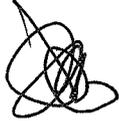


CITY OF RANCHO PALOS VERDES

MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: DENNIS McLEAN, DIRECTOR OF FINANCE & INFORMATION TECHNOLOGY 

DATE: MAY 26, 2009

SUBJECT: TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

REVIEWED: CAROL LYNCH, CITY ATTORNEY

RECOMMENDATION

- 1) Consider the comments, recommendations and alternatives presented throughout this report and provide direction to Staff regarding the request made by Lowe Enterprises for financial assistance using future transient occupancy tax revenue.
- 2) If the Council elects to adopt Alternative 1 - 27 Month (Maximum \$8 Million) TOT Rebate Arrangement, introduce the proposed Ordinance that is expected to be distributed as Late Correspondence.
- 3) Approve the use of a trust deposit funded by Long Point Development, LLC, or an affiliate of it, to pay for the City's cost of professional services, including due diligence, document preparation, and other work product necessitated by the request for financial assistance.

EXECUTIVE SUMMARY

The senior management of Lowe Enterprises ("Lowe's") have made a request that the City provide financial assistance to Long Point Development, LLC, the owner of Terranea Resort ("Terranea") in the form of a rebate of 100% of the transient occupancy tax ("TOT") collected and remitted by Terranea. The original request was for 50% of the TOT that is generated by Terranea over a ten-year period. Prior to the City Council meeting on May 4,

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2009, Lowe's and Staff worked together to refine the initial request (Alternative 1) for \$8 million of TOT. Lowe's proposal included a recommendation that the City adopt a TOT rebate ordinance that would require the City to rely solely on projected net sales proceeds and net refinancing proceeds of Terranea, after payment to lien holders, for repayment (and would bind all future owners to that repayment structure). Lowe's proposal does not include a fixed repayment date, a guarantee of payment or the use of net operating cash flow for repayments.

Considering the current economy and credit market, Terranea's request for assistance is understandable. However, the downturn of the economy is also having a direct fiscal impact on the City. Staff and the City Council have been challenged to even balance the draft FY09-10 General Fund budget and General Fund reserves are essentially at the policy threshold level. The threat of a \$770,000 property tax loan to the state has become more real with the defeat of propositions designed to help balance the state's budget. The uncertainty of the growing \$21 billion state budget crisis and any other future impact on the City is unknown. This week, the Deputy Director of Finance & Information Technology discovered that the County Assessor is reviewing almost one-fifth of all parcels in Los Angeles County for a potential decrease in assessed value, which will likely impact the City's General Fund revenue. This emerging development is not widely known in the municipal finance community. The City's per capita spending is about 28% of the statewide average, as the City provides minimum levels of service to its residents. City facilities are deteriorating even with the City Council's actions to fund infrastructure improvements. With the opening of Terranea, the City will need to increase service levels for public safety and right-of-way maintenance. The prospect of providing financial assistance to Terranea must be evaluated in light of the City's current and future needs. After considering this carefully, Staff believes that providing as much as \$8 million of TOT is not fiscally prudent at this time, even though it would be derived from the operations of Terranea, is not currently included in the proposed FY09-10 budget, the 2009 Five-Year Financial Model, or the 2009 Capital Improvement Plan.

Based upon the request and the level of due diligence performed by Staff, the City Attorney, the City's Financial Advisor, Tim Schaefer of Magis Advisors, Bruce Galloway, Deputy City Attorney (a commercial real estate attorney), and Hospitality Valuation Services (HVS), the City's resort consultant (the "Advisory Team"), it offers three alternatives for consideration by the City Council (*Note: see more detailed terms and conditions described later in the report*):

Alternative 1 – 27 Month (Maximum \$8 Million) TOT Rebate Arrangement

The framework of Alternative 1 was presented to the City Council at a meeting on May 4, 2009. If the Council desires a fixed payment date of December 31, 2013 and interest, the Council should further consider this alternative which would give Lowe's rebates of 100% of the TOT for 27 months, or \$8 million, whichever comes first. This alternative also contemplates an ordinance, but includes multiple precedent conditions and a requirement that there be a guarantee of timely repayment from a creditworthy source due to: (i)

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uncertainty as to the timing and projected amounts of net sales proceeds and net refinancing proceeds (given the financial uncertainty in today's real estate economy and the City's Advisory Team's concern that sufficient net proceeds, after payment to lien holders, will not be available to repay the balance owed to the City prior to December 31, 2013, and Lowe's projections have not yet been reviewed and validated by HVS); and (ii) the belief of the Advisory Team that there may not be sufficient equity/value from which a future judgment obtained by the City could be satisfied if repayment is not made by Terranea when due.

