

**The City of Garden Grove as Successor Agency to the
Garden Grove Agency for Community Development**

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal From: Greg Brown
Dept: City Manager
Subject: APPROVAL OF A PROPOSED Date: May 28, 2013
 AMENDMENT TO THE
 DISPOSITION AND
 DEVELOPMENT AGREEMENT
 (DDA) WITH NEWAGE GARDEN
 GROVE, LLC (FORMERLY KAM
 SANG COMPANY), DEVELOPER
 OF THE SHERATON HOTEL
 LOCATED AT 12221 HARBOR
 BOULEVARD, GARDEN GROVE

OBJECTIVE

To consider approval of an amendment to a DDA between the former Garden Grove Agency for Community Development (Agency) and Newage Garden Grove LLC (Developer). The project subject to the DDA is the Sheraton Hotel located at 12221 Harbor Boulevard, Garden Grove.

BACKGROUND/DISCUSSION

The Developer has requested that the Successor Agency (SA) consider and approve an amendment to the DDA in order to meet certain financial conditions required by the current lender of record on the project. The amendment seeks to revise the definitions of "Approved Operator" and "Approved Product." The amendment also proposes language changes to Section 511 of the original 2006 DDA, which pertains to the cure period for defaults by the Developer. The proposed amendment is attached in substantial form.

FINANCIAL IMPACT

There is no known financial impact by virtue of approving this amendment.

RECOMMENDATION

It is recommended that the Successor Agency:

- Approve the attached Resolution approving a First Amendment to Disposition and Development Agreement between The City of Garden Grove As Successor Agency to the Garden Grove Agency for Community Development and Newage Garden Grove, LLC;
- Authorize the Director to execute the First Amendment and all necessary related documents on behalf of the Successor Agency, and to make minor modifications as appropriate thereto; and
- Direct staff to transmit the Resolution and the Agreement to the Oversight Board for approval.

Greg Brown
Senior Project Manager



Attachment 1: Successor Agency Resolution
2: Proposed DDA Amendment

Recommended for Approval



Matthew Fertal
Director

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ACTING AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING AN AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND NEWAGE GARDEN GROVE, LLC.

WHEREAS, the City of Garden Grove, Acting as Successor Agency to the Garden Grove Agency for Community Development (“Successor Agency”) is acting as Successor Agency to the Garden Grove Agency for Community Development (“Former Agency”) pursuant to ABx1 26, which added Parts 1.8 and 1.85 to Division 24 of the Health & Safety Code (“Dissolution Act”); and

WHEREAS, the Former Agency entered into that certain Disposition and Development Agreement (“DDA”) with Palm Court Lodging, LLC (“Previous Developer”) and subsequently assigned to Kam Sang Company (“Developer”) on April 27, 2004, relating to a proposed redevelopment project in the Project Area; and

WHEREAS, the Project Site includes an 285-room hotel (“Project”); and

WHEREAS, the Successor Agency, is responsible for administering the enforceable obligations of the Former Agency; and

WHEREAS, the DDA has been included as an enforceable obligation under a recognized obligation payment schedule as filed by the Successor Agency and approved by the oversight board for the Successor Agency (“Oversight Board”); and

WHEREAS, Developer has requested that the Successor Agency approve an amendment to the DDA that revises certain definitions and terms of said DDA; and

WHEREAS, Health & Safety Code Section 34189(a), added by the Dissolution Act, provides that, “[c]ommencing on the effective date of [the Dissolution Act], all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative”; and

WHEREAS, Health & Safety Code Section 34173(b), added by the Dissolution Act, provides that, “[e]xcept for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to [the Dissolution Act], *all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.*” (emphasis added); and

WHEREAS, Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E), added by ABx1 26, define “enforceable obligation” to include “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Health & Safety Code Section 34177(c), added by ABx1 26, requires the Successor Agency to “[p]erform obligations required pursuant to any enforceable obligation”; and

WHEREAS, the DDA was duly approved and fully executed prior to the effective date of the Dissolution Act; and

WHEREAS, the DDA is a legally binding and enforceable agreement that does not violate the debt limit or public policy; and

WHEREAS, the implementation of the DDA is in the best interests of the Successor Agency and the Oversight Board by promoting compliance with the terms of an enforceable obligation and by facilitating the consummation of the project described in the DDA

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ACTING AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Successor Agency hereby approves the Amendment to the Disposition and Development Agreement and authorizes and directs the Executive Director to execute the Purchase Agreement on behalf of the Successor Agency. The Executive Director and his designees are further authorized to take such actions as are necessary and convenient to implement the Purchase Agreement.

