

ORDINANCE NO. 2790

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
ADOPTING DEVELOPMENT AGREEMENT NO. DA-183-10 BETWEEN THE CITY OF  
GARDEN GROVE AND GARDEN GROVE MXD, INC.

***City Attorney Summary***

***This ordinance approves a development agreement between the City of Garden Grove and Garden Grove MXD, Inc., the developer of the water park hotel proposed to be located generally on the west side of Harbor Boulevard between Lampson Avenue and Garden Grove Boulevard. The agreement provides that the developer will be entitled to build the project in accordance with the existing land use entitlements for a period of 5 years. The agreement further provides for a development agreement payment, along with the payment of development fees, to the City of Garden Grove in an amount not to exceed \$2,635,629.***

WHEREAS, the City of Garden Grove has received an application from Garden Grove MXD, Inc., for Development Agreement No. DA-183-10 for the establishment of a water park themed hotel resort with ancillary restaurant, retail, and meeting space uses to be developed on approximately 12.1 acres in an urbanized area in the city of Garden Grove located on the west side of Harbor Boulevard, north of Garden Grove Boulevard and south of Lampson Avenue, with addresses: 12581, 12591, 12681, and 12721 Harbor Boulevard, and 12602 and 12601 Leda Lane (Assessor Parcel Numbers: 231-441-27, 29, 39, and 40; 231-431-02 and 03)(the Project);

WHEREAS, pursuant to Resolution No. 5719, the Planning Commission at a duly noticed Public Hearing held on December 16, 2010, recommended approval of Development Agreement No. DA-183-10;

WHEREAS, a duly noticed Public Hearing was held by the City Council on January 25, 2011, and all interested persons were given an opportunity to be heard;

WHEREAS, Development Agreement No. DA-183-10 is consistent with the General Plan, as amended, and Planned Unit Development No. PUD-126-10, including the goals and policies of the Garden Grove General Plan; and

WHEREAS, the City Council approved Resolution No. 9028-11 during its meeting on January 25, 2011, adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project pursuant to the California Environmental Quality Act, California Public Resources Section 21000 et seq. (CEQA) and CEQA's implementing guidelines, California Code of Regulations, Title 14, Sections 15000 et seq.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals. The City Council finds that the above recitations are true and correct.

Section 2. Environmental Review. Pursuant to CEQA, the City Council adopted a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project in City Council Resolution No. 9028-11 which incorporated by reference as if set forth fully herein.

Section 3. Approval. Development Agreement No. DA-183-10 is hereby adopted for property located on the west side of Harbor Boulevard, between Lampson Avenue and Garden Grove Boulevard, at 12581, 12591, 12681, and 12721 Harbor Boulevard, and 12601 and 12602 Leda Lane, Parcel Nos. 231-441-27, 29, 39, and 40 and 231-431-02, and 03. A copy of Development Agreement No. DA-183-10 is attached and on file in the City Clerk's Office.

Section 4. Recording. Pursuant to California Government Code Section 65868.5, the City Clerk shall record a copy of the Development Agreement with the County Recorder for the County of Orange within 10 days after the Development Agreement is executed.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words, or portions thereof be declared invalid or unconstitutional.

Section 6. Effective Date. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the \_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
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 Ordinance was introduced and presented on January 25, 2011, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, DO, JONES, NGUYEN, DALTON  
NOES: COUNCIL MEMBERS: (0) NONE  
ABSENT: COUNCIL MEMBERS: (0) NONE

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )

City Clerk's Office )  
City of Garden Grove )  
11222 Acacia Parkway )  
Garden Grove, CA 92840 )  
)  
)

(Space above for Recorder.)

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

Dated:

**DEVELOPMENT AGREEMENT NO. DA-183-10**

**Conditional Use Permit No. CUP-303-10  
and  
Tentative Parcel Map No. PM-2010-1178  
(Garden Grove MXD, Inc.)**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and Garden Grove MXD, Inc. (DEVELOPER).

**RECITALS**

The following recitals are a substantive part of this Agreement:

- A. The CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of a water park hotel facility consisting of an approximately 605 room hotel, an approximately 130,000 square foot water park, approximately 18,000 square feet of retail, approximately 30,000 square feet of meeting space, restaurants within the hotel facility, either a private or a public parking structure, an approximately 14,850 square foot restaurant pad, the on-site sale of alcoholic beverages in the hotel and hotel restaurants, the reconfiguration of the existing six properties into three separate properties, along with related improvements. (the "PROJECT") on that certain real property located on the west side of Harbor Boulevard, between Lampson Avenue and Garden Grove Boulevard, at 12581, 12591, 12681, and 12721 Harbor Boulevard and 12601 and 12602 Leda Lane, Parcel Nos. 231-441-27, 29, 39, & 40; 231-431-02 & 03. DEVELOPER will acquire such property in accordance with Sections 200-205 of the First Amended and Restated Disposition and Development Agreement dated as of \_\_\_\_\_ by

and between the Garden Grove Agency for Community Development and Garden Grove MXD, Inc.

- B. The Planning Commission approved Conditional Use Permit No. CUP-303-10 and Tentative Parcel Map No. PM-2010-1178, for the PROJECT, on December 16, 2010, subject to this Development Agreement.
- C. The CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of the PROJECT pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code (the "Development Agreement Statute").
- D. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
- E. The Development Agreement Statute provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.
- F. DEVELOPER has an equitable interest in the PROPERTY.

### **AGREEMENT**

#### **THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. Duration. This Agreement and Land Use Entitlements described in Section 2 shall expire five (5) years from its effective date, unless any duty specified remains executory, in which case this Agreement may be extended at discretion of CITY, pursuant to law, until all duties are performed. Renewals shall not unreasonably be withheld. The effective date of this agreement shall begin on the date first identified above.
2. Permitted Uses/Land Use Entitlements. The following uses are permitted on the PROPERTY: A water park hotel facility that includes the water park hotel consisting of an approximately 605 room hotel, an approximately 130,000 square foot water park, approximately 18,000 square feet of retail, approximately 30,000 square feet of meeting space, restaurants within the hotel facility, either a private or a public parking structure, and an approximately 14,850 square foot restaurant pad. The PROJECT had been granted the following entitlements: Conditional Use Permit No. CUP-303-10 and Tentative Parcel Map No. PM-2010-1178. The Conditional Use Permit allows for the sale of alcoholic beverages in the hotel and hotel restaurants, and the Tentative Parcel Map allows the reconfiguration of the existing six properties into three separate properties. The development is processed in conjunction with a General Plan Amendment to change the General Plan Land Use designations of two properties from Low Density Residential to International West Mixed Use and a zone change to change the zoning of the property from Planned Unit Development No. PUD-121-98 to Planned Unit Development No. PUD-126-10. The PUD is subject to the development

standards that have been approved through the PUD process and the associated entitlements. The base zoning for the PROJECT is HCSP-DC (Harbor Corridor Specific Plan-District Commercial).