Alternate 2 – 24 Month (Maximum \$3 Million) 50% TOT Rebate

Alternative 2 was developed by the Advisory Team after the City Council meeting on May 4th while it was continuing the due diligence process. Alternative 2 provides a rebate for up to 2 years of 50% of the TOT, with no repayment. It includes fewer precedent conditions, but those do include a condition that requires Terranea to show that it has obtained sufficient additional funds to cover projected net operating losses during the initial years of operation; however, it has a number of advantages over Alternative 1, including elimination of any need for a guarantee or other source of secured repayment, elimination of the need of an ordinance approved by the City Council. Most importantly, the Advisory Team believes that it preserves significant cash resources for the City when both the State and the City are amidst severe budget challenges. Compared with Alternative 1, it retains up to \$5 million that could be used for high-priority CIP projects over the next two years.

Alternative 3 – Defer or Reject the Request

The City Council may defer or reject the request on the grounds that: (i) the mezzanine lender or Lowe's may ultimately provide the funds if the City declines to do so, especially considering that the value of Terranea (and in particular the for-sale units) appears to be maximized by opening and operating the resort; (ii) Corus Bank's current position that its fully-secured loan is currently in default and could conceivably force the mezzanine lender to take action, possibly even paying or purchasing the Corus loan, the senior loan, and then ultimately provide the working capital funds requested (in order to maximize the value of its investment and minimize its potential losses); (iii) it is conceivably possible that a sale or refinancing that would generate net sale proceeds or net refinancing proceeds could be significantly delayed (for example, if the mezzanine lender obtains control and/or ownership of the resort, a sale or refinancing will depend on its business plan for the resort); and (iv) In light of the uncertainty of the financial status of Terranea's primary lender, Corus, whether or not Terranea will receive its final construction loan draws, and whether or not Terranea will obtain sufficient additional working capital to open and operate Terranea. Although Lowe's have said that they expect to continue to own and operate Terranea, a significant amount of uncertainty appears to currently exist regarding the ultimate resolution of the Corus loan default, especially in light of Corus' watch status by federal bank regulators.

The Advisory Team believes that repayment to the City on or before December 31, 2013,

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is primarily dependent upon:

- Terranea deriving net operating income at the level they have projected; and
- The sale of all “for sale” units at sales prices projected.

Lowe’s have not proposed a firm date on which the TOT would be repaid to the City. Rather, the proposal contemplates that the TOT would be repaid from the proceeds of a refinancing of the resort property in the future. The City’s Advisory Team believes that in light of the uncertainty of the timing of the City’s repayment, the significance of the amount at risk; as much as \$11 million with accrued interest; and the lack of adequate security that follows the land (i.e. a deed-of-trust); a guarantee of payment on or before December 31, 2013 is prudent.

BACKGROUND

Terranea is an oceanfront resort property situated on 102 acres of the Rancho Palos Verdes coastline. Terranea consists of a hotel, privately owned limited residency villas, a conference facility, a spa and fitness facility, a nine-hole executive golf course, and other amenities such as pools and food and beverage facilities. The project is in the final stages of construction. Lowe’s has advised the City that Terranea will conduct its grand opening on June 15th.

Terranea is expected to immediately become the largest economic engine in the City, as well as the surrounding area, providing more than 600 jobs, many filled by City residents and our south bay neighbors and bringing thousands of new tourists to the area. Along with its management and investors, the City and the community have a significant opportunity to share from the success of Terranea. The resort will become the largest single generator of tax revenue to the City, providing as much as \$8 million of tax revenue annually once it reaches stabilization. In addition to property tax, sales tax, business license tax, and golf tax, Terranea is expected to generate a considerable amount of transient occupancy tax (TOT). The City’s municipal code imposes TOT of 10% of the room rent on persons staying up to 30 days in a hotel or other lodging facility. The TOT is an unrestricted revenue source that is deposited into the City’s General Fund.

Recent events in the US and local economy have significantly impacted the level and type of tourism and occupancy rates of hotels and resorts such as Terranea. The economic downturn coupled with tightening credit markets have created a severe challenge to all resorts across the world that was not anticipated when the financial strategy of Terranea was developed.

The City has issued Temporary Certificates of Occupancy (“TCO’s”) as portions of the resort have been completed. The TCO’s expire on August 1, 2009, the date the final Occupancy permit is due to be issued. Lowe’s requested the issuance of TCO’s to allow a soft opening to enable staff training and occupancy of the Resort during that process.

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Prior To the City Council Meeting On May 4, 2009 - Request for Financial Assistance

Lowe's initially made a request that the City assign its TOT to help fund start-up costs and operating losses of Terranea's operation. The initial proposal included an assignment of 50% of the City's TOT for 10 years (estimated to be about \$35 million) to provide a source for the direct repayment of a \$15 million loan that Lowe's would borrow to cover the start up costs and expected operating deficits. The initial proposal included a repayment provision of the TOT loan based upon 3% of the net proceeds, after payment to lien holders, from any future sale, refinancing or re-capitalization of Terranea.