Section 3. This Resolution shall be effective immediately upon adoption.

Section 4. The City Clerk on behalf of the Successor Agency shall certify to the adoption of this Resolution.

FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Amendment**”) is dated the ____ day of _____, 2012 and is entered into by and between THE CITY OF GARDEN GROVE ACTING AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body corporate and politic (the “**Successor Agency**”), and NEWAGE GARDEN GROVE, LLC, a California limited liability company (the “**Developer**”) upon the terms and subject to the conditions set forth herein.

RECITALS:

WHEREAS, the Garden Grove Agency for Community Development (“Former Agency”) and Developer entered into that certain Disposition and Development Agreement dated as of November 7, 2006 (the “DDA”), concerning the development of a hotel located on the real property described in Exhibit A attached hereto;

WHEREAS, Successor Agency as of February 1, 2012, assumed all of the rights and obligations of the Former Agency with respect to the DDA pursuant to AB 1x 26;

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto intending to be legally bound hereby, agree to amend the DDA as follows:

AMENDMENT:

1. The definition of “Approved Operator” in the DDA is hereby amended to read as follows:
 “Approved Operator” means (i) Kam Sang Company, Inc., a California corporation, and (ii) any other reputable management company (x) having at least five (5) years’ experience in the management of national lodging chains and in the State of California, (y) having, for at least five (5) years prior to its engagement as operator of the Property, managed at least five (5) full service hotels; and (z) is not the subject of a bankruptcy or similar insolvency proceeding.

2. The definition of “Approved Product” in the DDA is hereby amended to read as follows:
 “Approved Product” means a Sheraton Hotel, or such other reputable and experienced hotel franchise possessing experience in flagging hotel properties similar in size, scope, use and value as the Property.

3. That a new Section 511 is hereby incorporated into the DDA as follows:

511 a. In the event Developer shall fail to perform or observe any of the terms, conditions or agreements in the DDA, Agency shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Agency shall not take any action with respect to such default under the DDA including, without limitation, any action in order to exercise the Agency Repurchase Option (as defined in the DDA) for a period which is the longest of (i) one hundred eighty (180) days after the cure period provided under the DDA to Developer, (ii) one hundred eighty (180) days from Lender's receipt of written notice of a Developer default, or (iii) if the cure of such default requires possession of the Property, one hundred eighty (180) days after Lender has obtained possession of the Property; provided, however, that in each such case if such default cannot with diligence be cured within said one hundred eighty (180) day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity. Performance rendered by Lender on Developer's behalf is without prejudice to Lender's rights against Developer under the Mortgage or any other documents executed by Developer in favor of Lender in connection with the Loan. Lender shall not be obligated to cure or attempt to cure Developer Specific Defaults (defined below) as a condition to preventing the exercise by Agency of the Agency Repurchase Option or any of its other remedies under the DDA. As used herein, the following terms shall have the following meanings: "Developer Specific Default" means any default (a) that is not reasonably susceptible of cure by Lender, such as (to the extent, if any, any of the following actually constitute a default under the DDA), by way of example only, any default arising from a bankruptcy or other insolvency action or proceeding affecting Developer or a prohibited transfer; (b) that by its nature relates only to, or can reasonably be performed only by, Developer; (c) that consists of Developer's failure to satisfy or discharge any indemnity obligation; or (d) the cure of which would subject Lender to liabilities pursuant to environmental laws beyond those to which Lender would otherwise be subject to as a mortgagee in its capacity as lender pursuant to environmental laws.

b. As used in this Section, the term "Lender" shall mean the holder of a first priority deed of trust on the Site, and the term "Mortgage" shall mean the deed of trust held by Lender.

4. To the extent set forth above, this Amendment also amends the June 30, 2006 Grant Deed (recorded August 1, 2006) from Former Agency to Developer.

[Remainder of page intentionally blank; signatures follow]

IN WITNESS WHEREOF, Developer and Successor Agency have executed this instrument as of the date first written above.

DEVELOPER:

NEWAGE GARDEN GROVE, LLC, a
California limited liability company

By: Newage Holding III Corporation,
a Delaware corporation,
its managing member

By: _____
Name: Ronnie Lam
Title: President

SUCCESSOR AGENCY:

**CITY OF GARDEN GROVE ACTING
AS SUCCESSOR AGENCY TO THE
GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT**, a
public body corporate and politic

By: _____
Name: _____
Title: _____