



DATE: June 17, 2009

TO: Honorable Mayor and City Council Members
Chairman and Members, Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **APPROVING A DISPOSITION AGREEMENT AND AUTHORIZATION FOR THE EXECUTIVE DIRECTOR TO ENTER INTO A LEASE BETWEEN S.D. MALKIN PROPERTIES AND THE COMMUNITY DEVELOPMENT COMMISSION; AND MAKING CERTAIN FINDINGS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33421.1, 33433 AND 33445 AND AUTHORIZING THE REDEVELOPMENT AGENCY TO PAY FOR CERTAIN OFF-SITE PUBLIC IMPROVEMENTS**

SYNOPSIS

Staff recommends that the City Council and Community Development Commission (CDC) adopt resolutions to approve a Disposition Agreement and authorize the Executive Director of the Commission to enter into a lease with S.D. Malkin Properties, Inc., for property owned by the Community Development Commission bounded by Pacific Street on the west, Myers Street on the east, Seagaze Drive on the south and Pier View Way on the north; and make certain findings pursuant to California Health and Safety Code Sections 33421.1, 33433, and 33445 and authorize the Redevelopment Agency to pay for certain off-site public improvements.

BACKGROUND

The Community Development Commission has been actively engaged for many years to meet a Redevelopment Plan objective to secure a destination resort in the downtown area on land acquired for that specific purpose. After a process of issuing a Request for Qualifications and then a Request for Proposals, the CDC selected S.D. Malkin Properties, Inc., as the developer. The CDC then entered into a Negotiating Agreement and later a Memorandum of Understanding with the developer, who subsequently applied for development approvals and a coastal permit, and prepared an Environmental Impact Report (EIR). All of the necessary discretionary land use entitlements for the project were approved by the City of Oceanside's Community Development Commission on January 16, 2008.

The project consists generally of 289 hotel rooms, a 47-unit boutique hotel, a 48-unit fractional time share, approximately 18,500 sq. ft. of visitor-serving commercial, a ballroom large enough to seat 500 people plus a dance floor, and two levels of underground parking.

To assure compliance with the California Coastal Act regarding fractional time shares, the CDC processed a Local Coastal Plan Amendment with the California Coastal Commission. Final Certification of the Local Coastal Plan Amendment by the Coastal Commission occurred on January 8, 2009.

In selecting S.D. Malkin as the developer, a Memorandum of Understanding was entered into that broadly outlined a public investment in the redevelopment project. The investment was proposed to be \$27 million and was to be funded exclusively from redevelopment funds with no contribution from the City's general fund. Under the lease now before the Commission for final approval, the investment is proposed to be \$27.61 million. The additional amounts include \$50,000 toward the costs of the Environmental Impact Report for a total of \$250,000. Two hundred thousand dollars has already been paid. The additional amount of \$560,000 will be paid by existing tax allocation bond proceeds and used for off-site public improvements that were not previously contemplated as the EIR had not been completed.

Throughout this process the CDC has been negotiating the details of the Disposition Agreement and the Lease. The Disposition Agreement governs the rights and obligations of the CDC and the developer until the close of escrow. Among other things, the Disposition Agreement includes all of the conditions necessary to close escrow and for the lease to commence. The Disposition Agreement becomes effective upon CDC approval and the commencement of the lease occurs when the developer and the CDC have met the conditions for escrow to close and the CDC executes the lease.

In addition, California Health and Safety Code 33433 requires an economic analysis of the cost to the CDC and the return to the CDC. This report is a document that will be received by the City Council as the legislative body for the CDC.

There are certain actions required to be taken by the Community Development Commission and the City Council. Due to the length of the lease, seventy-five years plus a twenty-four year option, the Redevelopment Plan will have expired and the lessor will eventually be the City.

The CDC has used internal staff, including the City Attorney, as well as outside counsel and various consultants, including Delmar Williams of Best Best and Kreiger LLP; Paul Marra and Curt Lewis of Keyser Marston Associates, Inc.; Brian Forbath and Tom Clark of Stradling Yocca Carlson and Rauth; Jay Scott of Scott Hospitality Consultants; Maurice Robinson of Maurice Robinson & Associates, LLC; and the City's bond underwriters, Stone and Youngberg, LLC.