Prior to submission of the initial proposal, Mayor Clark and Mayor Pro-Tem Wolowicz (the City Council sub-committee), Staff, the City's Financial Advisor, and the senior management of Lowe's met to discuss the request. The discussion provided Staff with a general understanding of the economic circumstances that led to the request and provided an opportunity to begin the process of learning about the organizational and financial framework of Terranea.

Upon receipt of the initial proposal, a limited review to understand the fiscal impact of the proposal was performed by the Advisory Team.

City Council Meeting On May 4, 2009 Regarding Request for Financial Assistance

The City Council took the following action on May 4th:

1. Discussed the request made by Lowe Enterprises to provide financial assistance to the Terranea Resort; and
2. Directed Staff to take the following steps:
 - a. undertake a more complete legal, economic and financial review to address the points of interest and concerns raised by the City Council;
 - b. return with a more complete analytical staff report for Council's consideration on May 26, 2009 at a location to be determined by staff;
 - c. provide weekly updates on the status of the review; and
 - d. directed staff to return to the next Council meeting with an item regarding the authorization to continue the funding of the services of the consultant up to the City Manager's authorization level.

During their presentation to the City Council, Mr. Bob Lowe, COB and CEO of Lowe Enterprises, provided the following information:

- Corus Bank, the primary construction lender, is on the federal "watch list", may not survive and shows no flexibility to react to changing conditions;
- Corus Bank has not advanced \$12.5 million of construction draws requested;

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- Lowe's is conducting on-going discussions to raise \$10-\$12 million of necessary post-opening working capital;
- Lowe's provided a Powerpoint slide that showed that Terranea would be worth more than \$500 million in 2014 using capitalization of net operating income at a rate of 8%; whereby, sufficient net worth could be available to repay the City at that time;
- The TOT rebate in the amount of \$8 million would be used to negotiate with investors to raise \$10 - \$12 million of working capital; and
- Lowe's would show the City how they have attained the \$10 - \$12 million of working capital prior to opening Terranea.

Sub-Committee of the City Council

The City Council sub-committee and the Advisory Team conducted several conversations, sometimes including senior management of Lowe's, during this on-going due diligence process. Subsequent to the City Council meeting on May 4, 2009, Sub-committee meetings or conference calls were conducted on May 8, 2009, May 12, 2009 and May 16, 2009.

During conversations between the City Council sub-committee, the Advisory Team and Lowe's, the following was discussed and/or requested:

- Lowe's were asked to provide the City Council with an update regarding the status of the Corus loan, especially the disagreement about whether or not Lowe's provided sufficient notice to effectuate an extension of the loan beyond April 26, 2009 and whether the alleged "technical" default (as described by Lowe's) has been cured;
- The TOT Rebate Arrangement must be subject to an interest rate that reflects the risk the City would bear;
- Lowe's should understand and acknowledge that any financial assistance that the City may extend is "one-time" only;
- Any financial assistance by the City would be subject to Terranea's receipt of \$13.5 million construction advances from Corus and the Mezzanine lender to Terranea; and
- The City should be immediately repaid the balance of TOT advances with accrued interest in the event a significant amount of equity is invested; thus making the TOT arrangement unnecessary;

Lowe's expressed their expectation that the disagreement with Corus would be resolved and would update the City Council about a solution to raise additional working capital from investors to open and operate Terranea.

FINDINGS AND DISCUSSION

Due Diligence

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The Advisory Team wishes to thank and compliment the Lowe organization and its advisors for their cooperation in this time constrained on-going due diligence review. The Advisory Team and Lowe's have worked tirelessly to provide the City Council with sufficient information to make one of the City's most significant fiscal decisions in decades. Although the process is sufficient for the City's Financial Advisor and the Advisory Team to make judgments and draw conclusions, HVS could not perform a timely review of the underlying assumptions used by Lowe's in its multi year operating projections. Therefore, the Advisory Team strongly believes that no reliance should be placed on Lowe's projections at this time until an independent review is conducted by HVS. The Advisory Team has been advised that Lowe's disagrees and is concerned that HVS's review may prolong the Council's decision-making process. Staff has advised Lowe's that the City Council could make a decision tonight to provide financial assistance, subject to certain conditions, including review and the affirmative findings from HVS. The review by HVS is scheduled to be conducted with the City's Financial Advisor and Lowe's on Friday, May 29, 2009. The Advisory Team believes that any final judgment regarding the likelihood of repayment of the proposed TOT rebate, as well any determination whether Terranea will have sufficient working capital to reach stabilized operations should be deferred until after HVS has completed their review. Nevertheless, the City's Financial Advisor shall provide an oral update during Staff's presentation during the meeting.

