

EXCLUSIVE NEGOTIATION AGREEMENT

**By and Between
The City of Carpinteria
And
The Theimer Group, LLC**

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is entered into this 24th day of June, 2019 ("Effective Date"), by and between the CITY OF CARPINTERIA, a municipal corporation of the State of California (the "City"), and The Theimer Group, LLC a California Limited Liability Company (the "Developer"), on the terms and provisions set forth below. The City and Developer may sometimes be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. The City, as a municipal corporation, owns or controls real property located at the southwest corner of Linden Avenue and Fifth Street, an approximately 30,000 square feet portion of Parking Lot No. 3, (APN 004-105-1), which is shown on the Site Map attached hereto as Exhibit "A" and hereinafter referred to as the "Site."
- B. On August 14, 2017, the City issued a City's Request for Proposal to the Site for Development ("RFP") to interested parties to tender submissions and substantiate their qualifications to work with the City to design, build, finance, and operate a new inn project and related development (the "Project").
- C. On December 8, 2017 the City Council authorized an extension of time to receive responses to the Request for Proposal (RFP) to solicit land lease and development proposals for the site.
- D. On July 9, 2018, the City Council closed the period for acceptance of responses to the City's invitation for offers to lease the Site, for the commercial development of a hospitality facility, known as the Inn Project and Authorized the Public Facility Site Acquisition/Development Committee to evaluate the offers received by the City and to return to the City Council with a recommendation for proceeding.
- E. On November 18, 2018 the City Council acted on the recommendation of the Public Facility Site Acquisition/Development Committee and selected the Theimer Group to enter into an Exclusive Negotiation Agreement for future City Council consideration.
- F. The Developer's proposal for the Project consisted of (1) approximately 18,000 square foot two-story inn with roof top and ground level food and beverage service; (2) funding to replace required parking spaces and relocate existing public restrooms; and (3) on-

and off-Site improvements, including, but not limited to, parking, sidewalks, curbs, and gutters, street lights, landscape and hardscape amenities, benches, bike racks, integration of Amtrak platform access, and other public amenities.

The City and the Developer desire to enter into this Agreement to establish a period during which the Parties shall negotiate the terms and conditions of the agreements to consummate the transaction contemplated in the RFP, as described in this Agreement.

IT IS HEREBY MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

1.0 INCORPORATION BY REFERENCE OF RFP

The Developer has been selected to enter into this Agreement in accordance with the City's Request for Proposal to Lease City Owner Property for Development ("RFP"), dated August 14, 2017, attached hereto as Exhibit "B", provisions of which are expressly incorporated herein by reference and made a part of this Agreement. Capitalized terms not otherwise defined in this Agreement shall have the meaning given to them in the RFP. In the event of any inconsistency between the RFP and this Agreement, the terms of this Agreement shall govern.

2.0 NEGOTIATIONS

2.1 Negotiation Consistency

These negotiations contemplated by this Agreement shall be based upon and in substantial accord with all requirements of the RFP, the Developer's proposal for the Project, attached hereto as Exhibit "C", and this Agreement.

2.2 Good Faith Negotiations

2.2.1 Subject to all the terms and conditions of this Agreement, the City and the Developer agree for the period set forth below in Section 2.4 to negotiate diligently and in good faith to prepare a Disposition and Development Agreement ("DDA") for the consideration of the City and the Developer with respect to the Project at the Site.

2.2.2 The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to exclusively negotiate a DDA. The Parties have not reached agreement on the matters described herein, and do not intend to be bound until a final written DDA is executed by both Parties, as provided in such DDA. By its execution of this Agreement, the City is not committing to any disposition of land to Developer, to Developer's ability to obtain any approvals required from the City to use the Site for the Project, or to any other acts requiring the subsequent independent exercise of discretion by the City or its staff. The City reserves final discretion and approval as to any proposed DDA and all proceedings and decisions in connection therewith. The Parties further agree and understand

that this Agreement does not imply any obligation on the part of the City or Developer to enter into any DDA that may result from the negotiations contemplated herein.

2.2.3 The City anticipates that following execution of this Agreement, and through the Negotiation Period (defined below) and preparation of the DDA, the City, as well as certain consultants and attorneys for the City, will devote time and effort in reviewing documents, proposals, plans, and meeting with the Developer, each other, and other necessary third parties. The City acknowledges that the Developer will also expend substantial time and resources hereunder, and the Parties are willing to engage in these activities subject to the terms and conditions set forth in this Agreement.

2.3 Exclusive Negotiations

During the Negotiations Period, the City agrees not to negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that the City is subject to this Agreement) any other person or entity in regards to development, sale or lease of the Site or any portion thereof. If the negotiations with the Developer under this Agreement are unsuccessful and do not lead to approval and execution of a DDA within the Negotiation Period, the City reserves the right to negotiate with other entities that responded to the RFP and/or to solicit a new Request for Proposal.

2.4 Period of Negotiations

2.4.1 The Negotiation Period ("Negotiation Period") shall commence upon the date the City approves and executes this Agreement (the "Effective Date") and continue for 180 days ("Initial Negotiation Period"). That date may be extended as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during the Initial Negotiation Period and any extension thereof. If a DDA has not yet been executed, upon the termination of the Initial Negotiation Period, this Agreement may be extended for 90 days by the written consent of the Developer and the City Manager to enable the City to determine whether it desires to enter into a DDA and take the actions necessary to authorize the City to continue negotiation of a DDA.

2.4.2 If the City has not signed the DDA by the expiration of the Negotiation Period (as the Negotiation Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate, unless the City, in its sole discretion, agrees in writing to an extension.

2.4.3 If a DDA is executed by the Parties relating to all or part of the Site during the Negotiations period, then this Agreement shall terminate upon execution of said DDA with regard to the portion of the Site subject to said DDA.

2.5. Negotiation Deposit

2.5.1 The Developer shall tender to City no later than 15 days after the Effective Date, and City shall accept, an initial deposit ("Negotiation Deposit") in the amount of ten thousand dollars (\$10,000), in the form of a cashier or certified check, or wire transfer, payable to the City. The Developer agrees that City may use the Negotiation Deposit to reimburse itself for its negotiation costs after the date of this Agreement for costs, including, but not limited to, attorneys' fees, appraisers, title reports and other third party costs as needed to complete negotiations ("Negotiation Costs").

2.5.2 The City shall submit to Developer invoices detailing the Negotiation Costs. The City shall be free to withdraw funds from the Negotiation Deposit, as needed, provided that it has submitted such invoices to the Developer and those invoices are solely for Negotiation Costs. If the initial deposit is exhausted by eligible expenses, Developer will make an additional deposit of ten thousand dollars (\$10,000.00) will be made to the City. The total Negotiation Deposit shall not exceed twenty-thousand dollars (\$20,000.00) unless mutually agreed by both parties. The City shall submit to the Developer all Negotiation Costs charged to the Negotiation Deposit for review by the Developer, with the understanding City Attorney Office invoices, if any, will be redacted as provided by law.

2.5.3 The Negotiation Deposit, less the Negotiation Costs already incurred, shall be refundable to Developer in the event this Agreement is terminated prior to the execution of a DDA. In the event a DDA is fully executed and approved by all requisite action, the balance of any remaining Negotiation Deposit shall be applied as a credit against amounts, if any, to be paid by Developer to City pursuant to the DDA.

2.5.4 The Parties acknowledge that the payment paid to the City by the Developer is exempt as a "source of income" to the City within the meaning of California Political Reform Act (pursuant to California Government Code section 87103.6). The Parties further acknowledge that the City reserves the full and sole discretion and authority to determine which consultants, contractors, or employees shall be hired to advise the City on the Project, and to direct and evaluate such work and to establish the amount of compensation paid.

3.0 OBLIGATIONS

3.1 Obligations of Developer

3.1.1 During the Negotiation Period, the Developer shall diligently and in good faith use its best efforts, at the Developer's sole cost, to:

- a. Provide a design concept mutually agreeable to the Developer and the City with sufficient detail to understand the project;

- b. Submit a conceptual Project Plan acceptable to City clearly showing building footprints, elevations, design theme, preliminary landscaping, signage and lighting, utilities, parking, vehicular and pedestrian access ways and exits, public and private open space, grading design, any environmental studies required by City in connection with such materials, including but not limited to any studies required for any CEQA determination that the City deems necessary for approval of the DDA, and any other elements necessary to describe the Project, all to scale ("Project Plan");
- c. Provide estimated Project costs, Project pro-formas, and other documents necessary for City review;
- d. Identify funding responsibilities and funding sources for development and maintenance of the Project; and
- e. Cooperate with City in the solicitation of community input regarding the Project.

3.1.2 The Developer shall not pay or agree to pay any fee, commission, or any other thing of value to any City employee or official or to any consultant hired by the City regarding the Project contingent on the entering into, or subsequent to entering into, this Agreement or any other transaction document or agreement with the City related to the Project. By entering into this Agreement, the Developer certifies to the City that it has not paid or agreed to pay any such fee, commission, or any other thing of value.

3.1.3 In connection with performance of this Agreement and subject to applicable rules and regulations, the Developer shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. The Developer shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3.1.4 The Developer shall not use the name of the City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City manager or designee.

3.2. Obligations of City

3.2.1 During the Negotiation Period, City shall use its good faith efforts to:

- a. Negotiate exclusively through its staff and consultants, and contract exclusively, with Developer in connection with the development of the Site;
- b. Review the Project Plans and preliminarily determine consistency with the General Plan, zoning and other relevant land use regulations on the proposed Site, with the understanding that the final determination of consistency will occur during the formal land use permit proceedings that will be required by any DDA entered into by City and Developer;
- c. Provide the Developer with documents in City's possession that would assist the Developer with the due diligence activities described in this Agreement, however, the City does not warranty the accuracy or completeness of the documents in the City's possession related to the Site or Project;
- d. Review Developer's proposal and provide feedback pertaining to development standards and permitting requirements;
- e. Respond on a timely basis to all submittals by the Developer made pursuant to this Agreement; and
- f. Cooperate with Developer to establish a reasonable time schedule, within the Negotiating Period, for negotiation of a DDA.

4.0 ENVIRONMENTAL COMPLIANCE

4.0.1 The Parties acknowledge that the City has not prepared an initial study to determine the environmental document, if any, that may be necessary under the California Environmental Quality Act ("CEQA") for the DDA or for final land use action on the Project.

4.0.2 The Parties acknowledge that the decisions of the City regarding approval of the DDA or review and final action on all land use permits and related agreements that may be required for development of the Project shall be conditioned upon the City making all the necessary findings and determinations required by CEQA. If preparation of a CEQA document is needed, the City shall prepare and distribute invitation of consulting firms to submit their qualifications to prepare any necessary CEQA documents. The City shall select a consultant ("Environmental Consultant") to prepare any necessary CEQA documents ("Environmental Documents") for the Project. Any reference herein in to an Environmental Document shall include any CEQA documents, such as a negative declaration, mitigated negative declaration, or environmental impact report, if appropriate, or other document consistent with CEQA. Final selection of the Environmental Consultant shall be in the City's sole discretion. The City shall

enter into an agreement for the preparation of any necessary environmental document with the Environmental Consultant.

