

AGREEMENT BIBLIOGRAPHY

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| Agreement With: | New Age Garden Grove, LLC Kam Sang Company |
| Agreement Type: | Second Amended and Restated Exclusive Negotiation Agreement for the property located on the northwest corner of Twintree Avenue and Harbor Boulevard |
| Date Approved: | 04 24 2018 |
| Start Date: | 04 24 2018 |
| End Date: | See agreement |
| Contract Amount: | See agreement |
| Comments | File No. A-55.232 Community and Economic Dev |
| Insurance Expiration: | N/A |



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.*

Steven R. Jones
Mayor

Kris Beard
Mayor Pro Tem - District 1

John R. O'Neill
Council Member - District 2

Thu-Ha Nguyen
Council Member - District 3

Patrick Phat Bui
Council Member - District 4

Stephanie Klopfenstein
Council Member - District 5

Kim Bernice Nguyen
Council Member - District 6

December 14, 2018

Kam Sang
411 E. Huntington Drive #305
Arcadia, California 91006


Attention: Phil Wolfgramm

Enclosed is a signed set of the Second Amended and Restated Exclusive Negotiation Agreement by and between the City of Garden Grove and New Age Garden Grove LLC.

The agreement was approved by the City Council at their meeting held on April 24, 2018.

Sincerely,

Teresa Pomeroy, CMC
City Clerk

By: 
Liz Vasquez
Deputy City Clerk

Enclosure

c: Finance Department
Community and Economic Development

SECOND AMENDED AND RESTATED EXCLUSIVE NEGOTIATION AGREEMENT

THIS SECOND AMENDED AND RESTATED EXCLUSIVE NEGOTIATION AGREEMENT (the "Second Amended and Restated Agreement") is made and entered into as of April 24, 2018 (the "Date of Agreement"), by and between the **CITY OF GARDEN GROVE**, a municipal corporation ("City") and **NEW AGE GARDEN GROVE, LLC**, a California limited liability company (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 (the "Former Agency" now succeeded by the "Successor Agency" to the Former Agency) entered into that certain Disposition and Development Agreement by and between the Garden Grove Agency for Community Development and Palm Court dated as of June 26, 2001 (the "Original DDA"). Under the Original DDA, Palm Court was to acquire property (the "Agency Property") from the Former Agency and develop two hotels. Although one hotel was built (the "First Hotel"), the disposition of property for and development of a second hotel (the "Second Hotel") on the Agency Property, 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 on the Agency Property under the Original DDA.
- D. Developer has proposed the development, opening, and operation of an approximately 560 room Nickelodeon Hotel & Resort of equal or greater (i) quality of exterior construction and furniture, fixtures, and equipment, (ii) quality and scope of amenities, and (iii) service level, as that found in the Nickelodeon Hotel & Resort located in _____ or, in the alternative, a AAA Four Diamond Hotel (the "Conforming Hotel") on the Agency Property and additional land owned by the City (the "City Property") and land owned by third parties adjacent to and near the Agency Property (the "Third Party Property"). The Agency Property, the City Property, and the Third Party Property are collectively referred to herein as the "Site" as shown on the map attached hereto as Exhibit A.
- E. The Parties intend to enter into an agreement (the "City DDA") pursuant to which the Developer will construct and operate the Conforming Hotel on the Site through both the implementation of the Agency DDA and the City DDA.
- F. City and Developer previously entered into an agreement entitled "Exclusive Negotiation Agreement" dated as of May 10, 2016 (the "Original ENA"), and an Amended and Restated Exclusive Negotiation Agreement on May 9, 2017 ("Amended and Restated ENA").

G. The Parties agree that Developer is making progress toward arranging for and accomplishing the development activities referenced in the Amended and Restated ENA. However, Developer has requested and City is amenable to affording Developer additional time during which certain steps will be taken by Developer and the Parties will continue to remain in a negotiation period.

H. The Parties have previously prepared a document entitled "Deal Point Memorandum" attached to the Amended and Restated ENA as Exhibit B, which addresses certain topics anticipated to be addressed in the "City DDA". The Parties wish to modify the Deal Point Memorandum and are doing so by attaching the Second Revised Deal Point Memorandum to this Second Amended and Restated Agreement as Exhibit B (the "Second Revised Memorandum"). While the Parties intend to negotiate substantially on the fundamental basis set forth in the Second Revised Memorandum, the Second Revised 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.

