



Meeting Date: 05/01/07

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Alan Holmberg, Assistant City Attorney Agenda Item No. I-3

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance SW Other (Specify) _____

DATE: April 24, 2007

TO: City Council
City of Oxnard Finance Authority

FROM: Michael More, Financial Services Manager [Signature]
Finance Department

SUBJECT: **Consent to Assignment of Residence Inn by Marriott Parking Lot Sublease**

RECOMMENDATION

That City Council approve and authorize the Mayor to execute an estoppel and consent (the "Consent") consenting to the assignment of the sublease ("Sublease") wherein the City of Oxnard leases the parking lot servicing the Marriott Residence Inn located at 2201 West Vineyard Avenue (the "Hotel") to Sunstone O.P. Properties, L.L.C. ("Sunstone"), successor in interest to Ventura Hospitality Partners, L.P.

That City of Oxnard Finance Authority approve and authorize the Chairman to execute the same Consent.

DISCUSSION

The execution of the Consent consents to the assignment of the Sublease to RECP RI Oxnard LLC, a Delaware limited liability company ("Assignee") in connection with a sale of the Hotel to Assignee.

In 1985 the City purchased the land upon which the Hotel and parking facilities are located. The City entered into a ground lease with Inner City Equities, a general partnership ("Inner City") and Inner City constructed the Hotel. The City, by a separate sublease, leased the Hotel parking lot property to Inner City. Later, Inner City assigned its interest under the lease and sublease to Westland Company ("Westland").

The purchase and improvements of the parking lot was financed by certificates of participation in the original amount of approximately \$9 million. The Hotel construction was financed by a loan from Manufacturers Bank in the original amount of \$12 million. As a condition of the loan to finance construction of the Hotel, the City was required to subordinate its fee interest in the Hotel to the lender,

Manufacturers Bank, and the City was also required to grant to the Hotel a perpetual easement to use the parking lot. Westland then pledged the easement to Manufacturers Bank.

For reasons attributable primarily to declining economic conditions, the Hotel did not meet projections as estimated in 1986. In 1989, the City, Manufacturers Bank and Westland entered into agreements reducing rent and deferring payment of bank debt. These agreements did not, however, reduce debt. They only provided for deferral and repayment restrictions.

Economic conditions continued to deteriorate, and the Hotel was unable to service its debt. In June 1994, Manufacturers Bank filed an action to foreclose its liens on the Hotel property and the easement in the Ventura County Superior Court. The case was set for trial in October 1995. The outstanding balance of the loan against the Hotel was at that time approximately \$19 million. The value of the Hotel was about \$8 million. A foreclosure would have eliminated the City's interest in both the Hotel and parking lot.

Ventura Hospitality Partners, L.P. made an offer to purchase the Hotel which involved payment to Manufacturers Bank in the agreed upon sum of approximately \$8 million, investment in the Hotel of approximately \$1.1 million as required by the City and by the Marriott franchise, and payment to the City of approximately \$545,000. In exchange, the City conveyed its interest in the Hotel to Ventura Hospitality Partners, L.P. Because the City could not convey the parking lot until bonds secured by it were repaid, City and Ventura Hospitality Partners, L.P. entered a no rent sublease for the parking lot.

At this point in time, the City has no economic interest in the Hotel or the Hotel parking facilities. The sublease remains in effect only because the City's ownership of the undergoing fee was tied to the above-referenced bonds. The City will in the near future be required to convey its interest in the parking lot to the Hotel owner.

Sunstone is in the process of selling the Hotel and has requested that the City consent to the assignment of the Sublease to the Assignee on or prior to May 15, 2007. The City has three times previously consented to assignment of the sublease.

RECP RI OXNARD LLC ("RECP") is a wholly subsidiary of DLJ Real Estate Capital Partners, Inc. ("DLJ"). DLJ owns over thirty hotels with a value in excess of \$1 billion dollars. Twenty of these have been acquired in partnership with Windsor Capital Group ("Windsor") which has served as TLJ's preferred management company for the past five years. Windsor is a California based hotel ownership and operating company that manages twenty-eight hotels across the United States. Windsor manages eight Marriott Hotels. Windsor manages Marriott brands including the Courtyard, Residence Inn, Marriott Renaissance and Renaissance. The Hotel will continue as a Marriott franchise.

FINANCIAL IMPACT

There is no financial impact associated with the Consent.

