). .

"Loan Balance" means, with respect to any Holder and its mortgage or deed of trust, the sum of the following amounts: (a) the aggregate unpaid amount (including, but not limited to, principal, protective advances, interest, fees, costs and expenses) owing to the Holder under the loan documents ("Holder Loan Documents") secured by such Holder's mortgage or deed of trust upon the Site (or any part thereof) immediately prior to the revesting of title in Agency (referred to herein as "Revesting") in accordance with this Agreement, whether Agency exercises such right of Revesting

prior to such Holder's acquisition of Site (or portion thereof) by foreclosure or deed in lieu of foreclosure, or after completion of a foreclosure under such Holder's mortgage or deed of trust (or acceptance and recordation of a deed-in-lieu of such foreclosure); plus (b) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) under, or in connection with the enforcement of the applicable Holder Loan Documents, including, without limitation, foreclosure costs and expenses (or deed-in-lieu of foreclosure costs and expenses) (such costs and expenses to include, but not be limited to, title charges, default interest, appraisals, environmental assessments and reasonable attorneys' fees and expenses); plus (c) if Agency commences the exercise of its Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, all third party costs and expenses, if any, reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the management and operation of the Site subsequent to the date upon which a foreclosure under such mortgage or deed of trust is completed [or such Holder or its Nominee accepts a deed in lieu of foreclosure]; plus (d) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the construction, Developer Improvements (including tenant improvements), restoration, repair and equipping of the Site (or any portion thereof); plus (e) if Agency commences the exercise of its right of Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, an amount equal to the interest that would have accrued on the aggregate of the amounts described above under the Holder Loan Documents had all such amounts become part of the debt secured by such Holder's mortgage or deed of trust and had such debt continued in existence from the date of such foreclosure (or acceptance of a deed-in-lieu of foreclosure) by such Holder or its Nominee to the date Agency reenters in accordance with this Agreement. (For purposes of this definition, the Agency's right to Revest in accordance with this Agreement shall not be deemed to have occurred prior to the date the Loan Balance is paid to the Holder (or its Nominee) in accordance with the Agreement). Each Holder (or its Nominee) shall provide Agency with its calculations of the Loan Balance and documents in support thereof within ten (10) days after written demand therefore by the Agency.

"Memorandum of Agreement" is attached hereto as Exhibit K and incorporated herein by reference.

"Negotiated Purchase Agreement" is defined in Section 201.1.

"Nominee" means an entity which is owned and controlled by any Holder.

"Notice" is defined in Section 601.

"Official Records" means the official records of the Office of the Registrar Recorder of Orange County, California.

"Open for Business" means the date on which the Hotel opens for business to the general public.

"Parking Structure" is the multi-level parking structure described in Section 301.3.

"Parking Structure Parcel" is defined in Section 301.3.

"Permitted Transferee[s]" is defined in Section 103.2.

"Phase 1 Environmental Assessment" means an assessment to identify Recognized Environmental Concerns defined under ASTM Standards E-1527-00 as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, past release, or material threat of a release of any hazardous substance or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

"Phase II Environmental Assessment" means an evaluation of the Recognized Environmental Concerns identified in the Phase I Environmental Site Assessment for the purpose of providing sufficient information regarding the nature and extent of contamination.

"Pre-approved Restaurant Tenant(s)/Operator(s)" is attached hereto as Exhibit M and incorporated herein by reference.

"Presence" means the presence, release, use, generation, discharge, storage and disposal of any Hazardous Materials.

"Prevailing Wage and Public Works Requirements" are attached hereto as Exhibit I and incorporated herein by reference.

"Project" means the development and operation of the Developer Improvements.

"Project Architect" means the architect retained by the Developer to prepare the Construction Drawings and supervise construction of the Project.

"Project Area" is defined in Recital A.

"Qualified BID Assessment" means a BID Assessment in which (i) the BID Assessment will be higher in the City of Garden Grove than in the City of Anaheim and (ii) the BID Assessment is based on a percentage of room rates.

"Recognized Environmental Concerns" means the presence or possible presence of any hazardous substances or petroleum products on the Site under conditions that indicate an existing or possible release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the Site or into the ground, ground water, or surface water of the Site. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not Recognized Environmental Conditions.

"Redevelopment Law" means the California Community Redevelopment Law, California Health & Safety Code 33300 *et seq*.

"Redevelopment Plan" is defined in Recital A.

"Release of Construction Covenants" means the document which evidences Developer's satisfactory completion of the Developer Improvements, or a part thereof, as set forth in Section 310, in the form of Exhibit G attached hereto and incorporated herein by reference.

"Resort Fee" means the imposition of a fee or charge by Developer for the use of each hotel room based on the room rate.

"Retail/Restaurant Component" means the retail portion of the Developer Improvements, consisting of approximately 18,000 square feet, including at least one (1) restaurant, as shown on the Site Plan.

"Revesting" is defined in the definition of "Loan Balance."

"Right of Entry" is described in Section 204 hereof and attached hereto as Exhibit H and incorporated herein by reference.

"Right of First Refusal" means the Right of First Refusal in substantially the form attached hereto as Exhibit L and incorporated herein by reference with respect to the Right of First Refusal Area.

"Right of First Refusal Area" means the property which is the subject of the Right of First Refusal and is shown on the Site Map.

"Schedule of Performance" means that certain Schedule of Performance attached hereto as Exhibit D and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time due to the application of Section 602 hereof and as mutually agreed upon in writing between Developer and the Agency Director, and the Agency Director is authorized to make such revisions as he deems reasonably necessary.

"Scope of Development" means that certain Scope of Development attached hereto as Exhibit C, which describes the scope, amount and quality of development of the Developer Improvements to be completed by Developer and the Parking Structure and Agency Improvements to be completed by Agency pursuant to the terms and conditions of this Agreement.

"SERAF Statute" is defined in Section 408.1.

"Site" means, collectively, the Agency Property and Third Party Property.

"Site Condition" is defined in Section 204.2.

"Site Map" means the map of the Site which is attached hereto as Exhibit A and incorporated herein by reference.

"State" means the State of California.

"Tax Allocation Bonds" is defined in Section 408.

"Tax Increment Revenue" means seventy percent (70%) of the tax increment received by the Agency pursuant to Health & Safety Code Section 33670(b) with respect to the Site and Developer Improvements, utilizing as base year the fiscal year in which the Hotel opens for business to the public.

"Taxing Entity" means a governmental entity which levies property taxes within the boundaries of the Project Area.

"Tenant(s)" mean the tenant(s) of the Retail/Restaurant Component.

"Third Party Property" means that certain property shown on the Site Map as Third Party Property and owned by third parties.

"Title Company" is defined in Section 202 hereof.

"Title Polices" means the CLTA Policy and the ALTA Policies and Endorsements is defined in Section 203 hereof.

"Title Report" is defined in Section 202.

"TOT Differential" means the differential each year between the TOT Rate imposed by the City of Anaheim and the TOT Rate imposed by the City of Garden Grove.

"TOT Rate" means the percentage of room rate charge by the City of Garden Grove and/or the City of Anaheim, as applicable under their respective Transient Occupancy Tax Ordinances.

"Transfer" means any total or partial sale, transfer, conveyance, assignment, subdivision, financing, refinancing, lease or sublease.

"Transferee" means a voluntary or involuntary successor in interest to the Developer.

"Transient Occupancy Tax Revenues" means those revenues imposed and collected by the City with respect to the Hotel pursuant to Section 3.12.010 of the Garden Grove Municipal Code.

102. Representations, Warranties and Covenants.

102.1 Agency Representations Warranties and Covenants. The Agency hereby makes the representations, warranties and covenants contained below in this Section 102.1. All of the representations and warranties set forth in this Section 102.1 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) The Agency is a public body, corporate and politic, validly created and existing pursuant to the Community Redevelopment Law, which has been authorized to transact business pursuant to action of the City. The execution and delivery of this Agreement by the Agency has been fully authorized by all requisite actions.

(b) The Agency's execution and delivery of this Agreement does not violate any applicable laws, regulations, or rules nor to the best of Agency's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which the Agency is a party, or any judicial or regulatory decree or order to which the Agency is a party or by which it is bound; provided however that while Agency believes this Agreement to be enforceable in accordance with its terms, Agency makes no representations or warranties regarding the enforceability hereof.

(c) The Agency has not made an assignment for benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to the Agency under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against the Agency any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to the Agency under the Federal Bankruptcy Code.

(d) All documents, instruments and other information delivered by the Agency to Developer pursuant to this Agreement, other than documents, instruments and other information received by Agency from third parties, are, to the best of Agency's knowledge, true, accurate, correct and complete in all material respects.

(e) The Agency has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the Agency's execution delivery, and performance of this Agreement, other than consents, approvals, and authorizations which have already been unconditionally given.

(f) Contingent upon the acquisition of the Third Party Property, the Agency has or will have at the Closing, full right, power and lawful authority to grant, sell and convey the Third Party Property as provided herein.

(g) The Agency is not a "foreign person" within the parameters of Foreign Investors in U.S. Real Property Tax Act ("FIRPTA"), or is exempt from the provisions of FIRPTA, or the Agency has complied and will comply with all the requirements under FIRPTA.

(h) In consideration of the development of the Developer Improvements as described herein, the Agency covenants and agrees that for the sooner of six years from January 1, 2010 or three years from the date on which the Hotel Opens for Business, it shall not provide any financial assistance or accommodation to another hotel, motel or transient occupancy establishment that includes significant water park amenities within the City (collectively or individually a "Competing Water Park Hotel"). Such consideration is in recognition of the significant financial commitment of Developer and in recognition of the inherent initial marketing and operating costs associated with the Developer Improvements.

(i) Until the Closing Date and thereafter, the Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.1 not to be true as of the Closing Date, give written notice of such fact or condition to Developer as soon as is reasonably practicable.

Each of the foregoing items (a) through (h), inclusive shall be deemed to be ongoing representations, warranties and covenants.

102.2 Developer's Representations, Warranties and Covenants. Developer hereby makes the representations, warranties and covenants contained below in this Section 102.2. All of the representations and warranties set forth in this Section 102.2 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in

all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) Developer is a duly organized Colorado limited liability company and in good standing under the laws of the State of California and is authorized to carry on its business in California as such business is now conducted and to own and operate its properties and assets now owned and being operated by it, and as set forth in and anticipated by this Agreement. Developer has full right, power and lawful authority to enter into this Agreement and the execution and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. Developer has provided the Agency with true and correct copies of documentation reasonably acceptable to the Agency Director, or his/her designee, designating the party authorized to execute this Agreement on behalf of Developer.

(b) Developer's execution, delivery and performance of its obligations under this Agreement will not violate any applicable laws, regulations, or rules nor to the best of Developer's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which Developer is a party, or any judicial or regulatory decree or order to which Developer is a party or by which it is bound.

(c) Developer has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to Developer under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against Developer any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to Developer under the Federal Bankruptcy Code.

(d) All documents, instruments, and other information delivered by Developer to the Agency pursuant to this Agreement are, to the best of Developer's knowledge, true, accurate, correct and complete in all material respects.

(e) This Agreement and all documents to be delivered by Developer pursuant to this Agreement, when executed by Developer and delivered, shall constitute the legal, valid and binding obligation of Developer. The Agency has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the Agency's execution delivery, and performance of this Agreement, other than consents, approvals, and authorizations which have already been unconditionally given.

(f) Until the Closing Date and thereafter, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.2 not to be true as of the Closing Date, immediately give written notice of such fact or conditions to the Agency.

Each of the foregoing items (a) to (f), inclusive shall be deemed to be ongoing representations, warranties and covenants.

102.3 Agency and Developer Representation Re Authority and Enforceability. Agency and Developer hereby covenant, represent and warrant to each other that neither will assert the lack of authority or enforceability of this Agreement against the other.

103. Transfers of Interest in Site or Agreement.

103.1 Prohibition Against Transfer Prior to Release of Construction Covenants. The qualifications and identity of Developer are of particular concern to the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with Developer. Except as expressly set forth in Section 103.2 below, for the period commencing upon the Date of this Agreement and until the issuance of the Release of Construction Covenants, no Transferee shall acquire any rights or powers under this Agreement, nor shall Developer make any Transfer, of the whole of the Site or any part, or the Developer Improvements without the prior written approval of the Agency, which approval may be granted or withheld in the sole and absolute discretion of the Agency. Following the issuance of the Release of Construction Covenants, any Transfer shall be governed by Section 103.3.

103.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, both before and after the issuance of the Release of Construction Covenants, the Agency approval of an assignment of this Agreement or Conveyance of the Site, shall not be required in connection with any of the following (each of which shall be "Permitted Transfer"):

(a) The conveyance or dedication of any portion of the Site to the City, Agency or other appropriate governmental agency, or for the purpose of the granting of easements, permits or similar rights to facilitate construction, use and/or operation of the Developer Improvements.

(b) Any Transfer for Construction Financing purposes (subject to such Construction Financing being in compliance with Section 311.1 herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements, as applicable.

(c) Any collateral assignment of the Covenant Consideration for purposes of borrowing money to be used on the Project.

(d) Any Transfer to an entity in which Developer (a) retains 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 (b) Developer has not less than five percent (5%) interest in profit and losses in the Project.

(e) Any Transfer to a Holder, or its Nominee by foreclosure or deed in lieu of foreclosure, or to a third party purchaser at a foreclosure sale or after foreclosure by the Holder or its Nominee.

(f) Any Transfer to a lessee or sublessee of a portion of the Project that is incidental to the primary purpose of the Developer Improvements (by example only, and not as a

limitation, lease of restaurant space), provided such lessee or sublessee is consistent with the overall purposes of the Development Improvements.

103.3 Agency Consideration of Requested Transfer After Release of Construction Covenants. The Developer shall have the right, following issuance of a Release of Construction Covenants to Transfer all or substantially all of the Site subject to the provisions of this Section 103.3. In such event, Developer shall deliver written Notice to Agency requesting such approval which Notice shall be accompanied by sufficient evidence regarding the proposed Transferee's net worth, development and operational qualifications and experience, and its financial resources, in sufficient detail to enable the Agency to evaluate the proposed Transferee pursuant to the criteria set forth hereinbelow and as reasonably determined by the Agency. In this regard, the Agency agrees that it will not unreasonably withhold approval of a request of a Transfer made after the issuance of the Release of Construction Covenants with respect to the Site or substantially all of the Site. The Agency shall evaluate each proposed Transferee on the basis of its qualifications and experience, and its financial commitments and resources. Agency may not disapprove any proposed Transferee that demonstrates to the reasonable satisfaction of the Agency that the transferee/assignee or its guarantor has a net worth sufficient to provide the prerequisite equity and access to debt offered by an institutional commercial real estate lender so as to permit the financing of the acquisition and operation of the Project and transferee/assignee and/or its contract manager or the individual within the contract management entity responsible for management of the Project has at least ten (10) years recent experience owning or operating first class hotel/retail/restaurant projects similar to the Project.

103.4 Assignment and Assumption Agreement. An executed Assignment and Assumption Agreement (or a document effecting a Transfer that includes the substantive provisions of the Assignment and Assumption Agreement) shall also be required for all proposed Transfers, with respect to the portion of the Site so transferred whether or not Agency's consent is required to a Transferee who has an obligation to construct all or any portion of the Developer Improvements. If the Transfer involves the obligation of the Transferee to construct specific Developer Improvements, Agency is hereby granted the right to compel Developer to enforce any such construction obligation.

103.5 Agency Action Re Requested Transfer. Within thirty (30) days after the receipt of a written Notice requesting Agency approval of a Transfer pursuant to Sections 103.3 and 103.7, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

103.6 Initial Selection and/or Transfers with Respect to the Hotel Operator, Franchisor, and Tenants; Approval of the Franchise Agreement. The selection of the operator ("Hotel Operator") and brand or franchisor for the Hotel (the "Franchisor"), as well as the franchise agreement or management agreement between Franchisor and Developer (the "Franchise Agreement") shall be approved by the Agency, acting in its reasonable discretion and based on consistency with the quality of the Hotel as described in Section 301.1 and the Scope of Development both initially and until expiration of the Redevelopment Plan. Agency shall also approve, acting in its reasonable discretion, the Tenants based on consistency with the quality of the Hotel as required herein.

103.7 Transfer of Covenant Consideration. Notwithstanding anything herein to the contrary, both before and after the issuance of the Release of Construction Covenants, except as to a collateral assignment described in Section 103.3(c), the approval of an assignment of the Covenant Consideration separate and apart from an assignment of this Agreement and/or Site or any part thereof, shall require the consent of the Agency which consent shall be granted or withheld in the sole and absolute discretion of the Agency.

200. DISPOSITION OF THE SITE

201. Conveyance of the Site to Developer. Subject to the satisfaction of the Conditions Precedent set forth hereinbelow, on or before the date set forth in the Schedule of Performance, but in no event later than the Outside Date, the Agency shall cause the Conveyance of the Site to Developer in the condition described in Sections 201.4, 204.2 and 301.2 and the Scope of Development in consideration for compliance with the terms and conditions of this Agreement and Developer shall accept Conveyance in accordance with the terms of this Section 201.

201.1 Acquisition of Third Party Property by Negotiated Purchase. Subject to the availability of funds, as determined in the absolute discretion of the Agency, 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 this Agreement, and the Agency may enter into an agreement for the purchase of the Third Party Property (a "Negotiated Purchase Agreement") without further approval by Developer, provided Developer has approved the terms and conditions of the Negotiated Purchase Agreement as it relates to the title and condition of the property being acquired.