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

J. 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.

K. 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) Environmental Review and Preparation of a Relocation Plan. The City is engaged in the environmental review pursuant to state and federal law of the Conforming Hotel in anticipation and preparation of the City's consideration of the City DDA and entitlements and has begun preparation of a relocation plan pursuant to state and federal law in furtherance of the acquisition of the Third Party Property. The Parties anticipate that the cost of such review and preparation will be approximately Three Hundred Thousand Dollars (\$300,000). To this end, the Developer has heretofore delivered to the City the amount of One Hundred Thousand Dollars (\$100,000.00) ("Initial Deposit"). When the expenses incurred in connection with the acquisition of the environmental review of the Conforming Hotel and preparation of the relocation plan exceed the Initial Deposit, City shall notify Developer and Developer shall promptly deliver additional moneys to pay such costs up to a total of approximately Three Hundred Thousand Dollars (\$300,000).

(2) The City DDA will include a provision requiring the Developer to pay the costs incurred in connection with the acquisition of the Third Party Property and the relocation of occupants of the Third Party Property prior to closing, not to exceed Thirteen Million Dollars (\$13,000,000). 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. If the Parties believe that the costs described above will exceed Fifteen Million Dollars (\$15,000,000), then Developer may either (i) commit additional funds, as necessary, or (ii) terminate the City DDA. In the case of termination, neither party shall have any rights or obligations thereunder.

(3) the Developer has heretofore submitted a site plan and elevations for the Conforming Hotel, a copy of which is attached hereto as Exhibit C and incorporated herein by reference;

(4) Within sixty (60) days from the Date of Agreement, the Developer shall submit:

(a) a development proposal generally describing the Conforming Hotel proposed to be constructed, including all development activities proposed to be undertaken, which shall include the previously described Nickelodeon Hotel & Resort of approximately five hundred sixty (560) rooms (or other AAA Four Diamond Hotel), between 15,000 square feet and 30,000 square feet of meeting space, resort-style pool, spa and restaurant amenities;

(b) a plan with respect to the acquisition of the Third Party Property and the relocation of its occupants prepared by the City's Consultant in compliance with state and federal law;

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

(d) 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;

(e) 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

(f) a proposed timeline;

(5) During the Term, but only after the Parties are jointly satisfied that they have agreed upon the material terms of the City DDA, 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 (3) and (4) above 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 City DDA. The Parties acknowledge that the inclusion of the Agency Property would require implementation of the Agency 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 the availability of or price for the Third Party Property has not been determined and the actual cost of relocation and associated costs has not been established.

(6) The Developer shall bear the cost for its performance under this Second Amended and Restated Agreement. The Developer shall, subject to Developer prior written approval, pay for all 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.

(7) 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) or December 31, 2018 (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 federal, state, and local environmental requirements (including, but without limitation, the California Environmental Quality Act of 1970, Public Resources Code Section 21000, et seq. and the National Environmental Protection Act) 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. **DDA provisions re Job Criteria.** The DDA will contain a provision requiring the Developer to insure that not less than 51% of the jobs associated with the development and operation of the Project will be available to low and moderate income persons. Such provision shall also include the following:

a. A copy of a written agreement containing:

(1) A commitment by the operator of the Conforming Hotel that it will make at least 51 percent of the jobs available to low and moderate income persons and will provide training for any of those jobs requiring special skills or education;

(2) A listing by job title of the permanent jobs to be created indicating which jobs will be available to low and moderate income persons, which jobs require special skills or education, and which jobs are part-time, if any; and

(3) A description of actions to be taken by the operator of the Conforming Hotel to ensure that low and moderate income persons receive first consideration for those jobs; and

b. After opening of the Conforming Hotel, a listing prepared by the operator of the Conforming Hotel of the permanent jobs filled (by job title), and which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used; which low and moderate income persons were interviewed for a particular job; and which low and moderate income persons were hired.

5. **Costs and Expenses.** Except as otherwise provided in this Agreement (including exhibits), 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.

6. **No Change in Developer or its Constituent Members.** 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.

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. **Breach.** Failure by either party to perform one or more of its duties as provided in this Agreement shall constitute a breach under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the breach and the action required to cure the breach. If the breaching party fails to cure such breach within thirty (30) days of written notice, such breach shall become a "Default."