4.0.3 Pursuant to the City's land use permit processing procedures, the Developer shall be solely responsible for all fees billed to City for the Environmental Consultant's work and for all costs associated therewith. The Developer shall pay an Environmental Deposit to the City prior to the start of any work by the Environmental Consultant on the environmental analyses. The amount of the Environmental Deposit shall be decided by the City based upon contractual estimates submitted by the Environmental Consultant.

4.0.4 The Developer shall have the right to review the progress of the Environmental Consultant with respect to the preparation of the Environmental Document, as more particularly described below. Upon completion of a draft of the Environmental Document, the City shall deliver a copy of such work to the Developer, consistent with City's normal practice in processing land use development permits. The Developer shall have the right to review such work and provide comment to City. Notwithstanding the foregoing, nothing herein shall relieve the City of the obligation to exercise its independent judgment in the preparation and adoption of the Environmental Document.

4.0.5 As directed by City, the Developer shall assist in preparation of all documents necessary to satisfy requirements of CEQA, as well of any related studies and analyses.

5. DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA")

5.1. Terms

5.1.1 The Parties acknowledge and agree that during the Negotiation Period, as such period may be extended pursuant to Section 2.4 above, the Parties shall use their respective good faith efforts to negotiate and enter into a DDA. The DDA shall provide for, but not be limited to, the following obligations of Developer:

- a. File and pursue with City, and with any other agencies with jurisdiction to issue permits or approvals for the Project ("Regulatory Agencies"), application for all required land use and related permits necessary to develop the Project, and gain approval for the Project from the City and such agencies; should the Project be approved, Developer will agree to comply with all conditions of approval imposed by the City or by any Regulatory Agency;

- b. Developer's obligation to construct the Project in accordance with final plans and specifications to be provided by the Developer and approved by the City;
- c. A schedule of performance for Project milestones and completion;
- d. A marketing plan for the Project, which shall include, but not be limited to, incentives for patrons to come by rail;
- e. Terms for ground lease and/or other payments to the City;
- f. Provision for the satisfactory maintenance, repair and refurbishment of landscaping, building(s), parking and improvements in good condition and high state of repair;
- g. Indemnification of the City for the payment of prevailing wages in connection with all "public work", as defined in California Labor Code section 1720, performed pursuant to this Agreement, and of any claims related thereto;
- h. Developer's compliance with all laws and regulations established by Federal, State, and local law;
- i. City's right to inspect the Project from time to time to assure compliance with these provisions;
- j. The financing and equity to be provided by Developer for the Project; and
- k. Developer's agreement and obligation to allow for and accommodate, to the maximum extent possible, the future implementation of Amtrak Rail Improvement Program and other future rail improvement programs or projects.

5.2 City Assistance

The Parties acknowledge and agree that the City shall not provide any financial assistance to Developer or the Project under the DDA.

6.0 RETENTION OF DISCRETION BY THE CITY

6.1 City's Retention of Discretion to Approve the Project

The Parties acknowledge and agree that the City reserves the right to exercise its discretion in all matters as to which, by law, the City is entitled or required to exercise its sole discretion, including, but not limited to, (a) its approval of a DDA (b) after any approval of the DDA, its review of and final action on all land use permits required for development of the Project pursuant to City's permit procedures, including completion of all required CEQA review, and (c) its approval of any and all plans, permits, financial plans and strategies, or any other acts or activities requiring the independent exercise of discretion by the City or any agencies or departments thereof. The parties understand and agree that the City has complete and unfettered discretion to approve, approve with conditions, or disapprove the DDA and to take such final action on all land use permits and approvals for the Project and related agreements. All costs and expense incurred by Developer to pursuing approval of all agreements and permits referenced in this Agreement shall be Developer's sole responsibility.

6.2 Review and Approval of all Discretionary Actions

The negotiation of a DDA is subject to approval of the City Council at a public meeting. Any decision by the City to approve the DDA shall be expressly conditioned upon the successful review and approval of all necessary land use permits and related findings which the City is required to approve by law, including all necessary findings and determinations required under CEQA, the California Coastal Act, and all applicable Federal, State and local land use provisions. As to discretionary matters, neither anything herein, or to be contained in the DDA, shall obligate the City to exercise its discretion in any particular manner, and any exercise of discretion required by law shall not be deemed to constitute a breach of the City's duties under this Agreement.

6.3. No Representation or Warranty

The Developer agrees and acknowledges that the City has made no representation or warranty that the necessary regulatory approvals and permits ("Regulatory Approvals") required for development of the for the development of the Project can be obtained. The Developer further agrees and acknowledges that although the Project is being developed, in part, for the City, the City officials, departments, boards, commissions or agencies responsible for the issuance of such required Regulatory Approvals, shall at all times, remain independent in their regulatory role, and that the City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site and not as a regulatory agency with certain powers. There is no guarantee or presumption that any of the Regulatory Approvals required for the development of the Project will be issued by City or by the appropriate Regulatory Agencies, and the City's status as a Regulatory Agency shall in no way limit the obligation of the Developer to obtain approvals from any Regulatory Agencies which have jurisdiction over the

Project. The Developer hereby releases and discharges the City from any liability relating to the failure of any Regulatory Agency to issue any required Regulatory Approval.

7.0 REMEDIES

7.1 City's Remedies

7.1.1 In the event that the Developer fails to perform any obligation herein, or in the event that the City reasonably believes that the Developer is not negotiating diligently and in good faith, the City shall provide written notice of such breach to the Developer. The Developer then shall have 10 days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event Developer shall commence the cure of the breach within the 10 day period and thereafter diligently pursue the cure to completion.

7.1.2 If the Developer does not cure the breach or the breach is incurable, the City, at its option, may: (i) terminate this Agreement upon written notice to the Developer as provided herein; (ii) seek to recover from the Developer any funds due and owing to the City first from the Negotiation Deposit, then from the Developer if Negotiation Costs exceed the Negotiation Deposit; (iii) seek to enforce the Developer's indemnity obligations; and/or, (iv) seek specific performance to enforce the obligations set forth herein. The foregoing remedies are not exclusive, but shall be cumulative with any remedies now or later allowed by law.

7.2 Developer's Remedies

7.2.1 In the event that the City fails to perform any obligation herein, or in the event that the Developer reasonably believes that the City is not negotiating diligently and in good faith, the Developer shall provide written notice of such breach to the City. The City then shall have 10 days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event City shall commence the cure of the breach within the 10 day period and thereafter diligently pursue the cure to completion.

7.2.2 If the City does not cure the breach or the breach is incurable, the Developer may, at its option, (i) terminate this Agreement upon written notice to the City as provided herein; or (ii) institute an action for specific performance of the terms of this Agreement, including the return of the remaining balance of the Negotiation Deposit after subtracting any unpaid City Negotiation Costs, and in no event shall the Developer have the right, and the Developer expressly waives the right, to seek monetary damages of any kind (including, but not limited to, actual damages, economic damages, consequential damages, or lost profits) from the City in the event of a default by the City under this Agreement or any action related to this Agreement. Notwithstanding the foregoing, the Parties acknowledge that

specific performance of this Agreement does not require the City to enter into a DDA with the Developer or obligate the City to exercise its discretion in any particular manner.

8.0 REAL ESTATE COMMISSIONS

The City has not engaged a broker, agent, or finder in connection with this transaction. As such, the City will not be responsible for any claims by a broker, agent or finder, and the Developer agrees to defend, indemnify, and protect and hold the City harmless from any and all claims, including all defense costs and attorney's fees, by any broker, agent, or finder retained by the Developer.

9.0 GENERAL PROVISIONS

9.1 Limitations on Effect of Agreement

This Agreement shall not obligate either the City or the Developer to enter into the DDA. By execution of this Agreement, the City is not committing itself to or agreeing to approve the DDA, undertake disposition or lease of any property related to the Project, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. This Agreement is merely an agreement to conduct a period of exclusive negotiations diligently and in good faith in accordance with the terms of this Agreement, reserving for subsequent City Council action the final discretion and approval regarding the DDA and associated approvals, and all proceedings and decisions in connection therewith. Until and unless the DDA are signed by the Developer and approved and executed by the City, no agreement, drafts, actions, deliverables or communications arising from performance of this Agreement shall impose any legally binding obligation on any Party to enter into or support entering into the DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

9.2 Applicable Law; Venue

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The Superior Court of the County of Santa Barbara shall be the venue and have jurisdiction for the resolution of all such actions.

9.3 Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

9.4 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

9.5 Indemnity

9.5.1 To the maximum extent allowed by law, the Developer shall indemnify, protect, defend and hold harmless the City, its council, boards, commissions, elected officials, officers, employees, representatives, members, consultants, and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs, court costs, experts' and witness' fees, and other costs and fees of litigation) arising out of, related to or resulting from, in whole or in part, out of or in connection with: (i) the Developer's breach or failure to comply with any of its obligations contained in this Agreement, including any obligations arising from compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq. or, (ii) the Developer's acts, errors, or omissions and/or willful misconduct with respect to the obligations of the Developer, its officers, employees, representatives, members, consultants and agents under this Agreement, the DDA or the Project (collectively "Claims" or individually "Claim").

9.5.2 If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, the Developer's costs of defense and indemnity shall be: (i) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (ii) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

9.5.3 In addition to the Developer's duty to indemnify, the Developer shall have a separate and wholly independent duty to defend Indemnified Parties at the Developer's expense by legal counsel approved by the City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of the Developer shall be required for the duty to defend to arise.

9.5.4 The Indemnified Parties shall notify the Developer of the existence of any Claim that they reasonably become aware of or to which the Developer's indemnification obligations would apply and shall give the Developer a reasonable opportunity to defend the

same at its sole cost and expense with counsel of its own selection, subject to the Indemnified Parties' reasonable approval. If the Developer, within a reasonable time after written notice, fails to defend the Indemnified Parties, the Indemnified Parties shall have the right, but not the obligation, to undertake the defense of, and compromise and settlement of (exercising reasonable business judgment) the Claim on behalf, for the account, and at the risk and expense of the Developer.

9.5.5 This indemnity obligation in connection with events occurring prior to the termination of this Agreement shall survive the termination of this Agreement.

9.6 Notices, Demands and Communications Between the Parties

Formal notices, demands, and communications between City and Developer shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile with a hard copy sent by United States mail; or (iv) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City:
City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

With copy to:
City Clerk
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

To Developer:
The Theimer Group, LLC
PO Box 23810
Santa Barbara, CA 93121

Notices personally delivered, sent by fax with a confirmation by United States mail or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

9.7 Non-liability City Officials and Employees

No member, official, employee, or contractor of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount, which may become due to Developer or on any obligations under the terms of the Agreement.

9.8 Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

9.9 Entire Agreement, Waivers, and Amendments

9.9.1 This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

9.9.2 All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the City and the Developer. Parties agree that waiver of any breach or violation of any term of this Agreement shall not be deemed to be a waiver of any term or condition of this Agreement.

9.10 Counterparts

This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.11 Assignment

9.11.1 The qualifications and experience of Developer are very important to the City; absent such qualifications and experience, the City would not enter into this Agreement. Therefore, the Developer shall not assign this Agreement without the prior approval of the City, which approval shall be at the sole and absolute discretion of the City. Any attempted assignment without the approval of the City shall be void.

