

## EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the "Agreement") is made and entered into as of MAY 10, 2016 (the "Date of Agreement"), by and between the CITY OF GARDEN GROVE, a municipal corporation ("City") and NEW XE GARDEN GROVE LLC, a \_\_\_\_\_ (the "Developer") (the Developer and the City are collectively referred to herein as the "Parties").

### RECITALS

The following recitals are a substantive part of this Agreement.

- A. City is a municipal corporation.
- B. Developer is an experienced developer, owner, manager and operator of hotels and commercial facilities.
- C. Palm Court Lodging, LLC, a California limited liability company ("Palm Court") and the Garden Grove Agency for Community Development ("Former Agency") entered into that certain Disposition and Development Agreement by and between the Garden Grove Agency for Community Development ("Former Agency") and Palm Court dated as of June 26, 2001 (the "Original DDA"). Under the Original DDA, Palm Court was to acquire land from the Former Agency and develop two hotels. Although one hotel was built (the "First Hotel"), the disposition of land for and development of a second hotel (the "Second Hotel") as provided for under the Original DDA has not occurred. Developer is the assignee of Palm Court with regard to the acquisition of land and development of the Second Hotel under the Original DDA.
- D. Developer has proposed the development, opening, and operation of a AAA Four Diamond hotel and resort (the "Project") on the property which is the subject matter of the Original DDA (the "Successor Agency Property") and additional land owned by third parties adjacent to the Successor Agency Property (the "Third Party Property"). The Successor Agency Property and the Third Party Property is collectively referred to herein as the "Site" as shown on the map attached hereto as Exhibit "A."
- E. Developer has requested that the City enter into this Agreement in order to facilitate the ability of the Developer to explore the viability of its development concept, to develop a detailed methodology and sequence of events for the acquisition of the Third Party Property, as well as to prepare and refine a proposal for the financing of the Project.
- F. The Parties have previously prepared an undated document entitled "Deal Point Memorandum" (the "Memorandum"), attached hereto as Exhibit "B", which addresses certain topics anticipated to be addressed in an agreement between the City and the Developer (the "City DDA"). While the Parties intend to negotiate substantially on the fundamental basis set forth in the Memorandum, the Memorandum has not been approved by and does not bind City and neither party has made any determination as to whether the development is feasible or practicable; it is therefore anticipated that negotiations will adapt to the circumstances that present themselves from time to time during the Negotiation Period.

G. The foregoing Recitals constitute a substantive part of this Agreement.

H. This Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with public purposes of applicable state and local laws and requirements.

I. The Parties intend that during and for the period of negotiations set forth herein (the "Negotiation Period") each will perform certain actions and responsibilities under this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Exclusive Agreement to Negotiate.**

a. Required Actions.

(1) Developer hereby agrees to pay the costs incurred in connection with the acquisition of the Third Party Property, the relocation of occupants of the Site and/or environmental review relating to the Project. Developer shall have the absolute right to approve all costs prior to the acquisition of any Third Party Property, or prior to the engagement of any consultant related to the relocation of the occupants of the Site, or related to any environmental review related to the project. To this end, the Developer shall, deliver to the city the amount of One Hundred Thousand Dollars (\$100,000.00) ("Initial Deposit"), once the Developer is reasonably satisfied that the Project will proceed. Thereafter, if the expenses incurred in connection with the acquisition of the Third Party Property, the relocation of occupants of the Site and/or the environmental review of the Project exceed the cumulative amounts previously delivered to City by Developer, City shall notify Developer and Developer shall promptly deliver additional moneys in the amount of Fifty Thousand Dollars (\$50,000.00) ("Additional Deposit") to pay such costs. If, after the Additional Deposit is made, the parties believe that the costs described above will exceed the Initial Deposit plus the Additional Deposit, then Developer may either (i) advance additional funds, as necessary, or (ii) terminate this Agreement. In the case of termination, neither party shall have any rights or obligations hereunder.