9. **Remedies for Default.** In the event of a 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, 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 Third Party 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 9, 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 the sale and/or 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 Conforming Hotel 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.

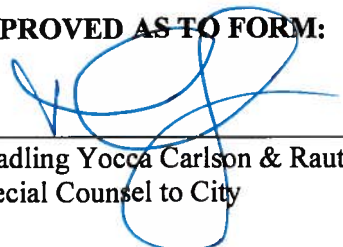
NOW THEREFORE, the Parties have executed this Negotiation Agreement as of the date and year first set forth above.

CITY:

CITY OF GARDEN GROVE,
a municipal corporation

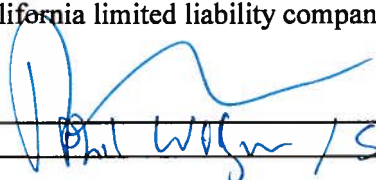
By: 
City Manager

APPROVED AS TO FORM:


Stradling Yocca Carlson & Rauth PC
Special Counsel to City

DEVELOPER:

NEW AGE GARDEN GROVE, LLC,
a California limited liability company

By: 
Its: Phil Wilson / SVP


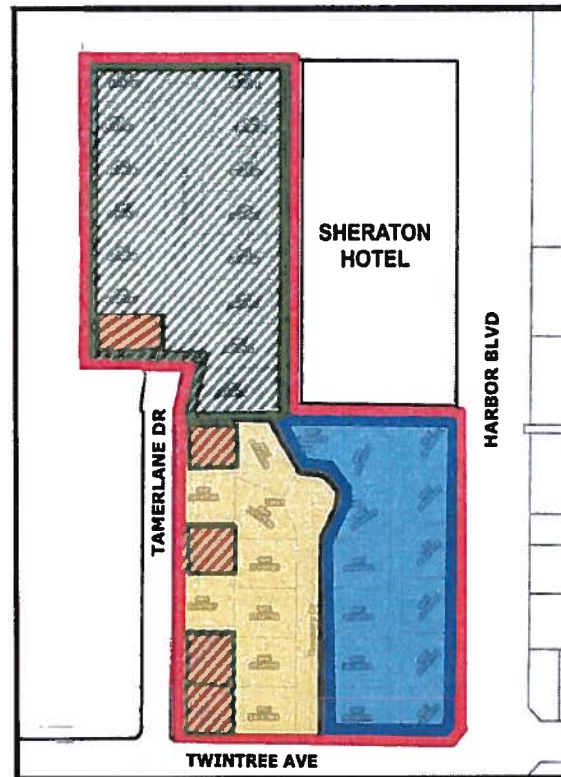
ATTEST: 
TERESA POMEROY, CMC
City Clerk
City of Garden Grove
DATED: 12/14/18

EXHIBIT A
MAP OF THE SITE

PROPOSED SITE B2 RESORT



Legend

| | | |
|---|-------------------|--|
|  | Original DDA | Third Party Properties |
|  | ENA Site Boundary |  Tamerlane Apartments |
|  | Other City Land |  Other Properties |

EXHIBIT B

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

This Second Revised 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 "Agency 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 "Agency Property."

2. Expanded Project Proposal. The Developer has proposed that the hotel be expanded to a 560 room Nickelodeon themed resort hotel or AAA Four Diamond Hotel, as described in Recital D of the Second Amended and Restated Exclusive Negotiation Agreement to which this Exhibit B is attached (the "Conforming Hotel"). The Conforming Hotel would be developed on a 9.08 acre Site that includes the City Property, the Agency Property, the Third Party Property, all as shown on the Site Map (collectively, the "Site"). Development and operation of the Conforming Hotel will occur through the implementation of the Agency DDA and the City DDA. Capitalized terms not defined herein shall have the meaning set forth in the Second Amended and Restated Agreement to which the Second Revised Transaction Memorandum is attached.

B. Public Benefit.

During the Covenant Consideration Period, as described in E.2(b), if the Conforming Hotel is constructed and operated in accordance with the City DDA, it is projected that the City will receive combined TOT, net new property taxes, and new sales tax in the aggregate amount of \$2,500,000 per year for a net present value amount of \$24,000,000 at a 8% discount rate for a period of twenty (20) years.