9.11.2 Notwithstanding the foregoing, the City agrees that the Developer may assign, without the City's prior written approval but with 30 days prior written notice to the City, its rights under this Agreement to a limited liability company, corporation, trust, or

partnership of which the Developer owns the majority beneficial interest and has operational control. The written notice must include proof of the Developer's control of the limited liability company, corporation, trust, or partnership in order to be effective.

9.12 Successors

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors of each of the Parties hereto.

9.13 Severability

In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

9.14 Time is of the Essence

Time is of the essence for each of the Parties' obligations under this Agreement.

9.15 Recitals

The recitals set forth above are incorporated herein by this reference.

9.16 Confidentiality

9.16.1 The Developer acknowledges that the City will need sufficient, detailed information about the economic feasibility of the Project to negotiate and make informed decisions about the content and approval of the DDA. The City will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements of the Public Records Act, California Government Code section 6250 *et seq.* ("CPRA"). The Developer acknowledges and agrees that the City may share information provided by the Developer of a financial and potential proprietary nature with consultants who have been engaged to advise the City concerning matters related to this Agreement and to the City Council members as part of the negotiation and decision-making process. Information submitted to the City is a public record and may be subject to disclosure if requested by a member of the public. The Developer shall familiarize itself with the CPRA, including consulting with legal counsel, regarding its requirements for disclosure of public records and applicable exemptions from such disclosure. If the Developer claims an exemption from disclosure under the CPRA, it must identify the specific provision(s) of the CPRA providing an exemption from disclosure for each such item claimed as exempt from disclosure. The Developer must also clearly identify, in writing and with specificity, all copyright, patent or trademark materials, trade secrets, or proprietary or

confidential commercial or financial information claimed as exempt from disclosure under the CPRA (collectively, "Exempt Information").

9.16.2 Exempt Information shall remain the property of the Developer. If a request is made under CPRA for disclosure of Exempt Information, the City will endeavor to provide the Developer with reasonable timely notice of that request, in order that the Developer will have the opportunity, under the CPRA, to seek protection from disclosure by a court of competent jurisdiction. The City shall not be, under any circumstances, responsible or liable to the Developer, or any other person, for the disclosure of Exempt Information, whether such disclosure is required by law, by an order of a court, or as a result of inadvertence, mistake, or negligence on the part of the City or its elected or appointed officials, officers, employees, agents, contractors, representatives, or consultants.

9.16.3 The Developer submitting claimed Exempt Information in connection with this Agreement, by making such submittal of claimed Exempt Information, unconditionally agrees to indemnify, defend, and hold harmless the City and its elected or appointed officials, officers, employees, agents, contractors, representatives, and consultants, from and against any and all claims, damages, losses, liabilities, and expenses, including actual attorneys' fees and costs, including in-house legal counsel fees and costs, incurred by the City, in good faith, that arise out of, relate to, or result from the City's failure to disclose any claimed Exempt Information to any person making a request for such information. If the Developer fails to timely and diligently undertake indemnification of the City, it shall be deemed to have waived the right to claim exemption from disclosure under the CPRA; and after reasonable notice to the Developer, the City may release the requested information in accord with applicable law.

9.17 Authority

The individuals executing this Agreement represent and warrant that they have the authority to enter into this Agreement and to perform all acts required by this Agreement, and that the consent, approval or execution of or by any third-party is not required to legally bind either Party to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the respective dates set forth below.

The City:
City of Carpinteria

By: [Signature]

Dated: 7/8/19

ATTEST:

By: [Signature]

APPROVED AS TO FORM:

[Signature]
City Attorney

Dated: _____

The Developer:
Theimer Development Group

By: [Signature]

Dated: 7/3/19

Attachments:

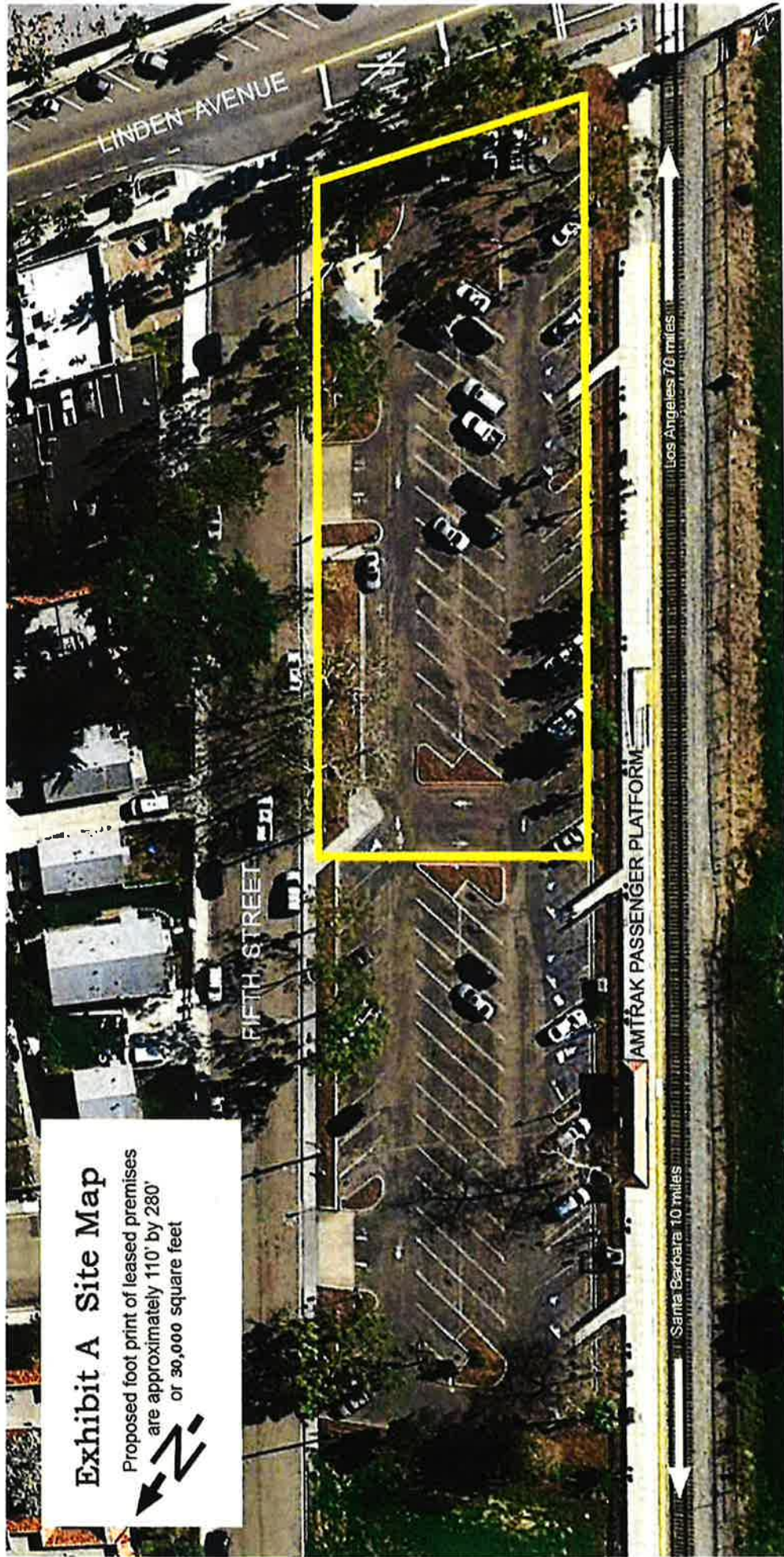
Exhibit A: Site Map

Exhibit B: City's Request for Proposal to Lease City Owner Property for Development

Exhibit C: The Theimer Group, LLC Project Proposal

Exhibit A Site Map

Proposed foot print of leased premises
are approximately 110' by 280'
or 30,000 square feet





CITY of CARPINTERIA, CALIFORNIA

Request for Proposals to Lease City owned property for Development

Proposals must be delivered to Carpinteria City Hall

5775 Carpinteria Avenue, Carpinteria, CA 93013

By 3PM November 16, 2017

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Requests for Proposals to Lease and Develop

General Description

The City of Carpinteria is inviting offers for a long term lease and development agreement for an approximate 30,000 square foot portion of a 1.15 acre City owned Parcel of land (APN 004-105-11) located in downtown Carpinteria at 499 Linden Avenue. The property is currently zoned Commercial Planned Development (CPD). A 110 space public parking lot and a small public restroom currently occupies the land. The size of the leased property may be adjustable to meet the needs of a successful proposal. The Property was once the site of the Carpinteria Southern Pacific Railroad station. The station had a two story train employee's residence and an attached small warehouse. The station was razed in 1969. In the early 1990's, the City constructed a public parking lot on the premises. The City may lease the Property for a period of 55 years or more pursuant to California Government Code 37380.



The Carpinteria Beach is famous for its natural beauty, soft sand and family friendly surf conditions that support the marketing slogan "World's Safest Beach".

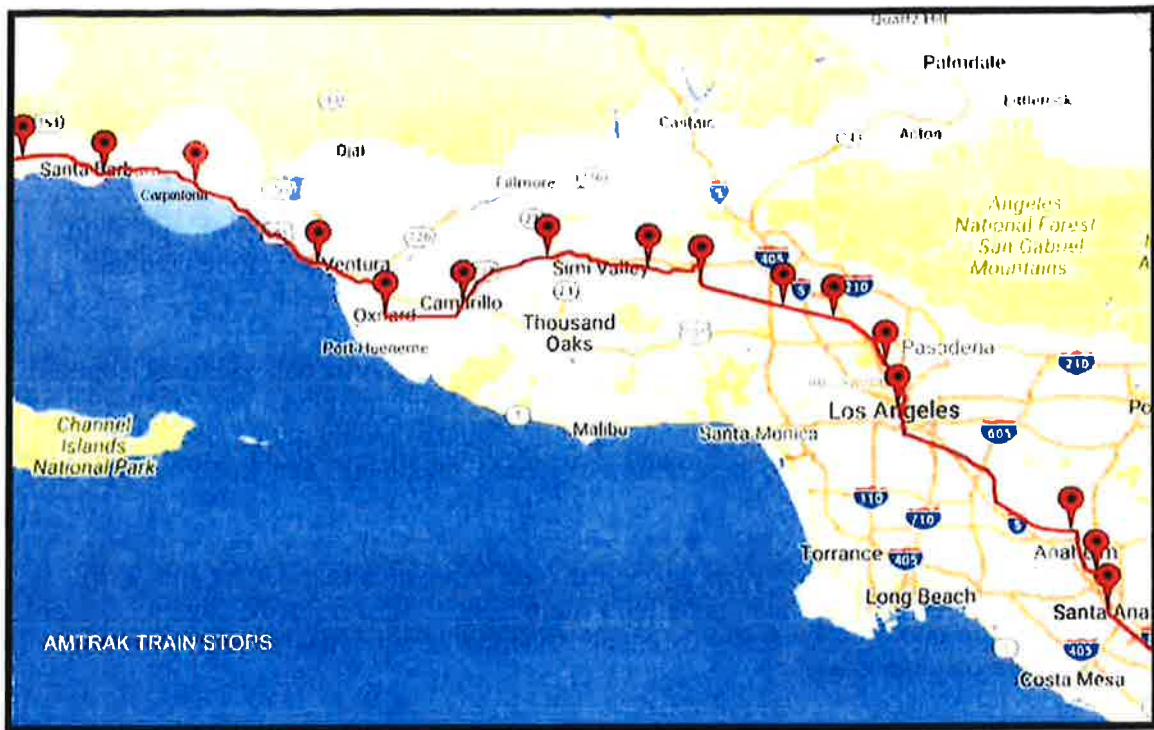
The Carpinteria State Beach reports over 875,000 visitors annually with an operating revenue of \$3,478,000 in FY15/16. The State Beach provides year round lifeguard service, over 160 campsites, and other visitor amenities.

