



Meeting Date: 7/10/07

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 [Signature] Other (Specify) \_\_\_\_\_

DATE: July 2, 2007

TO: City Council

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

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

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute a Ground Lessor Estoppel, Consent and Agreement (the "Consent") consenting to the encumbrance 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.

**DISCUSSION**

On May 1, 2007, the City Council approved and authorized the Mayor to execute a Consent to Assignment of the Sublease in connection with the sale of the Hotel, consenting to the assignment of the Sublease to RECP RI Oxnard LLC, a Delaware limited liability company ("Assignee").

Eurohypo AG, New York Branch ("Lender") has determined it will finance the transaction. The attached Consent affirms the City's consent and also consents to the encumbrance of the Sublease with Lender's mortgage.

As stated in the May 1, 2007 agenda report, 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 convey its interest in the parking lot to the Hotel owner.

RECP RI OXNARD LLC ("RECP") is a wholly owned 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

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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, Consent and Agreement.

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

**GROUND LESSOR ESTOPPEL, CONSENT AND AGREEMENT**

THIS GROUND LESSOR ESTOPPEL, CONSENT AND AGREEMENT (this "Estoppel"), is made as of June [ ], 2007, by and among **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, **RECP RI OXNARD LLC**, a Delaware limited liability company ("Tenant"), having an address c/o DLJ Real Estate Capital Partners, Inc., 2121 Avenue of the Stars, Suite 3000, Los Angeles, California 90067, and **EUROHYPO AG, NEW YORK BRANCH**, the New York branch of a German banking corporation, having an address at 1114 Avenue of the Americas, 29<sup>th</sup> Floor, New York, New York 10036 (together with its successors and assigns, "Mortgage Lender", "Mezzanine Lender" and/or "Lender"), as mortgage lender and mezzanine lender.

**RECITALS:**

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"), as 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 City of Oxnard Financing Authority, a joint exercise of powers of authority duly organized under the laws of the State of California (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 "Ground Lease") 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 Ground Lease 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 Ground Lease to Sunstone Hotel Investors, L.P., a Delaware limited partnership ("Sunstone Investors").

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

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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 Ground Lease to Sunstone OP Properties, L.L.C. ("Prior Tenant").

F. Pursuant to that certain Purchase and Sale Agreement and Escrow Instructions dated as of April 23, 2007 by and between Prior Tenant and Tenant, as assignee, Prior Tenant will assign all of its right, title and interest in, to and under the Ground Lease to Tenant.

G. Lender is about to make a mortgage loan and one or more mezzanine loans (collectively, the "Loan") to Tenant and certain affiliates of Tenant. Such Loan shall be secured by, among other things, a mortgage on Tenant's leasehold estate in the Ground Lease (the "Leasehold Mortgage") and one (1) or more pledges which grant security interests in the direct or indirect ownership interests in Tenant (each, a "Pledge"). Lender is unwilling to make the Loan unless the City and Tenant into this Estoppel for the benefit of Lender.

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

Section 1. Representations Regarding the Master Lease. The City represents to Lender that: (a) the Master Lease has terminated and there are no outstanding obligations (whether on the part of the Authority, the City or Tenant thereunder), (b) all references to compliance with or requirements under the Restated Hotel Lease (as defined in the Ground Lease), the Settlement Agreement (as defined in the Ground Lease), the Security Agreement (as defined in the Ground Lease) and the Right of First Refusal (as defined in the Ground Lease) do not constitute obligations, conditions or covenants of Tenant and each of the Restated Hotel Lease, the Settlement Agreement, the Security Agreement and the Right of First Refusal have been terminated, and (c) the Ground Lease continues as the primary and sole lease of the Demised Premises between the City and the Tenant.