ANALYSIS

S.D. Malkin proposes to build a destination resort in downtown Oceanside that will be a catalyst for other projects. Having a destination resort in the downtown has been in the Redevelopment Plan since the Redevelopment Agency was created in 1975. In addition, due to the requirements of the Nine Block Master Plan of the Local Coastal Plan, each of the 9 blocks in the core downtown area must either build their requisite share of 240 hotel rooms, or wait to pull building permits until the 240 hotel rooms have started construction. The effect of the length of time to secure such a hotel has led to the lack of development in the core area while the surrounding areas have developed. Although unfortunately the project is finally reaching an approved status at a time of severe world-wide economic turmoil, when it does begin, the remaining blocks including the five-block project and the Agency-owned parking garage project can move forward as market conditions permit.

The flag anticipated by S.D. Malkin is Hyatt Regency or Westin and Interstate is a pre-approved hotel operator. The architecture, finishes, furniture and fixtures are mandated to be of a quality reflected in a competitive set of hotels as outlined in the lease. Pre-approved operators are in Exhibit A to the lease. The hotel competitive set includes, among other hotels, the Loews Coronado Bay Resort, the Marriott Coronado Island, the Hyatt Regency and the Hilton Waterfront Resort in Huntington Beach. A complete list of the hotels in the competitive set is in Exhibit D to the lease.

Redevelopment Agency Investment

The investment in the project is intended to obtain significant public benefits and extraordinary covenants required for the quality and amenities of the hotel. The parking garage will be available to the public at market rates, set by the hotel, for the use of hotel guests, shoppers and diners, and attendees at events at the hotel. Through the CDC purchase of a public parking easement, this parking will be available when no conflicts exist with the hotel, timeshare and visitor-serving commercial operations.

The investment of 27.61M is proposed to be made as follows:

Environmental Impact Report	.25M
Off-site public improvements	5.10M
Parking garage easement & extraordinary covenants	
13.8 M TAB # 1	
3.46M TAB # 2	
5.0 M Performance Based TI payments	
	22.26M
Total	27.61M

The methodology for funding the project includes several financing tools. The funds for the off-site public improvements, which are listed in Exhibit C to the lease, will be paid by existing Tax Allocation Bonds, TABs, which the Agency has already issued. The funds for the parking garage easement and extraordinary lease covenants come in at the issuance of two new bonds, or TABs. The first bond, for 13.8 million, is expected to be paid at various stages of construction of the parking garage. A second bond generating enough proceeds to provide a completion payment of 3.46 million will be paid within 90 days of completion of the entire resort development.

The third component of the funding is performance-based and is tied to the generation of transient occupancy taxes by the project as described below.

After approval of the Disposition Agreement by the Community Development Commission and the City Council, the developer will continue to secure financing. Due to the severe economic climate, the developer has requested, and the staff is recommending, that the developer be allowed 18 months, with two potential 6-month extensions to close the escrow. To obtain the second extension the developer must demonstrate that the construction drawings are being completed at a rate that will allow for closing of the senior construction loan by the escrow closing date.

Based on current information about the Assessed Value in the Redevelopment Area, assuming that all projects currently under construction are completed, the CDC estimates that the new assessed value will generate bond capacity that can net approximately 13.8M. To maximize the bond capacity, the CDC will time the issuance of the bonds to be at the latest period available to have the funds ready for distribution according to the following schedule:

- 25 percent upon completion of excavation of the parking garage
- 25 percent upon completion of foundation and mats for the parking garage
- 25 percent upon completion of the pouring of the foundation for parking level 2
- 25 percent upon completion of the parking deck at street level

If the new bond does not net the 13.8M, then to the extent the CDC is short, at any disbursement event as noted above, the CDC will be required to pay interest until payment is made at a rate designed to approximate the CDC's cost of funds plus 1.5 percent, with an annual increase of 1 percent, not to exceed 12 percent.

The development is expected to take 24 to 40 months to build from commencement of the construction. There are twenty-nine entitled projects in the Redevelopment Area not yet under construction and while there is no empiric way to know which of those will start and when, it is expected that when the market conditions change, that new development will occur. Therefore, the second amount of funds, in the amount of approximately 3.46M would come at a later date, with the issuance of a second Tax Allocation Bond. Should the second bond not achieve a net 3.46M, interest will accrue at a rate equal to the interest rate on the tenant's senior construction financing plus 1.5 percent, not to exceed 12 percent. Should there be an outstanding debt to the

developer from a shortfall on the original bond, and the second bond achieves more money, then the funds may also be applied to the prior debt.

