

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO: \

CITY CLERK'S OFFICE
Community Development Dept.)
City of Garden Grove)
11222 Acacia Parkway)
Garden Grove, CA 92840)
)
)

Recorded in Official Records, County of Orange
Darlene Bloom, Interim Clerk Recorder

NO FEE

20020231935 08:37am 03/21/02

100 73 A12 26
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

(Space above for Recorder.)

This document is exempt for payment
of a recording fee pursuant to
Government Code Section 6103.

Dated: March 5, 2002

DEVELOPMENT AGREEMENT

Palm Court Lodging, LLC.
SP-301-01& PM-2001-227

THIS AGREEMENT is made this 26th day of February, 2002 by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and Palm Court Lodging, LLC. ("DEVELOPER")

RECITALS

The following recitals are a substantive part of this Agreement:

1. The Garden Grove Agency for Community Development and DEVELOPER have previously entered into a Disposition and Development Agreement (DDA) dated June 20, 2001, which provides for the development of that certain real property located on the west side of Harbor Boulevard, south of Chapman Avenue, north of Twintree Avenue, the "Disposition Site".
2. CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of two multi-story hotels with a total of 483 rooms, located on the west side of Harbor Boulevard, south of Chapman Avenue, north of Twintree Avenue, Assessor Parcel Nos 231-471-01 through 18.
3. DEVELOPER is qualified by virtue of experience, training, education and expertise to accomplish the requirements listed herein to the satisfaction of the City.

4. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
5. The CITY's Planning Commission recommended approval of Planned Unit Development No. PUD-141-01, and approved Site Plan No. SP-301-01 and Tentative Parcel Map No. PM-2001-227, on December 6, 2001, conditioned upon the DEVELOPER entering into a Development Agreement.
6. Government Code Section 65864 et seq. provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. DURATION. The term of this Agreement shall be in accordance with the terms and conditions of the DDA, provided however, in the event that the DDA is terminated, this Agreement shall also be terminated and be of no further force or effect.
2. Permitted Uses/Land Use Entitlements. The following use is permitted at the PROJECT: Two multi-story, hotels with a total of 483 rooms, located on the west side of Harbor Boulevard, south of Chapman Avenue, north of Twintree Avenue, as per the DDA and shown on the approved plans. The project has been granted the following land use entitlement: PUD-141-01, SP-301-01 and PM-2001-227.
3. Density/Intensity. The density or intensity of this project is as follows: Two multi-story hotels with a total of 483 rooms, located on the west side of Harbor Boulevard, south of Chapman Avenue, north of Twintree Avenue.
4. Maximum Height and Building Size. The maximum height and building size are as follows:
Hotel 1: The maximum building height shall be up to eight stories. The total building area shall not exceed 127,000 square feet.

Hotel 2: The maximum building height shall be up to nine stories. The total building area shall not exceed 160,331 square feet.
5. Reservation or Dedication. The reservation of easements or dedication of property to the City to allow the construction of the proposed facility as shown on the approved Site Plan.
6. Improvements. The improvements described in Resolution No. 5261 shall be constructed prior to the occupancy of each proposed hotel facility respectively, or

subject to an approved phasing plan for the entire site, all in accordance with the terms and conditions of the DDA.

7. Scope of Project. The Project shall consist of those uses stated in paragraph two, with a density/intensity stated in paragraph three, with a building height and size stated in paragraph four, all in accordance with the terms and conditions of the DDA.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5261 attached hereto and incorporated herein as Exhibit "1," are material terms of this Agreement. Breach of any condition of approval shall be deemed to be a breach of this Development Agreement.
9. Reimbursement. DEVELOPER shall pay CITY as follows:
 - 9.1 Amount. One percent of building permit valuation.
 - 9.2.1 Not to Exceed. Payment under this Agreement shall not exceed the following:
 - Hotel 1: \$117,480.00.
 - Hotel 2: \$148,310.00.
10. Records of Expenses. DEVELOPER shall keep records in which complete and correct entries will be made of construction costs. These records will be available to CITY.
11. City Agreement. CITY agrees that one percent (1%) of the project valuation, not to exceed \$117,480.00 for Hotel 1 and \$148,310.00 for Hotel 2, will reimburse CITY for the cost of certain CITY services required by the proposed development that are not otherwise being reimbursed to CITY.
12. Payment Due Date. The reimbursement amount shall be due and payable prior to the issuance of building permits for each hotel respectively.
13. Termination Provisions. This Agreement may be terminated upon the happening of any of the following events:
 - A. Failure of DEVELOPER to perform any of the provisions of this Agreement, or
 - B. Mutual agreement of the parties.
 - C. Failure of DEVELOPER to cure any default under the terms and conditions of the DDA.