The City maintains the Carpinteria City Beach and currently provides seasonal lifeguard service, ocean recreation programming, and routine beach cleaning. The City beach has been recognized as the cleanest beach in Santa Barbara County and is known as the "World's Safest Beach" due to its southern exposure, gentle surf and smooth sandy surf zone.

The Project Site has wide views of the Santa Ynez Mountains to the west and north. It has views of open space in the Carpinteria State Beach and the Pacific Ocean. As can be seen in the photo below, Santa Cruz and Anacapa Islands may be seen from the Project Site on clear days.



The immediate proximity of the City maintained Amtrak Passenger platform allows visitors to arrive and leave by train. Current daily Amtrak Pacific Surfliner service includes five northbound and five southbound trains that stop in Carpinteria. It runs from San Diego to San Luis Obispo making Carpinteria very accessible by rail.



Objectives

The City desires to enter into a lease and development agreement for the Property. The City has prepared a concept level plan for a boutique hotel and restaurant that is evocative of the Southern Pacific Railroad station. This concept level plan includes a 30-room, high quality (three diamond/three diamond plus) boutique hotel project with an ocean view restaurant built over what is now a public parking lot.

The City intends to establish a legal lot for the leased premises.

The ideal lessee would pursue the development and long term operation of a boutique hotel with a view restaurant similar to what the City has envisioned in the concept plans. It is expected the Project will become an iconic destination that can take advantage of the site's ocean and mountain views while also contributing to a positive economic outcome for the downtown tee.

The concept level plan preserves a portion of the existing public parking lot. The City owns a vacant lot on the south side of the railroad tracks that is also available for development into a new public parking lot that will serve as replacement parking and a site to relocate the public restroom. The ultimate project must both include parking adequate to comply with applicable zoning requirements and not result in loss of public parking spaces, or the public restroom amenity.

Other concepts that provide equivalent or better benefits in the opinion of the City will be considered including provision for some retail space. In addition to benefitting the vibrancy of the Carpinteria's downtown, the project is expected to generate revenue for the City to use toward its goal of meeting the need for public services and infrastructure maintenance.

Community and City Benefits

Proposed development projects for the Property must benefit the Community and City. The ideal Project outcome will result in a valuable community asset that helps support the Downtown business district. Examples of benefits include increased visitorship and tourism, improved Downtown architectural ambiance consistent with Carpinteria's vernacular, property, sales and transient occupancy taxes, increased job opportunities and public revenues from ground lease payments.

Green Building Objectives

Green building or sustainable building refers to both a structure and use of processes that are environmentally responsible and resource-efficient throughout a building's life-cycle including design, construction, operation, maintenance, renovation, and demolition. A project that includes features such as photovoltaic electrical generation, rain water harvesting, non-toxic building materials and sustainable operational methods is preferred.

City Sponsored Carpinteria Hotel Market Conditions Report

The City retained the services of a hotel industry expert who performed a market analysis of the Carpinteria area that concluded a new boutique hotel would serve unmet demand in Carpinteria. Keyser Marston Associates prepared a Carpinteria Hotel Market Conditions Report. The Report prepared in June 2016 is attached.

Successful Proposals

The City is seeking a proposal that includes;

1. Development of a high quality architectural design boutique hotel and restaurant that is evocative of the railroad building that once stood on the site. The proposed project is required to meet all applicable City development standards and building code requirements.
2. Providing public amenities attractive to both local residents and visitors. Stunning architecture with inviting public spaces, a view restaurant, new and increased beach area parking, walking trail extensions, and possibly retail space.
3. An experienced development team with experience in Hotel development. The team must provide information to demonstrate financial capacity and strength adequate to perform the development and operational obligations in the lease.
4. Attractive ground lease terms for both to the City and the Lessee. These terms include the length of lease term, specifications for insurance and maintenance requirements, the formula and amount of rent paid and detailed description of the durable improvements provided by the lessee.
5. Demonstration of a clear understanding of the City's Municipal Code Zoning Regulations and the General and Local Coastal Plan. Knowledge of the City's development limitations regarding overall height, parking requirements, and the City's development review process is critical to the success of the Project. (The Developer will be responsible for obtaining any and all governmental approvals

and selection through the RFP process does not guarantee outcomes relative to necessary governmental approvals. Gaining approvals should be considered in the proposed timeframe.)

6. A Lessee assumption of the ground lease, unsubordinated to any financing.
7. A Lessee paying any and all property taxes and/or possessory interest taxes.

Other Information

Any proposed development project will be required to comply with the California Environmental Quality Act and obtain a coastal development permit from the City.

The City has an adopted Local Coastal Plan (LCP) / General Plan (GP) and has authority to regulate development projects to insure conformance with the LCP/GP. Prior to the issuance of any permit for development in any area zoned or to be rezoned CPD, a development plan shall be submitted, processed, and approved, as provided in Chapter 14.68.

Many of the development standards used by the City can be found in Title 14 of the Municipal Code 14.16.090. For example building height is restricted to a height of no more than thirty feet. Chimneys, elevator and stair housings, church spires, and similar architectural features and similar structures may exceed the thirty foot restriction provided such excess heights are not in conflict with other provisions of this title.

Parking requirements are listed in Chapter 14.54 - PARKING REGULATIONS of the Municipal Code. Generally hotel/motel development requires one space per guest room and one space per employee. Restaurants require one space for each four fixed seats; or one space per fifty square feet of seating area, and one space per two hundred fifty square feet of gross floor area—CPD zone or one space per five hundred square feet of gross floor area—CB zone.

The Lessee will be required to pay all applicable fees, assessments and possessory interest taxes.

Projects that include timeshare, residential and industrial uses will not be considered.

The City has an adopted Local Coastal Plan (LCP) / General Plan (GP) and has authority to regulate development projects to insure conformance with the LCP/GP.

Many of the development standards used by the City can be found in Title 14 of the Municipal Code.

https://www.municode.com/library/ca/carpinteria/codes/code_of_ordinances?nodeId=TIT14ZO

Proposals that include City financial participation in the Project will not be considered. The Developer is responsible for obtaining any and all governmental approvals for the Project. No fees or other costs are waived by the City. All costs should be calculated as part of the proposed Development Project expenses.

The City is proposing to ground lease the Property "As Is" and is not obligated to repair, improve or otherwise incur costs.

Printed Proposals shall be delivered to Carpinteria City Hall City by the deadline listed on the cover page of this document. Proposals should be unbound and have numbered pages. A PDF of the proposal must also be provided using a USB Flash Drive.

Proposals should include the following information:

1. A cover page that includes:

- A. Developer's name and mailing address
- B. Developer's current legal status: corporation, partnership, sole proprietor, etc.
- C. Federal ID number or Social Security number.
- D. State ID number.
- E. Contact person's name, title, phone number, fax number and e-mail address
- F. Signature of authorized corporate officer for each entity proposing as a partnership or team acknowledging the authority to submit the Proposal.

2. A concept plan of the proposed development

The concept plan must be in sufficient detail for the City to determine the following:

- A. The size and height of building(s) and square footage of specific components.
- B. Building elevations with a photo simulation.
- C. A concept interior layout.
- D. The amount and type of parking spaces needed and how replacement public parking will be achieved.
- E. The public restroom facility's new location.
- F. Anticipated design style and materials to be used.
- G. Proposed public improvements to be built on the site.

3. Identification of the entities and individuals involved.

- A. Provide a list of the entities and individuals that will be involved with a description of the responsibilities each will have. Please provide an Organizational Chart that shows the entity structure and the roles each will have in the project. (Project Org Chart).
- B. Provide a summary of the team's past experience. Please include a description of the entities' experience in developing similar projects including location, type

of development, cost of project, funding sources, status of project and information about any continued financial or operating interest in each.

- C. Provide references for the projects that the team and its members have developed. The City would like to see projects and references for other publicly or institutionally owned sites if any.
- D. Identify the principal person who will speak for the development team and any other key participants who will be involved in negotiating the project terms. Specify whether the development entity is or intends to form a corporation, a general or limited partnership, a joint venture or other type of business association to carry out the proposed development.
- E. The developer must also provide two years of financial statements, which may be submitted confidentially under separate cover (City Attorney).
- F. Design consultants on the team must be licensed in the State of California.

4. A Preliminary Capital Pro Forma

A preliminary capital pro forma showing the sources and uses of funds (debt, equity and other) to construct the development in its entirety. The pro forma should include line item detail for the following:

- A. Project Hard Costs (Building Shell, FF&E, Site Costs, etc.)
- B. Project Soft Costs (Architecture & Engineering, Permits & Fees, Development Management, etc.)
- C. Capitalized Financing Costs

Information as to the status of securing those funds should be included, and inclusion of a conditional financing commitment is strongly encouraged.

5. An Operating Pro Forma

An operating pro forma for at least 20 years of Project operation, including the assumptions underlying the line item income and expense projections. Also show the Cash-on-Cash Return and Internal Rate of Return. If the project includes multiple uses, the operating pro forma should be broken down for the component uses. Detailed proformas in a format acceptable to the City will be required during the negotiation of a development agreement.

6. Preliminary Transaction Terms:

- A. Proposed Lease Term, Cannot exceed statutory limits.
- B. Proposed Minimum Rent
- C. Proposed Percentage Rent

7. A Description of the Public Benefits that will result from the development, such as the creation or retention of jobs (including the estimated number, type and wage levels), tax base enhancement, increase in tourism and downtown visitorship, public parking and restroom facilities.

8. A proposed timeframe for the development, including identification of any conditions that must be met before the proposal can become a reality. The schedule should include the time needed to obtain financing, complete design and secure permits and approvals, prepare the site, start and complete construction, and start operations.

9. Any other information that would help City staff understand and evaluate the Proposal.

The contents of the proposal and any clarification to the contents submitted by the successful proposer may become part of the contractual obligation and be incorporated by reference into the Lease and Development Agreement between the selected developer and the City.

Developers responding to this RFP are not required to provide a Good Faith Deposit with their proposals but may be required at a future time.

Conditions to Commencement of Initial Term of Lease

- A. All development entitlements for the must be final.
- B. Approval of construction plans and permits, including posting of required bonds and fees.
- C. Lessee shall have obtained City approval of Lessee's evidence of financial capability to complete development of Project.
- D. Lessee shall obtain approval from the City of the Project's operational management plan.
- E. Lessee shall have submitted evidence of required insurance to City.
- F. The physical/environmental condition and title to the site are suitable for the development, operation, and maintenance of the Project and consistent with the conditions stated in the Lease.
- G. The outside date for satisfaction of the conditions of commencement of the Lease Term is three years after City approval of Lease, subject to extensions for events of force majeure.
- H. As with all proposed development in the City, final plans are subject to compliance with adopted City and State laws and regulations.