(2) Within ninety (90) days from the Date of Agreement, Developer shall submit to the City a "Preliminary Development Concept Package" which shall include:

(a) a development proposal generally describing the Project proposed to be constructed, including all development activities proposed to be undertaken (the "Proposed Development"), which Proposed Development shall include a hotel of approximately six-hundred (600) rooms, between 15,000 square feet and 30,000 square feet of meeting space, resort-style pool, spa and restaurant amenities] and which hotel shall be a hotel recognized and designated by the American Automobile Association as a AAA Four Diamond Hotel ("Conforming Hotel");

(b) a site plan and elevations for the Conforming Hotel;

(c) a plan [which may be the plan prepared by the City's acquisition and relocation consultant] with respect to the acquisition of the Third Party Property and the relocation of its occupants;

(d) a statement describing the proposed method of financing, including construction and permanent financing and, if applicable, proposed credit enhancement;

(e) a list of entities prepared to be involved in the development as well as the operation of the Conforming Hotel, their respective roles, and financial references for such entities;

(f) a construction and operating pro forma which identifies all sources and uses of funds including without limitation design of the Conforming Hotel and supporting infrastructure; and

(g) a proposed timeline;

After receipt of the complete Preliminary Development Concept Package, City will review the Preliminary Development Concept Package. Subject to such review, City will provide input to Developer concerning the Preliminary Development Concept Package. If City determines that the Preliminary Development Concept Package as originally submitted is not suitable to the needs and desires of City, City shall so inform Developer. Upon receipt of such information, Developer shall, within ninety (90) days of receipt of such notice, submit a revised Preliminary Development Concept Package or inform City in writing that it agrees that this Agreement shall be terminated.

If City determines that a Preliminary Development Concept Package is appropriate, Developer shall proceed with preparation of a "Draft Final Development Concept Package," as described below.

(3) Within ninety (90) days from the approval by City of a Preliminary Development Concept Package, Developer shall submit to the City a "Draft Final Development Concept Package," consisting of the following:

(a) updated information, current as of the date of submittal of the Final Development Concept Package, as to each and every item set forth under the heading "Preliminary Development Concept Package" and addressing such other and additional matters as may arise during negotiations;

(b) proposed final identification of sources of financing, with a description of the terms and conditions of such financing;

(c) a highly detailed proposed scope of development including minimum and appropriate square footages of buildings, a detailed parking and access plan, a reasonably detailed landscape plan, and a proposed financing plan;

(d) an updated timeline; and

(e) a detailed construction schedule of development.

After receipt of the complete Draft Final Development Concept Package, City will review the Draft Final Development Concept Package. Subject to such review, City will provide input to Developer concerning the Draft Final Development Concept Package. If City determines that the Draft Final Development Concept Package as originally submitted is not suitable to the needs and

desires of City, City shall so inform Developer. Upon receipt of such information, Developer shall, within ninety (90) days of receipt of such notice, submit a revised Draft Final Development Concept Package or inform City in writing that it agrees that this Agreement shall be terminated.

If City determines that a Draft Final Development Concept Package is appropriate, it shall be referred to as the "Final Development Concept Package" and the parties will proceed with the negotiation of a disposition and development agreement or similar agreement. The Parties acknowledge that the inclusion of the Successor Agency Property would require implementation of the Original DDA, without amendment, which implementation may require approvals by the Oversight Board to the Successor Agency (the "Oversight Board") and possibly review by the California Department of Finance ("DOF"). The Parties further acknowledge that no contact has been made with the owners of the Third Party Property, the availability of or price for the Third Party Property has not been determined, and the cost of relocation or associated costs has not been determined.

(4) The Developer shall bear the cost for its performance under this Agreement, including without limitation costs incurred by the City with respect to the plans for acquisition of the Third Party Property, and relocation planning and implementation and the environmental review of the Conforming Hotel.

(5) During the term of this Agreement, the City will negotiate exclusively with Developer concerning the development of a Conforming Hotel on the Site.

b. Term. The term of the negotiation period commence as of the Date of Agreement and shall continue until the earlier to occur of (i) the execution by the parties of the City DDA, or (ii) to the first (1st) anniversary of the Date of Agreement (the "Term of the Negotiation Period") at which time this Agreement shall automatically terminate unless sooner terminated pursuant to Section 10 or extended by the parties, each acting at its sole and absolute discretion.

c. Agreement to Negotiate. The City (by and through its staff and consultants) and Developer agree that for the term of the Negotiation Period (whether said period expires or is earlier terminated by the provisions herein) each party shall negotiate diligently and in good faith to carry out its obligations under this Agreement with the goal of coming to agreement on a City DDA. The Developer expressly agrees and acknowledges that its rights pursuant to this Agreement are subject to and based upon compliance by the Developer with this Agreement (including without limitation the making of all submittals required pursuant to this Agreement, in conformity with this Agreement).

d. Supplemental Progress Reports. In addition to the information required in Section 1 above, for so long as this Agreement remains in effect Developer agrees to make [weekly] oral progress reports and [monthly] written reports to the City Manager or his designee advising the City on all matters and all studies being made.