Request for the Proposed TOT Rebate Arrangement – Will Terranea Open Without Financial Assistance?

The purpose of the proposed TOT Rebate Arrangement has been described above and continues periodically throughout this report. The Advisory Team has considered the request, the facts and circumstances that the Lowe's are facing, including our current economic conditions, eminent opening date, dismal "frozen" commercial real estate lending climate, the Corus loan, the financial strength of the owner of the Mezzanine loan, the organization structure of Terranea and many, many other factors regarding this request. The Advisory Team continually asked itself the most important question for the City: Will Terranea open and operate without the City's financial assistance? The Advisory Team believes that Lowe's, its investors and its lenders will not allow Terranea to not open. The risk of further market value erosion (especially as to the for-sale units) that would result from not opening, compared with their respective investment, far exceeds the \$8 million of financial assistance that has been requested. When asked, Lowe's have told the Advisory Team that they will not advance the additional working capital necessary. When asked why, they have said that they are developers, not an investment company. If Lowe's believe in their operating projections that support their request and statement that they need \$10 - \$12 million of working capital until Terranea begins operating profitably, one may find it difficult to believe that they won't loan the funds to protect investor's equity and derive future management and sales fees for their own company from operating Terranea. During the Council meeting on May 4, 2009, Mr. Bob Lowe said that he would not provide a personal guarantee of repayment.

If Terranea will open soon, regardless of whether the City provides financial assistance,

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weighing the \$8 million of the proposed TOT Rebate Arrangement against the City's competing demands will make the decision more difficult. Unfortunately, it is impossible for the Advisory Team or the City to know whether financial assistance from the City is actually necessary.

Sufficient Funds to Open?

Notwithstanding the ability to defer bill payment and/or accelerate cash flow through receipt of deposits and advance bookings, Lowe's advised the City's Advisory Team that their balancing sources and uses schedule for the construction of Terranea currently includes about \$13.5 million of expected advances from construction lenders that may be at risk. It is uncertain at this time whether or not Terranea has sufficient funds to complete construction and open the resort, based upon Lowe's own schedule.

Lowe's have asserted that the alleged default on the Corus loan is the result of a disagreement regarding whether or not Terranea has provided adequate notice of its request to extend the April 26th maturity date of the Corus loan. Unfortunately, resolution of the disagreement is complicated by many factors, including Corus' possible failure while under the federal banking regulator's "watch status", the possibility of violations of loan covenants under the Corus, Mezzanine and Turner loans, the possibility of diminished collateral values resulting from the economic trends and a mezzanine lender with the apparent financial capability to buy or pay off the Corus loan and take ownership or control of Terranea (and possibly delay a refinancing or sale that would generate net proceeds) if certain events were to occur.

Sufficient Working Capital to Reach Stabilized Operations?

Lowe's advised the City's Advisory Team that their multi-year operating projection indicates that the receipt of \$8 - \$12 million of additional working capital will be sufficient operate Terranea during the start-up period. The City's Financial Advisor has reviewed Lowe's operating projections and expressed that they "possibly" reflect the ability to maintain adequate working capital until Terranea reaches stabilized operations.

HVS could not perform a timely review of the underlying assumptions used by Lowe's in its multi year operating projections on such short notice. Therefore, the Advisory Team strongly believes that reliance upon Lowe's projections should not occur until an independent review is conducted by HVS. The review by HVS is scheduled to be conducted with the City's Financial Advisor and Lowe's on Friday, May 29, 2009. The Advisory Team believes that any determination whether or not Terranea will have sufficient working capital to reach stabilized operations should be deferred until after HVS has completed its review.

Sufficient Equity in 2013 for Repayment? - Risk

Repayment to the City on or before December 31, 2013, is primarily dependent upon:

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- Terranea deriving net operating income at the level they have projected; and
- The sale of all “for sale” units at sales prices projected.

HVS has advised the City’s Advisory Team that economic recovery in the hospitality industry is not expected until 2013 at the earliest. Lowe’s have advised the City Council that Terranea is opening during the most challenging time for resorts since World War II. The speed of the recovery, and its impact of the sales of “for sale” units, the commercial real estate lending markets’ willingness to refinance Terranea and the “appraised” market value of Terranea in 2013 are significant unknowns that will determine whether or not the City will be repaid on or before December 31, 2013. *[Note: See the attached Memorandum, dated May 4, 2009]*

Lowe’s have not proposed a firm date on which the TOT would be repaid to the City. Rather, the proposal contemplates that the TOT would be repaid from the proceeds of a sale or refinancing of the resort property in the future.