Review/Selection Process

A committee of City representatives will review proposals received by the due date. The City may also seek Input from Community Groups and Consultants. Some or all of the proposers may be requested to present their proposals to the review committee and the City Council. During the review process, proposers may be asked questions to clarify their proposals, but cannot modify their proposals.

Hold Harmless

The selected developer must agree to defend, indemnify and hold the City of Carpinteria harmless from any and all claims or lawsuits that may arise from the developer's activities under the provisions of the Lease / development agreement, that are attributable to the acts or omissions, including breach of specific contractual duties of the developer or the developer's independent contractors, agents, employees or officers.

Prevailing Wage Requirements

Prevailing wage requirements may or may not apply to this project. Anyone working on a public works project must be paid prevailing wages as determined by DIR. Public works projects in general means construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. For a full definition of public works refer to [Labor Code section 1720](#). Anyone working on a public works project must be paid prevailing wages as determined by DIR. The developer will be responsible for complying prevailing wage requirements if applicable.

City Non-Liability and Related Matters

The RFP and the selection process shall in no way be deemed to create a binding contract, agreement, or offer of any kind between the City and the proposers. If the City selects a development team pursuant to the RFP, any legal rights and obligation between the successful team, if any, and the City will come into existence only when an agreement is fully executed by all parties, and the legal rights and obligations of each party shall at the time be only those rights and obligations which are set forth in the agreement and any other documents specifically referred to in that agreement.

The information being requested through this RFP is necessary for the City to adequately evaluate proposals. Failure to supply the requested information may result in rejection of the proposal. Each proposer agrees the City is not responsible for the costs incurred by proposers or their subcontractors incurred in connection with this RFP process; including, but not limited to costs associated with preparing a proposal or associated with participating in any presentations or negotiations related to this RFP.

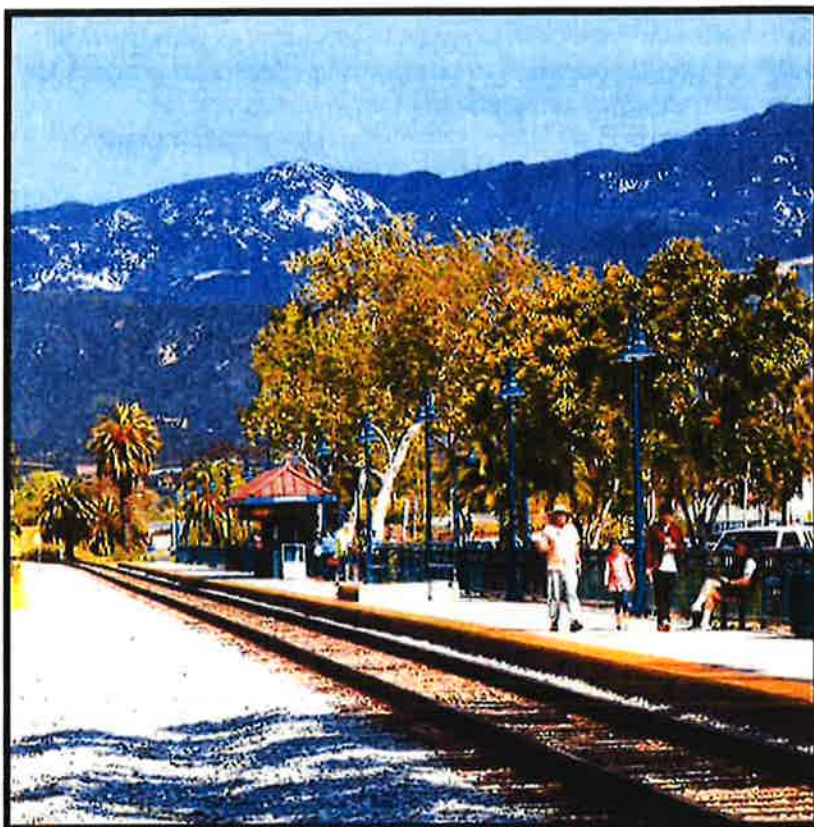
In addition, each proposer agrees that all documentation and materials submitted in response to this RFP shall remain the property of the City. Subject to the California law relating to access to public records, the City may be required to publicly disclose all submitted information and materials to parties requesting such information.

The City reserves the right to alter the selection process in any way, to withdraw the RFP, to deem the proposals as non-responsive, to postpone the selection process for its own convenience at any time, to waive any defects in any submission, to recirculate the RFP, to issue a new RFP any time, or to hire a development team it deems appropriate at its sole discretion within an RFP evaluation.

The City is not responsible for representations made by any of its officers or employees prior to the approval of an agreement by the City Council unless such understanding or representation is included in the RFP or in subsequent written addenda. The City is responsible only for that which is expressly stated in this solicitation document and any authorized written addenda thereto.

The information being requested through this RFP is necessary for the City of Carpinteria to adequately evaluate your proposal. Failure to supply the requested information may result in rejection of your proposal. The City is not responsible for the costs incurred by proposers or their subcontractors incurred in connection with this RFP process, including, but not limited to costs associated with preparing a proposal or associated with participating in any presentations or negotiations related to this RFP.





Site Photos

Page 1

The Amtrak
passenger train
shelter located
at parking Lot
#3



A picture of the
Amtrak
passenger
platform and
Shelter



Site Photos

Page 2

A view to the west from the project site showing the Santa Ynez Mountains and the Los Padres National Forrest



A view looking east on Fifth Street adjacent to Parking Lot #3



Site Photos

Page 3

A view of
Parking Lot
#3 looking east.



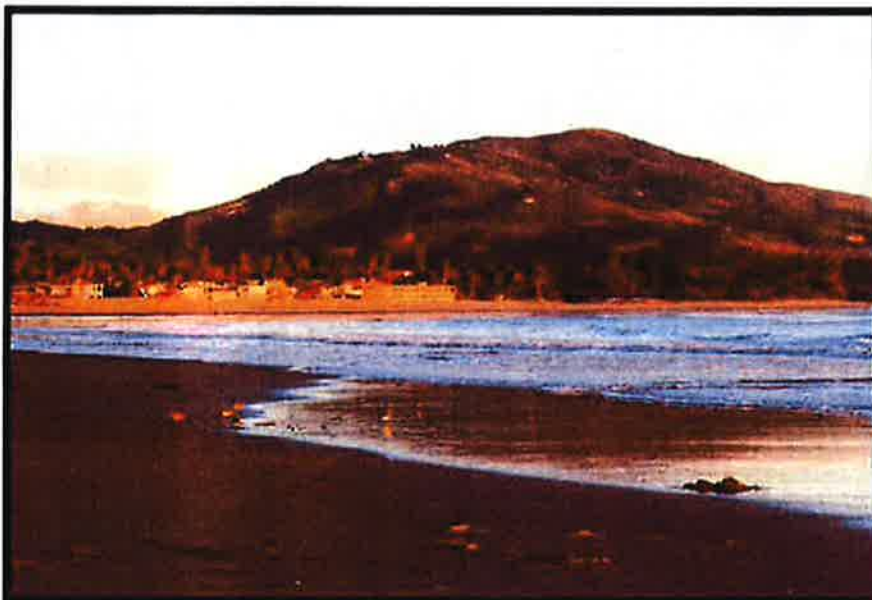
A View looking
west of Parking
Lot #3

Site Photos

Page 4



A photo of the
Carpinteria
Beach on a
busy summer
day 2015



A view of
Carpinteria City
and State Beach
from Sand Point
on a winter day.