201.2 Acquisition of Third Party Property by Eminent Domain. If the Agency's efforts to negotiate the purchase of the Third Party Property pursuant to Section 201.1 are unsuccessful, and provided that the parties have fulfilled all obligations required to be fulfilled prior to commencing a condemnation action, the Agency shall consider adoption of a resolution of necessity to acquire the Third Party Property by eminent domain. In no event shall the Agency's decision not to adopt a resolution of necessity to acquire the Third Party Property be considered a Default of the Agency's obligations under this Agreement, it being understood and acknowledged by the Developer that the Agency retains full and complete discretion with respect to the adoption of such a resolution. Subject to the provisions of this Agreement, if the Agency, in its discretion, adopts a resolution of necessity to acquire the Third Party Property, the Agency shall pursue to completion the acquisition of such Third Party Property through eminent domain (or settlement) as long as Developer is not in Default hereunder.

Notwithstanding any other provision of this Agreement to the contrary, so long as the Conditions Precedent to Closing (other than Sections 205.1(h) and 205.2(i)) have been satisfied, if;

(a) The Agency provides to the Developer a copy of an effective, non-appealable order of prejudgment possession as to the Third Party Property for which fee title has not yet been acquired, free and clear of any other right of possession, together with a covenant in favor of Developer that Agency will not abandon the eminent domain action.

(b) The Agency delivers effective possession of the Third Party Property and the Title Company issues to the Developer (and Developer's Holder) the Title Policies provided for in Section 203 hereof (subject only to delivery to Title Company of an agreement mutually approved by Agency for Agency to indemnify Title Company as set forth in Section 204); and

(c) The right of possession of, and the covenant to vest all, subsequently acquired title to the Third Party Property conveyed by the Agency to the Developer is sufficient to allow Developer to close the Construction Financing without additional expense, interest or concessions and commence construction of the Developer Improvements;

then the Agency shall convey and the Developer shall, in such event, accept possession of the Third Party Property and the right to subsequently acquire title thereto, and the Developer shall proceed with the development of the Third Party Property, with the date of transfer of possession from the Agency to the Developer treated the same as the date for the Close of Escrow for purposes of the Developer's obligation to proceed with and complete construction of the Developer Improvements.

201.3 Consideration for Site. The consideration for the Conveyance will be the Developer's construction and operation of the Project in accordance with this Agreement, and its promise to otherwise be bound by the Covenants set forth herein; provided however, Developer has deposited with the Agency the sum of Fifty Thousand Dollars ($50,000) (the "Deposit") which Deposit the Agency shall retain for its own purposes, without limitation, to pay for costs incurred by Agency in connection with the implementation of the Agreement; except in the event Developer acquires the Site pursuant to this Agreement, in which case upon Construction Commencement Date pursuant to validly issued building permits, Developer will be refunded the amount of the Deposit.

201.4 Condition of Site. EXCEPT AS SET FORTH IN SECTION 204 HEREOF, DEVELOPER HAS AGREED TO ACCEPT POSSESSION OF THE SITE ON THE CLOSING DATE ON AN "AS IS" BASIS. AGENCY AND DEVELOPER AGREE THAT THE PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET OFF OR REDUCTION IN CONSIDERATION, AND, EXCEPT AS SET FORTH IN SECTIONS 102.1 AND 204 HEREOF, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND SELLER DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY.

201.5 Opening and Close of Escrow. The Conveyance of the Site shall be consummated ("Closing" or "Close of Escrow") on the date ("Closing Date") set forth in the Schedule of Performance, but in no event later than May 27, 2012, except as provided in footnote 1 of the Schedule of Performance, or such other date as agreed to by the parties in writing, each acting in their sole and absolute discretion, through an escrow (the "Escrow") established at Western Resources Title or another escrow company mutually agreeable to the parties (the "Escrow Agent") which Escrow shall be opened within thirty (30) days following the Date of this Agreement. Escrow Agent is hereby authorized to effect the Closing upon satisfaction of the Conditions to Closing set forth in Section 205 by taking the following actions:

(a) Current real property taxes, personal property taxes, and installments of assessments and all items of income (if any) and expense regarding the Site shall be prorated as of the Closing.

(b) Concurrently with the Closing of Escrow, Escrow Agent shall cause the Title Company to issue the Title Policy, as described in Section 203.

(c) Escrow Agent shall pay and charge: (i) Developer for the following: (aa) the recording cost of the Grant Deed and other closing documents, (bb) one-half (1/2) the premium for the CLTA Policy, (cc) the additional premium for the ALTA Policies and Endorsements (as hereinafter defined), if any, (dd) half of the escrow fees charged by the Escrow Agent, (ee) Developer's share of proration; and (ii) Agency for the following (ff) one-half of escrow fees, (gg) Agency's share of prorations and (hh) one-half (1/2) the cost of the CLTA Policy.

(d) Escrow Agent shall record, in the following order, the following documents:

(i) The Grant Deed;

(ii) The Memorandum of Agreement; and

(iii) The Declaration.

all duly executed and acknowledged by the appropriate party.

201.6 Submittal of Documents.

(a) At least two (2) days prior to the Close of Escrow, Developer shall execute and submit to Escrow Agent the following:

(i) Two (2) originals of a certificate of acceptance of the Grant Deed duly executed by Developer and acknowledged.

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by Developer and acknowledged.

(iii) Any documents to be recorded as part of Developer's financing of the Project which Agency has approved in writing pursuant to Section 311, along with a request for notice of default executed by the Agency.

(b) At least two (2) days prior to the Close of Escrow, Agency shall execute and deliver to Escrow the following:

(i) Two (2) originals of the Grant Deed duly executed by Agency and acknowledged; and

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by Agency and acknowledged.

201.7 Post-Closing Deliveries by Escrow.

(a) After the Close of Escrow, the Developer shall be delivered the following documents:

(i) This Agreement and the Grant Deed duly executed by the appropriate party or parties and recorded in the Official Records of Orange County.

(ii) A non-foreign affidavit in a form reasonably acceptable to Developer.

(iii) A conformed copy of the Declaration.

(iv) A conformed copy of the Memorandum of Agreement.

(b) After the Close of Escrow, Agency shall be delivered the following documents:

(i) A conformed copy of the recorded Grant Deed and this Agreement.

(ii) The recorded original of the Declaration.

(iii) The recorded original of the Memorandum of Agreement.

(iv) The recorded original of the request for notice of default.

(c) At Close of Escrow, the Agency and Developer shall each execute counterpart closing statements in customary form together with such other documents as are reasonably necessary to consummate the Closing.

201.8 Payment of Escrow Costs. At Close of Escrow, both parties shall pay their respective costs by wire transfer, or by cashier's check drawn on a bank reasonably acceptable to the Escrow Agent. In the event of termination of this Agreement prior to the Close of Escrow due to failure of a condition set forth in Section 205, the parties shall each be responsible for one-half of any Escrow cancellation costs. In the case of termination prior to the Close of Escrow due to a default by one of the parties hereto, such defaulting party shall pay one hundred percent (100%) of all Escrow Cancellation Costs.

202. Review of Title. Within ten (10) days after the Date of this Agreement, Agency shall cause First American Title Company of California, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer a preliminary title report (the "Title Report") with respect to the Site, together with legible copies of all documents underlying the exceptions ("Exceptions") set forth in the Title Report, along with an ALTA survey prepared by a California licensed surveyor under contract with and paid for by Developer ("ALTA Survey). Developer shall have thirty (30) days from its receipt of the Title Report and ALTA Survey within which to give written notice to Agency of Developer's approval or disapproval of any of such Exceptions. No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due, shall be approved Exceptions. If Developer notifies Agency of its disapproval of any Exceptions in the Title Report or ALTA Survey, Agency shall have thirty (30) days from Agency's receipt of such notification to advise Developer that it will use commercially reasonable efforts or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If Agency does not provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the Agency written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions and conditions set forth in the ALTA Survey (and conditioned upon the issuance of any

endorsements necessary to render title acceptable to Developer), or to give the Agency written notice that the Developer elects to terminate this Agreement in which event, the Agency and Developer shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor Agency shall have any further rights or obligations hereunder except as set forth in Section 307. The Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company or conditions set forth on the ALTA Survey after Developer has approved the condition of title for the Property in accordance with this Section 202. The foregoing periods of time shall be reasonably extended if any updates in the Title Report are provided to Developer after Developer approval of the Exceptions. Agency shall not voluntarily create any new exceptions to title following the Date of this Agreement, except for the recordation of documents in connection with the Closing as required herein. The Developer shall assume all non-delinquent assessments and taxes not specifically disapproved as provided herein.

203. Title Policy. At the Closing, the Title Company, as insurer, shall issue in favor of Developer, as insured, a CLTA owner's standard coverage policy or policies of title insurance with endorsements, if any, as may be required in Section 202 hereof with liability in an amount equal to the value of the Site as determined by the parties prior to Closing but not to exceed Ten Million Dollars ($10,000,000) ("CLTA Policy"), or, at Developer's option and expense, an ALTA extended policy of title insurance and/or lender's policy of title insurance with any endorsements and/or increased coverage amounts requested by Developer or its lender ("ALTA Policies and Endorsements") (collectively, the "Title Policies"), subject to the following:

(a) All nondelinquent general and special real property taxes and assessments for the current fiscal year; and

(b) If a CLTA policy is issued, the standard printed conditions and exceptions contained in the CLTA standard owner's policy of title insurance regularly issued by the Title Company.

(c) The Redevelopment Plan.

(d) The provisions of this Agreement, the Grant Deed and the Declaration.

(e) Any Exceptions to title approved by Developer pursuant to Section 202.

The Title Policies shall be combined with a policy insuring the personal property (Eagle 9 policy from the Title Company) with tie-in endorsements to cover the full insurable cost of the Project paid for by Developer.

204. Studies, Reports.

204.1 Site Investigation. Representatives of the Developer and any prospective users, following execution of the Right of Entry Agreement, shall have the right of access to the Agency Property, and to the Third Party Property at such time, if ever, as Agency has the right of access 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 Site, including the groundwater, or that

the Site is or may be in violation of any Environmental Law, or that the condition of the Site is otherwise unacceptable to Developer, then the Developer shall notify the Agency and Escrow Holder prior to the Due Diligence Date. Agency and Developer shall thereafter have thirty (30) days to negotiate an agreement with respect to remediation of the Site, pursuant to which Agency shall commit to expend up to Two Hundred Fifty Thousand Dollars ($250,000) for Site remediation. If, at the end of such thirty (30) day period, Developer and Agency have not come to an agreement with respect to remediation of the Site, Developer shall, within three (3) days thereafter notify Agency of whether it elects to go forward with the acquisition of the Site and pay all remediation costs in excess of Two Hundred Fifty Thousand Dollars ($250,000), or whether it elects to terminate this Agreement, in which event the Developer and Agency shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor Agency shall have any further rights or obligations hereunder except as set forth in Section 307.

204.2 As-Is Environmental Condition. Subject to the terms of this Agreement, if the Developer elects to proceed with Close of Escrow, the Site shall be conveyed to the Developer in an "as is" environmental condition, with no warranty, express or implied by the Agency, as to the condition of the Site, the soil, its geology, the Presence of known or unknown faults, the suitability of soils for the intended purposes or the presence of known or unknown Hazardous Materials or toxic substances ("Site Condition").

204.3 Indemnities and Releases Re Hazardous Material.

(a) **Developer Indemnity.** Developer hereby agrees and hereby shall Indemnify the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site (excluding Public Streets) which Presence first occurred after Close of Escrow, and (ii) the Presence of Hazardous Materials on the Site, which Hazardous Materials were not Hazardous Materials at the time of the Close of Escrow, but became Hazardous Materials after Close of Escrow as a result of an amendment to, or interpretation of, the Environmental Law; provided, that none of the same were directly and proximately caused by Agency or any of its agents, employees or contractors. Agency shall cooperate with Developer to ensure that Agency has assigned to Developer any and all rights that Agency acquired in its acquisition of the Site or any portion thereof to permit Developer's prosecution of claims against any third parties who are potentially responsible for such Hazardous Materials.

(b) **Developer Release.** Developer agrees to and hereby shall release the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site that first existed on the Site as of the Close of Escrow, but were discovered after Close of Escrow, and (ii) the Presence of Hazardous materials on the Site, which Hazardous Materials were not identified and/or defined as such under the Environmental Laws at the time of Close of Escrow but became Hazardous Materials after Close of Escrow as a result an amendment to, or interpretation of, the Environmental Law. Notwithstanding the foregoing, Developer is not releasing any person or entity other than the Indemnitees.

205. Conditions to Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions, which the parties shall exercise their best efforts to satisfy, within the times designated below:

205.1 Agency's Conditions Precedent. Agency's obligation to proceed with the Closing is subject to the fulfillment or waiver in writing by Agency of each and all of the conditions precedent (a) through (n), inclusive, described below ("Agency's Conditions Precedent"), which are solely for the benefit of Agency, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, Developer shall not be in Default in any of its obligations under the terms of this Agreement.

(b) Execution of Documents. The Developer shall have executed any documents required hereunder and delivered such documents into Escrow.

(c) Payment of Funds. Prior to the Close of Escrow, Developer shall have paid all required costs of Closing into Escrow in accordance with Section 201.5 hereof.

(d) Land Use Approvals. The Developer shall have received all Land Use Approvals and Entitlements and building permits shall have issued with respect to the Improvements required pursuant to Section 303 hereof.

(e) Insurance. The Developer shall have provided proof of insurance as required by Section 306 hereof.

(f) Financing. The Agency shall have approved the Construction Financing as defined in Section 311.1 hereof, for construction of the Developer Improvements as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the commitment for Construction Financing.

(g) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(h) Agency's Acquisition of the Third Party Property. Agency has acquired the Third Party Property in accordance with Sections 201.1 and/or 201.2 hereof.

(i) Approval of Hotel Operator, Franchisor and Franchise Agreement. The Developer shall have provided Agency and Agency shall have approved the Hotel Operator, Franchisor and a Franchise Agreement, which approval shall be granted if each comply with the terms of this Agreement, including without limitation, Section 301.1, and the Scope of Development. Great Wolf Lodge Resort, Kalahari Resort, and Nickelodeon Resorts by Marriott are hereby approved as Franchisors.

(j) Pre-leasing and Approval of Tenant. Agency has approved the Tenant(s)/Operator(s) unless included in the list of Pre-approved Restaurant Tenant(s)/Operator(s). The Tenant(s) listed in Exhibit M are hereby approved.

(k) Hazardous Material Insurance. Agency and Developer shall have obtained or waived Hazardous Material Insurance pursuant to Section 204.4.

(l) Agency Improvements. Agency has determined, acting in its reasonable discretion, that the estimated actual and direct third party costs of the Agency

Improvements will not exceed Twenty Million, Eight Hundred Thirty Five Thousand Dollars ($20,835,000) of which the Agency has already expended Twelve Million Dollars ($12,000,000) in connection with the acquisition of the Agency Parcel.

(m) Tax Allocation Bonds. The Agency and Developer have entered into the Agreement described in Section 408.

(n) CFD and CFD Bonds. The Agency (or City) and the Developer have agreed on a proposed form of rate and method of special tax, petition to form a CFD, an acquisition and funding agreement, CFD policies and procedures, appraisal standards and the documents relating to the CFD Bonds to be presented to the Agency (or City) for consideration subject to the limitations set forth in Section 301.3 hereof.

205.2 Developer's Conditions Precedent. Developer's obligation to proceed with the Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (p), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, Agency shall not be in default in any of its obligations under the terms of this Agreement.

(b) Execution of Documents. The Agency shall have executed the Grant Deed and any other documents required hereunder and delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the condition of title of the Site, as provided in Section 202 hereof.

(d) Site Condition. Developer shall have determined, in its sole and absolute discretion, and advised Agency in writing that the Site Condition is satisfactory in accordance with Sections 201.4, 204 and 301.2 hereof.

(e) Relocation, Demolition and Clearance of the Site. The Agency shall have relocated occupants and demolished and cleared the Site and removed all above ground structures located thereon and all substructures under existing buildings.

(f) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Title Policy for the Site upon the Close of Escrow, in accordance with Section 203 hereof.

(g) Land Use Approvals. The Developer shall have received all Land Use Approvals and Entitlements and building permits shall have issued with respect to the Improvements required pursuant to Section 303 hereof.

(h) Financing. The Developer shall have obtained the Construction Financing as provided in Section 311.1 hereof, and such construction financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the Construction Financing.

(i) Agency's Acquisition of the Third Party Property. Agency has acquired the Third Party Property in accordance with Sections 201.1 and/or 201.2 hereof.

(j) Adverse Conditions. No lawsuit (including by private parties), moratoria, or similar judicial or administrative proceeding or government action shall exist which would materially delay or significantly increase the cost of constructing the Agency Improvements.

(k) Approval of Hotel Operator, Franchisor and Franchise Agreement. The Developer shall have provided Agency and Agency shall have approved the Hotel Operator, Franchisor and a Franchise Agreement, which approval shall be granted if each comply with the terms of this Agreement, including without limitation, Section 301.1 and the Standards for Water Park Hotel.

(l) Pre-leasing and Approval of Tenant. Agency has approved the Tenant(s)/Operator(s) unless included in the list of Pre-approved Restaurant Tenant(s)/Operator(s).

(m) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(n) Development Agreement. Developer and City have executed a Development Agreement.

(o) Tax Allocation Bonds. The Agency and Developer have entered into the Agreement described in Section 408.

(p) CFD and CFD Bonds. The Agency (or City) and the Developer have agreed on a proposed form of rate and method of special tax, petition to form a CFD, an acquisition and funding agreement, CFD policies and procedures, appraisal standards and the documents relating to the CFD Bonds to be presented to the Agency (or City) for consideration subject to the limitations set forth in Section 301.3 hereof.