Section 2. Representations Regarding the Ground Lease. The City represents to Lender the following:

Section 2.1 Ground Lease. A true, correct and complete copy of the Ground Lease is attached hereto as Exhibit B and such Ground Lease has not been assigned, modified, amended or supplemented except as set forth in such Exhibit B. The Ground Lease 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) other than that certain Option Agreement described in Section 2.19 below. The City acknowledges and agrees that all leasehold mortgagee protections contained in the Lease inuring to the benefit of mortgagees or their successors and assigns (including, but not limited to, those contained in Section 17 of the Ground Lease) are hereby incorporated into this Estoppel by reference and restated and confirmed by the City for the benefit of Lender, its successors and assigns.

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

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

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

Section 2.5 Term. The current term of the Ground Lease expires on May 14, 2050.

Section 2.6 Renewal Options. There are no renewal options under the Ground Lease.

Section 2.7 Escrow. There are no escrows or deposits presently held by the City under the Ground Lease.

Section 2.8 Tenant's Defaults. Tenant is not in default under the Ground Lease 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 Ground Lease.

Section 2.9 City's Defaults. The City is not in default under the Ground Lease 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 Ground Lease.

Section 2.10 No Mortgages. The City has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Ground Lease 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.

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

Section 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.

Section 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

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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.

Section 2.14 No Security Interest. Notwithstanding anything to the contrary set forth in the Ground Lease, 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.

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

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

Section 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.

Section 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.

Section 2.19 Option Agreement. Pursuant to that certain Option Agreement Regarding Hotel Site and Parking Site, as amended (the "Option Agreement"), a true, correct and complete copy of which is attached hereto as Exhibit C, the City acknowledges that the Certificates (as defined in the Option Agreement) have been paid or otherwise satisfied, and the Master Lease has expired according to its terms, and that upon payment by Tenant of One Dollar (\$1.00) to the City, the City shall convey fee title to the Demised Premises and the Facilities (as defined in the Option Agreement).

Section 3. Notice to Lender. The City hereby recognizes Lender as the holder of a "Leasehold Mortgage" afforded the leasehold mortgagee protections contained in the Ground Lease and acknowledges and agrees that the Leasehold Mortgage and the Pledges are not a violation of any provisions set forth in Section 19 of the Ground Lease. The City shall give to Lender, at the address of Lender set forth in Paragraph 4 below, and otherwise in the manner provided by the Ground Lease, a copy of each notice of default under the Ground Lease at the same time as, and whenever, any such notice of default shall thereafter be given by the City to

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Tenant, and no such notice of default shall be deemed to have been duly given by the City to Tenant, unless and until a copy thereof shall have been given to Lender. Notwithstanding any of the provisions of the Ground Lease to the contrary, Lender (i) shall have a period of thirty (30) days more than given to Tenant in each instance in the case of a default in the payment of rent and sixty (60) days more than given to Tenant in each instance in the case of any other default, for remedying the default or causing the same to be remedied; provided, however, if any non-rent default is not capable of remedy by Lender within such sixty (60) day period, Lender shall have such sixty (60) day period to commence curing the default and such greater period of time as is necessary to complete same with due diligence, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such default or cause the same to be remedied. City shall accept performance by Lender of any covenant, condition or agreement on Lessee's part to be performed under the Lease with the same force and effect as though performed by Tenant. Notwithstanding anything to the contrary contained in the Ground Lease, if the default is of such a nature that it cannot be cured by Lender (for example, the bankruptcy of Tenant), such event shall not be a default under the Ground Lease.

Section 4. Unless otherwise notified by Lender, all notices to Lender shall be sent to the following address:

Eurohypo AG, New York Branch  
1114 Avenue of the Americas  
Twenty-Ninth Floor  
New York, New York 10036  
Attention: Head of Portfolio Operations  
Facsimile No.: (866)-267-7680

With a copy to: Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: William P. McInerney, Esq.  
Facsimile No.: (212) 504-6666

Section 5. Modifications. The City and Tenant hereby acknowledge and agree that the Ground Lease shall not be modified, altered, terminated or cancelled, nor shall a surrender of the Demised Premises be accepted without the prior written consent of Lender. In the event that Lender shall become the owner of the leasehold estate, Lender shall not be bound by any modification or amendment of the Ground Lease made subsequent to the date of the Leasehold Mortgage and prior to its acquisition of such interest unless Lender shall have consented to such modification or amendment at the time it was made or at the time of such acquisition. Neither the City nor Tenant shall have the right to terminate the Ground Lease in the event of a casualty or condemnation without the prior written consent of the Lender.