Site Photos

Page 5

A view looking
to the beach
down Linden
Avenue



A view of the
900 block
Linden Avenue

Concept Plans Prepared by City



Artistic Rendering

West Elevation

East Elevation

North and South Elevation

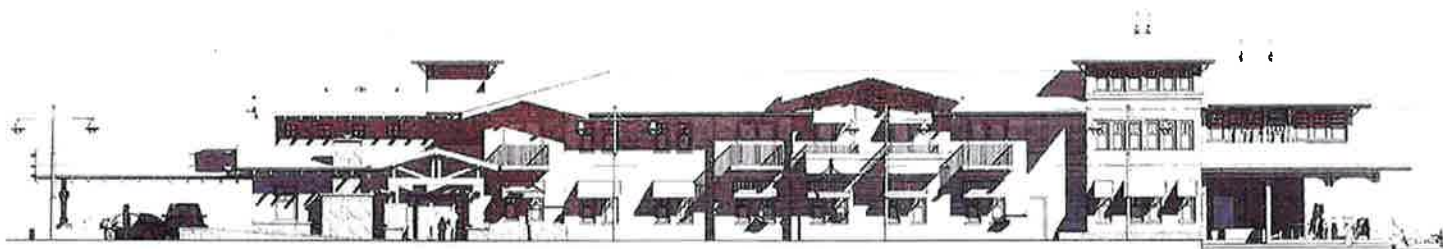
Ground Floor Plan

Second Story Floor Plan

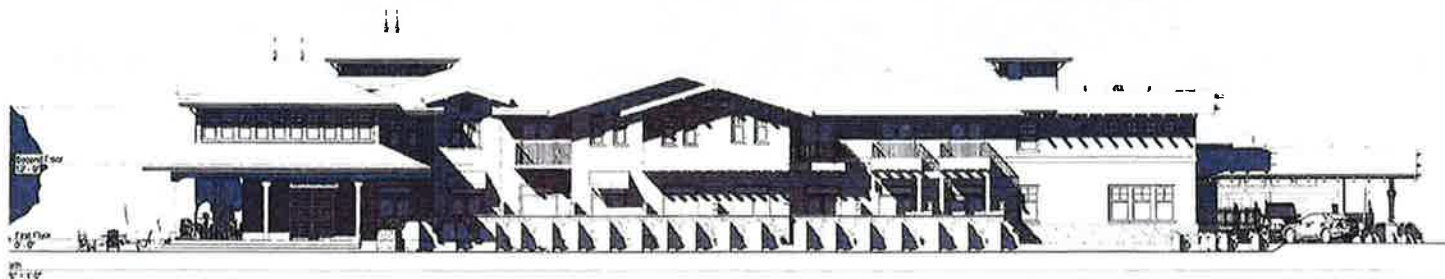




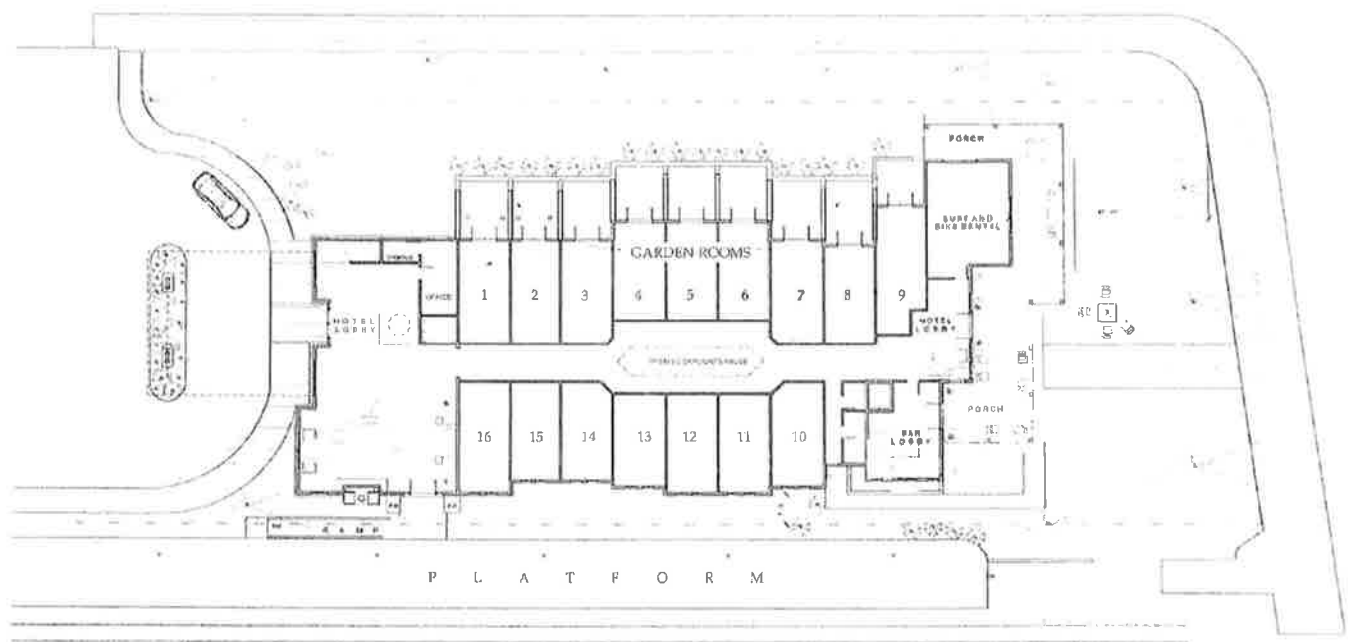
West Elevation



South Elevation
Railroad Side



North Elevation
Fifth Avenue Side



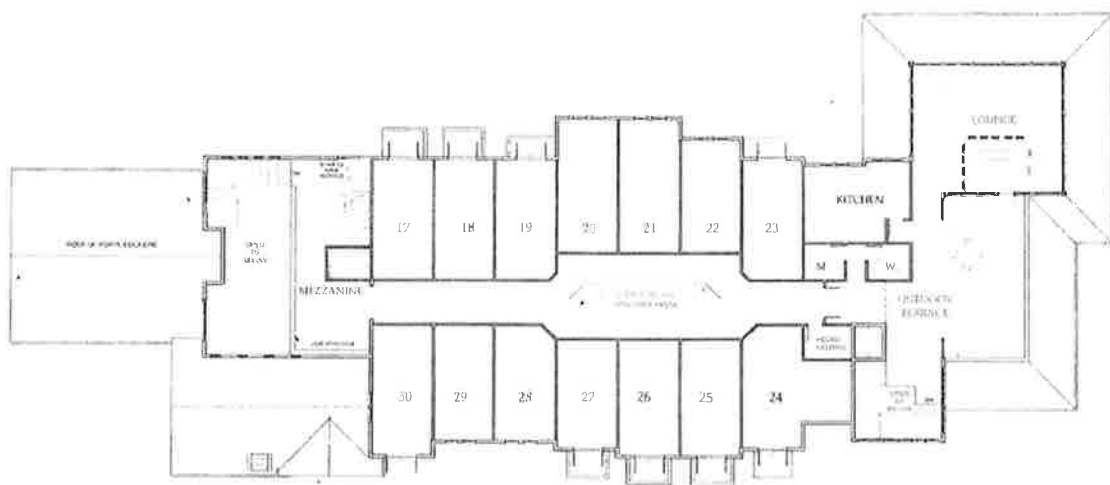
AREA SUMMARY

1ST FLOOR FOOTPRINT: 11,152 S.F.

BREAKDOWN BY AREAS

COMMON AREAS: 2,850 SF.
GUEST ROOMS: 8,973 SF.
EAST WING PORCH: 1,367 SF.

TOTAL BLDG AREA ENCLOSED: 18,016 S.F.
TOTAL AREA OUTDOORS: 2,387 S.F.





KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

SAN FRANCISCO
A JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
REED T. KAWAHARA
DAVID DOEZEMA

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GRIGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMEY

SAN DIEGO
PAUL C. MARRA

To: Matt Roberts,
Director of Parks and Recreation
City of Carpinteria

From: Kevin Engstrom
James Rabe

Date: June 21, 2016

Subject: Carpinteria Hotel Market Conditions

Pursuant to your request, Keyser Marston Associates, Inc. (KMA) reviewed the market variables that will influence the demand for an approximately 30-room hotel development on the Linden Avenue and Fifth Street property (Site). Based on a review of the available data and contact with developers active in the area, KMA evaluated the market feasibility of a hotel at this location.

MARKET OVERVIEW

Located along Highway 101 between the cities of Ventura to the south and Santa Barbara to the north, the City of Carpinteria (City) is home to over 13,000 persons. Within the entire Carpinteria Valley, the estimated population is over 17,000 residents with over 8,600 employees.¹

The Carpinteria Valley currently has a handful of hotels with over 600 rooms and approximately 100 vacation rentals.¹ As KMA understands the situation, the City is currently evaluating its options for regulating its vacation rental inventory. This is consistent with other jurisdictions throughout Southern California, which are considering mechanisms for managing the proliferation of these units and their coexistence with the City residents. In general, cities are finding that these units are not having a significant impact on hotel room demand; however, they are creating issues with local residents.

¹ Source: 2015 Carpinteria Valley Economic Profile

To: Matt Roberts, City of Carpinteria
Subject: Carpinteria Hotel Market Conditions

June 21, 2016
Page 2

The City has a prime coastal location and surrounds Highway 101, which serves as a significant north – south transportation corridor for the State of California. Due to its coastal location, the City has a significant amenity in the form of Carpinteria State Beach, which hosted 880,000 visitors and generated nearly \$3.5 million in user fees during the 2014/15 fiscal year.² The proposed Site is located in the historic core of the City and would be adjacent to the existing Amtrak station. The project would see the development of an existing parking lot and would assume the replacement of this parking on another site.

Historically, hotels are the most volatile land use, as rooms are "rented" on a nightly basis. This trend will continue in the future as fluctuations in employment, the economy, and natural/man-made disasters can all have a significant influence on the hotel industry. Notwithstanding these issues, the hotel market in Southern California is healthy, having improved significantly as the United States continues to recover from the recession. The following analysis summarizes hotel performance trends in the market over the past five years, provides an indication of regional hotel demand, and summarizes the impression of hotel developers active in the region.

HOTEL PERFORMANCE

The primary data sources used in this analysis were provided by PKF, Smith Travel Research and the City of Carpinteria (City). The information provided by these sources is based on surveys of a representative sample of hotels in the following market areas.

1. The Santa Barbara Town market are hotels located on, or within a few blocks of State Street (Town).³
2. The Santa Barbara Beach market includes resort hotels located along the beach communities of Santa Barbara, Montecito and Goleta (Beaches).¹
3. The Santa Barbara County market includes the performance of hotels of all types in the county, including those in Carpinteria (County).¹
4. The Carpinteria hotels include the top transient occupancy tax (TOT) producing hotels in the City: Best Western, Holiday Inn Express, Sandland Reef and two Motel Sixes.⁴

² Source: California State Park System: Statistical Report 2014/15 Fiscal Year.

³ Data provided by PKF Consulting

⁴ Data provided by the City of Carpinteria

To: Matt Roberts, City of Carpinteria
Subject: Carpinteria Hotel Market Conditions

June 21, 2016
Page 3

5. Working with the City, a Comparable Hotel Set of hotels was identified, including: Hotel Indigo Santa Barbara, The Wayfarer, Coast Hotel West Beach Inn and The Upham Hotel.⁵

The analysis is presented in the following tables:

Tables 1 – 4: Summarize hotel performance, including:

- 2010 - 2016 Hotel Occupancy Rates
- 2010 - 2016 Hotel Average Daily Rate (ADR)
- 2010 - 2016 Hotel Annual Revenue Per Available Room (RevPAR)

Tables 5 - 7: Summarize hotel demand for the following markets:

- Santa Barbara Town
- Santa Barbara Beach
- Santa Barbara County

Table 8: Projects Santa Barbara County hotel room demand

Table 9: Summarizes the 2015 Performance of Comparable Hotels

Table 1: Hotel Occupancy Rates

1. In each year between 2010 and 2015, the occupancy rate achieved in the Town was higher than the occupancy rates achieved in the Beach and County. In 2015, the average occupancy rates were as follows:
 - a. The Town occupancy rate was 80.3%;
 - b. The occupancy rate for the Beaches was 77.5%; and
 - c. The County average occupancy rate was 78.5%.

⁵ Data provided by Smith Travel Research (STR). Not all hotels provide their operating data to STR. The selected hotels provide their information and were identified by City staff and KMA as being most representative of a potential project in Carpinteria.

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Subject: Carpinteria Hotel Market Conditions

June 21, 2016
Page 4

2. In each of the areas being studied, the average occupancy levels have increased since 2010. The percentage increases over the period are:
 - a. Town at 15.2%;
 - b. The Beaches at 18.3%; and
 - c. The County at 18.8%.

For 2016, occupancy levels are projected to rise for the Beach and County. The occupancy level of the Town is projected to decrease slightly; however, this is due to an increase in room inventory as demand is projected to increase.

Table 2: Hotel Average Daily Rate (ADR)

1. The Town exhibits the lowest ADRs of the three areas being summarized herein; however, all of the current ADRs are relatively healthy.
2. In 2015, the ADRs were as follows:
 - a. The Town ADR was \$195;
 - b. The Beaches' ADR was \$289; and
 - c. The County ADR was \$217.
3. In each of the areas being studied, the ADR increased significantly since 2010. The percentage increases over the period are:
 - a. The Town at 30.2%;
 - b. The Beaches at 31.5%; and
 - c. The County at 26.5%.

For 2016, ADRs are projected to rise an additional 5.0% for each of the market areas.

Table 3: Hotel Annual Revenue Per Available Room (RevPAR)

The RevPAR is the product of a hotel's occupancy rate multiplied by the average daily rate. Based on TOT records, the RevPAR of the largest TOT producing properties in the City can be estimated. As would be expected, the RevPAR estimates mirror the results of the occupancy and ADR results presented in the previous two tables. The key findings are:

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Subject: Carpinteria Hotel Market Conditions

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Page 5

1. The highest RevPAR numbers were achieved for all four areas in 2015.
2. The Carpinteria RevPAR was significantly lower than the RevPAR exhibited by the other three areas, but the Carpinteria RevPAR is growing at a faster pace than the other three areas.
3. The percentage growth in RevPAR over the period between 2010 and 2016 for the four areas are:
 - a. Carpinteria at 72.8%;
 - b. The Town at 49.9%;
 - c. The Beaches at 55.6%; and
 - d. The County at 50.3%.

For 2016, RevPARs are projected to rise over 4.0% for each of the market areas.

Table 4: Annual Change in Hotel Performance

Table 4 summarizes the change in hotel performance between 2010 and 2015 for the market areas. As previously noted, the occupancy levels, ADRs and resultant RevPARs have all shown healthy increases during this period.