300. DEVELOPMENT OF THE SITE

301. Scope of Development.

301.1 Improvements. Developer shall develop the Site in substantial conformance with the Conceptual Site Plan, Land Use Approvals and the Scope of Development, within the time periods set forth in the Schedule of Performance. Once the Construction Drawings are approved by the Agency, as provided below, and the City, Developer's obligations under this Agreement with respect to Development Improvements shall be limited to ensuring that the Developer Improvements are constructed in accordance with the Construction Drawings. Developer shall diligently improve the Site with the Developer Improvements. The physical quality of the Hotel, including, without limitation, construction quality, finish material, lighting, landscaping and site amenities shall be comparable, at a minimum, to that achieved at Great Wolf Lodge Resort located in Grapevine, Texas. In addition to the foregoing, the actual and direct third party construction costs for the Hotel shall not be less than Two Hundred Sixty-Five Thousand Dollars ($265,000) per room computed by dividing the total actual and direct third party construction costs by the number of rooms ("Construction Costs") excluding Furniture, Fixtures and Equipment. Following the issuance of the Release of Construction Covenants for the Developer Improvements and thereafter until the

expiration or termination of the Redevelopment Plan, the Developer Improvements and repair and maintenance thereof shall remain comparable in terms of quality and level of amenities to any such Developer Improvements as of the date of issuance of the Release of Construction Covenants; provided the foregoing is not intended to require Developer to take any action that might cause a violation of any Governmental Requirement, including without limitation, any regulations or building codes or, as a result of changes in laws, regulations or codes or other changed circumstances, require Developer to take any action to comply with the same that would make performance of the foregoing obligations commercially infeasible.

301.2 Agency Improvements. Subject to a determination by the Agency, acting in its sole and absolute discretion as to whether or not the actual and direct third party costs ("Agency Improvement Costs") of the items described in (a), (b) and (c) below (collectively "Agency Improvements") exceeds an amount which would render the transaction economically infeasible, Agency shall cause the following within the time set forth in the Schedule of Performance:

(a) Acquisition of the Site and relocation of all occupants of the Site in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation;

(b) The demolition and removal of all existing structures and improvements including foundations, and, subject to Section 204, remediation of any environmental hazards necessary to address any Recognized Environmental Concerns identified in a Phase II Environmental Site Assessment on the Site, 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;

(c) All offsite infrastructure, including CEQA mitigation required by Section 303, 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 subject site including both sides of Harbor Boulevard (collectively, "Agency Improvements").

The Agency's determination of the Agency Improvement Costs shall be made no later than the date set forth in the Schedule of Performance by written notice to the Developer. If Agency disapproves the Agency Improvements Costs, it shall give notice to the Developer of such disapproval in accordance with the Schedule of Performance and such notice shall include (a) the specific amount by which any cost exceeds the amount by which the Agency would approve and (b) back up information supporting the Agency's determination of it's own budgeted expenses for such costs in sufficient detail to allow Developer to determine whether or not, without obligation, to pay any such excess of such Agency Improvement Costs in lieu of termination of the Agreement.

301.3 Parking Structure. The Developer or its designee will construct a multi-level Parking Structure consisting of approximately 1200 parking spaces, as generally shown on the Site Map ("Parking Structure") as set forth herein:

(a) Subject to applicable law, it is the intent of the Agency to (or to request the City to) initiate proceedings to form a CFD and use the proceeds of an issuance of CFD Bonds to finance the construction of the Parking Structure, assuming that it is economically feasible to do so and subject to the Agency's (or City's, as appropriate) legislative requirements as set forth in the CFD Act. The parties acknowledge that the sole property subject to the special tax levied by such CFD would be the Site. The parties' preference is to use tax-exempt CFD Bonds but acknowledge that such issuance will be subject to then applicable Internal Revenue Code requirements. If and to the extent tax-exempt CFD bonds cannot be issued the parties will in good faith explore the use of taxable CFD bonds.

Developer acknowledges that there are significant conditions precedent to the legal authority of the Agency to proceed with the formation of the CFD and the issuance of the CFD Bonds, and the subsequent use of the proceeds of sale of the CFD Bonds for the acquisition of the Parking Structure, including the making of findings following a public hearing on the advisability of forming the CFD and authorizing the CFD Bonds, and the requirement that the Parking Structure has been constructed as if under the control and supervision of the Agency. Nothing herein shall bind the legislative discretion of the Agency with respect to any of such matters. The parties expect that an acquisition/funding agreement will be entered into by the Developer and the sponsor of the CFD which will address the formation of the CFD, the issuance of the CFD Bonds and the application of the proceeds in further detail.

If the Agency or City does not, for any reason, form a CFD and/or issue CFD bonds on conditions reasonably acceptable to both parties then, unless such formation and/or issuance is waived in writing by Agency and/or Developer, this Agreement may be terminated by the Developer, without further liability or obligation.

(b) Subject to its right to terminate the DDA as set forth in subsection (a) above, if a CFD is not formed and/or if the Parking Structure is not acquired by the Agency through the issuance of either taxable or tax-exempt CFD Bonds, the Parking Structure may be privately owned and constructed, financed and operated by Developer or its designee.

301.4 Design Review. The Developer Improvements shall be subject to Design Review by the Agency within the timeframe set forth in the Schedule of Performance.

302. Construction Drawings and Related Documents. 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 Site (the "Construction Drawings"). 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. The Agency shall not have the right to disapprove any current set of Construction Drawings unless they are materially inconsistent with the review requirements of the immediately preceding sentence.

303. Land Use Approvals. Except as otherwise expressly set forth herein, prior to commencement of construction of the Developer Improvements upon the Site, 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 (the "Land Use Approvals"). Notwithstanding anything to the contrary herein, Developer and Agency acknowledge and agree that Agency shall prepare, at Agency's expense, and process all documentation required by the California Environmental Quality Act ("CEQA") with respect to the Project. Except as to the Agency Improvements, costs of any Project related on-site (as described in Paragraph I.E. of the Scope of Development) CEQA mitigation shall be borne by Developer, the cost of which shall be subject to Developer's approval as a condition to Developer's obligation to proceed with any such mitigation. Developer acknowledges that compliance with any such CEQA mitigation shall be a condition under applicable law for proceeding with the Project.

304. Schedule of Performance. Provided that the Agency has timely met its respective obligations under the Schedule of Performance and subject to the application of Section 602 hereof, 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.

305. Cost of Construction. Except as otherwise expressly set forth herein, including Section 303 and costs relating to Agency Improvement, all of the cost of planning, designing, developing and constructing all of the Developer Improvements, including but not limited to the securing of Land Use Approvals, permits, and entitlements of any kind, compliance with any and all environmental laws and regulations, and payment or other satisfaction of development impact fees payable in connection with the Developer Improvements, shall be borne solely by Developer.

306. Insurance Requirements. Developer shall obtain and maintain at its sole cost and expense, or shall cause its contractor or contractors to take out and maintain at their sole cost and expense, until the issuance of the Release of Construction Covenants pursuant to Section 310 of this Agreement, the insurance coverages described in this Section 306, with the coverage limits, conditions, and endorsements defined herein:

306.1 Insurance Coverage. Prior to the earlier to occur of the (i) Developer's exercise of a right of entry under the Right of Entry and Reimbursement Agreement or (ii) the Closing, the following policies shall be obtained and maintained by Developer or its contractor or contractors covering all activities relating to construction of Developer Improvements at the Site:

(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.

(b) 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), including coverage for liability arising out of the use of owned, non-owned, leased, or hired automobiles for performance of the work. As used herein the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle

code. Such insurance shall apply to all operations of Developer or its contractors and subcontractors both on and away from the Site. In the event that any drivers are excluded from coverage, such drivers will not be permitted to drive in connection with construction of the Developer Improvements.

(c) Workers' compensation insurance as required by law.

Except for workers compensation insurance which shall be placed with The State Compensation Fund, acceptable insurance coverage shall be placed with carriers admitted to write insurance in California, or carriers with a rating of or equivalent to A:VII by a.m. Best Company. Any deviation from this rule shall require specific approval in writing from the Agency's risk manager or City Attorney. Any deductibles or self-insured retentions in excess of $250,000 must be declared to and approved the Agency.

306.2 Policy Provisions. A certificate or certificates evidencing coverage described in subsections (a) through (c) above (the "Insurance") shall be submitted to the Agency prior to issuance of building permits for and commencement of the construction of the Developer Improvements, which certificates shall be accompanied by appropriate policy endorsements stating that:

(a) The Insurance shall be primary insurance for losses at the Site, and will be noncontributing with respect to any other insurance carried by Developer or its contractor(s) with respect to any losses which do not arise out of the construction of Developer Improvements, and any other insurance carried by the Agency or City which may be applicable shall be deemed to be excess insurance and the Insurance shall be primary for all purposes despite any conflicting provision in the Insurance to the contrary;

(b) Not less than ten (10) days advance notice shall be given in writing to the Agency and the City prior to any material change, cancellation, termination, non-renewal, or reduction in coverage of the Insurance;

(c) The City and the Agency and their respective officers, employees, representatives, and agents are named as additional insureds. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by the Agency or the City.

Upon request by Agency, Developer shall provide Agency with complete insurance policies evidencing coverage as required herein. Certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. If required by Agency, Developer shall, from time to time, increase the limits of its general and automobile liability insurance to reasonable amounts customary for owners of improvements similar to those on the Site.

Notwithstanding anything to the contrary set forth in this Section, Developer's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Developer or its affiliate; provided, however, (i) that the City of Garden Grove, the Agency, their officers, agents and employees shall be named as an additional insureds as its interest may appear and (ii) that the

coverage afforded Agency, et. al., will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) that the requirements set forth herein are otherwise satisfied.

The obligations set forth in this Section 306.2 shall remain in effect as to any portion of the Site only until a Release of Construction has been furnished for such portion of the Site as hereafter provided in Section 310 of this Agreement.

306.3 Mutual Waivers. Except as otherwise set forth in Section 307 hereof, Agency and Developer hereby waive any rights each may have against the other, on account of any loss or damage occasioned to Agency and any additional insured parties and Developer, as the case may be, or the Site, arising from any loss generally covered by all-risk insurance; and the parties each, on behalf of their respective insurance companies insuring the property of either Agency and Developer against any such loss, waive any right of subrogation that such insurer or insurers may have against Agency and Developer, as the case may be. The foregoing mutual waivers of subrogation shall be mutually operative only so long as available in the state in which the Site is situated and provided further that no such policy is invalidated thereby.

307. Developer's Indemnity. Except as set forth in Section 204.2 with respect to Hazardous Materials and except to the extent caused by a failure of Agency's warranties for representations or Default by Agency hereunder, Developer shall Indemnify (with one (1) counsel reasonably acceptable to the Agency, unless there is a conflict of interest by, among or between any of the Indemnitees, whether individuals or entities in which case separate counsel shall be provided by Developer for each such Indemnitee) the Indemnitees from and against any and all Liabilities which result from the performance of this Agreement by Developer or Developer's ownership, development, use, or operation of the Site or any portion thereof excepting those Liabilities which are caused by the Indemnitees' (or any of them) gross negligence or willful misconduct. The Agency, City and Developer agree to fully cooperate with one another in any case where no conflict of interest between the parties is apparent. Without limiting the generality of the foregoing, Developer specifically agrees to indemnify, defend and hold harmless Agency and City from any Liabilities resulting from Developer's failure to comply with all applicable laws in accordance with Section 309 hereof.

308. Rights of Access. Representatives of the Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements and so long as Agency representatives comply with all safety rules and do not unreasonably interfere with the work of Developer. Agency shall defend, indemnify, assume all responsibility for and hold the Developer harmless from and against any and all third party liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees of any kind or nature and for any damages, including damages to property or injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which result from the exercise of such entry. Representatives of the Developer shall have the right of access to those portions of the Site owned by Agency without charges or fees during normal construction hours for the purpose of Investigation and Grading (as those terms are defined in the Right of Entry and Reimbursement Agreement).

309. Compliance with Governmental Requirements. Developer shall carry out the design, construction and operation of the Project in conformity with all Governmental Requirements.

309.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, with respect to the construction and operation of the Project, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, *et seq.*, the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of the Agency access to its employment records related to this Agreement during regular business hours at Developer's principal office in Garden Grove, California to verify compliance with these provisions when so requested by the Agency.

310. Release of Construction Covenants. Following Completion of the Developer Improvements in conformity with this Agreement and within thirty (30) calendar days following receipt of a written request from Developer, the Agency shall furnish Developer with a Release of Construction Covenants for the completed Developer Improvements or portion thereof. The Agency shall not unreasonably withhold or delay such Release of Construction Covenants. The Release of Construction Covenants shall be conclusive determination of satisfactory completion of the Developer Improvements (or the part thereof identified in the Release of Construction Covenants) and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site (or part thereof which is the subject of Release of Construction Covenants) shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Sections 400 of this Agreement. If the Agency refuses or fails to furnish the Release of Construction Covenants for the Site (or part thereof) after written request from Developer, the Agency shall, within thirty (30) working days of receiving such written request, provide Developer with a written statement setting forth the reasons the Agency has refused or failed to furnish the Release of Construction Covenants for the Site (or part thereof). The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants, which list shall be based on the requirements set forth in the Construction Documents. If the reason for the Agency's refusal to issue the Release of Construction Covenants is due to lack of availability of specific landscape and/or finish materials, the Developer may provide a completion bond reasonably acceptable to the Agency, in which case the Developer shall thereby become entitled to the Release of Construction Covenants.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code, Section 3093.

311. Financing of the Developer Improvements.

311.1 Approval of Financing. Prior to the Close of Escrow and in accordance with the Schedule of Performance, Developer shall have submitted evidence to the Agency that Developer has equity capital and/or a lender commitment from an institutional lender ("Construction Lender") for the construction of the Developer Improvements in accordance with this Agreement ("Construction Financing"). In addition, such Construction Financing shall be funded or ready to fund in accordance with Sections 205.1(f) and 205.2(h) hereof. Agency shall have the right to review and approve any such Construction Financing in its reasonable discretion. The Agency shall approve Construction Financing if the debt portion, if any, is issued by an institutional lender, together with Developer's equity (and, if applicable, the commitment of a Tenant to reimburse the Developer for all or any portion of the costs of the Developer Improvement), is in an amount not less than the cost of the Developer Improvements and conditioned only upon Closing. Developer and Agency agree that Developer shall be solely responsible for all financial obligations under such financing.

311.2 Holder Not Obligated to Construct Developer Improvements. The holder of any mortgage or deed of trust authorized by this Agreement (a "Holder") shall not be obligated by the provisions of this Agreement to construct or Complete the Developer Improvements or any portion thereof, or to guarantee such construction or Completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such Holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such Holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or Developer Improvements provided for or authorized by this Agreement.

311.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the Agency delivers any notice of default ("Notice of Default") or demand to Developer with respect to any breach or default by Developer in the construction of the Developer Improvements, and if Developer fails to cure the Default within the time set forth in Section 501, the Agency shall deliver to each Holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such Holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such Default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however if the Holder is legally prevented from curing such default because of a bankruptcy by the Developer or because such cure requires physical possession of the Site then the thirty (30) day period shall be tolled until such bankruptcy is confirmed, rejected or otherwise resolved or the Holder has obtained lawful physical possession of the Site. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to the Agency by written agreement reasonably satisfactory to the Agency which election to assume may be made within ninety (90) days following Holder's securing of title to the Property. Such assumption shall not have the effect of causing the Holder to be responsible for any prior damage obligations of Developer to the Agency. The Holder, in that event, must agree to complete, in the manner provided in this Agreement, the Developer Improvements. Any such Holder properly completing the Developer Improvements shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty

(30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced foreclosure proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the default.

311.4 Failure of Holder to Complete Developer Improvements. In any case where, thirty (30) days after the Holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a Notice of Default by Developer in Completion of construction of any of the Developer Improvements under this Agreement, and the Holder has not exercised the option to construct as set forth in Section 311.3, or if it has exercised the option but has defaulted thereunder and failed to timely cure such default, the Agency may, by giving written notice to the Holder, purchase the mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the Holder, the Agency, if it so desires, shall be entitled to a conveyance of title to the Site or such portion thereof from the Holder to the Agency upon payment to the Holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure including reasonable attorneys' fees;

(c) The net expense, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent management of the Site or part thereof;

(d) The costs of any Developer Improvements made by such Holder;

(e) Any prepayment charges, default interest, and/or late charges imposed pursuant to the loan documents and agreed to by Developer; and

(f) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

311.5 Right of the Agency to Cure Mortgage or Deed of Trust Default. In the event Developer receives a notice of default on any mortgage or deed of trust prior to the Completion of the construction of the Developer Improvements and issuance of a total Release of Construction Covenants, Developer shall immediately deliver to the Agency a copy of such notice of default. If the Holder of any mortgage or deed of trust has not exercised its option to construct, the Agency shall have the right but not the obligation to cure the default. The Agency shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by the Agency in curing such default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements.

400. COVENANTS AND RESTRICTIONS

401. Covenant to Develop, Use and Operate the Site in Accordance with Redevelopment Plan, Land Use Approvals, and this Agreement. Until expiration of the Redevelopment Plan, Developer covenants and agrees for itself and its successors, assigns, and every successor in interest to the Site or any part thereof that Developer and such successors and assignees, shall use and operate the Site in accordance with the Redevelopment Plan, the Land Use Approvals, and this Agreement, and except for a Holder who, pursuant to Section 311, has not elected to assume Developer's obligations hereunder to construct, shall construct and Complete the Developer Improvements in accordance with the Land Use Approvals, Scope of Development, Section 301.1, and Schedule of Performance.