2. **No Predetermination of City Discretion; No Assurances as to Actions of Other Entities**. The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City's discretion. The Developer acknowledges in this regard that the feasibility of the Developer's proposal has not been determined nor has the City completed necessary environmental review or governmental processes necessary for processing of plans for development or use of the Site. Further, nothing in this Agreement in any

respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, or undertake the acquisition and/or development of any portion of the Site, or shall affect the City's compliance with the laws, rules, and regulations governing land uses, environmental review, or disposition of the Site. In addition, no assurances are made by City hereunder concerning any actions by the Successor Agency, Oversight Board, DOF or any private party.

3. **Environmental and Other Requirements.** Certain state and local environmental requirements (including, but without limitation, the California Environmental Quality Act of 1970, Public Resources Code Section 21000, et seq.) may be applicable to proposed development. Pursuant to such requirements, certain environmental documents may be required to be prepared and certified for any proposed development. The City, by this Agreement, undertakes no obligation to pay any costs associated with such environmental documents.

4. **Costs and Expenses.** Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

5. **No Change in Developer or its Constituent Members.** The Developer shall within thirty (30) days of this Agreement make full disclosure to the City of all pertinent information concerning the Developer, including any joint venture partners. The qualifications of the Developer are of particular interest to the City. Consequently, no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement without the prior written approval of the City, which approval the City may grant, withhold, condition, or deny at its sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

6. **Lead Negotiators.** \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall be the lead negotiators for the City with respect to the subject matter of this Agreement. Ronnie Lim and Phil Volpe shall be lead negotiators for Developer with respect to the subject matter of this Agreement.

7. **Address for Notices.** Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To City: City of Garden Grove  
Attention: Scott C. Stiles, City Manager  
11222 Acacia Parkway  
Garden Grove, California 92842

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:           Kam Sang  
                              411 E. Huntington Drive #305  
                              Arcadia, California 91006  
                              Attn: [Phil Wolfgramm]

8.     **Default.** Failure by either party to perform one or more of its duties as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the action required to cure the default.

9.     **Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the sole remedy of the nondefaulting party shall be to terminate this Agreement. Following such termination, neither party shall have any further rights, remedies or obligations under this Agreement. Neither party shall have any liability to the other for monetary damages or specific performance for the breach of this Agreement, or failure to reach agreement on a City DDA as to the Site, and each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, the Developer knowingly agrees that it shall have no right to specific performance for conveyance of, nor to claim any right of title or interest in the Property or any portion thereof.

10.    **Termination.** This Agreement shall: (i) automatically terminate upon the expiration of the Term of the Negotiation Period or earlier as set forth in Section 1.b above, or (ii) terminate prior to the time(s) set forth in Section 1.b above in the event the Developer shall fail to perform its obligations hereunder to the reasonable satisfaction of the City Manager; provided that prior to termination under (ii) of this Section 10, the City shall provide the Developer with notice of any such failure(s) and thirty (30) days in which to cure. In addition, the parties agree that if either party shall determine that it is infeasible to proceed in the manner provided under the Preliminary Development Concept Package or the Draft Final Development Concept Package or if the development of the Site, consistent with such Preliminary Development Concept Package or Draft Final Development Concept Package, does not appear to either party to be economically sound and feasible, either party may, upon ten (10) days' written notice to the other party, terminate this Agreement. Upon termination of this Agreement, whether upon expiration of the Negotiation Period or otherwise, both Parties knowingly agree that neither Party shall have any further rights or remedies to the other and the Developer shall have no rights in or with respect to the Site.

11.    **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City's obligations of review, approval and/or performance hereunder; provided, however that the City shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City's action on the particular item in question. Further, the time periods set forth herein are outside dates of performance. In the event a party completes a performance item earlier than the time required hereunder, the time for the next performance obligation of a party shall commence. Thus, the parties agree that the requirements hereunder may occur and be completed in a shorter time frame than set forth herein.

12. **Real Estate Commissions.** The City shall not be liable for any real estate commission or brokerage fees which may arise with respect to this Agreement or the Site.

13. **Developer Not an Agent.** The Developer is not an agent of the City.

14. **Press Releases.** The Developer agrees to discuss any press releases with the City Manager or his designee prior to disclosure or publication in order to assure accuracy and consistency of the information.

15. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

16. **Agreement Does Not Constitute Development Approval.** The City reserves final discretion and approval as to any sublease or development and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the proposed development or any other project. All design, architectural, and building plans for the Proposed Development shall be subject to the review and approval of the City and such governmental entities properly exercising authority with respect thereto. By its execution of this Agreement, the City is not committing itself to or agreeing to undertake the disposition of the Site to the Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof.

17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

18. **Implementation of Agreement.** The City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or concept of the proposed development, or add to the costs or risks incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the collective consideration, action and written consent of the governing board of the City.

19. **No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

20. **Waiver of Damages.** Each party hereby waives any claim for monetary damages for breach or default hereunder.



NOW THEREFORE, the Parties have executed this Negotiation Agreement as of the date and year first set forth above.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

By: [Signature]  
City Manager

APPROVED AS TO FORM:

[Signature]  
Stradling Yocca Carlson & Rauth PC  
Special Counsel to City

DEVELOPER:

Kan Sign Co. Inc., a California Corporation

By: [Signature]  
Its: Phillip J. Wolfgram  
Sr. VP



**EXHIBIT "A"**  
**MAP OF THE SITE**

[to come]

# PROPOSED SITE B2 RESORT



- Proposed Project Site
- Original DDA Project Site

0 75 150 300 Feet



City of Garden Grove  
Feb 2013

**EXHIBIT "B"**

**MEMORANDUM**

[to come]

**Deal Point Memorandum**  
Nickelodeon Hotel and Resort Development  
(Site B-2 and Adjacent Properties)

This Deal Point Memorandum is intended as a basis for future negotiations by the parties of the terms of a City DDA (defined below). No agreement, including the City DDA, can be effective against the City without approval by the City Council, and therefore the proposed terms set forth in this letter are subject to approval by the City Council.

**A. Background.**

1. **The Existing DDA and the DDA Property.** The Successor Agency to the Garden Grove Agency for Community Development (as successor in interest to the Garden Grove Agency for Community Development) ("Successor Agency") and New Age Garden Grove, LLC (as successor in interest to Palm Court Lodging) ("Developer") entered into a Disposition and Development Agreement in 2001 (the "DDA") pursuant to which Developer was to develop, among other things, a hotel on the 2.5 acre site shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference as the "DDA Property."

2. **Expanded Project Proposal.** The Developer has proposed that the project be expanded to a 600 room Nickelodeon themed resort hotel (the "Project"). The Project would be developed on a 10 acre Site that includes the DDA Property, the Tamerlane Apartments and the Single Family Properties all as shown on the Site Map (collectively, the "Site").

**B. Property Acquisition.**

A portion of the Site is subject to the existing DDA. The parties would like to keep the existing DDA in place to enable the Successor Agency to convey the DDA Property to the Developer at no cost. Assuming that the DDA Property can be conveyed under the existing DDA, the components of the Site and the estimated costs of acquiring the Site are described in the following table.

Site Description	Estimated Acquisition Costs (000,000)	Rationale
Tamerlane Apartments	\$ 6.36	First trust deeds
	1.65	Management Fee
	5.95	HUD Repayment – Home Funds
	\$ 13.96	
Single Family Properties	\$ 8.00	Purchase Price
DDA Property	0.00 <sup>1</sup>	DDA obligation to convey
Miscellaneous costs	3.00	Relocation
	.30	Entitlements
	\$ 25.26	

<sup>1</sup> The DDA Property can be conveyed at no cost only if the DDA is an enforceable obligation and the DDA is implemented. See paragraph F., below.

**C. Economic Assistance Agreement/Operating Covenant.** To accomplish the acquisition of the Tamerlane Apartments and the Single Family properties, the sale of those properties to the Developer and the payment of the assistance requested by the Developer in connection with the Project, the parties must negotiate and enter into a new Disposition and Development Agreement, Economic Assistance Agreement and/or Operating Covenant (the "City DDA").

**D. Prerequisites to Approval of City DDA.** The City must take certain actions prior to approving any City DDA, including the following:

(a) Environmental Review. Compliance with California Environmental Quality Act ("CEQA") and, if Section 108 loan proceeds are contributed, the National Environmental Policy Act ("NEPA"). Under CEQA, City staff has determined that a full Environmental Impact Report ("EIR") will likely be required to document the potential impacts of the Project. If federal funds (Section 108 loan proceeds) are contributed to the Project, NEPA will also apply, requiring an environmental impact statement ("EIS") will also be required; the EIR and EIS can be combined to streamline the process. Under NEPA, HUD will be required to clear the environmental evaluation for the Project. The environmental review process is expected to take from 6-12 months.