Tables 5-7: Summary - Market Area Hotel Performance

Between 2010 and 2015, the following compound annual growth rates were generated within the market area:

1. Based on the factors already discussed, the RevPAR grew at healthy rate during this period. The average rate of growth per year equaled the following:
 - a. The Town at 8.4%;
 - b. The Beaches at 9.2%; and
 - c. The County at 8.5%.
2. The supply of hotel rooms in the market area changed slightly:
 - a. The Town at -1.1%;
 - b. The Beaches at .2%; and

To: Matt Roberts, City of Carpinteria
Subject: Carpinteria Hotel Market Conditions

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- c. The County at .3%.
- 3. While the supply remained relatively static during this period, demand increased at relatively healthy rate:
 - a. The Town at 1.7%;
 - b. The Beaches at 3.6%; and
 - c. The County at 3.9%.

Table 8: Projected Increase in Santa Barbara County Room Demand

The increase in County room demand is projected for the period between 2016 and 2031 based on an assumed 2.0% annual increase in the demand for hotel rooms, and 74% to 76% target occupancy rates. Based on these assumptions, demand for approximately 180 to 340 new hotel rooms is exhibited in the County over the next five years and over 2,000 new hotel rooms are supported over the next 15 years.

Table 9: 2015 Performance of Comparable Hotels

Table 9 identifies the average occupancy, the ADR and the RevPAR for the Comparable Hotel Set for each month in 2015. As shown in Table 9, the market is seasonal:

- 1. The Comparable Hotel Set exhibits strong demand during the summer months, with average occupancies exceeding 92% and ADRs up to \$264.
- 2. The market area demonstrates fluctuating demand during the spring and fall, with average occupancies ranging from 68% to 86%, and ADRs ranging from \$183 to \$223.
- 3. The performance of the hotels in the market area declines during the winter months. The lowest occupancy point falls in December at 59.0% and the lowest ADR is January at \$176.

Over the course of 2015, the average occupancy level was 79.8%, the ADR was \$217 and the resultant RevPAR was \$173. As would be expected given their location, the performance of these hotels would be comparable to the Town.

Hotel Performance Findings

The data collected for the market area indicates the following:

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1. Hotel performance in the market area improved significantly over the past five years.
2. The demand for hotel rooms in the market area is seasonal, which indicates leisure travelers are driving the demand.
3. Demand is exhibited in the County for 180 - 340 new hotel rooms over the next five years, and for over 2,000 new hotel rooms over the next 15 years.

A hotel development on the Site would effectively need to capture approximately 10% - 15% of the near-term demand for new hotel rooms in the County. That capture rate would fall to less than 2% of the demand exhibited over the next 15 years.

MARKET IMPRESSIONS

To augment the hotel performance data collected for the market area, KMA contacted developers active in the region to gain their impressions of the opportunities for this specific site. These impressions can be summarized as follows:

1. There is a healthy amount of demand in the market area, as the hotel industry is performing very well in the Santa Barbara market area.
2. The current collection of hotels in Carpinteria does not offer a broad range of product types that would meet the needs of regional visitors.
3. The Site would be a good location for a hotel, given its proximity to the downtown and the State Beach.
4. Rail activity could be an issue; however, there are other hotels in the region that have successfully mitigated a similar location. Further, some travelers may be intrigued by the possibility of alighting from a train and having their hotel, beach and dining within walking distance.
5. The financial feasibility of the hotel is less certain, as it was noted that the City may need to subsidize the project.

Overall, the developers indicate a 30-40 room hotel at this location should have market support and would be well received by the region's visitors.

MARKET FEASIBILITY SUMMARY

The KMA analysis is intended to provide the City with a perspective on the market conditions exhibited for a potential hotel project in Carpinteria. The analysis indicates

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strong hotel performance, as occupancies are high, ADRs have risen significantly and RevPARs are healthy. These findings are corroborated by developers active in the area, which indicate a 30-40 room hotel at this location should have market support and would be well received by the region's visitor. However, market feasibility does not immediately equate to financial feasibility, which cannot be determined until hotel developers have adequately addressed the potential hotel performance (ADR, occupancy levels, food and beverage revenues and operating expenses), the development costs and the financing available for such a project.

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Limiting Conditions

1. The analysis contained in this document is based, in part, on data from secondary sources such as state and local government, planning agencies, real estate brokers, and other third parties. While KMA believes that these sources are reliable, we cannot guarantee their accuracy.
2. The analysis assumes that neither the local nor national economy will experience a major recession. If an unforeseen change occurs in the economy, the conclusions contained herein may no longer be valid.
3. The findings are based on economic rather than political considerations. Therefore, they should be construed neither as a representation nor opinion that government approvals for development can be secured.
4. Market feasibility is not equivalent to financial feasibility; other factors apart from the level of demand for a land use are of crucial importance in determining feasibility. These factors include the cost of acquiring sites, relocation burdens, traffic impacts, remediation of toxics (if any), and mitigation measures required through the approval process.
5. Development opportunities are assumed to be achievable during the specified time frame. A change in development schedule requires that the conclusions contained herein be reviewed for validity.
6. The analysis, opinions, recommendations and conclusions of this document are KMA's informed judgment based on market and economic conditions as of the date of this report. Due to the volatility of market conditions and complex dynamics influencing the economic conditions of the building and development industry, conclusions and recommended actions contained herein should not be relied upon as sole input for final business decisions regarding current and future development and planning.

TABLE 1

2010-2016 HOTEL OCCUPANCY RATES
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

Year	Santa Barbara Town¹	Santa Barbara Beach²	Santa Barbara County³
2010	70.5%	65.5%	66.4%
2011	73.2%	69.1%	69.9%
2012	75.4%	71.6%	71.4%
2013	76.9%	72.8%	72.6%
2014	78.9%	76.0%	75.3%
2015	81.2%	77.5%	78.9%
2016(f)	80.3%	77.0%	78.5%
Percentage Increase between 2010 and 2015	15.2%	18.3%	18.8%
Compound Annual Growth between 2010 and 2015	2.9%	3.4%	3.5%
Forecast Change between 2015-2016	-1.1%	-0.6%	-0.5%

(f) Forecast

- ¹ Hotels in Santa Barbara Town are located on, or within a few blocks of State Street. Source: PKF
- ² Hotels in Santa Barbara Beach are located along beaches in Santa Barbara, Montecito and Goleta. Source: PKF.
- ³ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

TABLE 2

**2010-2016 HOTEL AVERAGE DAILY RATE (ADR)
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA**

Year	Santa Barbara Town¹	Santa Barbara Beach²	Santa Barbara County³
2010	\$149.65	\$219.98	\$163.01
2011	\$155.98	\$232.30	\$168.78
2012	\$159.09	\$240.21	\$174.69
2013	\$167.03	\$255.00	\$182.51
2014	\$177.47	\$276.74	\$196.39
2015	\$194.79	\$289.20	\$206.20
2016(f)	\$206.48	\$303.65	\$216.84
Percentage Increase between 2010 and 2015	30.2%	31.5%	26.5%
Compound Annual Growth between 2010 and 2015	5.4%	5.6%	4.8%
Forecast Change between 2015-2016	6.0%	5.0%	5.2%

(f) Forecast

- ¹ Hotels in Santa Barbara Town are located on, or within a few blocks of State Street. Source: PKF
² Hotels in Santa Barbara Beach are located along beaches in Santa Barbara, Montecito and Goleta. Source: PKF.
³ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

TABLE 3

2010 - 2016 HOTEL ANNUAL REVPAR¹
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

Year	City of Carpinteria²	Santa Barbara Town³	Santa Barbara Beach⁴	Santa Barbara County⁵
2010	\$47.12	\$105.50	\$144.09	\$108.24
2011	\$58.15	\$114.18	\$160.52	\$117.98
2012	\$65.27	\$119.95	\$171.99	\$124.73
2013	\$64.42	\$128.45	\$185.64	\$132.50
2014	\$70.73	\$140.02	\$210.32	\$147.88
2015	\$81.42	\$158.17	\$224.13	\$162.69
2016(f)	NA	\$165.80	\$233.81	\$170.22
Percentage Increase between 2010 and 2015	72.8%	49.9%	55.6%	50.3%
Compound Annual Growth between 2010 and 2015	11.6%	8.4%	9.2%	8.5%
Forecast Change between 2015-2016	NA	4.8%	4.3%	4.6%

(f) Forecast

- ¹ RevPAR is equal to the occupancy rate multiplied times the average room rate.
² Includes top TOT producing hotels in Carpinteria: Best Western, Holiday Inn Express, Sandland Reef and Motel Sixes.
³ Hotels in Santa Barbara Town are located on, or within a few blocks of State Street. Source: PKF
⁴ Hotels in Santa Barbara Beach are located along beaches in Santa Barbara, Montecito and Goleta. Source: PKF.
⁵ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

TABLE 4

ANNUAL CHANGE IN OCCUPANCY, ADR & REVPAR
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

Change in Occupancy Rates			
Period	Santa Barbara ¹ Town	Santa Barbara ² Beach	Santa Barbara ³ County
2010-11	3.83%	5.50%	5.27%
2011-12	3.01%	3.62%	2.15%
2012-13	1.99%	1.68%	1.68%
2013-14	2.60%	4.40%	3.72%
2014-15	2.92%	1.97%	4.78%
2010-15	15.18%	18.32%	18.83%

Change in Average Daily Rates (ADR)			
Period	Santa Barbara Town	Santa Barbara Beach	Santa Barbara County
2010-11	4.23%	5.60%	3.54%
2011-12	1.99%	3.41%	3.50%
2012-13	4.99%	6.16%	4.48%
2013-14	6.25%	8.53%	7.61%
2014-15	9.76%	4.50%	5.00%
2010-15	30.16%	31.47%	26.50%

Change in Revenue Per Available Room (RevPAR)				
Period	City of Carpinteria ⁴	Santa Barbara Town	Santa Barbara Beach	Santa Barbara County
2010-11	23.40%	8.22%	11.40%	9.00%
2011-12	12.24%	5.06%	7.15%	5.72%
2012-13	-1.29%	7.08%	7.94%	6.23%
2013-14	9.80%	9.01%	13.30%	11.61%
2014-15	15.10%	12.96%	6.56%	10.01%
2010-15	72.78%	49.92%	55.55%	50.31%

¹ Hotels in Santa Barbara Town are located on, or within a few blocks of State Street. Source: PKF

² Hotels in Santa Barbara Beach are located along beaches in Santa Barbara, Montecito and Goleta. Source:

³ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

⁴ Includes top TOT producing hotels in Carpinteria: Best Western, Holiday Inn Express, Sandland Reef and Motel Six

TABLE 5

SUMMARY - SANTA BARBARA TOWN PERFORMANCE ¹
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

Santa Barbara Town							
	Average Occupancy	Average Daily Rate	Annual Supply of Room Nights	Annual Demand for Room Nights	Change in Occupied Room Nights	RevPAR	Change
2010	70.5%	\$149.65	257,690	181,751		\$105.50	
2011	73.2%	\$155.98	257,690	188,528	3.7%	\$114.18	8.2%
2012	75.4%	\$159.09	271,560	204,714	8.6%	\$119.95	5.1%
2013	76.9%	\$167.03	272,655	209,599	2.4%	\$128.45	7.1%
2014	78.9%	\$177.47	272,655	215,071	2.6%	\$140.02	9.0%
2015	81.2%	\$194.79	243,698	197,924	-8.0%	\$158.17	13.0%
2016(f)	80.3%	\$206.48	262,435	210,789	6.5%	\$165.80	4.8%
Compound Annual Growth - 2010 -2015	2.9%	5.4%	-1.1%	1.7%		8.4%	
Forecast Change between 2015-2016	-1.1%	6.0%	7.7%	6.5%		4.8%	

¹ Hotels in Santa Barbara Town are located on, or within a few blocks of State Street. Source: PKF

TABLE 6

SUMMARY - SANTA BARBARA BEACH HOTEL PERFORMANCE ¹CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

	Santa Barbara Beach					
	Average Occupancy	Average Daily Rate	Annual Supply of Room Nights	Annual Demand for Room Nights	Change in Occupied Room Nights	RevPAR Change
2010	65.5%	\$219.98	801,540	525,378		\$144.09
2011	69.1%	\$232.30	801,540	553,744	5.4%	\$160.52 11.4%
2012	71.6%	\$240.21	801,540	573,991	3.7%	\$171.99 7.1%
2013	72.8%	\$255.00	804,916	586,063	2.1%	\$185.64 7.9%
2014	76.0%	\$276.74	809,205	615,311	5.0%	\$210.32 13.3%
2015	77.5%	\$289.20	809,205	627,216	1.9%	\$224.13 6.6%
2016(f)	77.0%	\$303.65	830,497	639,760	2.0%	\$233.81 4.3%
Compound Annual Growth - 2010-2015	3.4%	5.6%	0.2%	3.6%		9.2%
Forecast Change between 2015-2016	-0.6%	5.0%	2.6%	2.0%		4.3%

¹ Hotels in Santa Barbara Beach are located along beaches in Santa Barbara, Montecito and Goleta. Source: PKF.