402. Maintenance and Security Covenants. Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain, at Developer's sole cost and expense, the Site and all Developer Improvements thereon, in compliance with the terms of the Declaration, the Redevelopment Plan and with all applicable Governmental Requirements. The operation, use, security and maintenance of the Site, shall be accomplished in accordance with the Covenants and Declaration, (to be approved by the parties prior to Closing) consistent with other first-class hotel/retail/restaurant projects in Orange County, and shall include regular landscape maintenance, graffiti removal, and trash and debris removal.

403. Nondiscrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Improvements or the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Site. The foregoing covenants shall run with the land.

All deeds, leases or contracts with respect to the Project or the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status,

nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

b. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."
>
> "Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

c. **In contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

404. Prevailing Wages. With respect to the construction of the Developer Improvements on the Site set forth herein and in the Scope of Work, and the construction of the Parking Structure, if constructed by Developer, Developer 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 pertaining thereto. Such requirements are set forth in greater detail in Exhibit J attached hereto and incorporated herein by reference. Upon the periodic request of the Agency, the Developer shall certify to the Agency that it is in compliance with the requirements of this Section 404. Developer shall indemnify, protect, defend and hold harmless the Agency and its officers, employees, contractors and agents, with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 405, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion of the construction and development of the Developer Improvements by the Developer.

405. Point of Sale and/or Use. The Developer, for itself and for its general contractor and subcontractor, agrees to obtain a State Board of Equalization sub-permit for the jobsite and allocate all eligible use tax payments to the City of Garden Grove and provide the Agency with either a copy of the sub-permit or a statement that the use tax does not apply to this portion of the job, to insure that the City of Garden Grove is the point of sale and/or use under the Bradley Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code, as amended from time to time).

406. Agency Use of Hotel Facility. During the period of five (5) years commencing upon the date the Hotel opens for business to the public, 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.

407. Effect of Violation of the Terms and Provisions of this Agreement. The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the Covenants, for

and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the Covenants have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site. The Agency shall have the right (subject to Section 501 below), upon a Default by Developer of this Agreement, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and Covenants may be entitled. The Covenants contained in Sections 103, 301, 309, and 401, 402, 404 and 406, and the Declaration shall remain in effect until the expiration of the Redevelopment Plan, as it may be amended from time to time. The Covenants set forth in Sections 204.2, 204.3, 307, 403, and 603 shall remain in effect in perpetuity. The Covenants described in Sections 304, 305, 306, 308, 405 and 503 shall remain in effect until the issuance of a Release of Construction Covenants and so long thereafter as shall be necessary to enforce a Default(s) thereunder. The Covenants set forth in Section 407 shall remain in effect in accordance with the terms set forth therein.

408. Covenant Consideration. In consideration for the granting of the Covenants by the Developer to the Agency and provided Developer is not in Breach and/or Default hereunder or in default with respect to the special tax under the CFD, Agency shall pay to the Developer the all cash sum of Forty-Seven Million Dollars ($47,000,000) ("Covenant Consideration") as follows: (a) Five Million Dollars ($5,000,000) concurrently with the Commencement of Construction of the Parking Structure, and (b) Forty-Two Million Dollars ($42,000,000) thirty (30) days after the later of the date on which (i) the Hotel Opens for business or (ii) the Certificate of Occupancy for the Hotel. The parties acknowledge that the Agency intends to issue its tax allocation bonds to pay the Forty-Two Million Dollars ($42,000,000) described above through an issuance of tax allocation bonds (the "Tax Allocation Bonds") sized to net Forty-Two Million Dollars ($42,000,000). As a Condition Precedent to Closing, the Agency and the Developer shall have reached agreement, in general conformity with Section 408.1 below, each acting in their respective sole and absolute discretion, as to the scope of Agency's contingencies with respect to the Agency's obligation to issue Tax Allocation Bonds.

In addition, if and only if Developer imposes a Resort 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 receives the Covenant Consideration, and so long as, and to the extent such TOT Differential remains 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%). Anything to the contrary herein notwithstanding the Agency's obligations hereunder are unsecured and no agency obligation hereunder are or shall be secured in whole or in part by a pledge of tax revenues allocated to the Agency pursuant to the Redevelopment Law.

408.1 Further Assurances Regarding Tax Allocation Bonds. To provide Developer further assurance that the Agency will maximize its ability to issue the Tax Allocation Bonds described in Section 408, the Agency covenants and agrees that as long as the Covenant Consideration is due and Developer is not in Default hereunder:

(a) **Limitation on Superior Debt; Compliance with Plan Limitations.** The Agency shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case secured by a lien on all or any part of the tax increment revenues for the Project Area which is or will be superior to or on a parity with the lien to be established for the Tax Allocation Bonds, excepting only (i) bonds, notes or other obligations secured by tax increment revenues chargeable to the Agency's Low and Moderate Income Housing Fund, and (ii) any obligations issued for the principal purpose of refinancing the Agency's obligations with Union Bank of California in the current principal amount of Thirty-Two Million Dollars ($32,000,000) (inclusive of costs of issuance, and required reserves, etc.). In addition, the Agency shall take no action, including but not limited to the issuance of its bonds, notes or other obligations, which causes or which, with the passage of time would cause, any of the Agency's plan limitations to be exceeded or violated, as such limitations relate to the maximum amount of tax increment to be allocated to the Agency for the Project Area, or the bonded indebtedness limit for the Project Area.

(b) **SERAF Obligation.** The Agency shall comply with California Health and Safety Code Sections 33690 and 33690.5 (the "SERAF Statute") in full and at such time as the Agency is required to do so under applicable law so as to not be subject to any of the penalties associated with such statute under Health & Safety Code Section 33691, if such penalties would materially adversely affect the Agency's ability to issue the Tax Allocation Bonds. In addition, to the extent permitted by law, the Agency will take such steps as may be legally required to cause the SERAF Statute payment obligation to be junior and subordinate to the Tax Allocation Bonds,, provided nothing in this covenant shall require the Agency to engage in litigation or issue Tax Allocation Bonds earlier than the date the Covenant Consideration is due.

(c) **Tax Sharing Payments.** To the extent the Agency is liable for tax sharing payments pursuant to Health and Safety Code Sections 33607.5 and 33607.7 (or any successor statutes) the Agency will, to the extent permitted by law and reasonably necessary to facilitate the issuance of the Tax Allocation Bonds, request subordination of the obligations to Taxing Entities to the Agency's obligations under the Tax Allocation Bonds; provided, the Agency shall be under no obligation to contest any objection to such subordination submitted by any Taxing Entity in response to such a request for subordination.

(d) **Consideration of Tax Allocation Bonds.** At such time as the Developer delivers written notice to the Agency, with supporting documentation, that the Covenant Consideration will be due and payable within six (6) months of the date of the notice, the Agency will proceed to promptly engage a financial adviser and fiscal consultant to review the feasibility with respect to the issuance of the Tax Allocation Bonds, and shall deliver to the Developer within thirty days of such written notice a schedule of events relative to the Agency's issuance of such Tax Allocation Bonds, and shall thereafter consult in good faith with the Developer regarding issuance of the Tax Allocation Bonds. If at any time during or prior to this period the Agency determines that it will not be able to issue Tax Allocation Bonds in amounts sufficient to pay the Covenant Consideration when due, the Agency will nonetheless issue Tax Allocation Bonds to the extent legally permissible in such amounts as it determines are feasible taking into account the factors described in Section 408, and shall pay the balance of the Covenant Consideration not paid from the proceeds of the Tax Allocation Bonds, plus interest at a rate equal to the yield of the Tax Allocation Bonds, from "Available Agency Revenues" and shall enter into such further arrangements with the Developer or its assigns as may be reasonably required to document such payment obligation. "Available Agency Revenues" shall mean tax increment allocated to the Agency

pursuant to the Redevelopment Law following payment, if any, and all obligations having a prior lien on such tax increment within the meaning of Health & Safety Code Sections 33641.5 and 33671.5, less (i) housing set aside, (ii) any future SERAF or similar obligations if lawful, and/or (iii) statutory pass-throughs and other existing pass-throughs.

408.2 Hotel Expansion. In addition to the Covenant Consideration set forth in Section 408 and subject to fulfillment of the requirements of Health & Safety Code Section 33433 of the Redevelopment Law, should Developer commence construction of all or a part of the Hotel Expansion prior to the fifth (5th) anniversary date of the Date of this Agreement, Developer shall be entitled to additional Covenant Consideration payable from Agency Tax Increment Revenue using the following formula: (i) Fifty percent (50%) of the actual Tax Increment Revenue generated from the Hotel Expansion, (ii) plus fifty percent (50%) of the net increase in Transient Occupancy Tax Revenues generated by the Hotel after the opening of the Hotel Expansion (iii) plus Fifty percent (50%) of the net increase in sales tax generated by the Developer Improvements after the opening of the Hotel Expansion.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to Enforced Delay and compliance with the provisions of this Agreement which provide for the protection of Mortgagee rights, including the provisions of Section 311 of this Agreement, failure or delay by either party to perform any material term or provision of this Agreement (a "Breach") following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion("Cure Period"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a "Default" hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

AGENCY SHALL ALSO BE REQUIRED TO SEND NOTICES OF DEFAULT TO EACH MORTGAGEE FOR WHICH AGENCY HAS RECEIVED A MORTGAGEE NOTICE.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the

County of Orange, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California.

503. Re-entry and Revesting of Title in the Agency After the Closing and Prior to Completion of Construction. Without limiting the rights as set forth in Section 311, and without affecting the priority of the lien of the Holder's deed of trust or mortgage, the Agency has the right, at its election, to reenter and take possession of Site with all Developer Improvements thereon, and terminate and Revest in the Agency the estate conveyed to the Developer only if after the Closing and prior to the issuance of the final Release of Construction Covenants, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements as required by this Agreement for a period of ninety (90) days after Notice thereof from the Agency subject to extension pursuant to Section 602; or

(b) abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of ninety (90) days after Notice thereof from the Agency subject to extension pursuant to Section 602; or

(c) contrary to the provisions of Section 103 hereof, Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer, if it is a Transfer requiring approval by the Agency, is not rescinded within thirty (30) days of Notice thereof from Agency to Developer.

Such right to reenter, terminate and Revest is subject to the quiet enjoyment, and, if applicable, the right to continue to complete construction by (i) Tenants or other occupants who have (a) executed leases or subleases and (b) incurred substantial expenses in connection with the design and/or construction of improvements required to be constructed by such Tenant under such lease or sublease and (ii) Developer, in the case where the Developer is in Default and, vis a vis a Holder or its Nominee, shall be exercisable only if:

1. Such Holder (or its Nominee) (a) shall have failed to cure any Default within the applicable cure periods granted to such Holder (or its Nominee), or (b) shall have given Agency written notice that it will not cure any such Default or condition or that it will otherwise not comply with the terms and conditions of this Agreement, and

2. Agency, within ninety (90) days after the occurrence of any events described in subparagraph 1. immediately above, shall commence the exercise of its right of entry and shall pay to Holder (or its Nominee) in immediately available funds, the Loan Balance prior to Revesting.

In the event of a failure or refusal to cure a Default, as described in subparagraph 1. above, Agency's sole remedy *vis a vis* Holder shall be the exercise of the re-entry right and Revesting in accordance herewith. Nothing herein shall be construed to prohibit or limit the Agency's exercise of its power of eminent domain.

The conditions to the commencement of the exercise of the Agency's right to re-enter and Revest as described above shall be applicable whether the re-entry and Revesting occurs (a) prior to foreclosure (or deed in lieu of foreclosure) by the Holder (or its Nominee) under its mortgage or

deed of trust; or (b) after Holder (or its Nominee) acquires title to the Site by foreclosure (or deed-in-lieu of foreclosure) under its mortgage or deed of trust.

The applicable Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right as set forth in this Section 503, under specified circumstances prior to recordation of the Release of Construction Covenant, to reenter and take possession of the Site, with all improvements thereon, and to terminate and Revest in the Agency the estate conveyed to the Developer. Upon the Revesting in the Agency of title to the Site, as provided in this Section 503, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of constructing or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site, or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof, shall be applied:

(i) First, to reimburse the Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by the Agency or the City in connection with the recapture, management and resale of the Site, or part thereof (but less any income derived by the Agency from the Site, or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site, or part thereof which the Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site, or part thereof at the time or Revesting of title thereto in the Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the constructing or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the Agency, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) actual and direct third party costs incurred by the Developer for the Developer Improvements existing on the Site, at the time of the re-entry and possession, less (b) any gains or net income received by the Developer from the Site, or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 503, except as may otherwise be provided in this Section 503, are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the Site, to the Developer for redevelopment purposes, and not for speculation in undeveloped land.

504. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of

one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

505. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

506. Applicable Law. The laws of the State shall govern the interpretation and enforcement of this Agreement.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefore is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy, or email or overnight delivery service to:

To Agency:	Garden Grove Agency for Community Development 11222 Acacia Parkway Garden Grove, California 92842 Attention: Agency Director
with a copy to:	Stradling, Yocca, Carlson & Rauth 660 Newport Center Drive, Suite 1600 Newport Beach, California 92660 Attention: Thomas P. Clark, Jr.
To Developer:	McWhinney Real Estate Services 2725 Rocky Mountain Avenue, Suite 200 Loveland, Colorado 80538 Attention: Doug Hill
with a copy to:	Latham & Watkins LLP 355 South Grant Avenue Los Angeles, California 90071 Attention: Ursula Hyman

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

602. Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; eminent domain actions filed by the Agency pursuant to Section 201.2 including, without limitation, relocation obligations in

connection therewith and inverse condemnation actions (but only if and to the extent Item No. 9 of the Schedule of Performance is delayed), inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; unanticipated subsurface conditions that delay performance; lack of transportation; governmental restrictions or priority; building moratoria; unusually severe weather; or acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency) ("Enforced Delay"): Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period reasonably attributable to the Enforced Delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Agency and/or Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to Complete the Developer Improvements shall not constitute grounds of Enforced Delay pursuant to this Section 602.

603. Non Liability of Officials and Employees of Agency, City and Developer. No member, official or employee of either party or of the City shall be personally liable to the other party or the City, or any successor in interest, in the event of any Default or Breach by the either party or for any amount which may become due to either party or their successors, or on any obligations under the terms of this Agreement.

604. Relationship Between Agency and Developer. It is hereby acknowledged that the relationship between the Agency and Developer is not that of a partnership or joint venture and that the Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Exhibits hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site.

605. Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Agency Director or his or her designee is authorized to act on behalf of Agency unless specifically provided otherwise or the context should require otherwise.

606. Commencement of Agency Review Period. The time periods set forth herein and in the Schedule of Performance for the Agency's approval of agreements, plans, drawings, or other information submitted to the Agency by Developer and for any other Agency consideration and approval hereunder which is contingent upon documentation required to be submitted by Developer shall only apply and commence upon the complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of the Agency's obligations of review and/or approval hereunder; provided, however, that the Agency shall notify Developer of an incomplete submittal as soon as is practicable.

607. Successors and Assigns. All of the terms, covenants, conditions, representations, and warranties, of this Agreement shall be binding upon Agency and Developer and their respective permitted successors and assigns. Whenever the term "Developer" or "Agency," as the case may be,

is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

608. Assignment by Agency. The Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld; provided, however, that the Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of Developer.

609. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

610. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 45 (includes signature page) and Exhibits A through M, (each such Exhibit incorporated in this Agreement as if fully set forth herein) which together constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

611. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Costs recoverable for enforcement of any judgment shall be deemed to include reasonable attorneys' fees.

612. Administration. This Agreement shall be administered and executed by the Agency Director, or his/her designated representative, following approval of this Agreement by the Agency. The Agency shall maintain authority of this Agreement through the Agency Director (or his/her authorized representative). The Agency Director shall have the authority but not the obligation to issue interpretations, waive provisions, approve the Declaration, extend time limits, make minor modifications to prior Agency design approvals, and/or enter into amendments of this Agreement on behalf of the Agency so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the Agency as specified herein as agreed to by the Agency Board, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the Agency Board.

613. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

614. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the

context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

615. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

616. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

617. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

618. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded in which case such day is the day following the excluded day(s). The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time.

619. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

620. Time of Essence. Time is expressly made of the essence with respect to the performance by the Agency and Developer of each and every obligation and condition of this Agreement.

621. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. In this regard, Developer and the Agency agree to mutually consider reasonable requests for amendments to this Agreement and/or other estoppel documents. The party making the request shall be responsible for the costs incurred by the other party, including without limitation attorneys' fees, (the "Amendment/Estoppel Costs") in connection with any amendments to this Agreement and/or estoppel documents which are requested by such party (the "Developer/Agency Request") regardless of the outcome of the Developer/Agency Request.

622. Conflicts of Interest. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

623. Time for Acceptance of Agreement by the Agency. This Agreement, when executed by Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

624. Consideration of Agreement Modification. The Parties recognize that due to the changing economic conditions as it relates to hotel development, there is a possibility that the terms described herein will need to be modified based on requirements of the Franchisor, Hotel Operator and/or Construction Lender and/or other debt or equity contributors. With this in mind, the parties agree that in such event, the Parties agree that they will discuss any such requested modifications with the idea in mind of modifying or amending this Agreement, if required, with each Party acting in their sole and absolute discretion and without any commitment to the other to agree to any such requested modification or revision.