3. Density/Intensity. The density or intensity of the PROJECT is as follows: A water park hotel facility consisting of an approximately 605 room hotel, an approximately 130,000 square foot water park, approximately 18,000 square feet of retail, approximately 30,000 square feet of meeting space, restaurants within the hotel facility, either a private or a public parking structure consisting of approximately 1050 spaces, and an approximately 14,850 square foot restaurant pad.
4. Maximum Height and Building Size. The maximum height and building sizes are as follows: The maximum height of the hotel building shall be 12-stories, 165-feet; the maximum height of the lobby portion of the building shall be 65-feet; the maximum height of the 5-level public or private parking structure shall be 50-feet, with the exception of the stairwell/elevator towers, which may extend an additional 16-feet above the top of the parapet wall; and the maximum height of the water park building or buildings shall be 70-feet, as indicated on the site submitted elevations. The maximum height of the stand-alone restaurant shall be 35-feet.
5. Reservation or Dedication. The reservation of easements or dedication of property to the City to allow the construction of the proposed development shall be as shown on and/or conditioned in the approved Conditional Use Permit No. CUP-303-10 and Tentative Parcel Map No. PM-2010-1178.
6. Improvements. The improvements described in Planning Commission Resolution No. 5720 shall be constructed prior to the occupancy of the proposed development or the issuance of any certificate of occupancy for any unit of the development, all in accordance with the terms and conditions of CUP-303-10 and Tentative Parcel Map No. PM-2010-1178.
7. Scope of PROJECT. The PROJECT shall include a water park hotel facility consisting of an approximately 605 room hotel, an approximately 130,000 square foot water park, approximately 18,000 square feet of retail, approximately 30,000 square feet of meeting space and restaurants within the hotel facility, either a private or a public parking structure for approximately 1050 cars, an approximately 14,850 square foot restaurant pad, the on-site sale of alcoholic beverages in the hotel and hotel restaurants, the reconfiguration of the existing six properties described in Recital A into three separate properties, along with related improvements.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5720 attached hereto and incorporated herein as "Exhibit A," are material terms of this Agreement. A material breach of any condition of approval after notice and right to cure as set forth in Section 12 shall be deemed to be a breach of this Development Agreement.

9. PROJECT Fees and Development Agreement Payment.

A. Development fees for the PROJECT include "non-City controlled fees," including Orange County Sanitation District ("OCSD") and Garden Grove Unified School District ("GGUSD") fees. Developer shall be responsible to pay the total non-City controlled fees at whatever is the final amount applicable to the PROJECT.

B. "City Controlled Development Fees" include, but are not limited to, building permit fees, fire facility fees and Section 2 fire services fees, building permit/plan review fees, electrical, mechanical and plumbing permit fees, art in public places fees, general plan fees, cultural arts fees, parkway tree fees, commercial driveway fees, water, front footage and drainage assessment fees and traffic impact mitigation fees. City Controlled Development Fees for the PROJECT, except for the restaurant and the public or private parking structure, are currently estimated to total Two Million Two Hundred Eighty-Five Thousand Six Hundred Twenty-Nine Dollars (\$2,285,629). Except as noted in Subsection C below, Developer shall be responsible to pay the total City Controlled Development Fees at whatever is the final amount applicable to the PROJECT, without regard to the estimate herein.

C. Developer shall pay to City a Development Agreement Payment calculated to equal the positive difference between the final total of the (1) City Controlled Development Fees, except for those applicable to the restaurant and the public or private parking structure, that are currently estimated at a total of Two Million Two Hundred Eighty-Five Thousand Six Hundred Twenty-Nine Dollars (\$2,285,629) and (2) Two Million Six Hundred Thirty-Five Thousand Six Hundred Twenty-Nine Dollars (\$2,635,629). For example, if the current estimates of the City Controlled Development Fees are accurate, the Development Agreement Payment will be Three Hundred Fifty Thousand Dollars (\$350,000). In no event shall the combined amount of City Controlled Development Fees and the Development Agreement Payment exceed Two Million Six Hundred Thirty-Five Thousand Six Hundred Twenty-Nine Dollars (\$2,635,629).

D. Developer and City acknowledge and agree that the fees and payments addressed in this Section 9 do not include development related fees and any Development Agreement Payment that apply to either a private or a public parking structure and the restaurant proposed for the 14,850 square foot restaurant building pad. City Controlled Development Fees and any Development Agreement Payment for the parking structure shall be calculated/established and paid to City at the time of the closing of the bond issuance contemplated for financing the parking structure. Development related fees and any Development Agreement Payment for the restaurant to be constructed on the restaurant pad site shall be calculated/established

and paid in conjunction with the design and construction of the restaurant.

10. City Agreement. CITY agrees that the development fees to be paid to the City, pursuant to Paragraph 9, will reimburse CITY for the cost of CITY services required by the development of the PROJECT.
11. Payment Due Date.
  - A. The non-City controlled fees, shall be paid at the time and in the manner established by the OCSD and the GGUSD respectively.
  - B. The grading fees for the water park hotel portion of the PROJECT shall be due and payable prior to issuance of a grading permit for the water park hotel.
  - C. The building permit/plan review fees, electrical, mechanical and plumbing permit fees, general plan fees, traffic impact mitigation fees, commercial driveway fees, water, front footage and drainage assessment fees for the water park hotel portion of the PROJECT shall be paid prior to the issuance of building permits.
  - D. The art in public places fees, the cultural arts fees, the parkway tree fees, and the Development Agreement Payment for the water park hotel portion of the PROJECT shall be due and payable prior to the granting of any certificate of occupancy for the PROJECT.
12. Termination Provisions. Except for a termination by mutual agreement of the parties, this Agreement may only be terminated (1) through the annual review process referred to in Section 13 herein, in accordance with the process and procedures set forth in Exhibit B or (2) upon material breach of the Agreement, in which case the process and procedures set forth in Exhibit B shall be utilized without regard to the timing of the annual review.
13. Annual 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 in accordance with Exhibit B. This review shall be conducted by the Director of the Community Development Department.
14. City Discretion. So long as the Agreement remains in effect, DEVELOPER shall have the full vested right to construct and complete development of the PROJECT and the use of the PROPERTY consistent with the land use entitlements identified in Paragraph 2. Otherwise, CITY retains its right and discretion, under all applicable Codes, to approve or disapprove any item related to this PROJECT that it has not specifically agreed to via this



Agreement. DEVELOPER acknowledges that it shall comply with all CITY requirements for applications and permits (except with respect to timing as described in Paragraph 11) that apply to the PROJECT and the PROPERTY on or before the Commencement Date and that this Agreement does not relieve DEVELOPER of the necessity of filing applications for and obtaining any such permits.