However, if the entire resort development has been completed for six months, and no funds have been given to the developer from bond funds for any reason, including failure of the CDC to issue such bonds or an inability to sell the bonds, then the developer has contractual rights to a net 65 percent of CDC Tax Increment until the developer has received \$17.31 million plus accrued interest at a rate of 12 percent. The 65 percent would be net of the County Admin Fee; the 20 percent Set Aside for affordable housing; pass-through payments to other jurisdictions, including the City; any State-dictated loss such as the Education Relief Augmentation Fund (ERAF); debt payments, including the scheduled payments from the CDC to the General Fund; Admin expenses; and capital projects. In addition, the CDC would not likely be able to issue bonds for any other redevelopment projects until the CDC can meet the contractual obligations to the developer. The practical effect of this provision will be that the CDC will be induced to provide the funds as it will have limited flexibility until the developer is made whole.

The last funding source is to be paid using property tax increment but based on a Transient Occupancy Tax (TOT) index. The formula would calculate a \$1M base amount of TOT, increased at 3 percent per year, and the developer would be paid an amount of tax increment equal to 75 percent of the TOT over that base amount annually for a 15-year period or until the developer has achieved a net present value of \$5M, using a 12 percent interest rate. The tax increment proxy for the TOT is anticipated to be paid off by year 15; however, if it is not paid due to lower tax increment than expected, the remainder may be used as a rent credit. The tax increment from the hotel was not used in the analysis of the bond capacity for the other two bonds as the tax increment is intended to be used to make the TOT proxy indexed payments.

In addition, this project is required to be built using prevailing wages, in accordance with California Labor Code Section 1770.

Disposition Agreement

The purpose of the Disposition Agreement is to outline the conditions the developer must meet in order for escrow to close and the lease to become effective. It specifically deals with the time frame between when the CDC approves the agreement to the execution of the lease. Therefore, most of the terms have to do with the pre-construction period.

Within seven days of the signing of the agreement, an escrow account will be opened for the lease. At the completion of the conditions in the agreement, the Executive Director may execute the lease. To execute the lease the developer will need to have acquired all permits and recorded the final maps. In addition, the CDC will need the documents that outline the form of ownership the lease will be under as most developers create single-purpose entities for projects for various business and tax reasons; the franchise agreements, management agreements, construction contracts,

documents regarding the formation of the time share and any tenant associations; insurance documents, the construction surety; the financing plans and, importantly, the equity and debt financing, including the mezzanine financing.

The agreement also acknowledges Hyatt Regency or Westin as the brand and Interstate as one of the expected operators; requires a contractor with a net worth of at least 10M; requires a construction surety bond; requires a construction and permanent debt financing plan to be submitted; that the property is taken “as is” with regard to any current hazardous materials; that the developer must submit all required applications for permits including grading, improvement and building permits; and that the developer will not build or manage a project using the same brand or flag as either hotel within ten miles without the CDC’s consent within the first eight years of the lease.

Upon receipt of the required documents the lease can be executed. The CDC and the developer will each pay one-half of the escrow fees.

Should the escrow fail to close due to a default by the CDC, the developer’s remedy is limited to recovering amounts actually paid by the developer prior to the default or specific performance. Should the escrow fail to close due to a default by the developer, the CDC is limited to amounts expended. In no case shall the CDC be liable for consequential damages, including lost profits.

The developer may transfer its interest in the agreement without the CDC’s consent in a limited number of specified situations. All other lease transfers require landlord’s consent.

Should there be any legal action challenging the validity of the agreement the developer assumes the risks and shall defend, indemnify and hold the Agency harmless. For approvals and amendments that do not materially or substantially alter the resort development, the agreement or the lease, the Executive Director is allowed to act on behalf of the Agency. Disputes arising during the agreement that do not have a specific remedy shall be arbitrated.

Lease

As an overriding premise, because this is a 75-year lease with a 24-year option, and the process to amend such a lease cumbersome, every attempt has been made to identify esoteric events and worst-case scenarios and spell out the process and the remedy. As such, there are lengthy details about requirements of the owner, operator and the CDC and City over the length of the lease.

The structure of the lease has a definition section, which is critical to the context, authorizations and requirements, and more importantly to mathematic calculations. In addition, throughout the lease remedies are spelled out for the probable eventuality that disagreements on calculations, responsibilities and authorizations arise. Every attempt was made to provide a process that would allow for resolution short of either a termination of the lease or a legal action.

Some of the major provisions of the lease include that the property is offered on an “As Is” basis and that the CDC provides no warranties as to hazardous materials.

The rent structure on the hotel component has two components, fixed rent and percentage rent. The fixed rent in years one through twelve is zero, with fixed rent in year 13 at \$100,000 per year and increasing \$100,000 per year until year 20 at which time it is recalculated.