625. Recordation of Memorandum of Agreement. The Memorandum of Agreement shall be recorded concurrently with the Close of Escrow and the terms hereof shall survive Closing and run with the land for the period of time set forth herein.

[*SIGNATURES ON NEXT PAGE*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

Dated: May 11, 2010

By: _____
Agency Director

ATTEST:

_____
Agency Secretary

APPROVED AS TO FORM:

_____
Thomas P. Clark, Jr.
Agency General Counsel

DEVELOPER:

GARDEN GROVE MXD, LLC, a Colorado limited liability company

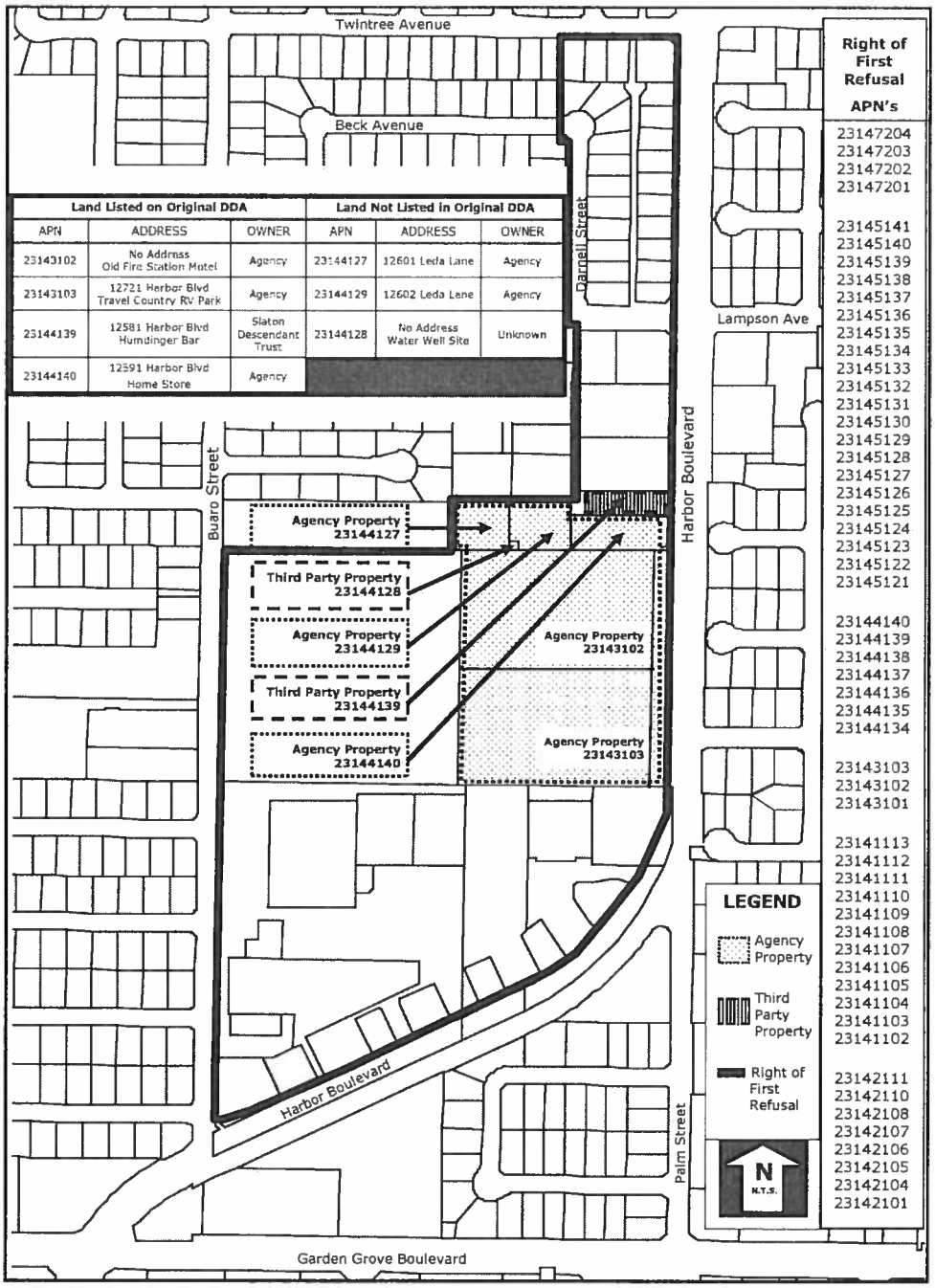
By: McWhinney Real Estate Services, Inc., a Colorado corporation, Manager

Dated: _____, 20___

By: _____
Douglas L. Hill
Chief Operating Officer

EXHIBIT A

SITE MAP



Land Listed on Original DDA			Land Not Listed in Original DDA		
APN	ADDRESS	OWNER	APN	ADDRESS	OWNER
23143102	No Address Old Fire Station Motel	Agency	23144127	12601 Leda Lane	Agency
23143103	12721 Harbor Blvd Travel Country RV Park	Agency	23144129	12602 Leda Lane	Agency
23144139	12581 Harbor Blvd Humdinger Bar	Slaton Descendant Trust	23144128	No Address Water Well Site	Unknown
23144140	12591 Harbor Blvd Home Store	Agency			

Right of First Refusal APN's
23147204
23147203
23147202
23147201
23145141
23145140
23145139
23145138
23145137
23145136
23145135
23145134
23145133
23145132
23145131
23145130
23145129
23145128
23145127
23145126
23145125
23145124
23145123
23145122
23145121
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23144138
23144137
23144136
23144135
23144134
23143103
23143102
23143101
23141113
23141112
23141111
23141110
23141109
23141108
23141107
23141106
23141105
23141104
23141103
23141102
23142111
23142110
23142108
23142107
23142106
23142105
23142104
23142101

EXHIBIT A-1

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1 APN 231-441-39

THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

EXCEPT THEREFROM THE SOUTH 100.00 FEET THERE OF.

ALSO EXCEPT THEREFROM THE NORTH 490.00 FEET THEREOF.

ALSO EXCEPT THEREFROM THE EAST 60.00 FEET THEREOF.

PARCEL 2 APN 231-441-40

THE SOUTH 100.00 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 20 WEST, IN RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNT RECORDED OF SAID COUNTY.

EXCEPT THEREFROM THE EAST 60.00 THEREOF.

PARCEL 3 APN 231-431-02

THE EAST HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE EAST THE EAST 60.00 FEET THEREOF.

PARCEL 4 APN 231-431-03

THE EAST ON-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH RANGE 10 WEST, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDED OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION OF SAID LAND, WHICH LIES EAST OF A LINE CONCENTRIC TO AND PARALLEL WITH AND 60.00 FEET WEST OF THE EAST LINE OF SAID LOT.

PARCEL 5 APN 231-441-27

THE SOUTH 140.00 FEET OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, S. B. B. & M

PARCEL 6 APN 441-231-29

THE SOUTH 140.00 FEET OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, S. B. B. & M

EXHIBIT C

SCOPE OF DEVELOPMENT

Unless otherwise specified herein, all capitalized terms in the Scope of Development shall have the meaning(s) set forth for the same Disposition and Development Agreement (DDA) to which this Scope of Development is attached.

I. DEVELOPER IMPROVEMENTS

A. RESTAURANT

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct on the Site the Restaurant Component consisting of approximately eighteen thousand (18,000) square feet of gross leaseable area and required parking. The Developer will submit a list of possible restaurants for Agency review and approval.

   The design and architecture of the improvements for the restaurant(s) shall follow the City's General Plan, the Redevelopment Plan, the Harbor Corridor Specific Plan, and all other requirements and provisions of this Agreement, as applicable. The architecture for the restaurant(s) shall create a distinct and unique identity with a cohesive, integrated architectural style that complements the proposed Hotel and Water Park Components. In the event the restaurant(s) is a Themed Restaurant, the building design shall follow the traditional theme but be designed to also be compatible with and complementary to the proposed Hotel and Water Park Components.

B. HOTEL

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct the Hotel Component consisting a minimum of six hundred (600) rooms with approximately three (3) acres of indoor and/or outdoor water park described in Paragraph C below and in accordance with Section 301.1 of the DDA. The Hotel shall also include required parking, as well as a central lobby, full-service restaurant (with room service), specialty restaurant, cocktail bar, spa, gift shop(s), business center, fitness center, concierge service, and not less than fifteen thousand (15,000) square feet of meeting and business space. The Developer will submit a list of possible water park hotel flags and operators for Agency review and approval.

   The Project will be themed in nature with a multi-story lobby and motif of characters and/or animals for entertainment of the younger guests. Common areas will continue this consistent theme to create a comfortable environment for parents and a sense of adventure and fantasy for children.

Similarly, all guest rooms shall be themed, ranging in size from 385 square feet to over 970 square feet. There shall be a variety of room styles to meet the needs and preferences of the guests, including mix of one, two and three bedroom suites that can accommodate up to 8 people. All rooms will include flat screen TV's and high speed internet access, refrigerator and microwave and other standard items such as alarm clocks, hair dryer, iron and ironing board. The larger suites will provide separate bedrooms, private bathrooms, dining and living areas, and kitchens. A selection of rooms will have lofts, fireplaces and a private deck. There will also be luxury suites with king beds, plasma televisions and wireless internet access. All guest suites will have themed wallpaper, artwork and linens..

The design and architecture of the Hotel shall follow the City's General Plan, the Redevelopment Plan, the Harbor Corridor Specific Plan and the all other requirements and provisions of this Agreement, as applicable. The architecture shall be consistent with the cost estimates for construction provided in the Developer's Pro Forma, the Basic Concept and Design Development Drawings and the Construction Plans and Drawings. Particular attention shall be paid to massing, scale, color, and materials.

C. WATER PARK

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct the water park component to the Hotel at approximately three (3) acres of indoor and/or outdoor water park with features comparable to those provided by the Hotels in the approved list. Features will include some, but not necessarily all, of the following: spa(s), lazy meandering river(s), water tipping bucket tower, wave pool(s), activity pool (s), stand-up flow rider(s), tornado waterslide, extensive multi-level/multi-length waterslide(s), multi-length flume(s) (enclosed, translucent or open flumes), high and low-speed slide(s), zigzag slide(s), climbing net(s), water/spray jet(s), water gun(s), water fall(s), mushroom/umbrella stream(s), private poolside cabanas, sundeck for sunbathing, and shower down areas or Equivalent water amenities. The Developer will submit a list of possible water amenities for Agency review and approval.

2. The Developer shall submit to Agency for Agency review and approval the final wall, groundscape, and floor finishing for the approximately three (3) acres indoor and/or outdoor water park.

D. IMPROVEMENTS

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct all public improvements from the back of the curb face, including sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscape (but excluding traffic or pedestrian or traffic signal poles which are the responsibility of the Agency). All such

improvements shall be constructed in accordance with the Harbor Boulevard Streetscape Improvement Plan. Improvements include the west side of Harbor Boulevard from the most south boundary portion of the Site to the most north boundary portion of the Site.

E. TENTATIVE AND FINAL MAP

The Agency shall pay for and the Developer shall prepare and process the tentative and final parcel map for the Site.

II. AGENCY IMPROVEMENTS

The following shall be the sole cost and expense of the Agency:

1. Acquisition of the Site and relocation of all occupants of the Site in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation;

2. The demolition and removal of all existing structures and improvements, including foundations, and, subject to Section 204, remediation of any environmental hazards necessary to address any Recognized Environmental Concerns identified in a Phase II Environmental Site Assessment on the Site, 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;

3. All offsite infrastructure, including CEQA mitigation required by Section 303, 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 subject site including both sides of Harbor Boulevard. The Off-Site improvements shall include the west side and the center median of Harbor Boulevard from the most northeast boundary portion of the Site to the southwest corner of Twintree Lane (South side of Twintree Lane). The improvements will be consistent with the Harbor Boulevard Streetscape Improvement Plan, including palm trees, groundscape, permanent automatic irrigation system, lighting (street, pedestrian, and landscape), hardscape, and banners (Items II.1,2, and 3 are collectively, "Agency Improvements").

4. The Agency shall prepare the plans and specifications and construct, or cause the construction of, the Agency Improvements.

5. The provision of water, sewer, gas, cable television, and electricity to the Agency Property, although the point of connection will be the responsibility of the Developer, regardless of whether of whether the point of connection is at the property line of the Agency Property or within the public right-of-way adjacent to the Agency Property.

6. The provision for roadway and traffic improvements and traffic mitigation measures required to accommodate the Project.

7 The vacation or abandonment of all existing utilities on the Agency Property which would interfere with the proposed development, provided that the Developer agrees to grant easement rights which do not interfere with proposed buildings or which are required to serve the Developer Improvements.

II. ARCHITECTURE AND DESIGN

A. BUILDING DESIGN

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop construction plans and design documents shall be developed in compliance with the Land Use Approvals and shall be consistent with the Conceptual Site Plan. The architecture is expected to create an unique identity with a cohesive, integrated architectural style that complements the surrounding developments. Particular attention shall be paid to massing, scale, color, and materials in order to articulate the buildings elevations. The elevations shall, to extent as possible, avoid flat or one-dimensional elevations. Architectural attention shall be given to the main entrance/lobby of he building, which shall include a porte-cochere that complements the main building.

B. BUILDING SERVICE, PROJECT TRAFFIC AND MANAGEMENT

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a building service, project traffic and management plan. The Declaration shall include the following:

(a) A service plan that includes general times for deliveries, trash collection, street cleaning and the agreed upon routing for such service-vehicles. This plan shall include routing and stopping for patron drop-off and small service-vehicles including mail, overnight delivery and messengers as well as conference facility deliveries. This plan shall also include routing and marked areas for emergency services.

(b) A traffic plan that includes the Developer's commitment to arrange for traffic control officers at the entrances to the Parking Structure during holiday peak periods and for special events that are expected to generate large volumes of traffic.

(c) A maintenance and management plan that includes cleaning and refuse policing, no visibility into service areas from public streets, degreasing and deodorizing (particularly for the service, trash and garbage areas), re-stripping, re-painting, re-lighting, drainage cleaning, signage, graffiti management and security.

The Project shall be consistent with Section 301.1 of the DDA.

C. LANDSCAPING

All areas of the Site that are not used for buildings, sidewalks, driveways or other hardscape improvements shall be landscaped in accordance with a landscaping plan to be approved by the Agency. The Developer, at its sole cost and expense, shall be responsible for all these area. Landscaping shall consist of ground cover, trees, potted plants, and fountains, pools, or other water features, if applicable. A permanent automatic water sprinkler system shall be provided in all landscaped areas as required for adequate coverage/maintenance.

D. REFUSE

Refuse areas shall be provided in accordance with the requirements of the Land Use Approvals.

E. SIGNS

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a sign program. The Project shall have a comprehensive graphics/logos and sign program that shall govern the entire Project; all signs shall conform as to location, size, shape, illumination system, cabinet and copy face colors, letter style, shall be complementary to the overall architectural theme, and comply with the high standards of Underwriter Laboratories. The sign program to be approved by the Agency.

F. UTILITIES

The following shall be the sole cost and expense of the Developer:

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.

EXHIBIT D

SCHEDULE OF PERFORMANCE – CONDENSED SCHEDULE

	PERFORMANCE ITEM	DATE
1.	Agency and Developer execute DDA.	On or before March 30, 2009
2.	Agency and Developer open Escrow.	Within thirty (30) days after Agency and Developer execute DDA
3.	Agency acquires Third Party Property.	On or before the Closing.
4.	Developer completes its Site Investigation pursuant to Section 204.	On or before the Due Diligence Date.
5.	Developer submits and Agency approves the identity of the Hotel Operator, Franchisor, and Franchise Agreement and Developer executes the Franchise Agreement.	On or before August 12, 2010.
6.	Agency approves or rejects cost of Agency Improvements pursuant to Section 205.1(l).	On or before November, 2010.
7.	Developer submits completed application for PUD/Site Plan approval.	On or before March 2, 2011.
8.	City approves, conditionally approves or rejects PUD/Site Plan	On or before April 27, 2011.
9.	Developer provides evidence of financing.	On or before October 27, 2011.[1]
10.	Agency completes demolition, Site clearance and remediation, if applicable, pursuant to Paragraph II.1. of the Scope of Development	On or before March 27, 2012.[2]

[1] In the event the Franchise Agreement is in effect on October 27, 2011 and the Agency and Developer have not entered into the agreement described in Section 408 regarding Tax Allocation Bonds, the date for provision of evidence of financing shall be automatically extended until the earlier of (i) termination of the Franchise Agreement, or (ii) April 12, 2012. If, on April 12, 2012, the Franchise Agreement is still in effect, and the Agency and Developer still have not entered into the agreement described in Section 408 regarding Tax Allocation Bonds, the date for provision of evidence of financing shall be further automatically extended until the earlier of (i) termination of the Franchise Agreement, or (ii) October 12, 2012.

[2] The parties acknowledge that the completion of certain offsite improvements may be delayed so as to be constructed in coordination with the construction of the Project.

	PERFORMANCE ITEM	DATE
11.	Developer completes Construction Drawings	On or before May 27, 2012.
12.	Developer and Agency Close Escrow and Developer commences grading.	On or before May 27, 2012.
13.	Construction Commencement Date.	On or before July 27, 2012.
14.	Developer Completes the Project	Within twenty six (26) month after Close of Escrow.

GARDEN GROVE

CITY OF GARDEN GROVE
OFFICE OF THE CITY CLERK

Safeguard all official records of the City.
Conduct municipal elections and oversee legislative administration.
Provide reliable, accurate, and timely information to the City Council, staff, and the general public.