C. Property Acquisition.

A portion of the Site, the Agency Property, is subject to the Agency DDA. The Parties intend to implement the Agency DDA by the conveyance by the Successor Agency to the Developer of the Agency Property. The components of the Site and the estimated costs of acquiring the Site are described in the following table:

| Item | Estimated Costs (000,000) | Description |
|------------------------|------------------------------|--|
| Third Party Properties | \$ 6.80 | Total first trust deeds |
| | 2.35 | Management Fee |
| | 4.40 | HUD Repayment -- Home Funds |
| Other Properties | 1.00 | Estimated Purchase Price |
| Agency Property | 0.00 | Original DDA obligation to convey Successor Agency Property |
| Miscellaneous costs | 3.45 | Relocation (estimated) |
| Total | \$ 18.00 | |

D. Economic Assistance Agreement/Operating Covenant.

To accomplish the acquisition of the Third Party Property, the conveyance of the City Property to the Developer, and the payment of the assistance requested by the Developer in connection with the Conforming Hotel, the Parties must negotiate and enter into a new Disposition and Development Agreement (the "City DDA").

E. Prerequisites to Approval of City DDA.

The City must take certain actions prior to approving any City DDA, including the following:

1. **Environmental Review.** Compliance with California Environmental Quality Act ("CEQA") and, if Section 108 loan proceeds are contributed, the National Environmental Policy Act ("NEPA"). Under NEPA, HUD will be required to clear the environmental evaluation for the Conforming Hotel. The environmental review process is expected to take from 6-12 months. Developer will pay all costs associated with the environmental review process.

2. **Entitlements.** Prior to or concurrently with approval of the City DDA, the City must consider, and acting in its sole and absolute discretion, approve land use entitlements for the Conforming Hotel.

3. **Relocation Plan.** The Conforming Hotel is expected to result in relocation of households from the Third Party Property. 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. Developer will pay all costs associated with the preparation of a relocation plan.

4. **Housing Replacing Plan.** The City will prepare and process for approval a housing replacement plan.

F. Terms of City DDA.

The Parties propose the City DDA will include the following terms:

1. **Acquisition and Relocation.** It is anticipated that following execution of the City DDA and prior to closing, Developer will provide approximately \$13 million dollars, (i) to fund third party costs incurred by the City in connection with the acquisition and relocation efforts to acquire

the Third Party Property, and (ii) to relocate displaced persons. Any properties acquired with funds provided by the Developer shall be the property of the Developer.

2. City Economic Assistance.

(a) Concurrently with the closing of the escrows for the conveyance of the City Property, to the Developer, the Successor Agency's conveyance of the Agency Property to the Developer, and the issuance of building permits for the Conforming Hotel, the following shall occur:

(1) Subject to HUD approval, the City will provide the amount of \$5 million from Section 108 Funds to pay or reimburse the Developer for part of the acquisition costs for the Tamerlane Apartments.

(2) Building permits will be issued for the Project and, in connection therewith, the City will provide Developer with a waiver of specified development fees imposed by the City for the benefit of City pursuant to a development agreement not to exceed \$5.6 million.

(b) 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 (the "Covenant Consideration Period").

3. Development of the Project; Operating Covenant. Developer will construct a Conforming Hotel on the Site and operate same for a period of not less than 25 years (the "Operating Period").

4. Developer Right to Terminate Agreement prior to Closing. If, at any time prior to the closing, the Project, in Developer's discretion, becomes unfinancable or otherwise infeasible, then Developer may immediately cease to provide funds for the acquisition of the Third Party Property and terminate the City DDA, thereby terminating any further rights and obligations of either party to the other with respect to the City DDA.

5. 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 the Third Party Property;
- (b) City approval of hotel operator and franchise agreement/franchisor.
- (c) City approval of evidence of Developer's construction financing;
- (d) City approval of Conforming Hotel design; Land Use Approvals; Building Permits to issue at Closing;
- (e) Evidence of insurance required by the City DDA;
- (f) Completion guaranty. .

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

(a) Developer will comply with and defend and indemnify City with respect to the Parties' Developer obligation to comply with the prevailing wage statutes.

(b) 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 Conforming Hotel design elements, in addition to the standard City land use and permitting process to, among other things, insure that it is a Conforming Hotel.

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

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

7. Covenants. In addition to the 25 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 and/or the Conforming Hotel will be included in the City DDA;

(c) The Parties will negotiate the City's right to use specified hotel or resort facilities a specified number of days per year for City or community events, at no cost for the use of the facility.