Lease Years	Fixed Rent
Years 1 - 12	\$0
Year 13	\$100,000
Year 14	\$200,000
Year 15	\$300,000
Year 16	\$400,000
Year 17	\$500,000
Year 18	\$600,000
Year 19	\$700,000
Year 20 – End of Term	75% of the previous 5 years average total rent, adjusted every 10 years

Percentage rent is a percentage of room and other revenue. Percentage rent also is zero for the first twelve years and increasing to market rate over an extended period.

Lease Years	Percent of Room Revenue	Percent of Other Revenue
Years 1 - 12	0.00	0.00
Years 13 – 15	0.50	0.25
Years 16 – 18	1.00	0.50
Years 19 – 22	2.00	1.00
Years 23 – 26	3.00	1.50
Years 27 – 30	4.00	2.00
Years 31 – 35	5.00	2.50
Years 36 – 50	6.00	3.00
Years 51 – 75	7.00	3.50

There is also a nominal rent on the time shares, which is approximately \$4,200 per year per unit.

There is a recapture clause in that if the hotel development achieves revenues greater than projected, the CDC shares in the up-side. Should the original tenant (S.D. Malkin) sell the property, the tenant will receive all the net funds if he does not earn his original investment plus 20 percent rate of return. If the sale achieves additional revenue such that the tenant earns more than the investment plus 20 percent rate of return, the tenant can retain 90 percent until he has earned 25 percent rate of return on the investment and the CDC will receive the remainder as additional rent subject to a cap based on the

CDC's payments to tenant or for the project. For amounts above that threshold the tenant may retain 85 percent of the net proceeds and the landlord or Agency the rest.

The Agency will share in revenues generated from refinancing of the project. In the event that the original tenant refinances the tenant will pay the agency a portion of the net refinancing proceeds after recovery of the tenant investment and recovery of its internal rate of return. Subsequent tenants will pay the Agency 0.5 percent of the amount of the refinancing. This revenue sharing has been imposed in the event that the tenant refinances and takes equity out.

At the developer's request, a provision was added that should the City Council choose to impose an increase in the TOT such that more than 50 percent of the increase in the tax would be borne by the subject hotel, the hotel would have 50 percent of the increased TOT credited against the rent. This provision is not intended to disallow a general increase in the TOT, which must be voted on by the citizens, and there is no credit available for citywide TOT increases.

The tenant is allowed to protest the real and personal property taxes, but not below a 113 million assessment.

The Agency has the authority to approve changes in the flags of the hotels as long as it is still in the quality of the competitive set of hotels. There is also language that addresses changes in the competitive set and ways to resolve differences of opinion about the competitive set.

The hotels are required to establish and fund a Furnishings and Capital Reserve fund, and there is a schedule of deposits to that fund, beginning in year 3 at 1 percent of gross revenues. The hotel is required to submit a Furnishings Plan at year 7 and is required to reinvest in the hotels in a manner consistent with the competitive set. Much of the language in the Furnishings and Renovations section is to ensure that there is periodic investment in the hotel development to retain its quality while allowing flexibility as it is unknown what the fashion will be in the next 99 years.

The tenant is required to obtain and retain insurance to cover all facets of property and casualty insurance.

Should the CDC/City choose in the future to sell the property, the tenant has a Right of First Offer, (ROFO). After a specified time period, should the tenant either choose not to purchase the property, or unsuccessfully offer an amount less than the sales price, the Agency/City may offer it to sale to others. Should there be less than a 100 percent sales price offer from a second party, the CDC/City is obligated to once again offer it back to the tenant. Should the CDC/City and the tenant not agree on the offered sales price, each party will get an MAI appraiser to provide a value, and a third appraiser, approved by the first two, will either offer a determination of which price is closest to market, or a selection of price by two of the three appraisers will prevail. At that time the CDC/City may walk away from the sale, as can the tenant. The effect of this ROFO is

that it will be difficult to sell to anyone other than the tenant, but in the tenant's interest they have expressed grave concerns about third party ownerships.

The tenant may not sell the lease during construction, but after completion of the entire resort development the tenant may sell the lease to an approved operator with the Agency/City's reasonable consent.

S.D. Malkin Properties, Inc. Financing

The developer, S.D. Malkin, or its successors, is required to have 20 percent equity in the hotel. The developer has been given a wide berth in qualified lenders, with the goal of providing as much flexibility while at the same time wanting to ensure that the lender has enough depth to be able to provide the funding, as well as to have the capacity in the event that there would be a default on the loan.

Completion Guarantee

The tenant will provide a commercially reasonable completion guarantee obligating a creditworthy third party to finish the project if the tenant defaults. In addition there are performance bonds to be supplied by the contractor.