September 15, 2010

McWhinney
2725 Rocky Mountain Avenue, Suite 200
Loveland, Colorado 80538

Attention: Mr. Trae Rigby

Enclosed is a copy of the Assignment and Assumption Agreement by and between the Garden Grove Agency for Community Development and Garden Grove MXD, Inc. (formerly Garden Grove MXD, LLC).

Sincerely,

Kathleen Bailor, CMC
Secretary

By: Teresa Pomeroy
Deputy Secretary

Enclosure

c: Finance Department
Economic Development

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is hereby made as of August 9, 2010, by and between GG MXD, LLC (formerly known as Garden Grove MXD, LLC), a Colorado LLC ("Assignor"), and Garden Grove MXD, Inc., a Colorado Corporation ("Assignee").

RECITALS

A. Assignor and the Garden Grove Agency for Community Development (the "Agency") have entered a Disposition and Development Agreement dated April 14, 2010 (the "DDA").

B. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights and obligations under the DDA and for Assignee to accept such assignment and assume all rights and obligations thereunder.

C. Pursuant to Section 103 of the DDA, Agency approval of a Transfer of Assignor's interest in the DDA is required.

D. The parties also desire for Agency to consent to such assignment and assumption, and acknowledge that such assignment and assumption is permitted pursuant to Section 103 of the DDA.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns to Assignee all of its right, title and interest in and to the DDA, and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the DDA, from and after the date hereof. From and after the date hereof, Assignor shall be released from and have no further obligations under the DDA.

2. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee, their respective successors and assigns and Agency as third party beneficiary hereof.

3. Governing Law. This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

4. Further Assurances. Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

ASSIGNOR:

GG MXD, LLC (formerly known as Garden Grove MXD, LLC), a Colorado limited liability company

By: McWhinney Real Estate Services, Inc., a Colorado corporation, Manager

By _____
Douglas L. Hill
Chief Operating Officer

ASSIGNEE:

Garden Grove MXD, Inc., a Colorado Corporation

By _____
Douglas L. Hill
Chief Operating Officer

CONSENT OF AGENCY TO ASSIGNMENT

Agency hereby acknowledges and consents to the above assignment, and releases Assignor from any further liability under the DDA, except in Assignor's capacity as a member of Assignee.

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,
a public body, corporate and politic

By: _____
Its: Director

ATTEST:

_____
Agency Secretary

STRADLING YOCCA CARLSON & RAUTH

_____
Agency General Counsel

McWHINNEY

Transmittal

To:	Thomas Clark	**From:**	Trae Rigby
Company:	Stradling Yocca Carlson and Rauth	**Date:**	August 11, 2010
Address:	660 Newport Center Drive Suite 1600 Newport Beach CA 92660	**Phone:**	970-593-6513
RE:	Assignment and Assumption Agreement		

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☑ AS REQUESTED

Mr. Clark,

Included is an executed original of the agreement.

Please let me know if there is anything else.

Thank you,

Trae Rigby

Trae Rigby
Project Manager
McWhinney
(970) 310-6136
traer@mcwhinney.com

Document must be filed electronically.
Paper documents will not be accepted.
Document processing fee $50.00
Fees & forms/cover sheets are subject to change.
To access other information or print copies of filed documents, visit www.sos.state.co.us and select Business Center.

E-Filed

Colorado Secretary of State
Date and Time: 07/27/2010 03:39 PM
ID Number: 20101419680
Document number: 20101419680
Amount Paid: $50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Incorporation for a Profit Corporation

filed pursuant to § 7-102-101 and § 7-102-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the corporation is

Garden Grove MXD, Inc.

(The name of a corporation must contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", inc.", "co." or "ltd.". See §7-90-601, C.R.S. If the corporation is a professional or special purpose corporation, other law may apply.)

*(**Caution:** The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the corporation's initial principal office is

Street address

2725 Rocky Mountain Avenue
(Street number and name)
Suite 200
Loveland | CO | 80538
(City) | *(State)* | *(ZIP/Postal Code)*
(Province – if applicable) | United States *(Country)*

Mailing address
(leave blank if same as street address)

(Street number and name or Post Office Box information)
(City) | *(State)* | *(ZIP/Postal Code)*
(Province – if applicable) | *(Country)*

3. The registered agent name and registered agent address of the corporation's initial registered agent are

Name
(if an individual)

McWhinney | Chad | C. |
(Last) | *(First)* | *(Middle)* | *(Suffix)*

OR

(if an entity)

*(**Caution:** Do not provide both an individual and an entity name.)*

Street address

2725 Rocky Mountain Avenue
(Street number and name)
Suite 200
Loveland | CO | 80538
(City) | *(State)* | *(ZIP/Postal Code)*

Mailing address
(**leave blank** if same as street address) _____
(Street number and name or Post Office Box information)

_____

_____ CO _____.
(City) *(State)* *(ZIP/Postal Code)*

(The following statement is adopted by marking the box.)

☑ The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual) Goff Neil M. _____
(Last) *(First)* *(Middle)* *(Suffix)*

OR

(if an entity) _____
*(**Caution:** Do not provide both an individual and an entity name.)*

Mailing address c/o Brownstein Hyatt Farber Schreck
(Street number and name or Post Office Box information)
410 17th Street, Suite 2200

Denver CO 80202.
(City) *(State)* *(ZIP/Postal Code)*

_____ United States
(Province – if applicable) *(Country)*

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. The classes of shares and number of shares of each class that the corporation is authorized to issue are as follows.

(If the following statement applies, adopt the statement by marking the box and enter the number of shares.)

☑ The corporation is authorized to issue 10,000 common shares that shall have unlimited voting rights and are entitled to receive the net assets of the corporation upon dissolution.

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☑ Additional information regarding shares as required by section 7-106-101, C.R.S., is included in an attachment.

*(**Caution:** At least one box must be marked. Both boxes may be marked, if applicable.)*

6. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

☑ This document contains additional information as provided by law.

7. *(**Caution:** Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are _____.
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

8. The true name and mailing address of the individual causing the document to be delivered for filing are

Goff (Last) Neil (First) M. (Middle) (Suffix)
c/o Brownstein Hyatt Farber Schreck (Street number and name or Post Office Box information)
410 17th Street, Suite 2200
Denver (City) CO (State) 80202 (ZIP/Postal Code)
(Province – if applicable) United States (Country).

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

Click the following links to view attachments

Attachment 1
Attachment to Articles of Incorporation

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE

I, Bernie Buescher, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Garden Grove MXD, Inc.

is a **Corporation** formed or registered on 07/27/2010 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20101419680.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 08/30/2010 that have been posted, and by documents delivered to this office electronically through 09/02/2010 @ 11:08:40.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 09/02/2010 @ 11:08:40 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 7735036.

Bernie Buescher

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click Business Center and select "Frequently Asked Questions."

McWHINNEY

Trae Rigby
2725 Rocky Mountain Avenue
Suite 200
Loveland, CO 80538

August 2, 2010

Garden Grove Agency for Community Development
Attn: Matthew Fertal, Director
11222 Acacia Parkway
Garden Grove, CA 92840

Garden Grove Agency for Community Development:

On June 23, 2010 Garden Grove MXD, LLC ("Developer") executed License and Management agreements (collectively "Franchise Agreements") with Great Wolf Resorts, Inc. ("Licensor" and "Manager").

Item 5 of Exhibit D (Schedule of Performance) of the Disposition and Development Agreement, dated April 14th, 2010, requires Agency approval of the Licensor and Manager and acknowledgement that these Agreements were in place by August 12, 2010 at the latest.

McWhinney sent executed copies of both Agreements to the Garden Grove Agency for Community Development ("Agency").

This letter shall serve as approval by the Agency of the selection of Great Wolf Resorts, Inc. as Licensor and Manager. This letter shall also serve as acknowledgement to the receipt of the executed Franchise Agreements.

Sincerely,

Trae Rigby 8/2/10
Trae Rigby Date
Director

Matthew Fertal 9-14-10
Matthew Fertal Date
Agency Director

TOM DALY
ORANGE COUNTY CLERK - RECORDER

ORANGE COUNTY
CLERK-RECORDER'S OFFICE
12 Civic Center Plaza, Room 106, P.O. BOX 238, Santa Ana, CA 92702
web: www.oc.ca.gov/recorder/
PHONE **(714) 834-5284** FAX **(714) 834-2500**

CITY OF GARDEN GROVE
P.O. BOX 3070 1122 ACACIA PARKWAY
GARDEN GROVE, CA 92842

Office of the Orange County Clerk-Recorder
Memorandum

SUBJECT: NOTICE OF DETERMINATION - NEG. DEC.

The attached notice was received, filed and a copy was posted on 04/14/2010

It remained posted for 30 (thirty) days.

TOM DALY
ORANGE COUNTY CLERK - RECORDER
In and for the County of Orange

By: ANGEL CARDENAS Deputy

Public Resource Code 21092.3

The notice required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the County Clerk of each county *** in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The County Clerk shall post notices within 24 hors of receipt.

Public Resource Code 21152

All notices filed pursuant to this section shall be available for public inspection, and shall be posted ***within 24 hours of receipt*** in the office of the County Clerk. Each notice shall remain posted for a period of 30 days.
*** Thereafter, the clerk shall return the notice to the local **lead** agency *** within a notation of the period it was posted. The local **lead** agency shall retain the notice for not less than nine months.

Additions or changes by underline; deletions by ***

EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer's Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a pre-acceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

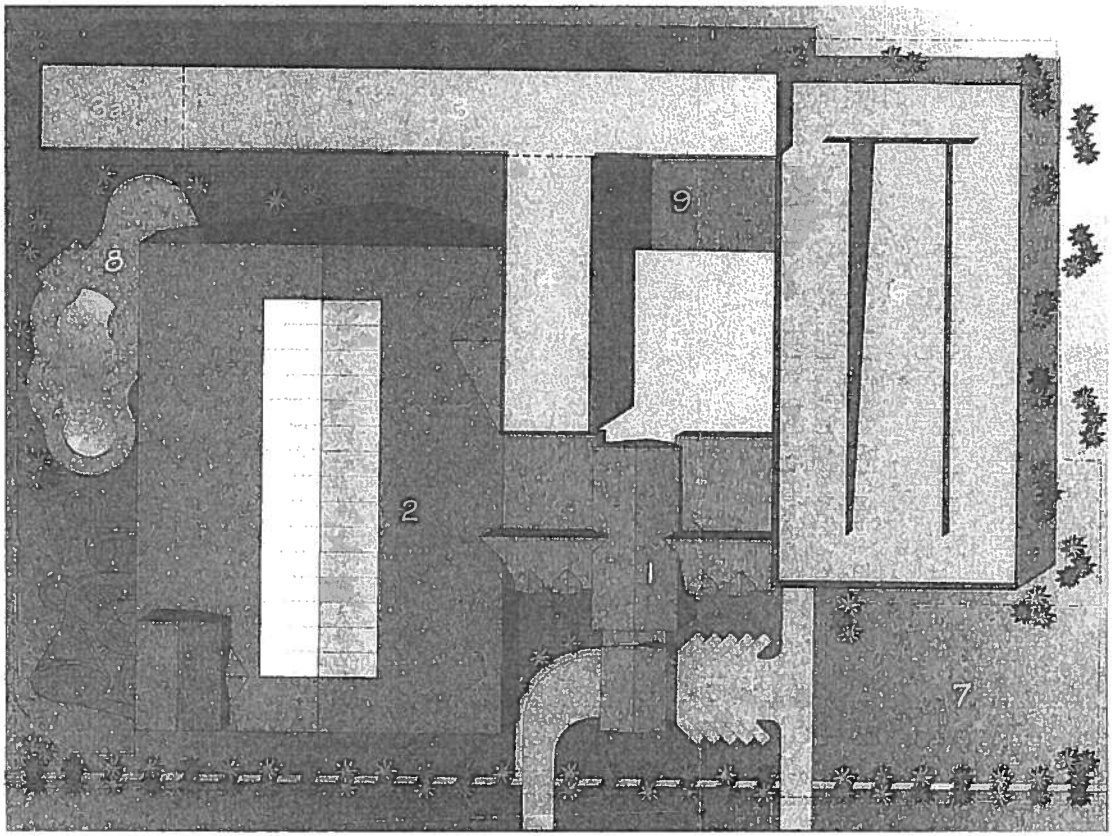
(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

EXHIBIT J
CONCEPTUAL SITE PLAN



Index

1. Hotel Lobby
   -3 Levels
2. Indoor Waterpark
   -104,000 sqft
3. Hotel Units
   -8 Stories, 432 Units
3a. Hotel Unit Expansion
   -8 Stories, 112 Units
4. Hotel Units
   -2 Stories, Support Functions
   -6 Stories, 168 Units
5. Conference Center
   -20,000 sqft
6. Parking Structure
   -5 Levels
   -250 stalls per level
7. Outlot
   -29,000 sqft
8. Outdoor Waterpark
   -26,000 sqft
9. Undeveloped Green Space
   -11,700 sqft

ADCI
Architectural Design Consultants, Inc.

Site Plan Option 1

Feasibility Study

July 28, 2009

EXHIBIT J-1

EXHIBIT M

PRE-APPROVED RESTAURANT TENANT(S)/OPERATOR(S)

List of Full-Service Restaurants:

1. Yard House
2. RockSugar
3. Season's 52
4. Grand Luxe Cafe
5. Maggiano's
6. T-Rex
7. BJ Restaurant and Brewery
8. Claim Jumper
9. Roadhouse Grill
10. TGI Fridays
11. Spaghetti Factory
12. Macaroni Grill
13. Romanos
14. Chili's Grill and Bar
15. Margaretville
16. Nascar Café
17. Hard Rock Café
18. Emeralds
19. Gladstones
20. Lucilles BBQ
21. King's Fishhouse
22. Daily Grill
23. California Pizza Kitchen
24. Uno Chicago Grill
25. Papa Bello
26. Granite City Food and Brewery
27. Corner Bakery Café
28. Wingnuts

List of Quick-Service Restaurants:

1. Panera
2. Portillos
3. The Hat
4. Longhorn Steakhouse
5. Fleming Prime Steakhouse
6. Baham Breeze
7. Hemmingway's

List of Specialty Restaurants:

1. Jamba Juice
2. Coffee Bean
3. Starbucks
4. Dunkin Donuts
5. Southern Maid Donut Shops
6. Yogurt Land
7. Pink Berry

PUBLIC HEARING - JOINT PUBLIC HEARING WITH THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT TO CONSIDER THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH GARDEN GROVE MXD, LLC (F: A-55.346) (XR: 43.4)

Staff report dated April 13, 2010, was introduced and reviewed by staff.

Council/Agency Member Nguyen inquired about the financial assistance and Agency contribution to this project.

Staff explained that the original agreement required spreading the money out over time requiring more Agency money contributed to the project because of the time value of money, and the Agency would have been required to share tax revenues with the Developer. Under the new proposal, $42 million would be due to the Developer at the time the hotel opens with the City receiving the full amount of tax revenue estimated at $8.5 million per year. The debt service would be about $4 million, leaving approximately $4.5 million annually as a net effect to the City.

Agency Chair/Council Member Broadwater declared the Public Hearing open for both the City Council and the Agency and asked if anyone wished to address the Agency/City Council on the matter.

In response to Charles Mitchell's concern regarding putting the money forward at this time when the economy and the State budget are precarious, Agency Chair/Council Member Broadwater stated the bond would not be issued until the time the hotel opens.

In response to Peggy Bergin's inquiry concerning where the tax revenues would go, Agency Chair/Council Member Broadwater indicated the revenues are Bed Tax, which go directly into the City fund.

In response to Robin Marcario's inquiry, Agency Chair/Council Member Broadwater stated the funding would be a bond, not COP (Certificates of Participation), and does not need voter approval.

Chad McWhinney, the Developer, provided background on the new proposal. He indicated this project will cost upwards to $300 million to develop, and would be one of the largest new construction projects in the State of California. He further commented that in the past lenders have been willing to take revenues over a certain period of time, as originally proposed. However, due to the turmoil and changes in the financial market, lenders are cautious, and focused on wanting revenues up front. He thanked staff for working with him to meet lender requirements. By providing revenue to lenders upfront, it

increases the likelihood the project would move forward sooner benefiting all parties involved.

There being no further response from the audience, the Public Hearing was declared closed.

Agency Chair/Council Member Broadwater noted the benefits the City realizes by taking advantage of hotel development opportunities.

Mayor/Agency Member Dalton stated he is often asked why the City is not waiting to develop projects until the economy turns around, his response is that in order to take advantage of a better economy in the future, the time to develop is now.

CITY COUNCIL ACTION
RESOLUTION NO. 8963-10

It was moved by Council Member Nguyen, seconded by Council Member Jones, and carried by unanimous vote of those present that full reading of Resolution No. 8963-10 be waived, and said Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE CONSENTING TO THE APPROVAL BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT OF A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC, be and hereby is adopted.

AGENCY ACTION
RESOLUTION NO. 683

It was moved by Member Nguyen, seconded by Member Jones, and carried by unanimous vote of those present that full reading of Resolution No. 683 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC AND MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted; and

Authorize the Agency Director to execute any pertinent documents to fully execute this Agreement.

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Kathy Bailor
Dept:	City Manager	Dept:	City Clerk
Subject:	JOINT PUBLIC HEARING WITH THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT TO CONSIDER THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH GARDEN GROVE MXD, LLC. (ALSO LISTED ON THE AGENCY AGENDA AS ITEM 5.A.)	Date:	April 13, 2010

THE BACKUP MATERIAL FOR THIS ITEM WILL BE FOUND IN YOUR AGENCY PACKET AS ITEM 5.a.