Lowe’s advised the City’s Advisory Team that their multi-year operating projection indicates that the net worth of Terranea as of December 31, 2013 will be sufficient to refinance the resort and completely pay-off the TOT Rebate balance owed the City. The City’s Financial Advisor has reviewed Lowe’s operating projections and expressed that it is “possible, but uncertain” whether or not their will be sufficient equity as of December 31, 2013 to repay the City. The Advisory Team believes that any determination whether or not Terranea will have sufficient working capital to reach stabilized operations should be deferred until after HVS has completed their review. This is especially significant in the event a guarantee of payment is not provided. Finally, it is conceivably possible (even if it is arguably unlikely) that if the mezzanine lender were to take ownership (by foreclosure or by a deed-in-lieu of foreclosure transaction), a refinancing or sale that would generate net proceeds could be delayed.

Security - Balance of Advances and Interest Accrued From TOT Rebate Arrangement – Debtors Bound to Payment by Ordinance

Several key factors regarding the proposed advances of the TOT rebate and interest thereon are as follows:

- Terranea’s obligation for the TOT rebate and interest owed to the City would be unsecured;
- Based upon the interest rate proposed herein, the total balance owed the City could be as much as \$11 million (including interest) on December 31, 2013, the due date;
- If the City’s source of repayment, “net proceeds” from sale or re-financing, after payment to lien holders, is less than the amount owed the City and the balance continues until paid in full with the next capital event, the City’s collection risk increases significantly and the value of the uncollected value decreases with time; and

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- The City's hospitality consultant, HVS, has told the Advisory Team that the resort industry is "resetting itself" (as well as property values) and the recovery is not expected to occur until at least 2013 [*Note: Therefore, projected net worth computations of resort projects will likely follow the same trend and the timing of the City's repayment from "net proceeds" is uncertain.*]

The construction of Terranea has been funded with three secured loans, each of which is secured by a deed of trust encumbering the resort and its profits. Terranea's obligation for the TOT rebate and interest owed to the City would be unsecured. As the resort is the only asset of value involved here, those secured lenders will be repaid before the City is repaid. Lowe's legal counsel and the City Attorney have proposed that the City Council adopt an ordinance that would include terms and conditions of the proposed TOT Rebate Arrangement. The ordinance would also establish the purpose and benefits to the City's residents, including: "...to provide support for the operation and maintenance of first class hotel facilities within the City of Rancho Palos Verdes, which will provide benefits to the City's residents, enhance the tourist and travel experience for visitors to the City of Rancho Palos Verdes, increase the sales tax revenue to the City, provide transient occupancy tax revenue to the City, and provide attractive amenities to the public and desirable visitor serving facilities and experiences along the California coast."

Although the proposed ordinance is not a lien, notice that Terranea has opted into the TOT rebate program would be recorded against its property. Therefore, the proposed ordinance would then show up on a title report that any buyer or refinancing lender would receive prior to a purchase or refinancing of Terranea.

It is believed by the Lowe's legal counsel that such buyer or refinancing lender then would not close the purchase or refinancing transaction without assurance that the City would be paid net proceeds, after all other liens are satisfied, through the escrow (which they could accomplish by their escrow instructions). Regardless of whether the proposed ordinance is recorded, the ordinance will require the net sales proceeds, after payment to lien holders, to be paid to the City or else the buyer (or refinancing lender) will be liable for it. Lowe's legal counsel believes that the ordinance would be binding on a buyer even if not recorded. Lowe's legal counsel believes that Terranea (or any real estate counsel representing the a seller or an owner involved in refinancing) would disclose the ordinance to any buyer and refinancing lender (or they would discover it in their due diligence), and that the seller/owner, in any event, presumably would comply with the ordinance and make arrangements to have the net proceeds paid to the City through the escrow.

Notwithstanding the intent of the recordation of the proposed ordinance, it does not create a security interest. The City's rights would still fall behind the secured lenders in a foreclosure, bankruptcy or similar proceeding.

Summary of Risk and Recommendation

Lowe's have not proposed a firm date on which the TOT would be repaid to the City.

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Rather, the proposal contemplates that the TOT would be repaid from the proceeds of a refinancing or sale, after payment to lien holders, of the resort property in the future. The City's advisory Team believes that in light of the uncertainty of the City's repayment, the significance of the amount at risk (as much as \$11 million) and the lack of adequate security that follows that land (i.e. a deed-of-trust); a guarantee of payment on or before December 31, 2013 is prudent.