FISCAL IMPACT

The revenue to the Redevelopment Agency and the City over the life of the lease comes from four main sources, the Transient Occupancy Tax, which is a General Fund Revenue; the Property Tax Increment, which is a Redevelopment fund but with pass-throughs to the City; the Lease revenue, which accrues to the Redevelopment Agency until the expiration of the agency and after that to the City; and the sales tax, which is a General Fund Revenue.

The Average Daily Rate for the 336 hotel rooms is projected to be \$311 per night and the occupancy at stabilization is projected at 74 percent. In addition there are 48 fractional time share units.

A summary of the anticipated direct revenues for one year at stabilization in operating year five is as follows:

	<u>City of Oceanside</u>	<u>Redev. Agency</u>	<u>Total</u>
Transient Occupancy Tax	\$2.9M		\$2.9M
Property Tax Increment	\$.1M	\$1.2M	\$1.3M
Lease Revenue		\$.2M	\$.2M
Sales Tax	<u>\$.2M</u>		<u>\$.2M</u>
Total	\$3.2M	<u>\$1.4M</u>	\$4.6M

As this is a 75–year lease with a 24–year option, following is a summary of the net present value of the direct revenues over the first 75 years of the lease:

	<u>City of Oceanside</u>	<u>Redev. Agency</u>	<u>Total</u>
Transient Occupancy Tax	\$42.1M		\$42.1M
Property Tax Increment	\$ 4.2M	\$11.7M	\$15.9M
Lease Revenue		\$11.7M	\$11.7M
Sales Tax	<u>\$ 3.2M</u>		<u>\$ 3.2M</u>
Total	\$49.5M	\$23.4M	\$72.8M

The estimates of net property tax increment are net of set–aside funds for affordable housing and pass-throughs, and not net of the use of the tax increment for the funding of the project.

The investment of \$27.61M is proposed to be made as follows:

Environmental Impact Report	\$.25 M
Off–site public improvements	\$ 5.10 M
Parking garage easement & extraordinary covenants	<u>\$ 22.26 M</u>
Total	\$27.61 M

The CDC paid S.D. Malkin a total of \$200,000 toward the cost of the Environmental Impact Report. The \$5.1 million for the off-site public improvements is budgeted in the FY 2009-10 CIP budget (591.878871).

Funds for the parking garage easement and extraordinary covenants in the amount of \$22.26 million will be paid by the issuance of tax allocation bonds in the amount of \$13.8 million and \$3.36 million, respectively. The remaining \$5 million is tied to the generation of transient occupancy taxes generated by the project.

As referenced in the 33433 report, over a 75-year period, given the investment the Agency has made in the project, the Agency and City of Oceanside will have netted \$35 M with the development of the Beach Resort Hotel.

INSURANCE REQUIREMENTS

Both the Lease and the Disposition Agreement have significant insurance requirements, which will be met.

COMMISSION OR COMMITTEE REPORT

The Economic Development Commission will review the Lease and the Disposition Agreement at its meeting on June 2, 2009, and the Redevelopment Advisory Committee will review it at its June 10, 2009, meeting.

CITY ATTORNEY'S ANALYSIS

The City Attorney along with outside counsel and the Economic and Community Development Director and have been extensively involved in the process of drafting, negotiating and revising the proposed disposition agreement and lease. The City Attorney has approved the documents as to form.

The Commission should be aware of unique provisions relating the enforcement of its rights and duties under the two documents. Under the disposition agreement, the parties have agreed that all disputes will be resolved through binding arbitration. This means that neither the developer nor the Agency will have a right to a trial by jury or judge in the event of a legal dispute between the parties. This will result in a more expeditious and less expensive process for the parties to enforce their rights under the disposition agreement. The parties have limited damage rights under the disposition agreement. In the event of an event of default related to the disposition agreement caused by the Agency, the developer has the option of seeking either specific performance or termination of the agreement and recovery of amounts actually paid to third parties prior to the event of default. The developer has no contractual right to seek consequential damages, including potential lost profits or other speculative damages. If an event of default is caused by the developer prior to the close of escrow, the Agency has the right to assignment of all premises information and approvals, including all expert reports concerning the site and recovery of all amounts paid to third parties related to the project prior to the event of default.

Disputes under the lease are treated in a different manner. Given the length and technical nature of some of the provisions of the lease, the parties have agreed to resolve disputes through a mandatory negotiation period as well as a non-binding mediation process. Should a dispute arise between the tenant and Agency, either party may send the other party a notice requesting the commencement of a thirty-day negotiation period. The period may be extended by agreement of the parties. If the dispute is not resolved during the negotiation period, the parties may then seek mediation before a retired judge. Although mediation is not mandatory, the party refusing to mediate would not be able to seek recovery of its attorney fees if the matter proceeded to formal litigation.