(b) Entitlements. Prior to or concurrently with approval of the City DDA, the City must approve land use entitlements for the Project.

(c) Relocation Plan. The Project is expected to result in relocation of households from the Tamerlane Apartments and the Single Family Properties. This will require a relocation plan to be prepared, made available for public review and comment for at least 30 days prior to approval of the City DDA. This process is expected to take approximately 3 months.

**E. Terms of City DDA.** The parties propose the City DDA will include the following terms:

**1. Acquisition of the Single Family Properties.** Following execution of the City DDA, Developer will provide approximately \$25.26 million dollars, as necessary, (i) to fund third party costs incurred by the City in connection with the acquisition and relocation efforts to acquire the Single Family Properties, (ii) to acquire the Single Family Properties and Tamerlane Apartments, (iii) to relocate displaced persons, and (iv) to process entitlements for the Project. Any properties acquired with funds provided by the Developer shall be the property of the Developer.

**2. City Economic Assistance.** Concurrently with the closing of the escrows for the City's conveyance of the Tamerlane Apartments to the Developer and the Successor Agency's conveyance of the DDA Property to the Developer, the following shall occur:

(a) The City will provide the amount of \$5 million from Section 108 Funds at closing to pay or reimburse the Developer for part of the acquisition costs for the Tamerlane Apartments. The remaining acquisition cost of Tamerlane Apartments and the HUD Repayment (if not deferred) will be paid by the Developer.

(b) Building permits will be issued for the Project and, in connection therewith, the City will provide Developer with a waiver of all development fees imposed by the City for the benefit of City pursuant to a development agreement in the approximate amount of \$5.6 million.

**3. Development of the Project; Operating Covenant.** Developer will construct a AAA Four Diamond Hotel and operate same for a period of not less than 20 years.

**4. TOT Rebate.** The City will pay to Developer annually an amount equal to 70% of the transient occupancy tax generated by the Project for a period of the lesser of (i) 20 years, or (ii) repayment of the to-be-determined gap amount.

**5. Developer Right to Terminate Agreement prior to Closing.** If, at any time prior to the closing, the Project, in Developer's discretion, becomes infeasible, then Developer may immediately cease to provide funds for the acquisition of the Properties and terminate the DDA, thereby terminating any further rights and obligations of either party to the other.

**6. Conditions to Closing.** Among other things, the City DDA will include the following conditions precedent to the closing, among others determined to be appropriate by the parties:

- (a) Acquisition of all properties within the Site;
- (b) City approval of hotel flag, hotel operator and franchise agreement/franchisor;
- (c) City approval of evidence of Developer's construction financing;
- (d) City approval of Project design; Land Use Approvals; Building Permits to issue at Closing;
- (e) Evidence of insurance required by the City DDA;
- (f) Construction security (see item 7 below).

**7. Construction of the Improvements.** Developer will construct the Project at Developer's own cost and expense.

(a) Construction security will be required, in the form of a completion bond, letter of credit or completion guaranty.

(b) The Project will be subject to California and federal Davis-Bacon prevailing wage and labor requirements. Federal funding (Section 108 loan proceeds) will also trigger Section 3 requirements. Developer will be responsible for ensuring these requirements are met.

(c) A Scope of Development approved by both parties will be attached to the City DDA. The City will have the right to review and approve the Project design elements, in addition to the standard City land use and permitting process.

(d) The parties will agree to a reasonable Schedule of Performance, to be attached to the City DDA.

(e) Developer must secure financing for 100% of the estimated construction cost as a condition precedent to the Closing.

**8. Covenants.** In addition to the 20 year Operating Covenant, the following covenants will be recorded against the Site at Closing:

- (a) Maintenance and nondiscrimination covenants;
- (b) Typical restrictions on the transfer of the Site, the Agreement or the Hotel will be included in the City DDA;
- (c) The City will have the right to use specified Hotel or Resort facilities a specified number of days per year for City or community events, at no cost.

**F. Effectiveness of the DDA.** The Successor Agency's ability to convey the DDA Property to the Developer at no cost depends on the Successor Agency's ability to convey the DDA Property under the existing City DDA thereby continuing to treat the DDA as an "enforceable obligation" under the Dissolution Act, Part 1.85 of Division 1 of the California Health and Safety Code notwithstanding the fact that such a conveyance is now part of the larger project envisioned by the City DDA. The DDA is currently classified as an "enforceable obligation" under the Dissolution Act; however, the project scope refers to a limited service hotel, not the larger project now envisioned by the parties. The City DDA will need to address the risk that the Developer and/or City will need to pay fair market value for the DDA Property in the event the Successor Agency is prevented from transferring the DDA Property to the Developer for the Project under the existing DDA.