15. 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. 5720 shall be completed prior to the issuance of any certificates of occupancy or release of any public utilities.

16. 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.
17. 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 that will become due to DEVELOPER, or any obligation under the terms of this Agreement.
18. 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:  
Garden Grove MXD, Inc.  
2725 Rocky Mountain Avenue, Ste. 200  
Loveland CO, 80538  
Attn: Chad McWhinney
- B. Address of CITY is as follows:  
City of Garden Grove  
Attention: City Manager  
11222 Acacia Parkway  
Garden Grove, CA 92840
19. 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. 5720, 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.

20. 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.
21. Time of Essence. Time is of the essence in the performance of this Agreement.
22. Successor's In 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 and for the benefit of any future lessees or other owners of an interest in PROPERTY.
23. 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.
24. Indemnification. DEVELOPER agrees to protect, defend, and hold harmless CITY and its 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.
25. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written, regarding the time period that PROJECT land use entitlements shall be valid. This Agreement may be modified only by subsequent mutual written agreement executed by CITY, and the DEVELOPER.
26. Recordation. The City Clerk shall cause this Agreement to be recorded against the PROPERTY when DEVELOPER or its permitted successor in interest becomes the owner in fee of the PROPERTY.
27. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
28. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or default are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts

of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of 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.

29. Attorney's Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorney's fees.
30. Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each other and every such right, power, remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.
31. Waiver of Terms and Conditions. The CITY may, in its sole discretion waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

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

Date: \_\_\_\_\_

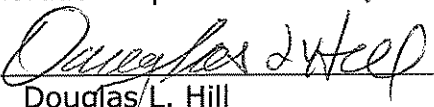
**"CITY"**  
**CITY OF GARDEN GROVE**

BY

**ATTEST:**

CITY CLERK  
DATE:

**"DEVELOPER"**  
**GARDEN GROVE MXD, INC.,** a  
Colorado Corporation

By   
Douglas L. Hill  
Chief Operating Officer  
Date: January 5, 2011

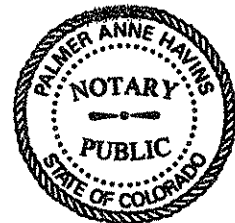
STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of January, 2011, by Douglas L. Hill, as Chief Operating Officer of GARDEN GROVE MXD, INC., a Colorado Corporation.

Witness my hand and official seal.

My Commission Expires: June 21, 2013

Palmer Anne Havins  
Notary Public



My Comm. Expires  
June 21, 2013

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Garden Grove City Attorney

Date: \_\_\_\_\_

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.

## **EXHIBIT "A"**

### **Conditional Use Permit No. CUP-303-10, Tentative Parcel Map No. PM-2010-1178**

12581, 12591, 12681, and 12721 Harbor Boulevard, and  
12601 and 12602 Leda Lane

### **CONDITIONS OF APPROVAL**

#### **General Conditions**

1. The applicant shall record a "Notice of Agreement with Conditions of Approval and Discretionary Permit of Approval," as prepared by the City Attorney's Office, on the property. Proof of such recordation is required within 30 days of this approval. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Planning Commission.
2. Approval of this Conditional Use Permit and Tentative Parcel Map shall be contingent upon the approval of General Plan Amendment No. GPA-1-10(A) and Planned Unit Development No. PUD-126-10 and shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply, the development standards/requirements in Planned Unit Development No. PUD-126-10, and the Harbor Corridor Specific Plan.
3. Minor modifications may be approved by the Community Development Department. If other than minor changes are made in the proposed development, the proper entitlements shall be filed which reflect the revisions made.
4. All lighting structures shall be placed so as to confine direct rays to the subject property. All exterior lights shall be reviewed and approved by the City's Planning Division. Lighting adjacent to residential properties shall be restricted to low decorative type wall-mounted lights, or a ground lighting system. Lighting shall be provided throughout all private drive aisles and entrances to the development per City standards for street lighting. Lighting in the common areas shall be directed, positioned, or shielded in such manner so as not to unreasonably illuminate the window area of nearby residences.

5. The applicant shall submit detailed plans showing the proposed location of utilities and mechanical equipment to the Community Development Department for review and approval prior to Building Division Plan Check. The project shall also be subject to the following:
  - a. All on-site and off-site utilities (off-site refers to the areas within public right-of-way to the center line of the streets adjacent to the subject property) within the perimeter of the site and to the centerline of the adjacent streets shall be installed or relocated underground.
  - b. Above-ground utility equipment (e.g., electrical, gas, telephone, cable TV) shall not be located in the street setbacks, within the common areas along Harbor Boulevard, or any parking areas and shall be screened to the satisfaction of the Community Development Department.
  - c. No roof-mounted mechanical equipment, including but not limited to dish antennas, shall be permitted unless a method of screening complementary to the architecture of the building is approved by the Community Development Department prior to the issuance of building permits. Said screening shall block visibility of any roof-mounted mechanical equipment from view of public streets and surrounding properties.
  - d. All ground, roof, or wall-mounted mechanical equipment shall be screened from public view from adjacent properties and the public right-of-way and shall also be screened, to the extent feasible, from on-site areas.
  - e. All mitigation measures that are part of the Mitigated Negative Declaration that was adopted for General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10 and Tentative Parcel Map No. PM-2010-1178 (the "Mitigated Negative Declaration") are incorporated herein by this reference and shall be implemented as conditions of approval for this project.
  - f. The Mitigation Monitoring Program adopted in conjunction with the Mitigated Negative Declaration shall be implemented during project construction through project completion. The applicant shall provide the City with a quarterly report demonstrating adherence to all mitigation measures. A person shall be designated by the developer and or hotel operator that will be responsible for any hotel or water park operational mitigation measure that extends beyond construction completion. Said person shall provide a report to the City when requested.