The Agency should also be aware of novel provisions related to the public financing. Substantial portions of the public financing are proposed through the issuance of tax allocation bonds. As noted above, Section 12 of the lease contemplates a first bond in the amount of approximately \$13.8 million and the issuance of a second bond in the amount of \$3.46 million. These payments are made in consideration of the

extraordinary lease covenants detailed in Section 12.3 of the lease as well as the tenant granting the public parking easement to the landlord. As a legal matter, the agency cannot agree to pre-commit in the lease its future decision to issue these bonds. However, this component of the financing is essential for the project. Therefore, the lease details the consequences if the bonds are not issued. For example, the lease requires the Agency to pay interest on the two bond payments at specified rates set forth in Sections 12.4.5.1 and 12.4.5.2 if the bond payments are not made at the time specified in the lease. In addition, the lease provides the tenant with an ability to recover surplus tax increment revenues as detailed in Section 12.4.5.4 until the tenant recovers the amount owed. Finally, the tenant has to ability to seek a rent credit as specified in Section 12.4.5.5 in the event amounts owed from the bond payments are not paid by the end of the life of the Agency.

RECOMMENDATION

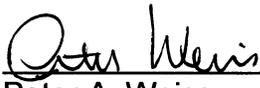
Staff recommends that the City Council and Community Development Commission adopt resolutions to approve a Disposition Agreement and authorize the Executive Director of the Commission to enter into a lease with S.D. Malkin Properties, Inc., for property owned by the Community Development Commission bounded by Pacific Street on the west, Myers Street on the east, Seagaze Drive on the south and Pier View Way on the north; and make certain findings pursuant to California Health and Safety Code Sections 33421.1, 33433, and 33445 and authorize the Redevelopment Agency to pay for certain off-site public improvements.

PREPARED BY:

SUBMITTED BY:



Jane McVey
Economic and Community
Development Director



Peter A. Weiss
Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director





EXHIBITS/ATTACHMENTS

1. Community Development Commission Resolution
 - Exhibit 1. Disposition Agreement
 - Exhibit 2. Lease
2. City Council Resolution
3. California Health and Safety Code Section 33433 Report

1 **WHEREAS**, a copy of the Agreement is attached to this resolution (“Resolution”) as
2 Exhibit A; and

3 **WHEREAS**, implementation of the Agreement: (i) is in the best interests of the Project
4 Area; (ii) is in accordance with the public purposes set forth in the Redevelopment Plan and CRL;
5 (iii) strengthens the City’s land use and social structure; and (iv) will alleviate both economic and
6 physical blight in the Project Area; and

7 **WHEREAS**, pursuant to CRL Sections 33431 and 33433, the CDC may approve the
8 conveyance of a leasehold estate in the Property to the Developer for development and operation
9 of the Project, with the consent of the City Council, following a noticed public hearing and the
10 City Council making certain findings; and

11 **WHEREAS**, pursuant to CRL Sections 33431 and 33433, on June 3, 2009, and June 10,
12 2009, the City and the CDC caused notice of a joint public hearing of the City Council and the
13 CDC to be published in a newspaper of general circulation within the City’s territorial
14 jurisdiction; and

15 **WHEREAS**, the CDC prepared a summary report in accordance with CRL Section 33433
16 (“Report”); and

17 **WHEREAS**, a copy of the Report and the Agreement have been made available for
18 public inspection in accordance with CRL Section 33433 and are on file in the City Clerk’s
19 office; and

20 **WHEREAS**, pursuant to CRL Section 33445, with the consent of the City Council, the
21 CDC may pay the costs of construction or installation of certain public improvements to be
22 owned by the City, as described in the Agreement (“Public Costs”), if the City Council and the
23 CDC make certain findings; and

24 **WHEREAS**, pursuant to CRL Sections 33421 and 33421.1, the City Council has
25 determined that the CDC causing, providing or undertaking or making provision with other
26 agencies for the installation or construction of streets, utilities, parks, playgrounds and other
27 public improvements, including such improvements that an owner or operator of the Property
28 would otherwise be obligated to provide, is necessary to effectuate the purposes of the

1 Redevelopment Plan and the City Council has consented to CDC providing for such
2 improvements at the cost and expense of the CDC; and

3 **WHEREAS**, pursuant to the California Environmental Quality Act Public Resources
4 Code Sections 21000, *et seq.*) (“CEQA”), the CDC is the “Lead Agency” concerning the Project;
5 and

6 **WHEREAS**, the CDC certified that certain Final Environmental Impact Report (“EIR”)
7 for the Project on January 16, 2008;

8 **NOW, THEREFORE, BE IT RESOLVED** by the Community Development
9 Commission of the City of Oceanside, as follows:

10 **Section 1.** The CDC finds and determines that the recitals of facts preceding this
11 Resolution are true and correct and such recital are incorporated into this Resolution by this
12 reference.