## **EXHIBIT D**

### **SCHEDULE OF PERFORMANCE – CONDENSED SCHEDULE**

<b>PERFORMANCE ITEM</b>	<b>DATE</b>
1. City and Developer execute RHDA.	On or before April 15, 2013.
2. City and Developer open Escrow.	Within thirty (30) days after Date of Agreement.
3. City accepts conveyance of fee title to all Agency Property.	On or before September 1, 2013. <i>(May 29, 2015)</i>
4. Developer completes its Site Investigation pursuant to Section 204.	On or before the Due Diligence Date. <i>(August 27, 2015 → May 29 + 90 Days)</i>
5. Developer notifies City of election of whether to include Third Party Property in Project and add to Site and, if applicable, provides City with evidence of acquisition of necessary interest in Third Party Property.	On or before January 1, 2014. <i>(September 29, 2015)</i>
6. Developer submits completed application for tentative Subdivision Map, Development Agreement, and other necessary or desired Land Use Approvals.	On or before January 1, 2014. <i>(September 29, 2015)</i>
7. City approves, conditionally approves or rejects tentative Subdivision Map, Development Agreement, and other necessary or desired discretionary Additional Land Use Approvals.	On or before May 1, 2014. <i>(January 27, 2016)</i>
8. City and Developer agree in writing which Hotels constitute Upper Upscale Hotel(s) and Additional Hotel(s), respectively.	On or before October 1, 2014. <i>(June 28, 2016)</i>
9. Developer submits and obtains City approval of the identity of the Hotel Operators, Franchisors, and Franchise Agreements and Developer executes the approved Franchise Agreements.	On or before October 1, 2014. <i>(June 28, 2016)</i>

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If the City has not acquired fee title to all of the Agency Property by such date, then each subsequent date set forth in this Schedule of Performance will be extended on a day-for-day basis for each day after September 1, 2013 through and including the date upon which City acquires fee title to all of the Agency Property.

EXHIBIT D

	PERFORMANCE ITEM	DATE
10.	Developer submits and obtains City approval of Construction Drawings.	On or before February 1, 2015. <i>(October 30, 2016)</i>
11.	Developer obtains necessary commitments for issuance of building permits and other similar required non-discretionary Land Use Approvals.	On or before March 1, 2015. <i>(November 27, 2016)</i>
12.	Developer provides evidence of financing.	On or before May 15, 2015. <i>(February 10, 2017)</i>
13.	City completes demolition, Site clearance and remediation, if applicable, pursuant to Paragraph II.1. of the Scope of Development	On or before August 15, 2015. <i>(May 13, 2017)</i>
14.	Developer and City Close Escrow and Developer commences grading.	On or before September 1, 2015. <sup>1</sup> <i>(May 30, 2017)</i>
15.	Construction Commencement Date.	On or before September 1, 2015. <i>(May 30, 2017)</i>
16.	Offsite Infrastructure Completed by City	Concurrently with completion of the Developer Improvements.
17.	Developer Completes Construction of the Developer Improvements	Within twenty six (26) months after Close of Escrow. <i>(July 30, 2019)</i>

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<sup>1</sup> Although the outside date for the Closing of September 1, 2015, may not be extended for the events described in Section 602, the Closing may be extended until March 1, 2016 provided that, as of September 1, 2015, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor the Franchisor is in breach or default thereunder. The Closing may also be extended until September 1, 2016 if on March 1, 2016, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor Franchisor is in breach or default thereunder.

EXHIBIT D

-3-

NEWAGE GARDEN GROVE II, LLC

020003

CITY OF GARDEN GROVE

Check Number: 020003

Check Date: Aug 4, 2016

Check Amount: \$100,000.00

Item to be Paid - Description

Discount Taken Amount Paid

THIRD PARTY ENVIRONMENTAL STUDY

100,000.00

NEWAGE GARDEN GROVE II, LLC  
411 E HUNTINGTON DR STE #305  
ARCADIA, CA 91006-3736



Wells Fargo Bank, N.A.  
16-24/1220

020003

PAY

Aug 4, 2016

\$100,000.00

TO THE  
ORDER  
OF

One Hundred Thousand and 00/100 Dollars  
CITY OF GARDEN GROVE

Memo:

⑈020003⑈ ⑆122000247⑈

3347081287⑈

AUTHORIZED SIGNATURE

