

**AGREEMENT FOR REIMBURSEMENT
FOR PREPARATION OF
ENVIRONMENTAL CLEARANCE DOCUMENTS**

This Agreement is made and entered into as of the ___ day of _____, 2017, by and between the **City of Garden Grove** ("City") and **Garden Grove Hotel, LLC** a Louisiana limited liability company ("Developer") (collectively referred to as the "parties").

RECITALS

- A. Developer seeks to construct a project in the City of Garden Grove; and
- B. Such project requires that environmental clearance and review be completed in compliance with the California Environmental Quality Act ("CEQA"); and
- C. City will hire a consultant to complete the required environmental review; and
- D. Developer acknowledges and agrees that the costs associated with the preparation of environmental clearance and environmental review documents are project specific costs that are the responsibility of the Developer as part of the entitlement process.

AGREEMENT

1. Selection of Consultant. Developer acknowledges and agrees that there is a need to hire an independent third party consultant(s) to use his/her own professional judgment to conduct and prepare the environmental clearance and environmental review documents. City reserves the right to contract the most qualified consultant through the third party contract at the discretion of the Community and Economic Development Director ("Director").
2. Method of Payment. Developer shall deposit 100% of the estimated total cost of completing the environmental review, which includes the traffic impact study, and the parking analysis prior to commencement of the environmental review. **No work shall be performed by an environmental review consultant until Developer has deposited such money with the City.** City shall keep the money deposited to complete the environmental review in a separate non-interest bearing account and will use the money to pay for the consultant's services. When the City has depleted the funds in the account, City shall immediately notify Developer of the additional funds necessary to complete the environmental review. Further, City shall notify consultant that no work should continue on the environmental review process until Developer has deposited additional funds with the City. If Developer fails to provide additional funds to the City, no further environmental review shall be completed. Developer shall be

responsible for all costs incurred by the City for the consultant's services up until the point that the City notifies the consultant to stop work on the project.

3. Administration Costs. In addition to the cost of completing the environmental review, the amounts reimbursed by Developer shall include administrative the costs incurred by City, including, without limitation, staff time, fees and services, which shall be reimbursed on a time and materials basis based on current City reimbursement rates.
4. Examination of Bills. Developer shall have the right to examine all invoices of the environmental consultant that are submitted to the City. Once Developer has made the request to review the invoices from the consultant, City shall have ten (10) days to copy and produce such invoices for inspection by Developer.
5. Authority of City. Because City has the ultimate authority and responsibility to prepare and review the environmental documents prior to approval of a project, City shall guide the environmental consultant as to the appropriate considerations for the review. If additional environmental or technical studies are required as a result of comments received from internal and external agencies, Developer is solely responsible for the costs of such studies. Nothing in this Agreement is meant to be a guarantee that Developer's project will be approved or that the environmental clearance will be obtained. Further, nothing in this Agreement specifies or guarantees the timing of completion of the environmental clearance and review or other related documents. The City has discretion under its police powers to approve land development projects in accordance with pertinent laws and policies.
6. Indemnity. Developer agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.
7. No Inducement. Developer declares and represents that no promise, inducement or agreement not herein expressed has been made to it and that this Agreement contains the entire agreement between and among the parties, and that the terms of this Agreement are contractual and not a mere recital. This Agreement is entered into knowingly, freely, intelligently, and voluntarily by the parties, without any duress, or coercion. The parties have had a full opportunity to review and consider the matter prior to executing this Agreement. The parties fully acknowledge that they also have had a full opportunity to discuss its contents with their respective representatives.

8. **Validity.** If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against the public policy or otherwise, the invalidity shall not affect other provisions or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.
9. **Amendment.** This Agreement may be modified or amended only by a written document executed by both Developer and City and approved as to form by the City Attorney.
10. **Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
11. **Controlling Law Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Orange, California.
12. **Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Garden Grove
 Attn.: Community and Economic Development
 Department - Planning Division
 11222 Acacia Parkway
 Garden Grove, CA 92840

If to Developer: Cuong Nguyen/Sonya Nguyen
 Garden Grove Hotel, LLC
 2439 Manhattan Blvd. Ste. 211
 Harvey, Louisiana 70058

13. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of Agreement between the City and Developer. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
14. **Execution.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by

both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

15. Termination. This Agreement may be terminated with thirty (30) days notice if Developer decides not to proceed with the proposed development project. Upon termination, Developer shall be responsible for compensation of the consultant's services performed up to the effective date of termination.
16. Insolvency; Receiver. Either the appointment of a receiver to take possession of all or substantially all of the assets of Developer, or a general assignment by Developer for the benefit of creditors, or any action taken or offered by Developer under any insolvency or bankruptcy action, will constitute a breach of this Agreement by Developer, and in such event this Agreement will automatically cease and terminate.
17. Developer Default. Should Developer fail to perform any of its obligations under this Agreement, then City may, at its option, pursue any one or more or all of the remedies available to it under this Agreement, at law or in equity. Without limiting any other remedy which may be available to it, if Developer fails to perform any of its obligations under this Agreement, City may cease performing its obligations under this Agreement and may bring an action to recover all costs and expenses incurred by the City in completing the Studies, together with interest thereon from the date incurred at the rate of 10% per annum.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY:

City Manager

DEVELOPER: Garden Grove Hotel, LLC
BN Hotel Group, LLC

Bui Nguyen
By: Bui Nguyen
Its: Authorized Agent

ATTEST:

City Clerk

APPROVED AS TO FORM:

Omar Sandoval
City Attorney