Attachment #1 - Ground Lessor Estoppel and Consent

Location: 2101 West Vineyard Avenue, Oxnard, California
Name of Facility: Residence Inn

GROUND LESSOR ESTOPPEL AND CONSENT

THIS GROUND LESSOR ESTOPPEL AND CONSENT (this "Estoppel"), is made as of May ____, 2007, by **CITY OF OXNARD FINANCING AUTHORITY**, a joint exercise of powers of authority duly organized under the laws of the State of California (the "Authority"), having an address at c/o City of Oxnard, 300 W. Third Street, Oxnard, California 93030, Attention: Controller and **CITY OF OXNARD**, a California municipal corporation (the "City"), having an address at City Hall, 300 W. Third Street, Oxnard, California 93030, Attention: Finance and Management Services Director, for the benefit of RECP RI OXNARD LLC, a Delaware limited liability company ("RECP"), having an address in care of DLJ Real Estate Capital Partners, Inc., 2121 Avenue of the Stars, Suite 3000, Los Angeles, California 90067, Attention: _____, with the acknowledgment and consent of **SUNSTONE OP PROPERTIES, L.L.C.**, a Delaware limited liability company ("Tenant"), having an address at 903 Calle Amanecer, Suite 100, San Clemente, California 92673.

R E C I T A L S :

A. Pursuant to that certain Amended and Restated Lease Agreement dated as of November 1, 1993 and recorded on November 9, 1993 as Instrument No. 93-212813 in the Official Records for Ventura County, California (the "Official Records"), which was amended by that certain Amendment No. 1 to Amended and Restated Lease Agreement dated as of July 20, 1995 and recorded on July 24, 1995 as Instrument No. 95-085768 in the Official Records (as amended, the "Master Lease") the City leased certain property described on Exhibit A attached hereto (the "Demised Premises") to the Authority and the Authority leased the Demised Premises back to the City.

B. Pursuant to that certain Third Amendment and Restatement of Sublease (River Ridge Public Parking) dated as of May 15, 1995, a Memorandum of which Sublease was recorded on July 24, 1995 as Instrument No. 95-086771 in the Official Records (the "Sublease") the City subleased the Demised Premises to Westland Company, a California general partnership ("Westland").

C. Pursuant to that certain Assignment of Parking Sublease dated July 20, 1995 and recorded on July 24, 1995 as Instrument No. 95-085775 in the Official Records, Westland, as sublessee, assigned all of its right, title and interest in, to and under the Sublease to Ventura Hospitality Partners, L.P., a Delaware limited partnership ("Ventura").

D. Pursuant to that certain Assignment recorded on December 19, 1996 as Instrument No. 96-172714 in the Official Records, Ventura, as sublessee, assigned all of its right, title and interest in, to and under the Sublease to Sunstone Hotel Investors, L.P., a Delaware limited partnership ("Sunstone Investors").

000625

ATTACHMENT NO. 1
PAGE 1 OF 9

E. Pursuant to that certain Assignment, Acceptance and Assumption of Seller's Right, Title and Interest to Lease and Deed to Improvements dated November 22, 1999 and recorded on December 2, 1999 as Instrument No. 99-0215424 in the Official Records, Sunstone Investors, as sublessee, assigned all of its right, title and interest in, to and under the Sublease to Tenant.

F. Pursuant to that certain Purchase and Sale Agreement and Escrow Instructions dated as of April __, 2007 by and between Tenant and RECP, as assignee, Tenant will assign all of its right, title and interest in, to and under the Sublease to RECP.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Representations Regarding Master Lease. Each of the Authority and the City represents to RECP the following:

1.1. Termination of Master Lease. The Master Lease has terminated and there are no outstanding obligations (whether on the part of the Authority or the City).

2. Representations Regarding the Sublease. The City represents to RECP the following:

2.1. Sublease. A true, correct and complete copy of the Sublease is attached hereto as Exhibit B and such Sublease has not been assigned, modified, amended or supplemented except as set forth in such Exhibit B. The Sublease is in full force and effect, and constitutes the entire agreement between the City and Tenant with respect to the Demised Premises. There do not exist any other agreements (including, but not limited to, subordination, non-disturbance and attornment agreements) concerning the Demised Premises, whether oral or written between the City and Tenant (or their respective predecessors or successors) under the Sublease except for that certain Option Agreement described in Section 2.11 below. All references to compliance with or requirements under the Restated Hotel Lease, the Settlement Agreement, the Security Agreement and the Right of First Refusal (each as defined in the Sublease) do not constitute obligations, conditions or covenants of Tenant. Such agreements have been terminated. The City reaffirms the provisions of the Sublease and acknowledges that the Sublease continues as the primary lease of the Demised Premises between the City and the Tenant.