**CONDITIONAL USE PERMIT CONDITIONS:**

6. This approval shall allow for the establishment of a hotel and water park with ancillary uses that include restaurants, game arcade, and meeting rooms with alcoholic beverage sales for on-site consumptions. Due to the operational

aspects of a hotel facility, this approval shall permit the subject water park hotel facility to operate under a Type "47" (On-Sale, General-Eating Place), a Duplicate "47", a Type "66" (Controlled Access Cabinet Permit) and a Type "68" (Portable Bar), or comparable general license(s) as required by the Alcoholic Beverage Control board.

7. The trash enclosure areas shall be maintained, as indicated on the site plan, per City standard. Trash enclosure doors shall be kept closed and secured, except during trash disposal or pickup. Trash pickups and automated parking lot cleaning/sweeping, shall occur between the hours of 8:00 a.m. and 6:00 p.m. Trash pickups shall occur at a minimum of three (3) trash pickups per week.
8. No satellite dish antennas shall be installed on said premises unless and until plans have been submitted to and approved by the Community Development Department, Planning Division, which may require proper screening to hide such appurtenances from public view.
9. The service doors of all buildings shall be kept closed at all times during hours of operation except in case of emergency or to permit deliveries. Panic hardware on doors shall comply with all City Code requirements.
10. The developer/owner shall submit signed letters acknowledging receipt of the decision for General Plan Amendment No. GPA-1-10(A), Planned Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Tract Map No. PM-2010-1178, and their agreement with all conditions of approval.
11. Litter shall be removed daily from the project site including adjacent public sidewalks and all parking areas under the control of the developers/owners. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
12. Graffiti shall be removed from the project site and all parking lots under the control of the developer/owner within 120 hours of application/notification.
13. The floor plan of the hotel and water parks shall be reviewed and approved by the Planning Division prior to issuance of permits and release of the Alcoholic Beverage Control Licenses.
14. Any adult merchandise (books, magazines, videos, etc.) shall be kept under the control of the management behind cashiers' counters and shall be segregated and screened from minors.
15. The owner/operator, at his/her expense shall provide a uniformed security guard(s) on the premises during the operation of the establishment, in the event security problems occur, at the request of the Police Department.



16. There shall be no gaming tables or gaming machines as outlined in Garden Grove Municipal Code Section 9.16.020.070, with the exception of the game machines located within the game arcade located within the hotel.
17. There shall be no uses or activities permitted of an adult-oriented nature as outlined in Garden Grove Municipal Code Section 9.16.020.070.
18. A prominent, permanent sign stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign shall be determined by the Department of Alcoholic Beverage Control.
19. Entertainment may be permitted in the establishment. However, at no time shall the establishment allow flyer events/parties, erotic dancers or any other special entertainment activities that are private or open to the public.
20. The operation of the water park hotel facilities shall be subject to the requirements and conditions of approval of Conditional Use Permit No. CUP-303-10 and Tentative Parcel Map No. PM-2010-1178, the standards within Planned Unit Development No. PUD-126-10, and the mitigation measures outlined within the Mitigated Negative Declaration adopted for this project. This includes complying with all provisions of Alcoholic Beverage Control Act, subject to Condition No. 6, above. In addition, this provision also governs the meeting rooms, restaurants, and the indoor/outdoor water park area. In regard to specific activities within the meeting rooms and recreation areas, regardless of the type of event conducted, no event or activity shall at any time be or become a nuisance, disturbance or cause complaints for hotel guests or occupants of the surrounding area/properties, or in any way, endanger the public health, safety, or welfare.
21. No alcohol shall be served/consumed outside of any areas of the property that are licensed and approved for alcohol sales.
22. The business, prior to opening, shall show proof to the Police Department that all members of the business staff have completed the LEAD training (Licensee Education on Alcohol and Drugs) through Alcoholic Beverage Control (ABC) or an ABC approved "Responsible Beverage Service (RBS) Training" program.

#### **TENTATIVE PARCEL MAP CONDITIONS:**

##### **Public Work's Engineering Division**

The following provisions of the Public Works Engineering Division shall be complied with:

23. Prior to the issuance of any building permits, the applicant shall prepare a Parcel Map for the consolidation of the six separate parcels. A field survey shall be required.
24. Ties to horizontal control: Prior to recordation of a Final Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub article 18. The surveyor/engineer shall submit record information to the City on Auto Cad DWG format.
25. Digital map submission: Prior to recordation of a Final Map, the surveyor/engineer preparing the map shall submit to the County Surveyor a digital graphics file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub article 18. The surveyor/engineer shall submit record information to the City on Auto Cad DWG format.
26. A geotechnical study prepared by a registered geotechnical engineer is required. The report shall analyze the liquefaction and contamination potential of the site and make recommendations. The report shall analyze sub-surface issues related to the past uses of the site, including sub-surface tanks, basement and septic facilities. Should contaminants be found, the site will require Environmental Clearance that will usually involve site remediation. The report shall make recommendations for pavement design based on a Traffic Index to be supplied by the City Traffic Engineer. The report shall also contain tests and analysis of soil conditions for LID (Low Impact Development) principles and make recommendations for implementation of such LID principles, including, but not limited to, soil compaction, saturation, permeability and groundwater levels. The recommendations of the geotechnical study, as approved by the City Engineer, shall be implemented.
27. Grading plans prepared by a registered Civil Engineer are required. The grading plan shall be based on a current survey of the site, including adjacent properties, and designed to preclude cross-lot drainage. Minimum grades shall be 0.50% for concrete flow lines, 1.25% for asphalt surfaces and 2.0% for landscaped areas. Grading modifications will be allowed if approved by the City Engineer. The grading plan shall also include demolition, water, sewer and LID improvements.
28. The trash enclosure/facilities shall be located to allow pick-up and maneuvering, including turnarounds, in the area of the enclosure/facilities.
29. Street improvement plans prepared by a registered Civil Engineer are required. Harbor Boulevard shall be designed to the City's proposed Smart Street

Standards, and specifically, the existing raised median on Harbor Boulevard shall be modified per the City Traffic Engineer recommendations stated herein.