TABLE 7

SUMMARY - SANTA BARBARA COUNTY HOTEL PERFORMANCE ¹CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

Santa Barbara County							
	Average Occupancy	Average Daily Rate	Annual Supply of Room Nights	Annual Demand for Room Nights	Change in Occupied Room Nights	RevPAR	Change
2010	66.4%	\$163.01	1,946,180	1,291,833		\$108.24	
2011	69.9%	\$168.78	1,946,180	1,360,018	5.3%	\$117.98	9.0%
2012	71.4%	\$174.69	1,972,825	1,409,497	3.6%	\$124.73	5.7%
2013	72.6%	\$182.51	2,003,211	1,454,372	3.2%	\$132.50	6.2%
2014	75.3%	\$196.39	2,007,135	1,510,413	3.9%	\$147.88	11.6%
2015	78.9%	\$206.20	1,977,813	1,560,808	3.3%	\$162.69	10.0%
2016(f)	78.5%	\$216.84	2,035,909	1,598,410	2.4%	\$170.22	4.6%
Compound Annual Growth - 2010-2015	3.5%	4.8%	0.3%	3.9%		8.5%	
Forecast Change between 2015-2016	-0.5%	5.2%	2.9%	2.4%		4.6%	

¹ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

TABLE 8

**PROJECTED INCREASE IN SANTA BARBARA COUNTY ROOM DEMAND
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA**

Potential Demand - 2% Annual Increase in Demand & 74% Target Occupancy					
	Annual Increase in Room Demand	Existing Room Night Supply	Santa Barbara Average Occupancy Level	Room Night Demand Exceeding Target Occupancy	Cumulative Additional Room Demand
2016	1,598,400	2,035,900	78.5%	561,600	340
2021	1,764,800	2,035,900	86.7%	620,100	956
2026	1,948,500	2,035,900	95.7%	684,600	1,636
2031	2,151,300	2,035,900	105.7%	755,900	2,387

Potential Demand - 2% Annual Increase in Demand & 76% Target Occupancy					
	Annual Increase in Room Demand	Existing Room Night Supply	Santa Barbara Average Occupancy Level	Room Night Demand Exceeding Target Occupancy	Cumulative Additional Room Demand
2016	1,598,400	2,035,900	78.5%	504,800	184
2021	1,764,800	2,035,900	86.7%	557,300	784
2026	1,948,500	2,035,900	95.7%	615,300	1,446
2031	2,151,300	2,035,900	105.7%	679,400	2,178

¹ Performance of all hotels in Santa Barbara County, including those in Carpinteria. Source: PKF

TABLE 9

2015 PERFORMANCE OF NEARBY COMPARABLE HOTELS¹
CARPINTERIA HOTEL OVERVIEW
CARPINTERIA, CALIFORNIA

	Comparable Hotel Set		
	Average Occupancy	Average Daily Rate	RevPAR
January	71.6%	\$175.89	\$125.94
February	76.0%	\$183.31	\$139.32
March	79.0%	\$190.27	\$150.31
April	86.1%	\$204.48	\$176.06
May	81.7%	\$220.58	\$180.21
June	84.3%	\$237.35	\$200.09
July	92.4%	\$261.53	\$241.65
August	91.4%	\$263.72	\$241.04
September	85.2%	\$232.81	\$198.35
October	82.6%	\$222.80	\$184.03
November	67.7%	\$189.24	\$128.12
December	59.0%	\$186.42	\$109.99
Overall 2015 Performance	79.8%	\$217.22	\$173.34

¹ Includes the following hotels: Hotel Indigo Santa Barbara; The Wayfarer; Coast Hotel West Beach Inn and the Upham Hotel. Source: Smith Travel Research

Exhibit C

GROUND LEASE PRELIMINARY TERM SHEET

DATE: March 13th, 2018

LANDLORD: City of Carpinteria, a municipal corporation with an address of City Hall, 5775 Carpinteria Ave. Carpinteria, CA 93013.

TENANT: *Entity to be determined* or Assigns with an Address of 201 W. Montecito St., Santa Barbara, CA. 93101

LEASE PARCEL: 30,000 sq. ft. of land known as 499 Linden Ave., Carpinteria, CA.

DISPOSITION AUTHORITY: Landlord wishes to enter into a Ground Lease for the Lease Parcel pursuant to the Request for Proposals issued by City of Carpinteria, due November 16, 2017 and extended to December 2018. This Ground Lease Preliminary Term Sheet is intended to be a further step towards entering into an "exclusive" right to negotiate for up to 120 days.

PROJECT: The Tenant wishes to lease the Lease Parcel in order to Develop and construct a 40+ - room, hotel property (Building) to be owned by the Tenant. Parking will be provided in an adjacent City parking lot owned and controlled by the Landlord.

The project is currently conceived and will seek entitlements for a 40+ room hotel, roof top lounge and ground floor retail space.

DOCUMENTS: Landlord and Tenant shall use commercially reasonable efforts to enter into a mutually satisfactory Development Agreement within 120 days of execution of this Preliminary Term Sheet. The Development Agreement will provide 1) terms for planning, permitting, and financing of the Project and 2) a form of Ground Lease to be executed on the Commencement Date. Tenant shall provide Landlord with the first draft of the Development Agreement and Ground Lease.

LEASE TERM: Ninety -Nine (99) years from the Commencement Date.

LEASE COMMENCEMENT DATE: The earlier of 1) the date on which Tenant closes on construction Financing for the Project; or 2) the date on which the Tenant

enters into possession of the Lease Parcel. In the event that the Commencement Date has not occurred by December 31, 2021 then the Landlord in its sole discretion and without cost shall be entitled under the Development Agreement to terminate the Development Agreement, unless the Tenant is effectively prevented from exercising its right because of pending litigation related to entitlement.

**BASE
RENT:**

Base Rent will consist of a monthly "fixed" minimum payment of \$10,000 per month..

**PREPAID
BASE
RENT:**

Tenant has the right, but not the obligation, to prepay the Base Rent for any period of the lease. Prepaid Base Rent shall be calculated by discounting to present value that portion of the Annual Base Rent applicable to the Parcel for which prepayment is being made for the period of such prepayment. The discount rate for prepayment shall be 10%.

**BASE RENT
COMMENCEMENT
DATE:**

The Base Rent Commencement Date will occur on the one-year anniversary of a Certificate of Occupancy having been issued to the Tenant.

**BONUS
RENT:**

An Annual "Bonus Rent" will be paid and computed as 4.5% of Gross Room Revenues on the Project less: \$120,000 of yearly Base Rent. In the event that Base Rent has been prepaid, Bonus Rent shall still be computed as Gross Room Revenues less: \$120,000 of yearly Base Rent.

**RESERVED
RIGHTS:**

The Landlord in its municipal capacity shall maintain reserved rights (the Reserved Rights) to operate, maintain and repair the Public Parking facility located adjacent to the Lease Parcel

**REAL ESTATE
TAXES AND
OPERATING**

EXPENSES: Tenant shall be responsible for payment of all real estate taxes, Assessments, utilities and operating expenses associated with the Project during the term of the Ground Lease. Landlord shall be responsible for any real estate taxes, assessments or similar charges affecting the Public Parking facilities.

**COMMON AREA
MAINTENANCE
EXPENSES:**

The area comprising 1) Tenants access to its appurtenant Parking area and 2) other areas of the exterior of the Property Subject to public access ("Common Areas") excluding the Public Parking will be maintained and repaired, as necessary by Tenant, Including without limitation, pavement repairs, maintenance of Landscaping and lighting, as well as insurance covering any loss From property damage or personal injury.

FINANCING: Tenant may mortgage Tenant's leasehold interest in the Lease Parcel, Landlord has no obligation to "subordinate" to any loan.

**APPROVAL
PERIOD:**

Tenant at Tenant's sole cost and expense, shall use commercially reasonable efforts to obtain all necessary State and Local permits to construct and operate the Project including Building Permits. Tenant shall have until December 31, 2021 to begin construction. Landlord agrees to cooperate with Tenant in this effort, including execution of applications for permits to be made by the Owner of the Property, without any requirement to spend its own money.

So long as Tenant is proceeding diligently to obtain the Permits and Approvals, the Initial Approval period will be extended at Tenants request for up to 1 year. Additionally, the Development Agreement will provide for extensions to resolve or defend any and all appeals.

If at any time during the Approval Period as it may be extended (a) Tenant has not obtained the Permits and Approvals for the Project or (b) the Permits and Approvals have been issued with conditions, which are unacceptable to Tenant, in Tenant's sole discretion, the Tenant may choose to terminate the Development Agreement.

**THIRD PARTY
EXPENSES:**

Each Party shall be responsible to its own legal, advisory and other expenses associated with the completion of this transaction

EXCLUSIVITY: During the period of negotiations of the Documentation and

thereafter, in accordance with the Development Agreement, Landlord shall not solicit or accept any other offers for purchase or lease of the Lease Parcel.

OTHER

PROVISIONS: The Ground Lease will contain mortgagee protective covenants In favor of Tenants mortgagees from time to time, including the right to cure any default by the Tenant under the Ground Lease, a right to obtain a new Ground Lease on the same terms and conditions and with no additional payment of rent in the event of any termination of the Ground Lease without the consent of the Mortgagee, and such other protections that will allow the Tenant to obtain financing substantially similar in form and terms as would be available for a fee purchase of the Property.

This Ground Lease Preliminary Term Sheet is not intended to be and shall not constitute a legally binding agreement to lease the Property, but each party agrees to negotiate exclusively for a period of 120 days to execute an acceptable Development Agreement.

Acknowledged and Agreed:

LESSOR:

City of Carpinteria, CA

Name:_____

LESSEE'S

JACK THEIMER

ANDY NORRIS

MATTHEW TAYLOR