14. Periodic Review. CITY shall review DEVELOPER'S performance every twelve (12) months at the anniversary of the adoption of this Agreement. DEVELOPER shall demonstrate good faith compliance with the terms of this Agreement. If as a result of the review, CITY finds and determines, based upon substantial evidence that DEVELOPER has not complied in good faith with terms or conditions of this Agreement, CITY may terminate the Agreement. This review shall be conducted by the Director of the Community Development Department.
15. City Discretion. CITY retains its right and discretion, under all applicable Codes, to approve or disapprove any item related to this PROJECT which it has not specifically agreed to via this Agreement. DEVELOPER acknowledges that it shall comply with all CITY requirements for applications and permits of any nature, and that this Agreement does not relieve DEVELOPER of the necessity of filing appropriate applications and permits.
16. Improvement Schedule. The following improvements shall be constructed by the stated dates:

All repairs and improvements to the public right-of-way required in Planning Commission Resolution No. 5261 shall be completed prior to the issuance of any certificates of occupancy or release of any public utilities, or subject to an approved phasing plan for the entire site.
17. Developer Breach. Failure of DEVELOPER to construct improvements as specified, or to pay amounts specified in a timely fashion, shall result in the withholding of building permits, any other permit or certificate of occupancy until the breach is remedied to satisfaction of CITY.
18. Non-Liability of Officials and Employees of the City. No official or employee of CITY shall be personally liable to DEVELOPER in the event of any default or breach by CITY, or for any amount which will become due to DEVELOPER, or any obligation under the terms of this Agreement.
19. Notices. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.

A. Address of DEVELOPER is as follows:
Palm Court Lodging, LLC.
9100 E. Panorama Dr. #300
Englewood, CO 80112

B. Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

20. DEVELOPER'S Proposal. The Project shall include DEVELOPER'S proposal, as modified by Planning Commission and City Council, including all conditions of approval contained in Planning Commission Resolution No. 5261, which shall be incorporated herein by this reference. In the event of any inconsistency between terms of the proposal and this Agreement, this Agreement shall govern.
21. Licenses, Permits, Fees, and Assessments. At its sole expense, DEVELOPER shall obtain all licenses, permits, and approvals as may be required by this Agreement, or by the nature of the PROJECT.
22. Time of Essence. Time is of the essence in the performance of this Agreement.
23. Successor's Interest. The provisions of this Agreement shall be binding upon and inure to successors in interest of the parties and shall be specifically binding upon any future lessees or other owners of an interest in PROPERTY.
24. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
25. Indemnification. DEVELOPER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER'S agents, officers or employees, subcontractors hired by DEVELOPER.
26. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and DEVELOPER.
27. Inconsistencies. Nothing in this Agreement shall limit or impair the Garden Grove Agency for Community Development's and DEVELOPER'S obligations under the Disposition and Development Agreement. In the event there is any inconsistency between the terms of this Agreement and the DDA, the DDA shall govern.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown below.

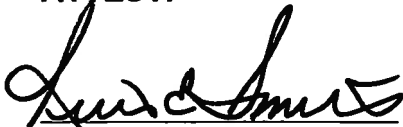
Date: 2-27-02

"CITY"
CITY OF GARDEN GROVE
a Municipal Corporation

BY

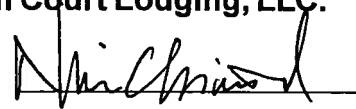

Mayor

ATTEST:


CITY CLERK
DATE: 3-01-02

"DEVELOPER"
Palm Court Lodging, LLC.

By:



Its: Member

Date: 12/16/01

(Signature must be notarized.)

APPROVED AS TO FORM:


Garden Grove City Attorney

Date: 1/14/02

If DEVELOPER is a corporation,
a Corporate Resolution
and/or Corporate Seal is required.
If a partnership, Statement of Partnership
must be submitted to CITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange } ss.

On March 5, 2002, before me, Priscilla Stierstorfer,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Bruce A. Broadwater,
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Priscilla Stierstorfer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

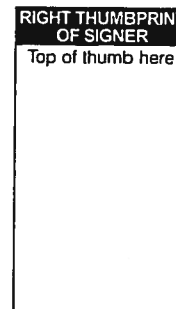
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



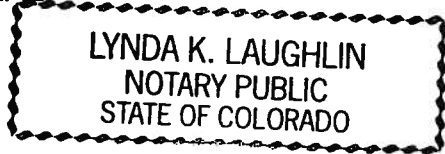
STATE OF COLORADO
COUNTY OF ARAPAHOE

This instrument was acknowledged before me by Navin C. Dimond,
known to me to be the person whose name is subscribed on the foregoing
instrument.

Given under my hand and seal of office on this 16 day of
December, 2001.

My commission expires: 2-14-2004

SEAL



Lynda K. Laughlin
Notary Public