

ORDINANCE NO. 2827

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADOPTING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF GARDEN GROVE AND LANDMARK HOTELS II, LLC FOR PROPERTY LOCATED
ON THE WEST SIDE OF HARBOR BOULEVARD, NORTH OF CHAPMAN AVENUE, AT
11767 HARBOR BOULEVARD AND 12261 CHAPMAN AVENUE, GARDEN GROVE,
PARCEL NOS. 233-182-02 AND 233-181-01

City Attorney Summary

This Ordinance approves a First Amendment to a previously recorded Development Agreement between the City of Garden Grove and Landmark Hotels II, LLC, for property located at 11767 Harbor Boulevard, Garden Grove, California (Assessor's Parcel Nos. 233-182-02 and 233-181-01), to extend the duration of the Development Agreement and associated Land Use Entitlements by an additional three (3) years.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND
DETERMINES AS FOLLOWS:

WHEREAS, the City of Garden Grove and Landmark Hotels II, LLC previously entered into a Development Agreement, dated March 11, 2008 for reference, effective April 25, 2008, and recorded in the Official Records of Orange County on April 30, 2008, as document number 2008000203828, for the expansion of the existing Embassy Suites Hotel and conference/banquet facilities on that certain real property located on the west side of Harbor Boulevard, north of Chapman Avenue, at 11767 Harbor Boulevard and 12261 Chapman Avenue, and identified as Assessor's Parcel Nos. 233-182-02 and 233-181-01, in conjunction with Site Plan No. SP-435-07 and Conditional Use Permit No. CUP-219-07 (the "Development Agreement");

WHEREAS, Landmark Hotels II, LLC has requested to amend the Development Agreement to extend the duration of the Development Agreement and associated Land Use Entitlements by an additional three (3) years and to add an express reference to Site Plan No. SP-435-07 and Conditional Use Permit No. CUP-219-07 (the "First Amendment to Development Agreement");

WHEREAS, pursuant to Resolution No. 5789-12, the Planning Commission following a duly noticed Public Hearing held on December 6, 2012, recommended approval of the First Amendment to Development Agreement;

WHEREAS, pursuant to a legal notice, a Public Hearing was held by the City Council on February 12, 2013, and all interested persons were given an opportunity to be heard;

WHEREAS, the First Amendment to Development Agreement is consistent with the General Plan and Planned Unit Development Nos. PUD-118-98 and PUD-104-82, including the goals and policies of the Garden Grove General Plan; and

WHEREAS, the City of Garden Grove has determined that the proposed First Amendment to Development Agreement is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The First Amendment to Development Agreement merely extends the duration of the previously approved Development Agreement and associated land use approvals for three (3) additional years; it does not authorize new or additional development not previously approved and studied.

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

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

Section 2. Approval. The First Amendment to Development Agreement between the City of Garden Grove and Landmark Hotels II, LLC is hereby adopted for property located on the west side of Harbor Boulevard, north of Chapman Avenue, at 11767 Harbor Boulevard and 12261 Chapman Avenue, Garden Grove, and identified as Assessor's Parcel Nos. 233-182-02 and 233-181-01. A copy of the First Amendment to Development Agreement is attached to this Ordinance and is on file in the City Clerk's Office.

Section 3. Recording. Pursuant to California Government Code Section 65868.5, the City Clerk shall record a copy of the First Amendment to Development Agreement with the County Recorder for the County of Orange within ten (10) days after the Development Agreement is executed.

Section 4. 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 5. 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 for first reading and passed to second reading on February 12, 2013, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, JONES, NGUYEN, PHAN, BROADWATER
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: _____

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

SP-435-07 & CUP-219-07

(Landmark Hotels II, LLC)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("FIRST AMENDMENT") is made this ____ day of _____, 20__, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and Landmark Hotels II, LLC ("PROPERTY OWNER/DEVELOPER").

RECITALS

- A. The CITY and DEVELOPER previously entered into a Development Agreement, dated March 11, 2008 for reference, effective April 25, 2008, and recorded in the Official Records of Orange County on April 30, 2008, as document number 2008000203828, for the expansion of the existing Embassy Suites Hotel and conference/banquet facilities on that certain real property located on the west side of Harbor Boulevard, north of Chapman Avenue, at 11767 Harbor Boulevard and 12261 Chapman Avenue, and identified as Assessor's Parcel Nos. 233-182-02 and 233-181-01 (the "DEVELOPMENT AGREEMENT").
- B. The CITY and DEVELOPER desire to amend the DEVELOPMENT AGREEMENT to extend the duration of the DEVELOPMENT AGREEMENT and associated Land

Use Entitlements by an additional three (3) years in accordance with 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").

- C. Paragraph 25 of the DEVELOPMENT AGREEMENT authorizes CITY and DEVELOPER to amend the DEVELOPMENT AGREEMENT by subsequent written agreement.
- D. 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.
- E. DEVELOPER has an equitable interest in the PROPERTY.

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties mutually agree as follows:

AGREEMENT

1. Amendment. Paragraphs 1 and 2 of the DEVELOPMENT AGREEMENT are hereby amended and restated in their entirety to read as follows:
 1. DURATION. This Agreement and Land Use Entitlements described in Section 2 shall expire seven (7) years from its effective date, unless any duty specified remains executory, in which case this Agreement may be renewed for a successive one year term at discretion of CITY, pursuant to law, until all duties are performed. This renewal shall not unreasonably be withheld.
 2. Permitted Uses/Land Use Entitlements. The following uses are permitted on the PROPERTY: To expand the existing Embassy Suites Hotel and conference/banquet facilities by adding a new 17-story, 238-room hotel tower to the existing 374-room hotel, along with 56,000 square feet of new banquet and meeting rooms to the existing facility. The overall 12.79-acre site will include the existing Embassy Suites site area and the entire golf driving range located to the west of the hotel complex. The overall improvement plans include creating a resort type hotel, adding a new restaurant and spa, and renovating the on-site circulation and parking arrangements. The following

land use entitlements has been granted: Site Plan No. SP-435-07 and Conditional Use Permit No. CUP-219-07.

3. To the extent not otherwise modified by this FIRST AMENDMENT, the terms and conditions of the DEVELOPMENT AGREEMENT are hereby incorporated by reference into this FIRST AMENDMENT and shall remain in full force and effect.

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

Date: _____

"CITY"
CITY OF GARDEN GROVE

BY _____
Mayor

ATTEST:

CITY CLERK

DATE: _____

"PROPERTY OWNER/DEVELOPER"
Landmark Hotels II, LLC.

By: _____

Its: _____

Date: _____
(Signature must be notarized.)

APPROVED AS TO FORM:

Garden Grove City Attorney

Date: _____

888089.1

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.