RESOLUTION NO. 8963-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE CONSENTING TO THE APPROVAL BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT OF A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC

WHEREAS, the Garden Grove Agency for Community Development ("Agency") entered into that certain agreement with Garden Grove MXD, LLC ("Developer") is a limited liability company duly organized under the laws of the State of Colorado entitled Disposition and Development Agreement, dated as of May 12, 2009 ("Original Agreement"), a copy of which is on file with the Agency, under which the Developer was to develop certain property identified therein as the "Site";

WHEREAS, in connection with arranging for financing to implement its development obligations under the Original Agreement, the Developer has received comments from hotel operators, finance and tax advisors and, in connection therewith, has requested that the Agency approve a First Amended and Restated Disposition and Development Agreement in the form submitted herewith ("First Amended Agreement");

WHEREAS, the Original Agreement, as amended by the First Amended Agreement, will continue to provide for the development and operation of a water park hotel, restaurants and a parking structure as more fully described in the DDA ("Project");

WHEREAS, the Agency has duly considered all terms and conditions of the proposed First Amended Agreement and believes that the First Amended Agreement is in the best interest of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local laws requirements;

WHEREAS, the Developer has submitted to the Agency and the City Council of the City of Garden Grove ("City Council") copies of the First Amended Agreement substantially in the form submitted herewith;

WHEREAS, all actions required by all applicable law with respect to the proposed First Amended Agreement have been taken in an appropriate and timely manner;

WHEREAS, the Agency and the City Council have duly considered all the terms and conditions of the proposed First Amended Agreement and believes that the redevelopment of the Site pursuant thereto is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements;

WHEREAS, the Health and Safety Code Section 33445 authorizes a redevelopment agency, with the consent of the legislative body, to pay all or a part of the cost of the installation and construction of any improvement that is publicly owned either within or without the project area, if the legislative body determines that: (1) the improvements are of benefit to the project area; (2) no other reasonable means of financing the improvements are available to the community; (3) the payment of funds for the cost of the improvements will assist in the elimination of one or more blighting conditions inside the project area; and (4) is consistent with the implementation plan adopted pursuant to Section 33490 of the Redevelopment Law;

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) ("CEQA") and its implementing guidelines (14 California Code of Regulations Section 15000, *et seq.*) ("CEQA Guidelines"), the City Council has reviewed an Environmental Impact Report which was certified in August 2008 as part of the General Plan Update (State Clearinghouse No. 2008041079) as well as the Final Environmental Impact Report for the Redevelopment Project Plan certified by the Agency by Resolution No. 629 on July 2, 2002 (collectively, "Environmental Impact Reports") in connection with an amendment of the Redevelopment Plan;

WHEREAS, the Environmental Impact Reports were designated as a program Environmental Impact Report pursuant to Section 15180(b) of the CEQA Guidelines, and no subsequent Environmental Impact Report is required for implementation of individual components of the General Plan and/or Redevelopment Plan because neither a subsequent or supplemental Environmental Impact Report is required by Section 15162 or 15163 of the CEQA Guidelines;

WHEREAS, the Environmental Impact Reports incorporate into the Redevelopment Plan a number of Mitigation Measures ("Mitigation Measures") including a Mitigation Monitoring Program ("Mitigation Monitoring Program"); and

WHEREAS, the Project will comply with the Mitigation Monitoring Program set forth in the Environmental Impact Reports.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's disposition of the Site, together with the Covenant Consideration and Parking Structure Contribution and other items set forth in the Agreement, present not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Agreement.

SECTION 2. The City Council hereby finds and determines that the disposition of the Site by the Agency pursuant to the Agreement will eliminate blight within the Project Area by contributing to consolidation of a relatively small parcel with a larger parcel, promoting improvements, and expanding the tourist opportunities available within the community, as well as providing for the proper reuse and redevelopment of a portion of the Project Area which was declared blighted.

SECTION 3. The City Council hereby finds and determines that the Agreement is consistent with the provisions and goals of the Implementation Plan.

SECTION 4. The City Council further finds and determines that:

(a) The public improvements, described in the First Amended Agreement ("Public Improvements"), will be of benefit to the Redevelopment Plan by providing access and infrastructure to the Site for the purpose of facilitating development of blighted property within the Project Area.

(b) No other reasonable means of financing the Public Improvements are available to the City. The prudent budget constraints of City prevent the City from financing the proposed construction of the Public Improvements by any means other than the Agency's tax increment. Insufficient moneys are currently available to the City to pay for the cost of the Public Improvements. Financing sources and mechanisms other than the Agency's tax increment are committed to the development of other required public improvements within the City.

(c) The payment of funds for the Public Improvements will assist in the elimination of blighting conditions within the Project Area by providing for the capacity to develop the Site, which was identified as blighted in the Report to the City Council approving the Redevelopment Plan.

SECTION 5. The City Council hereby finds and determines the following regarding the First Amended Agreement and the Project:

(a) The Project does not involve substantial changes in the Redevelopment Plan which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(d) No substantial changes have occurred with respect to the circumstances under which the Redevelopment Plan is being implemented which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(e) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Environmental Impact Reports were certified as complete, shows any of the following:

(i) The Project will have one or more significant effects not discussed in the Environmental Impact Reports;

(ii) Significant effects previously examined will be substantially more severe than shown in the Environmental Impact Reports;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Redevelopment Plan; or

(iv) Mitigation measures or alternatives, which are considerably different from those analyzed in the Environmental Impact Reports, would substantially reduce one or more significant effects on the environment.

SECTION 6. The City Council of the City of Garden Grove has considered the proposed Negative Declaration together with comments received during the public review process. The record of proceedings on which the City Council of the City of Garden Grove decision is based is located at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The City Council of the City of Garden Grove finds on the basis of the whole record before it, including the initial study and comments received, that there is no substantial evidence that the project will have a significant effect on the environment other than the impacts previously addressed in the Environmental Impact Reports. The City Council further finds that the adoption of the Negative Declaration reflects the City Council's independent judgment and analysis. Therefore, the City Council of the City of Garden Grove adopts the Negative Declaration.

SECTION 7. The City Council hereby consents to and approves the First Amended and Restated Disposition and Development Agreement and further authorizes the Agency Director (or his designee) is hereby authorized, on behalf of the Agency, to make revisions to the Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

SECTION 8. The City Council acknowledges that the governing board of the Agency may authorize the Agency Director of the Agency (or his/her duly

authorized representative) on behalf of the Agency, to implement the First Amended Agreement and make revisions to the First Amended Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the DDA and the administer the Agency's obligations, responsibilities and duties to be performed under the DDA and related documents.

Adopted this 13th day of April 2010.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ KATHLEEN BAILOR
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on April 13, 2010, by the following vote:

AYES:	COUNCIL MEMBERS:	(4)	BROADWATER, JONES, NGUYEN, DALTON
NOES:	COUNCIL MEMBERS:	(0)	NONE
ABSENT:	COUNCIL MEMBERS:	(1)	DO

/s/ KATHLEEN BAILOR
CITY CLERK

PUBLIC HEARING - JOINT PUBLIC HEARING WITH THE GARDEN GROVE CITY COUNCIL TO CONSIDER THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH GARDEN GROVE MXD, LLC (F: A-55.346) (XR: 43.4)

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CITY COUNCIL ACTION
RESOLUTION NO. 8963-10

It was moved by Council Member Nguyen, seconded by Council Member Jones, and carried by unanimous vote of those present that full reading of Resolution No. 8963-10 be waived, and said Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE CONSENTING TO THE APPROVAL BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT OF A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC, be and hereby is adopted.

AGENCY ACTION
RESOLUTION NO. 683

It was moved by Member Nguyen, seconded by Member Jones, and carried by unanimous vote of those present that full reading of Resolution No. 683 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC AND MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted; and

Authorize the Agency Director to execute any pertinent documents to fully execute this Agreement.

RESOLUTION NO. 8963-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE CONSENTING TO THE APPROVAL BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT OF A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC

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WHEREAS, the Original Agreement, as amended by the First Amended Agreement, will continue to provide for the development and operation of a water park hotel, restaurants and a parking structure as more fully described in the DDA ("Project");

WHEREAS, the Agency has duly considered all terms and conditions of the proposed First Amended Agreement and believes that the First Amended Agreement is in the best interest of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local laws requirements;

WHEREAS, the Developer has submitted to the Agency and the City Council of the City of Garden Grove ("City Council") copies of the First Amended Agreement substantially in the form submitted herewith;

WHEREAS, all actions required by all applicable law with respect to the proposed First Amended Agreement have been taken in an appropriate and timely manner;

WHEREAS, the Agency and the City Council have duly considered all the terms and conditions of the proposed First Amended Agreement and believes that the redevelopment of the Site pursuant thereto is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements;

WHEREAS, the Health and Safety Code Section 33445 authorizes a redevelopment agency, with the consent of the legislative body, to pay all or a part of the cost of the installation and construction of any improvement that is publicly owned either within or without the project area, if the legislative body determines that: (1) the improvements are of benefit to the project area; (2) no other reasonable means of financing the improvements are available to the community; (3) the payment of funds for the cost of the improvements will assist in the elimination of one or more blighting conditions inside the project area; and (4) is consistent with the implementation plan adopted pursuant to Section 33490 of the Redevelopment Law;

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) ("CEQA") and its implementing guidelines (14 California Code of Regulations Section 15000, *et seq.*) ("CEQA Guidelines"), the City Council has reviewed an Environmental Impact Report which was certified in August 2008 as part of the General Plan Update (State Clearinghouse No. 2008041079) as well as the Final Environmental Impact Report for the Redevelopment Project Plan certified by the Agency by Resolution No. 629 on July 2, 2002 (collectively, "Environmental Impact Reports") in connection with an amendment of the Redevelopment Plan;

WHEREAS, the Environmental Impact Reports were designated as a program Environmental Impact Report pursuant to Section 15180(b) of the CEQA Guidelines, and no subsequent Environmental Impact Report is required for implementation of individual components of the General Plan and/or Redevelopment Plan because neither a subsequent or supplemental Environmental Impact Report is required by Section 15162 or 15163 of the CEQA Guidelines;

WHEREAS, the Environmental Impact Reports incorporate into the Redevelopment Plan a number of Mitigation Measures ("Mitigation Measures") including a Mitigation Monitoring Program ("Mitigation Monitoring Program"); and

WHEREAS, the Project will comply with the Mitigation Monitoring Program set forth in the Environmental Impact Reports.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's disposition of the Site, together with the Covenant Consideration and Parking Structure Contribution and other items set forth in the Agreement, present not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Agreement.

SECTION 2. The City Council hereby finds and determines that the disposition of the Site by the Agency pursuant to the Agreement will eliminate blight within the Project Area by contributing to consolidation of a relatively small parcel with a larger parcel, promoting improvements, and expanding the tourist opportunities available within the community, as well as providing for the proper reuse and redevelopment of a portion of the Project Area which was declared blighted.

SECTION 3. The City Council hereby finds and determines that the Agreement is consistent with the provisions and goals of the Implementation Plan.

SECTION 4. The City Council further finds and determines that:

(a) The public improvements, described in the First Amended Agreement ("Public Improvements"), will be of benefit to the Redevelopment Plan by providing access and infrastructure to the Site for the purpose of facilitating development of blighted property within the Project Area.

(b) No other reasonable means of financing the Public Improvements are available to the City. The prudent budget constraints of City prevent the City from financing the proposed construction of the Public Improvements by any means other than the Agency's tax increment. Insufficient moneys are currently available to the City to pay for the cost of the Public Improvements. Financing sources and mechanisms other than the Agency's tax increment are committed to the development of other required public improvements within the City.

(c) The payment of funds for the Public Improvements will assist in the elimination of blighting conditions within the Project Area by providing for the capacity to develop the Site, which was identified as blighted in the Report to the City Council approving the Redevelopment Plan.

SECTION 5. The City Council hereby finds and determines the following regarding the First Amended Agreement and the Project:

(a) The Project does not involve substantial changes in the Redevelopment Plan which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(d) No substantial changes have occurred with respect to the circumstances under which the Redevelopment Plan is being implemented which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(e) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Environmental Impact Reports were certified as complete, shows any of the following:

(i) The Project will have one or more significant effects not discussed in the Environmental Impact Reports;

(ii) Significant effects previously examined will be substantially more severe than shown in the Environmental Impact Reports;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Redevelopment Plan; or

(iv) Mitigation measures or alternatives, which are considerably different from those analyzed in the Environmental Impact Reports, would substantially reduce one or more significant effects on the environment.

SECTION 6. The City Council of the City of Garden Grove has considered the proposed Negative Declaration together with comments received during the public review process. The record of proceedings on which the City Council of the City of Garden Grove decision is based is located at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The City Council of the City of Garden Grove finds on the basis of the whole record before it, including the initial study and comments received, that there is no substantial evidence that the project will have a significant effect on the environment other than the impacts previously addressed in the Environmental Impact Reports. The City Council further finds that the adoption of the Negative Declaration reflects the City Council's independent judgment and analysis. Therefore, the City Council of the City of Garden Grove adopts the Negative Declaration.

SECTION 7. The City Council hereby consents to and approves the First Amended and Restated Disposition and Development Agreement and further authorizes the Agency Director (or his designee) is hereby authorized, on behalf of the Agency, to make revisions to the Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

SECTION 8. The City Council acknowledges that the governing board of the Agency may authorize the Agency Director of the Agency (or his/her duly

authorized representative) on behalf of the Agency, to implement the First Amended Agreement and make revisions to the First Amended Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the DDA and the administer the Agency's obligations, responsibilities and duties to be performed under the DDA and related documents.

Adopted this 13th day of April 2010.

ATTEST:

/s/ KATHLEEN BAILOR
CITY CLERK

/s/ WILLIAM J. DALTON
MAYOR

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on April 13, 2010, by the following vote:

AYES:	COUNCIL MEMBERS:	(4)	BROADWATER, JONES, NGUYEN, DALTON
NOES:	COUNCIL MEMBERS:	(0)	NONE
ABSENT:	COUNCIL MEMBERS:	(1)	DO

/s/ KATHLEEN BAILOR
CITY CLERK

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

RESOLUTION NO. 683

A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND GARDEN GROVE MXD, LLC AND THE AGENCY AND MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Garden Grove Agency for Community Development ("Agency") entered into that certain agreement with Garden Grove MXD, LLC ("Developer"), a limited liability company duly organized under the laws of the State of Colorado entitled Disposition and Development Agreement, dated as of May 12, 2009 ("Original Agreement"), a copy of which is on file with the Agency, under which the Developer was to develop certain property identified therein as the "Site";

WHEREAS, in connection with updating its development pro forma and arranging for financing to implement its development obligations under the Original Agreement, the Developer has received comments from hotel operators, finance and tax advisors and, in connection therewith, has requested that the Agency approve a First Amended and Restated Disposition and Development Agreement in the form submitted herewith ("First Amended Agreement");

WHEREAS, the First Amended Agreement will continue to provide for the development and operation of a water park hotel, restaurants, and a parking structure as more fully described in the DDA (the "Project");

WHEREAS, the Agency has duly considered all terms and conditions of the proposed First Amended Agreement and believes that the First Amended Agreement is in the best interest of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws requirements;

WHEREAS, the Developer has submitted to the Agency and the City Council of the City of Garden Grove ("City Council") copies of the First Amended Agreement substantially in the form submitted herewith;

WHEREAS, all actions required by all applicable law with respect to the proposed First Amended Agreement have been taken in an appropriate and timely manner;

WHEREAS, the Agency and the City Council have duly considered all the terms and conditions of the proposed First Amended Agreement and believes that the redevelopment of the Site pursuant to the First Amended Agreement in the best interests of the City of Garden Grove and the health, safety, and welfare of its

residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements;

WHEREAS, the Agency is a community redevelopment agency duly organized and existing under the California Community Redevelopment Law, Health, and Safety Code Section 33000, et seq. ("CRL"), and has been authorized to transact business and exercise the power of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Garden Grove ("City");

WHEREAS, the existing Garden Grove Community Project and the boundaries of the Community Project Area ("Project Area") were duly established by various Ordinances of the City Council, which Ordinances approved a redevelopment plan for the Garden Grove Community Project, as amended ("Redevelopment Plan");

WHEREAS, the Agency is vested with the power to implement the Redevelopment Plan and to carry out the goals and objectives of the Garden Grove Community Project, including without limitation the goals and objectives adopted by the Agency's Implementation Plan ("Implementation Plan") pursuant to the CRL;

WHEREAS, the Agency is authorized and empowered by the CRL to enter into agreements for the acquisition, disposition and development of real property and otherwise to assist in the redevelopment of real property within a redevelopment project area in conformity with a redevelopment plan adopted for such area, to acquire real and personal property in redevelopment project areas, to receive consideration for the provision by the Agency of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects;

WHEREAS, the Garden Grove MXD, LLC ("Developer") is a limited liability company duly organized under the laws of the State of Colorado and experienced in the acquisition, construction and development of hotel and restaurant facilities;

WHEREAS, the Agency wishes to assist the Developer in the construction of the Project (as hereinafter defined) by conveying to the Developer certain real property ("Site") which is comprised of certain property owned by the Agency ("Agency Property") and certain other property owned by third parties ("Third Party Property"), as shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference which the Agency is currently seeking to acquire for the development of the Project and providing additional financial assistance;

WHEREAS, Agency desires to enter into that certain First Amended Agreement with the Developer relating to the disposition of the Site and development and operation of a 600 room water park hotel, restaurants and a parking structure as more fully described in the DDA ("Project");