2.2. Tenant. Tenant is the tenant under the Sublease and is in peaceful, quiet and undisturbed possession of the Demised Premises.

2.3. Enforceability. The Sublease constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms.

2.4. Rent. The fixed rent payable under the Sublease is One Dollar (\$1.00) per annum and such fixed rent has been paid through 2007. There is no other rent due under the Sublease.

2.5. Term. The current term of the Sublease expires on May 14, 2050.

2.6. Renewal Options. There are no renewal options under the Sublease.

2.7. Escrow. There are no escrows or deposits presently held by the City under the Sublease.

2.8. Tenant's Defaults. Tenant is not in default under the Sublease and the City has no knowledge of the existence of any event which, with the giving of notice, the passage of time or both, would constitute a default (or event of default) by Tenant under the Sublease.

2.9. City's Defaults. The City is not in default under the Sublease and the City has no knowledge of the existence of any event which, with the giving of notice, the passage of time or both, would constitute a default (or event of default) by the City under the Sublease.

2.10. No Mortgages. The City has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Sublease or the Demised Premises (or any part of it) and there currently are no mortgages, deeds of trust or other security interests encumbering the City's fee or leasehold interest in the Demised Premises (or any part of it). No third party has any option or preferential right to purchase all or any part of the Demised Premises.

2.11. No Offsets. There are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Sublease, or any amounts owing under any other agreement.

2.12. Eminent Domain. The City has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against the City's interest in the Demised Premises.

2.13. Violations. The City has not received written notice that it is in violation of any material governmental law or regulation applicable to its interest in the Demised Premises and its operation thereon, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim of any such violation.

2.14. No Security Interest. Notwithstanding anything to the contrary set forth in the Sublease, the City does not have any security interest in (a) any of Tenant's personal property (including without limitation any of Tenant's operating accounts) or (b) any other personal property located at the Demised Premises.

2.15. No Required Approval. The City consents to the assignment of the Sublease by Tenant to RECP and no further consent or approval on the part of the City or Tenant is or shall be required pursuant to Section 17 of the Sublease, it being understood that all conditions and approvals required thereunder have been satisfied, approved, obtained or otherwise waived.

2.16. Prior Transfers. All prior transfers or assignments of the sublessee interest in the Sublease have been in accordance with the terms of the Sublease.

2.17. Grant Deed. The City conveyed certain real property adjacent to the Demised Premises to Ventura pursuant to a Grant Deed and Restrictive Covenant recorded on July 24, 1995 as Instrument No. 95-085773 in the Official Records (the "Grant Deed"). The Grant Deed included a restrictive covenant requiring that the property conveyed be used as a first class commercial hotel, with restaurants, bars, banquet and conference rooms. Tenant's current use of the property conveyed pursuant to the Grant Deed as a Residence Inn is deemed to satisfy all of the requirements set forth in the Grant Deed.

2.18. Easement. The Demised Premises is benefited by an Easement Agreement granted by the City and recorded on July 24, 1995 as Instrument No. 95-085777 (the "Easement"). All of the grantee's obligations under the Easement have been satisfied.

3. RECP's Reliance on Representations. Each of the City and the Authority has executed this Estoppel with full knowledge that RECP and Tenant shall rely upon the representations herein contained.

4. Consent of Tenant. Tenant has joined herein to evidence its acknowledgement of and consent to all of the representations of the Authority and the City contained in this Estoppel.

5. Governing Law. This Estoppel and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of California (without giving effect to the principles of conflicts of law).

6. Successors. This Estoppel shall be binding upon and shall inure to the benefit of each party hereto and their respective successors and assigns.

7. Counterparts. This Estoppel may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original.

8. Recording of Estoppel. This Estoppel shall be recorded in the public land records of the jurisdiction in which the Demised Premises is located.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A
(Demised Premises)

[To be attached]

Exhibit A

000032

ATTACHMENT NO. 1
PAGE 8 OF 9

EXHIBIT B
(Sublease)

[To be attached]

Exhibit B

000033

ATTACHMENT NO. 1
PAGE 9 OF 9