13 **Section 2.** The CDC finds and determines that, since the CDC certification of the EIR,
14 there are no changes proposed in the Project, no new circumstances related to the Project and no
15 new information regarding the Project that would require or allow any subsequent or
16 supplemental environmental review of the Project, in accordance with Title 14 California Code of
17 Regulations Section 15162.

18 **Section 3.** The CDC, based on the information contained in the Report, the staff
19 report accompanying this Resolution, the oral presentation of CDC staff, and all written and oral
20 evidence presented to the CDC at or prior to the public hearing, finds and determines that:

- 21 (i) The public improvements to be constructed through CDC payment of the
22 Public Costs are of benefit to the Project Area.
- 23 (ii) No other reasonable means of financing the Public Costs are available to
24 the City.
- 25 (iii) The CDC’s financing of the Public Costs for construction of public
26 improvements in the Project Area will assist in the elimination of blighting
27 conditions in the Project Area and is consistent with CDC’s
28 implementation plan for the Project Area.

1 **Section 4.** The CDC approves the Agreement, with any non-substantive changes and
2 amendments as may be approved by both the CDC Executive Director and CDC General
3 Counsel.

4 **Section 5.** The CDC approves the payment from tax increment funds of the Public
5 Costs, pursuant to the Agreement, to facilitate the development of the Project and elimination of
6 blight in the Project Area.

7 **Section 6.** The CDC authorizes the CDC Executive Director to: (i) execute the
8 Agreement on behalf of the CDC; and (ii) execute a ground lease in substantially the form
9 attached to the Agreement as Exhibit “D,” following satisfaction of the conditions precedent to
10 the close of escrow for the benefit of the CDC, pursuant to and in accordance with the
11 Agreement. The CDC Executive Director is further authorized to take any actions and execute
12 any and all documents on behalf of the CDC necessary to perform the CDC’s obligations under
13 the Agreement and otherwise implement the Agreement on behalf of the CDC.

14 **Section 7.** The CDC Secretary is directed to file a Notice of Determination in
15 accordance with CEQA with the Clerk of the Board of Supervisors of the County of San Diego,
16 within five (5) calendar days following the date of adoption of this Resolution.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

///

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the
Community Development Commission of the City of Oceanside at a regular meeting held on the
_____ day of _____, 2009.

AYES:
NOES:
ABSTAIN:
ABSENT:

CDC Secretary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Disposition Agreement (Beachfront Resort Ground Lease)

[Attached behind this cover page]

1 **WHEREAS**, a copy of the Agreement is attached to this resolution (“Resolution”) as
2 Exhibit A; and

3 **WHEREAS**, implementation of the Agreement: (i) is in the best interests of the City and
4 the health, safety and welfare of the City’s residents; (ii) is in accordance with the public purposes
5 set forth in the Redevelopment Plan and CRL; (iii) strengthens the City’s land use and social
6 structure; and (iv) will alleviate both economic and physical blight in the Project Area; and

7 **WHEREAS**, pursuant to CRL Sections 33431 and 33433, with the City Council making
8 certain findings and giving its consent, after a noticed public hearing, the CDC may approve the
9 conveyance of a leasehold estate in the Property to the Developer for development and operation
10 of the Project; and

11 **WHEREAS**, pursuant to CRL Sections 33431 and 33433, on June 3, 2009, and June 10,
12 2009, the City and the CDC caused notice of a joint public hearing of the City Council and the
13 CDC to be published in a newspaper of general circulation within the City’s territorial
14 jurisdiction; and

15 **WHEREAS**, the CDC prepared a summary report in accordance with CRL Section 33433
16 (“Report”) and delivered such Report to the City Council; and

17 **WHEREAS**, a copy of the Report and the Agreement have been made available for
18 public inspection in accordance with CRL Section 33433 and are on file in the City Clerk’s
19 Office; and

20 **WHEREAS**, pursuant to CRL Section 33445, with the consent of the City Council, the
21 CDC may pay the costs of construction or installation of certain public improvements to be
22 owned by the City, as described in the Agreement (“Public Costs”), if the City Council and the
23 CDC make certain findings; and