WHEREAS, the Agency is authorized to convey an interest in its real property to the Developer pursuant to the CRL;

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) ("CEQA") and its implementing guidelines (14 California Code of Regulations Section 15000, *et seq.*) ("CEQA Guidelines"), the Agency has reviewed an Environmental Impact Report which was certified in August 2008 as part of the General Plan Update (State Clearinghouse No. 2008041079) as well as the Final Environmental Impact Report for the Redevelopment Project Plan certified by the Agency by Resolution No. 629 on July 2, 2002 (collectively, "Environmental Impact Reports") in connection with an amendment of the Redevelopment Plan;

WHEREAS, the Environmental Impact Reports were designated as a program Environmental Impact Report pursuant to Section 15180(b) of the CEQA Guidelines, and no subsequent Environmental Impact Report is required for implementation of individual components of the General Plan and/or Redevelopment Plan because neither a subsequent or supplemental Environmental Impact Report is required by Section 15162 or 15163 of the CEQA Guidelines;

WHEREAS, the Environmental Impact Reports incorporate into the Redevelopment Plan a number of Mitigation Measures ("Mitigation Measures") including a Mitigation Monitoring Program ("Mitigation Monitoring Program");

WHEREAS, the Project will comply with the Mitigation Monitoring Program set forth in the Environmental Impact Reports;

WHEREAS, the Agency has adopted an Implementation Plan pursuant to CRL Section 33490, which sets forth the objective of increasing the community's economic base by encouraging new investment in the community, insuring the optimum generation of local revenues by facilitating the redevelopment and reuse of land, maximizing the use of property to achieve the highest and best use and a feasible economic return, and promoting new investment;

WHEREAS, by providing for the development and operation of the Project on the Site, the First Amended Agreement will assist the Agency in meeting the development policies and objectives set forth in the Implementation Plan, specifically the goal of reducing blighting economic conditions and increasing employment opportunities by encouraging new investment in the community through facilitating the development and rehabilitation of commercial properties and through the implementation of economic development programs;

WHEREAS, pursuant to Sections 33430 and 33431 of the CRL, the Agency is authorized, after a duly noticed Public Hearing, to convey the Site for development pursuant to the Redevelopment Plan;

WHEREAS, Health and Safety Code Section 33445 authorizes a redevelopment agency, with the consent of the legislative body, to pay all or a part of the cost of the installation and construction of any improvement that is publicly owned either within or without the project area, if the legislative body determines that: (1) the improvements are of benefit to the project area; (2) no other reasonable means of financing the improvements are available to the community; and (3) the payment of funds for the cost of the improvements will assist in the elimination of one or more blighting conditions inside the project area and (4) is consistent with the implementation plan adopted pursuant to Section 33490 of the Redevelopment Law;

WHEREAS, on April 13, 2010, the Agency held a duly noticed Public Hearing on the proposed First Amended Agreement in accordance with Health and Safety Code Sections 33430 and 33431, at which time the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the Public Hearing;

WHEREAS, notice of the Public Hearing was published in the Orange County News, and the proposed First Amended Agreement was available for public inspection prior to the Public Hearing as stated in the published notice of public hearing;

WHEREAS, all actions required by all applicable law with respect to the proposed First Amended Agreement have been taken in an appropriate and timely manner;

WHEREAS, the City Council has previously determined, in its adoption of the Ordinance approving the Redevelopment Plan, that the Site were blighted;

WHEREAS, the First Amended Agreement will assist in the elimination of blight by providing for the development and operation of the Project on the Site; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed First Amended Agreement and believes that the Project is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED by the Garden Grove Agency for Community Development as follows:

SECTION 1. Each of the foregoing recitals is true and correct.

SECTION 2. The Agency finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's conveyance of the Site pursuant to the terms and conditions of the First Amended Agreement is not less than the fair reuse value of the Site.

SECTION 3. The Agency hereby finds and determines that the conveyance of the Site, construction and operation of the Project, and the payment of the Covenant Consideration and Parking Structure Contribution pursuant to the First Amended Agreement will eliminate blight within the Project Area by providing for the proper reuse and redevelopment of a portion of the Project Area, which was previously declared blighted.

SECTION 4. The Agency hereby finds and determines that the First Amended Agreement is consistent with the provisions and goals of the Implementation Plan.

SECTION 5. The Agency finds and determines that the public improvements described in the First Amended Agreement ("Public Improvements"), will be of benefit to the Redevelopment Plan by providing access and infrastructure to the Site for the purpose of facilitating development of blighted property within the Project Area.

SECTION 6. The Agency finds and determines that no other reasonable means of financing the Public Improvements are available to the City. The prudent budget constraints of City prevent the City from financing the proposed construction of the Public Improvements by any means other than the Agency's tax increment. Insufficient moneys are currently available to the City to pay for the cost of the Public Improvements. Financing sources and mechanisms other than the Agency's tax increment are committed to the development of other required public improvements within the City.

SECTION 7. The Agency hereby finds and determines the following regarding the First Amended Agreement and the Project:

(a) The Project does not involve substantial changes in the Redevelopment Plan which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) No substantial changes have occurred with respect to the circumstances under which the Redevelopment Plan is being implemented which will require major revisions of the Environmental Impact Reports due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Environmental Impact Reports were certified as complete, shows any of the following:

(i) The Project will have one or more significant effects not discussed in the Environmental Impact Reports;

(ii) Significant effects previously examined will be substantially more severe than shown in the Environmental Impact Reports;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Redevelopment Plan; or

(iv) Mitigation measures or alternatives, which are considerably different from those analyzed in the Environmental Impact Reports, would substantially reduce one or more significant effects on the environment.

SECTION 8. The Agency has considered the proposed Negative Declaration together with comments received during the public review process. The record of proceedings on which the Agency decision is based is located at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The Agency finds on the basis of the whole record before it, including the initial study and comments received, that there is no substantial evidence that the project will have a significant effect on the environment other than the impacts previously addressed in the Environmental Impact Reports. The Agency further finds that the adoption of the Negative Declaration reflects the Agency's independent judgment and analysis. Therefore, the Agency adopts the Negative Declaration.

SECTION 9. The Agency finds and determines that the payment of funds for the Public Improvements will assist in the elimination of blighting conditions within the Project Area by providing for the capacity to develop the Site, which was identified as blighted in the Report to the City Council approving the Redevelopment Plan.

SECTION 10. The First Amended Agreement is within the scope of the project covered by the Environmental Impact Reports. The Agency is not required to prepare a subsequent or supplemental environmental impact report by Section 15162 or 15163 of the CEQA Guidelines.

SECTION 11. The Agency hereby approves the First Amended Agreement between the Agency and Developer, in the form of the First Amended Agreement, which has been submitted herewith.

SECTION 12. The Agency Director and the Agency Secretary are hereby authorized to execute and attest the First Amended Agreement, including any related attachments, on behalf of the Agency. Copies of the final form of the First Amended Agreement, when duly executed and attested, shall be placed on file in the Office of the City Clerk.

SECTION 13. The Agency Director (or his/her duly authorized representative) is further authorized to implement the First Amended Agreement and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the First Amended Agreement. The Agency Director (or his/her duly authorized representative) is hereby authorized to the extent necessary during the implementation of the First Amended Agreement to make technical or minor changes thereto after execution, as necessary to properly implement and carry out the First Amended Agreement, provided the changes shall not in any manner materially affect the rights and obligations of the Agency.

SECTION 14. The Agency Secretary shall certify to the adoption of this Resolution.

Adopted this 13th day of April 2010.

ATTEST:

/s/ BRUCE A. BROADWATER
CHAIR

/s/ KATHLEEN BAILOR
SECRETARY

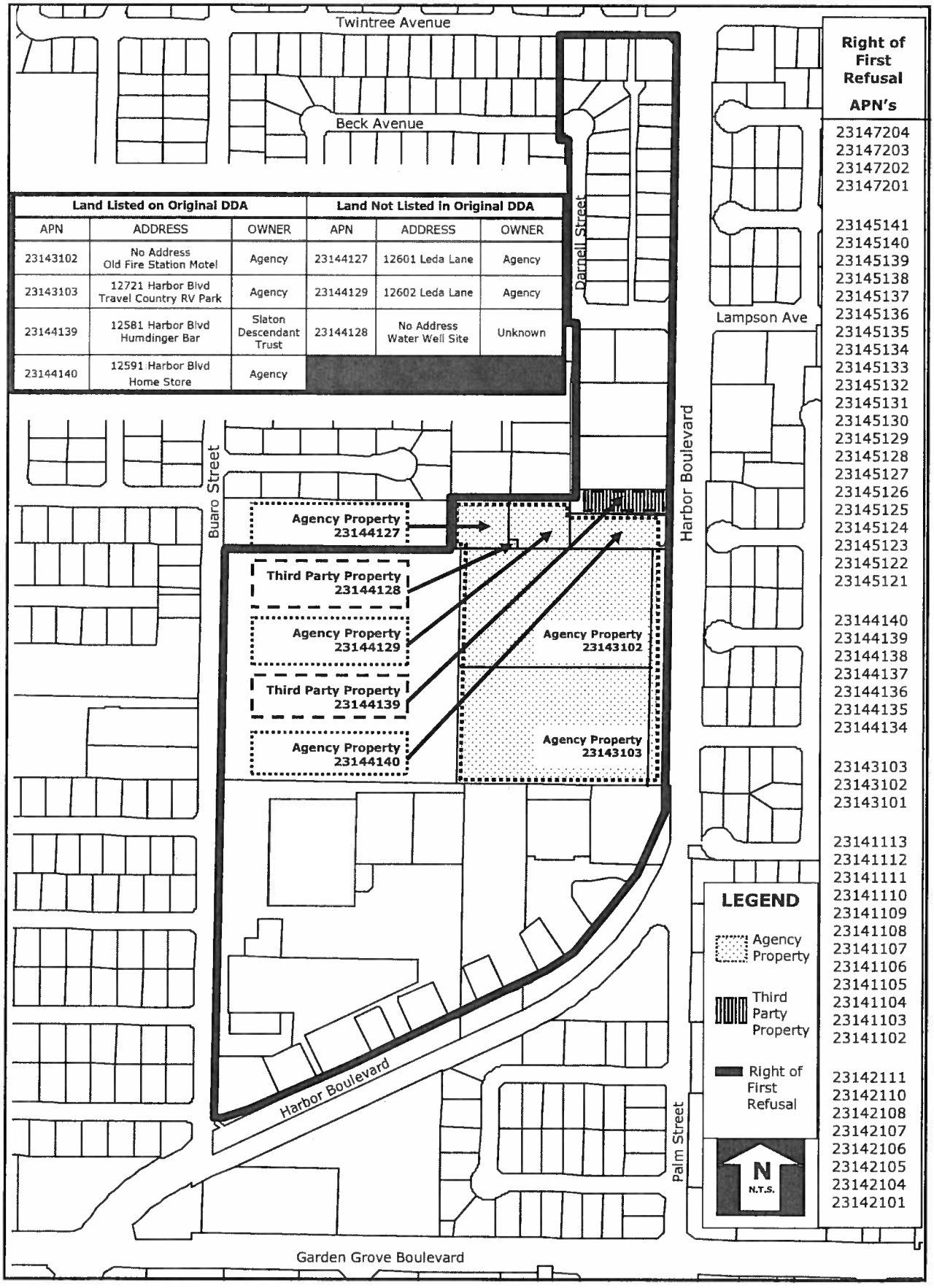
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, Secretary of the Garden Grove Agency for Community Development, do hereby certify that the foregoing Resolution was duly adopted by the Garden Grove Agency for Community Development, at a meeting held on the 13th day of April 2010, by the following vote:

AYES: MEMBERS: (4) DALTON, JONES, NGUYEN, BROADWATER
NOES: MEMBERS: (0) NONE
ABSENT: MEMBERS: (1) DO

/s/ KATHLEEN BAILOR
SECRETARY

SITE MAP



Land Listed on Original DDA			Land Not Listed in Original DDA		
APN	ADDRESS	OWNER	APN	ADDRESS	OWNER
23143102	No Address Old Fire Station Motel	Agency	23144127	12601 Leda Lane	Agency
23143103	12721 Harbor Blvd Travel Country RV Park	Agency	23144129	12602 Leda Lane	Agency
23144139	12581 Harbor Blvd Humdinger Bar	Slaton Descendant Trust	23144128	No Address Water Well Site	Unknown
23144140	12591 Harbor Blvd Home Store	Agency			

Right of First Refusal APN's
23147204
23147203
23147202
23147201
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23145137
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City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Garden Grove City Council
and
Garden Grove Agency for Community Development

To:	Matthew Fertal	From:	Chet Yoshizaki
Dept:	City Manager/Director	Dept:	Economic Development
Subject:	FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH GARDEN GROVE MXD, LLC	Date:	April 13, 2010

OBJECTIVE

The purpose of this report is to request the Garden Grove City Council (City Council) and the Agency for Community Development (Agency) to conduct a joint public hearing to consider the approval of the First Amended and Restated Disposition and Development Agreement (Agreement) by and between the Agency and Garden Grove MXD, LLC (Developer) and to consider the adoption of a Negative Declaration for the construction of a water park hotel with a minimum of six hundred (600) rooms, water park with a possible expansion of up to two hundred (200) additional rooms, approximately eighteen thousand (18,000) square feet of retail, including one (1) or more restaurants, and construct an approximately one thousand two hundred (1,200) space parking structure (Project).

BACKGROUND/DISCUSSION

On May 12, 2009, at a joint meeting of the City Council and the Agency, a Disposition and Development Agreement (DDA) was approved. Since the approval of the DDA, several of the salient points, the development costs, and project site have changed.

Due to extreme conditions in obtaining bank financing in today's lending market, past agency assistance formulas involving sharing of tax revenue over a period of years is not viable. Instead, the banks are requiring that the Agency Assistance be provided in a lump sum, due no later than the opening of the hotel. Consequently, the proposed revision reflects a different structure to provide assistance than previous hotel deals.

Reuse Valuation

Based on new cost and revenue numbers provided by the Developer, Horwath, Hospitality and Leisure, LLC (Horwath), the Agency's economic consultant concluded that the Project's development costs compared to the estimated income and development values reasonably expected from the project, generates a negative reuse value of Forty-One Million Dollars ($41,000,000). This financial gap is consistent within industry standards for hotel projects of this quality.

Summary Report (Health and Safety Code 33433)

In accordance with Section 33433 of the California Health and Safety Code, Horwath prepared a Summary Report to inform the City Council, Agency and the public about the transaction. The Summary Report includes the following: the cost of the Agreement to the Agency; the estimated fair market value of the property; the estimated fair reuse value of the property; the consideration to the Agency, and an explanation of how the sale or lease will assist in the elimination of blight. Horwath has determined that the consideration is not less than the reuse value.

Amendments to the DDA

The following provisions are the amendments to the DDA:

1. Covenant Consideration. Agency shall pay the Developer all cash sum of forty-seven million dollars ($47,000,000) as follows: (a) five million dollars ($5,000,000) concurrently with the commencement of construction of the parking structure, and (b) forty-two million dollars ($42,000,000) thirty (30) days after the later of the date on which (i) the hotel opens for business or (ii) the certificate of occupancy for the Developer improvements.

2. Non-Complete. The Agency shall not enter into a Disposition and Development Agreement and/or assist another Water Park Hotel, within the City, for a period of six (6) years beginning January 1, 2010 or three (3) years from the opening of the Hotel, whichever comes first.

3. Acquisition and Disposition of Property. The Agency acquired additional property located at 12601 and 12602 Leda Lane, which is to be conveyed to the Developer.

Environmental Clearance

The CEQA clearance for the Agreement is the environmental impact report approved as part of the 2002 Redevelopment Plan Amendment. In addition, the

City of Garden Grove has determined that a Negative Declaration recognizing consistency with a previously approved environmental impact report for the City of Garden Grove adopted General Plan.

FINANCIAL IMPACT

- The financial impact to the Agency is the contribution of a Forty-Two Million Dollars ($42,000,000) at the opening of the Water Park Hotel and Five Million Dollars ($5,000,000) contribution to the construction of the Parking Structure. Except in the case of Hotel Expansion, the Agency will not be required to share in any transient occupancy and sales tax revenues and tax increment revenues (Total Tax Revenue). In the Project's first full year of operation, the Project is projected to generate eight million five hundred thousand dollars ($8,500,000) of total tax revenue.

RECOMMENDATION

Staff recommends that the Agency take the following actions:

- Conduct the joint public hearing;
- Adopt a Resolution approving:
    1. The First Amendment to the Agreement between the Agency and Garden Grove MXD, LLC.
    2. Authorize the Agency Director to execute any pertinent documents in order to fully execute this Agreement.

Staff recommends that the City Council take the following actions:

1. City Council of the City of Garden Grove consenting to the approval by the Agency of an Agreement by and between the Agency and Garden Grove, MXD, LLC.

M Merola for
CHET YOSHIZAKI
Economic Development Director

Greg Blodgett
By: Greg Blodgett
Senior Project Manager

Approved for Agenda Listing
John R. Clark
Matthew Fertal for
Director

Attachment 1: Garden Grove Agency for Community Development Resolution
Attachment 2: City Council of the City of Garden Grove Resolution
Attachment 3: Estimated Reuse Analysis – 800 Key Waterpark Hotel Site Proposed for Development by McWhinney Enterprises – Constructed in Two Phases
Attachment 4: First Amended and Restated Disposition and Development Agreement
Attachment 5: Amended and Restated Summary Report Pursuant to Section 33433

mm(h:Staff/GBl/DDA-Garden Grove MXD LLC Amend sr 041310v3.doc)
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