30. A separate street permit is required for work performed within the public right-of-way.
31. The cul-de-sac located at the southerly end of Leda Lane shall be maintained.
32. Prior to the issuance of any grading or building permits or prior to recordation upon subdivision of land if determined applicable by the City Building Official, the applicant shall submit to the City for review and approval a Water Quality Management Plan that:
  - a. Addresses Site Design Best Management Practices ("BMPs"), as applicable, such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas;
  - b. Incorporates the applicable Routine Source Control BMPs as defined in the DAMP and provides a detailed description of their implementation;
  - c. Incorporates Treatment Control BMPs as defined in the DAMP;
  - d. Implements Low Impact Development (LID) BMPs to reduce run-off to the maximum extent practicable;
  - e. Includes an Operations and Maintenance (O&M) Plan that (1) generally describes the long-term operation and maintenance requirements for the Treatment Control BMPs; (2) identifies the entity that will be responsible for long-term operation and maintenance of the Treatment Control BMPs; and (3) describes the mechanism for funding the long-term operation and maintenance of the Treatment Control BMPs.
33. Prior to grading or building permit closeout and/or the issuance of a certificate of use or a certificate of occupancy, the applicant shall:
  - a. Demonstrate that all structural best management practices (BMPs) described in the Project WQMP have been constructed and installed in conformance with approved plans and specifications;
  - b. Demonstrate that applicant is prepared to implement all non-structural BMPs described in the Project WQMP;
  - c. Demonstrate that an adequate number of copies of the approved Project WQMP are available on-site; and,

- d. Demonstrate that the applicant has agreed to and recorded CC&Rs, an agreement, or another legal instrument approved by the City Attorney that shall require the property owner, successors, tenants (if applicable), and assignees to operate and maintain in perpetuity the post-construction BMPs described in the Project WQMP.
34. Prior to issuance of grading permits, the applicant shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the Building Official. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for City review on request. In addition, the applicant shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.
35. All required vacations and/or acquisitions shall be completed prior to recordation of the final map.
36. Any new or required block walls and/or retaining walls and trash enclosures shall be shown on the grading plans. Block walls shall be developed to City Standards or designed by a professional registered engineer. In addition, the developer shall provide the following:
  - a. The color and material of all proposed block walls, columns, and wrought iron fencing shall be approved by the Planning Services Division prior to installation.
37. All vehicular access drives to the site shall be provided in locations approved by the City Traffic Engineer.
38. Provide hydrology with scaled map and calculations and hydraulic calculations to size storm drains per the County of Orange standards. Additionally, the project is located in a mapped FEMA flood zone. The project shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:
  - a. Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. The City engineer shall approve such certifications.
  - d. Nonresidential structures that are elevated, not flood proofed, shall meet the same standards for space below the lowest floor as described in "a", above.
  - e. Applicants flood proofing nonresidential buildings are hereby notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level (e.g. a building flood proofed to the base flood level will be rated as 1-foot below).
39. Wheelchair ramps shall be provided as required by State and Federal law. The curb radius for drive entrances/approaches shall be 20-feet minimum unless otherwise approved by the City Engineer.
  40. Prior to issuance of building permits, all applicable traffic mitigation fees shall be paid in full.
  41. Prior to issuance of certificates of use and occupancy, a traffic signal shall be designed and constructed at the intersection of Harbor Boulevard and the Project Entrance in a manner meeting the approval of the City Traffic Engineer.
  42. Prior to the issuance of certificates of use and occupancy, raised median improvements shall be designed and constructed on Harbor Boulevard to facilitate ingress and egress at the Project Entrance in a manner meeting the approval of the City Traffic Engineer. Said improvements shall include a 150-foot northbound turn pocket with a 90-foot taper and removal/reconstruction of the median island north of the intersection.
  43. The three driveway approaches to the site shall be constructed in accordance with Garden Grove Standard Plan B-120 or B-120a.

#### **Garden Grove Fire Department**

The following provisions of the Garden Grove Fire Department and the California Fire Code shall be met:

44. Buildings shall be required to meet High-Rise Standards that include, but are not limited to, the following:
  - a. Including Fire Control Room.

- b. Diesel powered fire pump.
  - c. Installation of water pump as a secondary water source.
  - d. Fire Department standpipes shall be in vestibules and not stairwells.
  - e. Fire Department connection will be within 40-feet of a City hydrant.
  - f. Knox-Box key systems shall be installed at the Fire Control Room and emergency gates and where deemed necessary.
45. All buildings shall be required to meet all adopted local changes to the California Building Code (CBC) and California Fire Code (CFC) in Title 18 of the Garden Grove Municipal Code.
46. Not later than Applicant's submittal of project construction plans to the City for plan check, Applicant shall submit to City: (1) documentation, satisfactory to the Fire Chief, providing for public safety emergency vehicle access to the rear of the property; or (2) such other alternative plans for public safety emergency vehicle access to the project site as may be acceptable to the Fire Chief.
47. All vehicle access shall meet the standards provided for in the CFC for widths, turning radius, and hammerhead turnarounds. The fire access area shall be paved. Any fencing that crosses the subject fire emergency access shall be provided with a knox box. An emergency access plan shall be submitted to the Fire Department for review and approval prior to installation of the fire access.
48. A Bi-Directional Amplifier (BDA) system for emergency radios shall be installed for use in all areas.
49. Water supply and hydrants shall be installed before the start of construction.
50. All interior decorations shall meet the State Fire Marshal flame retardant test.
51. The development shall meet the City's hazardous materials disclosure plan for any storage or use of hazardous materials.
52. The development is subject to a third party inspector, at the owner's expense to certify the alarm systems, sprinkler systems, and smoke removal systems.
53. All plans submitted are subject to review and corrections, as needed per CBC and CFC conditions.
54. Fire hydrants shall be provided on-site. The fire hydrants shall be on a loop system approved by the Fire Department and on their own water line. The fire hydrants shall be within 40-feet of the Fire Department Connection (FDC). All sprinklers shall be on their own dedicated lines. The fire hydrants shall be

installed and fully operational prior to any combustible material being delivered to the site. Prior to and during construction, a temporary roadway shall be constructed and maintained to the satisfaction of the Fire Department for access to each of these fire hydrants. The Fire lanes serving the site shall be constructed to support the weight load of Fire truck(s) per Fire Department requirements.