ALTERNATIVES

Alternative 1 – 27 Month (Maximum \$8 Million) TOT Rebate Arrangement

The proposed TOT Rebate Arrangement between Terranea (together with any successor owners) and the City would be implemented in accordance with an ordinance approved by the City Council. The ordinance would apply to any successor owners of Terranea. The TOT Rebate Arrangement would be subject to, but not limited to, the following terms and conditions:

- 1) The total amount of the advances will not exceed \$8.0 million, or TOT revenues collected during the first twenty seven months of Terranea's operations, whichever occurs first. The City will receive payment of the TOT revenues collected by Terranea and will advance them to Terranea in the form of monthly rebates within five business days, subject to verification via an accounting review.
- 2) Advances will be charged to the Rebate Arrangement balance on the date the advances are remitted to Terranea. Advances will accrue interest at the 3-month LIBOR rate plus a margin of 800 basis points (about 9% currently) and will be added to the Rebate Arrangement balance quarterly (resulting in quarterly compounding). Terranea may elect to extend the repayment date through December 31, 2014. The interest rate during the period of the one-year extension would be the 3-month LIBOR rate plus 1, 100 basis points. In the event the balance is not paid in full on or before December 31, 2014, the interest rate would be the 3-month LIBOR rate plus 1,300 basis points.
- 3) All net proceeds from any sale or re-financing and net operating revenues after all payments due to lien holders of the project, shall be applied to repay the balance owed from advances and interest thereon. If they do not furnish sufficient proceeds to pay the City in full, the obligation survives through all subsequent re-financings and sales events until the Rebate Arrangement is completely repaid. (Net proceeds are what are left after repayment of the current principal amount contemplated by, and all accrued interest, under the Corus loan, the mezzanine loan and the Turner loan, but before any other unsecured loans, including loans owed investors). Lowe's shall provide a guarantee from a creditworthy source that is acceptable to the City to secure timely repayment of the TOT Rebate Arrangement.
- 4) Until the balance owed from advances and interest thereon is paid in full, Terranea will provide the following special discounts to residents of the City (who will register

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with Terranea and pay an annual fee starting at \$25 to receive the benefits):

- a. Discount of 25% off the best available room rate for a comparable room on a comparable date;
 - b. Discount of 10% off fees for use of the spa and golf course; and
 - c. Discount of 10% off food and beverage costs other than alcoholic beverages.
- 5) Advances pursuant to the TOT Rebate Arrangement shall immediately cease upon any change of managerial control, majority ownership and/or significant operating control during the 27-month term of the TOT Rebate Arrangement.
 - 6) Advances pursuant to the TOT Rebate Arrangement shall immediately cease in the event Terranea, or any of its affiliates, receive more than \$20 million of equity during the 27-month term of advances in accordance with the TOT Rebate Arrangement.
 - 7) Terranea, or any other affiliate of Lowe, shall pay for all costs associated with the TOT Rebate Arrangement, including, but not limited to the due diligence performed by the City, preparation of documents, reviews and audits performed to monitor performance and compliance by Terranea, representation in any legal proceedings during the term of the TOT agreement and collection of any amounts owed the City pursuant to the TOT Rebate Arrangement.
 - 8) During the 27-month advance period, Terranea shall refrain from making any requests for property tax assessment valuation reductions.
 - 9) Lowe's shall indemnify the City for any actions, claims, or lawsuits that are brought against the City specifically as a result of this TOT Rebate Arrangement.

No advances pursuant to the proposed TOT Rebate Arrangement would be made until the following conditions are met by Terranea and/or Lowe's to the complete satisfaction of the City:

- A. Lowe's shall provide the City with the 2008 audited financial statements for Long Point Holdings, LLC, the owner of Long Point Development, LLC (Terranea) with an unqualified "clean" opinion. Lowe's shall provide the City with the audited financial statements for each year thereafter during the term of the TOT Loan.
- B. The City Council shall establish an ordinance that would contain provisions that the present owner and all future owners will be bound to these terms and conditions until the TOT Rebate Arrangement has been repaid in full. Lowe's shall provide an unconditional guarantee from a creditworthy source that is acceptable to the City to secure timely repayment of the TOT Rebate Arrangement.
- C. Lowe's shall provide the City and the City's Financial Advisor with a signed representation letter (tentatively dated May 21, 2009), titled "*City of Rancho Palos*

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Verdes Terranea Project Financial Review”, signed by the Bob Lowe, Rob Lowe, Peter O’Keefe and one chief financial officer of Long Point Development, LLC.

- D. Lowe’s shall provide the City with satisfactory proof that Terranea has obtained sufficient funds to begin operations in accordance with the City’s approved conditions of approval and issuance of an occupancy permit and continue operations during all periods for which it is projected that Terranea will experience net losses and net deficit cash flow.
- E. Lowes shall provide the City with satisfactory proof that it has extended the Corus loan and received the final \$12.5 million of advances.
- F. Lowes shall provide the City with satisfactory proof that it has received a \$1 million final advance from Mezzanine lender.
- G. Lowe’s shall provide the City with satisfactory proof that Terranea has obtained sufficient cash resources to continue operations through the duration of the 27-month advance term of the TOT Rebate Arrangement.
- H. Lowes shall provide the City with satisfactory proof and or a written representation that it is in compliance with all laws, provisions of its loan covenants with all secured creditors and provisions of all agreements with equity owners of Terranea.
- I. Terranea must be open for business and fully operating in accordance with the City’s approved conditions of approval and issuance of a final certificate of occupancy by August 1, 2009.