Section 6. New Lease. Notwithstanding any of the provisions of the Ground Lease to the contrary, in the case of termination of the Ground Lease for any reason, or in the event the Ground Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, the City shall give prompt notice thereof to Lender pursuant to notice made in compliance with the provisions hereof. The City, on written request of Lender

made any time within thirty (30) days after the giving of such notice by the City, shall promptly execute and deliver a new lease of the Demised Premises to Lender, for the remainder of the term upon all the covenants, conditions, limitations and agreements contained therein except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that Lender (i) shall pay to the City, simultaneously with the delivery of such new lease, all unpaid rent due under the Ground Lease up to and including the date of the commencement of the term of such new lease and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by the City in connection with the default by Tenant, the termination of the Ground Lease and the preparation of the new lease, and (ii) shall cure all defaults existing under the Ground Lease which are susceptible to being cured by Lender promptly and with due diligence after the delivery of such new lease.

Section 7. Condemnation. The City and Tenant acknowledge and agree that in the event of any taking of all or any part of the Demised Premises, Lender shall have the right to participate in any condemnation proceedings settlement discussions, shall have the right to supervise and control the receipt and disbursement of all condemnation awards and shall be entitled to all condemnation awards which are not used to restore the Demised Premises in accordance with the relevant loan documents, to be applied to the reduction of the debt secured by the Leasehold Mortgage, provided, however, that the City shall be entitled to the balance of the award after payment of the debt secured by the Leasehold Mortgage in full until the City obtains the portion of the award to which it is entitled under the Ground Lease. Upon a taking for a temporary period, the Ground Lease shall continue and the entire award shall be payable to Tenant, subject to the provisions of the Leasehold Mortgage.

Section 8. Casualty. The City and Tenant acknowledge and agree that Lender shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Demised Premises or any improvements thereon and Lender shall have the right to supervise and control the receipt and disbursements of all insurance proceeds and shall be entitled to all insurance proceeds which are not used to restore the Demised Premises to be applied to the reduction of the debt secured by the Leasehold Mortgage in accordance with the relevant loan documents.

Section 9. Mezzanine Lender. The City hereby acknowledges and agrees that subject to the Leasehold Mortgage, (a) each Pledge shall be treated as a leasehold mortgage, (b) a foreclosure or other transfer in lieu of foreclosure of the interests pledged pursuant to a Pledge shall be treated as a foreclosure or conveyance in lieu of a foreclosure under a mortgage, (c) obtaining ownership of the interests pledged pursuant to a Pledge shall be treated as obtaining possession of the premises, and (d) neither the Pledge nor the exercise of any rights or remedies thereunder shall require the further consent of City or constitute a violation of the Ground Lease.

Section 10. Subordination. The City hereby confirms that the Leasehold Mortgage shall not be subject or subordinate to any mortgage or deed of trust encumbering the fee estate of the Demised Premises.

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Section 11. Lender's Reliance on Representations and Agreements. The City has executed this Estoppel with full knowledge that Lender shall rely upon the representations and agreements herein contained.

Section 12. Consent of Tenant. Tenant has joined herein to evidence its acknowledgement of and consent to all of the representations and agreements of the City contained in this Estoppel.

Section 13. 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).

Section 14. Successors. This Estoppel shall be binding upon and shall inure to the benefit of each party hereto and their respective successors and assigns.

Section 15. 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.

**[SIGNATURES ON FOLLOWING PAGE]**

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ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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ACKNOWLEDGMENT

STATE OF NEW YORK            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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