55. All Fire related aspects of the proposed project shall comply with California Fire Codes and the California Building Codes (2010 Edition).
56. An all-weather fire access road shall be in place before combustible materials are placed on-site. Required water supply for fire protection shall be in place before building with combustible materials commences.
57. All buildings shall be sprinklered according to NFPA 13 standards and shall have fire alarms according to NFPA 72 under the current year adopted by the Garden Grove Fire Department.
58. All Fire Department connections shall have a 3-foot clearance and shall be clear of all obstructions and vegetation.

#### **Building Services Division**

59. The buildings shall be designed to comply with all provisions of the California Building Codes and City adopted amendments.

#### **Public Works Water Services Division**

The following provisions of the Garden Grove Public Work's Water Services Division shall be met:

60. The existing 12-inch water main is presently located in the existing Harbor frontage road. In the proposed hotel improvements the existing water main will be under the proposed planter/sidewalk area. The existing 12-inch water main shall be relocated and resized to a 16-inch PVC water main. The new 16-inch water main is to be placed in Harbor Boulevard, east of/and parallel to the existing 12-inch main, and a minimum of 10-feet west of the existing 18-inch sewer main in Harbor Boulevard. The existing 8-inch A. C. water main shall be abandoned.
61. New Water service installations 2-inch and smaller shall be installed per City Standards. Installation shall be scheduled upon payment of applicable fees, unless otherwise noted. Fire services and larger water services 3-inch and larger shall be installed per City Standards.
62. Water meters shall be located within the City right-of-way or within dedicated waterline easement. Fire services and large water services 3-inch and larger

shall be installed by contractor with a Class A or C-34 license per City water standards and inspected and approved by a Public Works inspection.

63. A Reduced Pressure Principle Device (RPPD) backflow prevention device shall be installed for meter protection. The landscape system shall also have a RPPD device. Any carbonation dispensing equipment shall have a RPPD device. Installation shall be per City Standards and shall be tested by a certified backflow device tester immediately after installation. A Cross connection inspector shall be notified for inspection after the installation is completed. Owner shall have the RPPD device tested once a year thereafter by a certified backflow device tester and the test results shall be submitted to the City's Public Works Water Services Division. Property owner must open a water account upon installation of RPPD device.
64. Any existing private water well(s) shall be abandoned per Orange County Health Department requirements. Abandonment(s) shall be inspected by an Orange County Health Department inspector after permits have been obtained.
65. A composite utility site plan shall be part of the water plan approval.
66. Water system improvements within private streets shall be constructed per City Standards by developer and dedicated to the City. Bonding will be required.
67. Owner shall dedicate all rights to underground water, without the right to surface entry, to the City.
68. Any new or existing water valve located, or to be located, within a new concrete driveway or sidewalk shall be reconstructed per City Standard B-753.
69. City shall determine if existing water service(s) is/are usable and meet(s) current City Standards. Any existing meter and service located within a new driveway(s) shall be relocated.
70. No permanent structures, trees or deep-rooted plants shall be placed over sewer main, water main, or the fire service main.
71. Location and number of fire hydrants shall be as required by the Water Services Division and the Fire Department.
72. If required, fire service shall have an above ground backflow device with a double check valve assembly. The fire service line shall be looped. The device shall be tested immediately after installation and once a year thereafter by a certified backflow device tester and the results to be submitted to Public Works Water Services Division. The device shall be on private property and is the responsibility of the property owner. The above ground assembly shall be screened from public view as required by the Planning Division.



73. A properly sized grease interceptor shall be installed on the sewer lateral and maintained by the property owner. There shall be a separate sanitary waste line that will connect to the sewer lateral downstream of the grease interceptor. All other waste lines shall be drained through the grease interceptor. The grease interceptor shall be located outside of the building and shall be accessible for routine maintenance. Owner shall maintain comprehensive grease interceptor maintenance records and shall make them available to the City of Garden Grove upon demand.
74. Food grinders (garbage disposal devices) are prohibited per Ordinance 6 of the Garden Grove Sanitary District Code of Regulations.
75. Owner shall install new sewer lateral with clean out at right-of-way line. Lateral in public right-of-way shall be 6-inch minimum diameter, extra strength VCP with wedgelock joints.
76. Contractor shall abandon any existing unused sewer lateral(s) at street right-of-way on the property owner's side. The sewer pipe shall be capped with an expansion sewer plug and encased in concrete.

#### **Planning Services Division**

77. All landscaping shall be consistent with the landscape requirements within the development standards in Planned Unit Development No. PUD-126-10. The developer shall submit a complete landscape plan governing the entire development. The landscape irrigation plans shall include type, size, location and quantity of all plant material. The landscape plan shall include irrigation plans and staking and planting specifications. All landscape irrigation shall comply with the City's Landscape Ordinance and associated Water Efficiency Guidelines. The landscape plan is also subject to the following:
  - a. A complete, permanent, automatic remote control irrigation system shall be provided for all landscaping areas shown on the plan. The sprinklers shall be low flow/precipitation sprinkler heads for water conservation.
  - b. The plan shall provide a mixture of a minimum of ten percent (10%) of the trees at 48-inch box, ten percent (10%) of the trees at 36-inch box, fifteen percent (15%) of the trees at 24-inch box and sixty percent (60%) of the trees at 15-gallon. The remaining five percent (5%) may be of any size. These trees shall be incorporated into the landscaped frontages of all streets. Where clinging vines are considered for covering walls, drought tolerant vines shall be used.
  - c. Trees planted within 10-feet of any public right-of-way shall be planted in a root barrier shield. All landscaping along street frontages adjacent to driveways shall be of the low height variety to ensure safe sight clearance.