Pros & Cons:

The foregoing Alternative 1 has the following pros:

- I. The City’s financial assistance is expected to help ensure that Terranea will open and operate successfully and immediately become the largest economic engine in the City, providing up to 500 jobs, thousands of new tourism customers in the area seeking services and paying taxes.
- II. The City’s financial assistance is expected to ensure that Terranea will become the largest single generator of tax revenue to the City, providing as much as \$8 million of tax revenue once it reaches stabilization.
- III. Terranea is expected to provide significant amenities to the residents of the City and the public, including additional dining options, a golf course, and maintained public trails and beach access.
- IV. The City’s financial assistance is expected to improve the likelihood that the City will receive an uninterrupted stream of TOT and other tax revenue after the 27-month

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

May 26, 2009

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term of advances. HVS, the City's resort and hospitality consultant, expressed that if Terranea did not commence operations, it would probably take as long as 18 months for the hotel property to work through proceedings that would lead to operating under new ownership.

- V. The forgoing Pros are based upon an assumption that the Resort will not open timely without the financial assistance provided by the City.
- VI. Residents would receive Resort discounts ranging from 10% to 25% until the TOT advances and interest are paid in full.
- VII. Lowe's has asserted that the net worth of Terranea as of December 31, 2013 (value of Terranea Resort less the total debt outstanding) will be sufficient to pay the balance of advances made pursuant to the TOT Rebate Arrangement and interest thereon. Their assertion is based upon capitalization of their projected net operating income for the year 2013 using a rate of 8%. However, if the City Council desires to make its decision based upon expectation of repayment, the Advisor Team strongly recommends that the underlying assumptions used by Lowe's should be reviewed by the City's hospitality and report consultant.

The foregoing Alternative 1 has the following cons, which are discussed below:

- Credit risk similar to a commercial real estate lender;
 - Collection risk for an unsecured debt;
 - Temporary loss of revenue for City residents;
 - No guarantee that City assistance will prevent Terranea from closing;
 - The request for financial assistance is not being used to induce development to the City, like most other similar arrangements seem elsewhere;
 - The draft FY09-10 budget is currently unbalanced, and the City faces impacts of the state budget crisis;
 - The County Assessor is reviewing parcels for re-assessment, which would impact City revenue;
 - The City will need to increase service levels with Terranea's opening, without the TOT to pay for them;
 - Without the TOT, the City will forego funding up to \$8 million of capital projects over 27 months;
 - The City may be required to provide matching contributions for any federal stimulus monies received;
 - Legal costs may be incurred to enforce collection;
 - Legal costs may be incurred to defend the City against other claims for assistance; and
 - Significant additional staff time will be incurred to administer a TOT arrangement.
- VIII. Credit risk - In the event the City enters into an agreement with Terranea to advance TOT, the City will carry repayment risks similar to those of a commercial real estate

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

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lender. The financial plan for the project includes the sale of casitas and villas to enable pay-down of the senior and mezzanine debt. The balance owed the City from TOT advances and interest thereon would fall behind the senior debt, mezzanine debt and a trade note. The City assumes the risk of delayed repayment in the event the market value of Terranea is not sufficient to complete the sales of units and derive sufficient net proceeds, after payment to lien holders, to repay the City upon its sale, re-financing or re-capitalization. Lowe's advised Staff and its advisors that their financial plan calls for sale of all units before the end of 2012. The Advisory Team believes this may be difficult, at best, in this economic climate. HVS reports that the hotel industry is "re-setting itself" in economic terms; and that revenue per available room (a common measure of the industry's fiscal health) has dropped sharply from 2007, and may not fully recover to the prior level until 2013 or later. This decline has produced a corresponding reduction in the value of many hotel properties – in some cases by as much as 40%. Furthermore, there is no guarantee that repayment will not be delayed considerably as future re-financing or re-capitalization events are not guaranteed to occur.

- IX. Loss of \$8 million for City residents - HVS expressed that if Terranea did not commence operations, it would probably take as long as 18 months for the hotel property to work through proceedings that would lead to operating under new ownership. However, HVS also stated that it is also conceivable that Terranea's lenders and owners may be motivated to ensure that Terranea opens successfully to protect their respective interests. Accordingly, it may not be necessary for the City to provide the proposed TOT Rebate Arrangement. Assuming that Lowe's (or another entity that gains control of the resort) will obtain necessary working capital without assistance from the City, the City will likely receive as much as \$8 million of TOT revenue for resident services and infrastructure improvements.
- X. There is no guarantee that the City's assistance will prevent Terranea from closing if the economy does not improve in the near term, and there is no guarantee that Terranea will not request additional assistance from the City to prevent closing.
- XI. The City has never provided a developer with financial assistance. The City Council must weigh the "policy" and other fiscal considerations, including whether to provide financial assistance to a commercial enterprise, whether the City will receive adequate compensation for the TOT Loan in light of the credit risk, and whether it's appropriate for the City to act, in effect, in the capacity of a commercial real estate lender. In addition, the transaction would likely set a precedent empowering other developers to request assistance from the City.
- XII. Other cities have provided this type of assistance as a part of an inducement to build and operate a hotel with the resultant economic stimulus and revenue benefits to the city. These agreements or ordinances, which provide for a TOT Loan to the developer are typically approved prior to construction of the project. The request for financial assistance immediately prior to opening for operations is nearly, if not