24 **WHEREAS**, pursuant to CRL Sections 33421 and 33421.1, if the City Council finds that
25 the provision of such improvements is necessary to effectuate the purposes of the Redevelopment
26 Plan and consents to the CDC providing for such improvements, the CDC may cause, provide or
27 undertake or make provision with other agencies for the installation or construction of streets,
28 utilities, parks, playgrounds and other public improvements necessary for carrying out the

1 Redevelopment Plan, including such improvements that an owner or operator of the Property
2 would otherwise be obligated to provide;

3 **WHEREAS**, pursuant to the California Environmental Quality Act (Public Resources
4 Code Sections 21000, *et seq.*) (“CEQA”), the CDC is the “Lead Agency” and the City is a
5 “Responsible Agency” concerning the Project; and

6 **WHEREAS**, the CDC certified that certain Final Environmental Impact Report (“EIR”)
7 for the Project on January 16, 2008 and the City has reviewed the EIR;

8 **NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of
9 Oceanside, as follows:

10 **Section 1.** The City Council finds and determines that the recitals of facts preceding
11 this Resolution are true and correct and such recitals are incorporated into this Resolution by this
12 reference.

13 **Section 2.** The City Council finds and determines that the EIR adequately considered
14 the environmental impacts of the Project and, since the CDC certification of the EIR, there are no
15 changes proposed in the Project, no new circumstances related to the Project and no new
16 information regarding the Project that would require or allow any subsequent or supplemental
17 environmental review of the Project, in accordance with Title 14 California Code of Regulations
18 Section 15162.

19 **Section 3.** The City Council finds and determines, based on the information made
20 available in the Report, the staff report accompanying this Resolution, the oral presentation of
21 City staff, and all other written and oral evidence presented to the City Council at or prior to the
22 public hearing, that:

- 23 (i) The conveyance of a leasehold estate in the Property to the Developer will
24 assist in the elimination of blight by requiring development of the Project
25 in accordance with the Agreement on the underutilized and economically
26 stagnant Property and satisfying certain elements of the City’s certified
27 Local Coastal Plan to allow other future development in the Project Area;
28 and

- 1 (ii) The conveyance of a leasehold estate in the Property is consistent with the
- 2 implementation plan for the Project Area adopted by the CDC; and
- 3 (iii) The consideration to be paid for the leasehold estate in the Property by the
- 4 Developer is not less than the fair reuse value for such leasehold estate at
- 5 the use and with the covenants, conditions, restrictions, terms, requirements
- 6 and development costs imposed by the Agreement.

7 **Section 4.** The City Council finds and determines that the installation or construction
8 of streets, utilities, parks, playgrounds and other public improvements that the Developer would
9 otherwise be obligated to provide is necessary to effectuate the purposes of the Redevelopment
10 Plan and the City Council consents to the CDC undertaking or providing for such improvements
11 at the cost and expense of the CDC.

12 **Section 5.** The City Council further consents to the CDC's use of tax increment funds
13 to finance the Public Costs and finds and determines, based on the information contained in the
14 Report, the staff report accompanying this Resolution, the oral presentation of City staff, and all
15 written and oral evidence presented to the City Council at or prior to the public hearing, that:

- 16 (i) The public improvements to be constructed through CDC payment of the
- 17 Public Costs are of benefit to the Project Area.
- 18 (ii) No other reasonable means of financing the Public Costs are available to
- 19 the City.
- 20 (iii) The CDC's financing of the Public Costs for construction of public
- 21 improvements in the Project Area will assist in the elimination of blighting
- 22 conditions in the Project Area and is consistent with the CDC's
- 23 implementation plan for the Project Area.

24 **Section 6.** The City Council approves and authorizes the CDC's entry into the
25 Agreement, with any non-substantive changes and amendments as may be approved by both the
26 CDC Executive Director and CDC General Counsel.

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Oceanside at a regular meeting held on the _____ day of _____, 2009.

AYES:
NOES:
ABSTAIN:
ABSENT:

City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Disposition Agreement (Beachfront Resort Ground Lease)

[Attached behind this cover page]

MEMORANDUM

DATE: June 17, 2009
TO: Honorable Mayor and Councilmembers
FROM: Patricia Allison, City Manager's Office
SUBJECT: AVAILABILITY OF DOCUMENTS FOR REVIEW

Due to their size, the remaining documents for this item are not included in the agenda packet, but may be viewed by going to the follow City Web site location:

http://www.ci.oceanside.ca.us/EDD/pdf/06-10-09_RAC.pdf

The documents begin on page 30.