- d. Landscaping along Harbor Boulevard, including within the public right-of-way shall include two rows of Date Palm Trees (minimum brown trunk height of 25-feet), canopy trees (minimum 24-inch box), shrubs, and ground covers. Landscape materials shall match the landscape materials used within the project located at the southwest corner of Harbor Boulevard and Chapman Avenue.
  - e. All landscape areas, including the areas located within the public right-of-way along Harbor Boulevard that abuts the subject property, are the responsibility of the developer/operator of the water park hotel.
  - f. The landscape plan shall incorporate and maintain for the life of the project those means and methods to address water run-off also identified as Low Impact Development provisions, which address water run-off. This is also to be inclusive of any applicable Water Quality Management Plan (WQMP), the Orange County Drainage Area Management Plan (DAMP), and/or other water conservation measures applicable to this type of development.
78. Hours and days of construction and grading shall be as follows as set forth in the City of Garden Grove's Municipal Code Section 8.47.010 referred to as the County Noise Ordinance as adopted:
- a. Monday through Saturday - not before 7 a.m. and not after 8 p.m. (of the same day).
  - b. Sunday and Federal Holidays - may work same hours but subject to noise restrictions as established in section 8.47.010 of the Municipal Code.
79. The approvals are subject to a Development Agreement with the City of Garden Grove. This includes the payment of a Development Payment in accordance with the Ordinance approving Development Agreement No. DA-183-10.
80. After the installation of the Tornado waterslide lighting, but prior to final issuance of building permits for the project, the light output of the light show shall be adjusted to a level that is satisfactory to the City, that will minimize light spillage, and that will not produce light above what is allowed by Code.
81. The developer/owner shall prepare Covenants, Conditions, and Restrictions, or another appropriate recordable document or agreement acceptable to the City that runs with the land and binds future owners (collectively, "CC&Rs") for review and approval by the City Attorney's office and Community Development Department prior to the issuance of building permits. The approved CC&Rs shall be recorded at the same time that the subdivision map is recorded and two copies of the recorded CC&Rs shall be provided to the Planning Division. The CC&Rs shall include the following:

- a. Provisions for common maintenance of all landscape areas, including landscaping and landscape lighting within the public right-of-way, driveways, and parking areas.
- b. Provisions for reciprocal access and parking between properties. Parking provisions shall also include provisions for future Valet Parking.
- c. Best Management Practices shall be incorporated to detour and/or abate any graffiti vandalism throughout the project and the life of the project.
- d. The CC&Rs shall provide provisions for the tenant/property owner(s) a means of contacting persons responsible for site maintenance, repairs, trash pick-up, and other related matters for a development of this type. This also includes ensuring tree overhangs do not block or hinder any vehicles such street sweepers, trash trucks, fire trucks, etc. from maneuvering on the streets within the project.
- e. The preceding provisions shall not be modified without the approval of the City of Garden Grove. The CC&Rs shall contain a provision that indicates that the CC&Rs may not be terminated or substantially amended without the consent of the City.
- f. The CC&Rs shall include provisions identifying a property owner's association or other entity responsible for ongoing implementation and funding of the Operations and Maintenance (O&M) Plan associated with the WQMP for the Project and compliance with the City's Stormwater Quality Ordinance (Garden Grove Municipal Code Title 6, Chapter 40) and other applicable National Pollutant Discharge Elimination System (NPDES) regulations.
- g. The following provisions shall be included within the CC&Rs:
  - i. Enforcement: The City is hereby made a party to these Declarations solely for purposes of enforcing its provisions and the Conditions of Approval of General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178. The City, its agents, departments and employees shall have the unrestricted right and authority, but not the obligation, to enforce the provisions of these Declarations and the Conditions of Approval of General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178. The City, its agents, departments and employees may further refuse to issue any building, electrical or plumbing permit that may be in violation of these Declarations or General Plan Amendment No. GPA-1-10(A), Planned Unit Development

No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178 approvals. However, the City shall not be liable for failing or refusing to enforce the provisions of these Declarations or the Conditions of Approval of General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178.

- ii. Assessments: The City may levy special assessments against the properties in connection with its actions to enforce the conditions of these Declarations or General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178 approvals, or to abate the violation thereof. The City shall have the same power as the Association [*or other appropriate entity*] to levy special assessments pursuant to the provisions of [SECTION] of these Declarations in the event that it incurs expenses in the enforcement of the conditions of these Declarations or General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178 approvals. Notice of intention to make such assessment shall be mailed by the City to the Owner of each affected [LOT/UNIT] affording the Owner thirty (30) days' notice to satisfy or reimburse the City's expenditure. In the event of the failure of any Owner of any affected [LOT/UNIT] to reimburse the City within thirty (30) days, notice of such assessment shall be mailed by the City to said Owner, and said assessment shall thereafter be due as a separate debt to the City within thirty (30) days following the mailing of such notice. Any such delinquent assessment may be and may become a lien upon the interest of the defaulting Owner in the Lot upon the execution by the City and the recording in the Orange County Recorder's office of a notice of delinquent assessment under the same conditions that the Association could record the same pursuant to the provisions of [SECTION]. The City may foreclose on such notice of delinquent assessment in the same manner and with the same power as the Association could foreclose on such notice pursuant to the provisions of [SECTION]. It is the intent of Declarant, which intent shall be binding upon all of Declarant's successors in interest in the Properties, that the City shall be deemed an interest holder pursuant to the provisions of these Declarations in order to enforce the rights which have been given to the City generally in these Declarations and specifically pursuant to this Section.
- iii. Attorneys' Fees: The City shall be entitled to recover its attorneys' fees incurred in connection with its actions to enforce the conditions of these Declarations or General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, Conditional Use Permit

No. CUP-303-10, and Tentative Parcel Map No. PM-2010-1178 approvals, or to abate the violation thereof.

- iv. Public Safety Access: The Police and Fire Department personnel may enter upon any part of the common area and/or portion of the property generally held open to the public for the purpose of enforcing State and Local laws.
82. The developer shall comply with all provisions of the Community Development Department including, but not limited to, the following:
- a. The facades of the hotel, water park, and future free-standing restaurant structures shall be designed with sound attenuation features including the use of dual pane windows and limiting, when possible, the use of windows and vents. These features shall be approved by the Community Development Department prior to the issuance of building permits.
  - b. Prior to the finalization of working drawings for Planning Division, Engineering Division, and Building Division Plan Check, the developer shall submit to the Community Development Department detailed and dimensioned plot plans, floor plans, exterior elevations, and landscape plans which reflect the above conditions of approval. The plans shall indicate cross sections of all streets within the development, landscape materials, wall materials, and building materials proposed for the project. Each unit shall have phone jacks and cable-TV outlets in all hotel rooms. Mechanical equipment, including air conditioning units, pool equipment, sump pump, etc., shall not be located closer than 5-feet of any side or rear property line and shall not be located in the front landscape setback. Air conditioning units and all other mechanical shall be completely screened from public view from the street and/or common open space area.
  - c. Should the developer elect to build the project in more than one phase, then a phasing plan shall be submitted to the Community Development Department prior to issuance of building permits. The phasing plan shall include, but not limited to, a site plan showing the phasing areas, protection of finished units, and protection for related safety issues concerning pedestrians and non-construction vehicles. The perimeter improvements including landscaping, walls, street improvements, and underground utilities shall be completed in the first phase. The phasing plan shall be approved by the Community Development, Fire, and Public Works Departments prior to issuance of building permits.
83. Any new or required block walls and/or retaining wall(s) shall be shown on the grading plans. Block walls shall be developed to City Standards or designed by a Registered Engineer and shall be measured from on-site finished grade. The applicant shall provide the following:

- a. Decorative masonry walls are required along the entire northerly, southerly, and westerly property lines and shall be constructed to a maximum height of 8-feet, as measured from highest point of finished grade on the project's side. A higher wall may be constructed if needed for additional sound attenuation. These walls shall use slumpstone or split-face block with decorative caps, subject to Community Development Department's approval.
  - b. The applicant shall work with the existing property owner(s) along the northerly, southerly, and westerly property lines in designing and constructing the required block wall. This requirement is to avoid having double walls and minimize any impact that it might cause to the existing landscaping on the neighbor's side as much as possible. The perimeter block wall shall be constructed and situated entirely within the subject property. In the event that the applicant cannot obtain approval from the property owners, the applicant shall construct the new wall with a decorative cap to be placed between the new and existing walls. In the event the location of a new wall adjacent to an existing wall or fence has the potential to affect the landscape planter, then the Developer shall work with City Staff to address this situation.
84. Construction activities shall adhere to SCAQMD Rule 403 (Fugitive Dust) that includes dust minimization measures, the use of electricity from power poles rather than diesel or gasoline powered generators, and the use methanol, natural gas, propane or butane vehicles instead of gasoline or diesel powered equipment, where feasible. Also, the use of solar or low-emission water heaters, low-sodium parking lot lights, and compliance with Title 24 of the Building Code are required.
  85. Building color and material samples shall be submitted to the Planning Division for review and approval prior to issuance of building permits. The buildings shall have decorative features that include multi-toned stuccoed exterior; siding or equal material; building pop-outs; varied roof lines; decorative lighting; windows on the water park building, facing Harbor Boulevard; and a decorative porte-cochere. The parking structures shall be designed to be architecturally compatible with on-site buildings, utilizing similar design features, details and materials. All sides of a parking structure that are in view from adjacent properties and public-rights-of-way shall be architecturally enhanced. Parking structures shall be well illuminated, including having the interior of the parking garage painted a light color, and designed to meet City parking standards for aisle width, stall sizes, and height clearances.
  86. The driveways from Harbor Boulevard Street shall have enhanced concrete treatment. All details of the decorative entry shall be submitted on the required landscape plans for review and approval of the Community Development Department.

87. Prior to obtaining any building permits, if any structure or portion there of, is to be removed, demolished, or relocated on the subject site, a written report shall be provided verifying whether any hazardous materials exists (e.g., asbestos, lead based paint, termites or other) or do not exist to the City Building Division and the report shall declare how such hazardous material will be properly removed and properly discarded. This includes, but is not limited to, obtaining permits from Air Quality Management District, Environmental Protection Agency and any other affected Agency by such action, which can include tenting for termites or rodents/vermin, and/or any other action to remedy the situation of hazardous type materials, termites or pests. All of which is to be done to the satisfaction of affected agencies.
88. If suspected hazardous materials are discovered, the appropriate agencies will be notified immediately. Upon notification and coordination with the appropriate agencies, suspected hazardous materials will be sampled and submitted for analytical testing to a State-certified laboratory. Should such testing confirm the hazardous nature of excavated materials, they will be disposed of in accordance with State and Federal hazardous waste laws.
89. In the event any legal action or proceeding is filed against the City of Garden Grove and/or applicant or its successors or assigns, seeking to attack, set aside, void or annul any approval or condition of approval of the City of Garden Grove concerning the Project, including, but not limited to, the Mitigated Negative Declaration, Conditional Use Permit No. CUP-303-10, Tentative Parcel Map No. PM-2010-1178, General Plan Amendment No. GPA-1-10(A), Planned Unit Development No. PUD-126-10, or Development Agreement No. DA-183-10, the applicant or its successors and assigns shall have the right and obligation to either: (1) defend (with legal counsel mutually selected by the applicant and the office of the City Attorney), indemnify, and hold harmless the City, its officers, agents, and employees from and against any such legal action or proceeding; or (2) request that the City rescind the entitlement approvals, in which case the applicant would have no obligation to defend or indemnify the City; however, the applicant shall reimburse the City for any costs incurred or assessed against the City as a result of the filing of such legal action or proceeding, provided the City acts promptly to rescind the entitlements.

## **EXHIBIT B Termination**

**1. Annual Review.** The Annual Review shall be conducted in accordance with Paragraph 13 of the Development Agreement.

**2. Pre-Determination Procedure.** DEVELOPER's submission of compliance with this Agreement, in a form which the Director of Community Development Department may reasonably establish, shall be made in writing and transmitted to the Director of Community Development Department not later than ninety (90) days prior to the yearly anniversary of the Effective Date.

**3. Director's Determination.** On or before the yearly anniversary of the Effective Date of the Agreement, the Director of Community Development Department shall make a determination regarding whether or not DEVELOPER has complied in good faith with the provisions and conditions of this Agreement. The Director of Community Development Department may, at his/her discretion or at the request of the DEVELOPER host a public information meeting regarding compliance with this Agreement. The determination of compliance shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to DEVELOPER in the manner prescribed in Section 18 of the Development Agreement.

**4. Period To Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Community Development Department Director, that DEVELOPER has not complied in good faith with the provisions and conditions of this Agreement, the City, shall submit to DEVELOPER, by registered or certified mail, return receipt requested, a written notice of non-compliance stating with specificity those obligations of DEVELOPER which have not been performed. Upon receipt of the notice of non-compliance, DEVELOPER shall promptly commence to cure the identified items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than forty-five (45) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, provided that DEVELOPER shall continuously and diligently pursue such remedy at all times until such item of non-compliance is cured.

**5. Failure To Cure Non-Compliance Procedure.** If the Director of Community Development Department finds and determines that DEVELOPER, or its successors, transferees, and/or assignees, as the case may be, has not cured or timely commenced to and pursued the cure of an item of non-compliance pursuant to this Section, and that the City intends to terminate or modify this Agreement, the Director of Community Development Department shall then set a date for a public hearing before the Planning Commission for a recommendation to the City Council and, thereafter for consideration by the City Council in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868.



**6. Termination Or Modification Of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after a finding or determination of noncompliance by the City Council. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided above.