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

May 26, 2009

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unprecedented.

- XIII. As described in the Executive Summary, the City's draft FY09-10 General Fund budget is currently unbalanced, and General Fund reserves are essentially at the policy threshold level. City facilities have deteriorated over the last several decades, although the City Council has acted to restore the condition of streets, roadways and the storm drain system. The prospect of providing financial assistance to Terranea must be weighed against the City's current needs and demands.
- XIV. Due to the wide-spread decline in property values, the Los Angeles County Assessor is proactively reviewing up to 500,000 parcels (about one-fifth of all parcels in the county) for potential re-assessment without waiting for applications from individual property owners. The Assessor will not provide a list of properties being reviewed in the City until the "end of June or early July". Staff has estimated a worst-case scenario General Fund revenue impact of up to \$260,000. Without further information from the County Assessor, Staff cannot currently determine whether the likely impact will be relatively immaterial, or closer to the worst-case scenario. Of course, any re-assessment of the Terranea parcel would have an impact on the City's revenue as well.
- XV. The City will need to provide additional services directly resulting from the opening of Terranea Resort; including, but not limited to, traffic signal maintenance, additional roadway and pavement maintenance and possibly additional public safety. These additional services would be borne by the City's General Fund without the benefit of TOT to pay for them during the initial 27 months of Terranea's operations. However, if the City Council elects to approve the 27-month alternative, other additional tax revenues derived from Terranea may be sufficient to mitigate the additional service costs.
- XVI. Although not included in the budget for FY09-10 and FY10-11, future TOT revenue from Terranea was expected to become a possible source of funding for the City's capital projects. Without the TOT, the City will not be able to fund up to \$8 million of capital projects over 27 months. Based upon the Draft 2009 Capital Improvement Plan (CIP), deferred projects that are currently unfunded may include additional arterial pavement rehabilitation, sidewalk improvements, recreational and other facilities, storm drain rehabilitation, and roadway stabilization. The total estimated cost of unfunded projects identified in the Draft 2009 CIP ranges from \$77 million to \$117 million.
- XVII. The federal government is currently in a period of providing financial assistance to local governments for various capital projects (i.e. American Recovery and Reinvestment Act). In order to secure federal assistance, a local government may be required to provide a matching contribution. Staff and its consulting grant advisor have been working on several possible grant applications that would require a match using General fund monies. The most noteworthy is the possible grant application for

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

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a combined multi-year project in the area of Palos Verdes Drive East and the adjacent storm drain project (formerly known as San Ramon/25th Street). The required match could be as much as \$4 million, although it is not known whether any of it would be shared with any other local agencies. Although it is too soon to designate and quantify, there may also be other grants that may be worthy of application and would require a match by the City.

- XVIII. Cost associated with collection risk - The City may incur substantial legal costs if it becomes necessary for the City to legally enforce repayment of the loan in accordance with the Ordinance.
- XIX. Substantial legal costs may be incurred to defend the City if others make a claim for tax concessions. Donald Trump has threatened a lawsuit to obtain a similar rebate of taxes.
- XX. The City will incur hundreds of hours of additional staff time (and cost) to administer the TOT Rebate Arrangement, including processing advances within 5 days of TOT receipt, as well as the accounting and documentation of the loan balance until paid in full, monitoring the progress of repayment from cash flow or events leading to and including a sale or refinancing event.

Alternate 2 – 24 Month (Maximum \$3 Million) 50% TOT Rebate

The proposed 24 Month - 50% TOT Rebate between Terranea and the City would be in accordance with an agreement, rather than an ordinance. The 24 Month - 50% TOT Rebate would be subject to, but not limited to, the following terms and conditions:

- 1) The total amount of the advances will not exceed \$3.0 million, or TOT revenues collected during the first twelve months of Terranea's operations, whichever occurs first. The City will receive payment of the TOT revenues collected by Terranea and will advance them to Terranea in the form of monthly rebates within five business days, subject to the City's accounting review.
- 2) Advances pursuant to the 24 Month - 50% TOT Rebate shall immediately cease upon any change of managerial control, majority ownership and/or significant operating control during the 24 month term of the TOT Rebate.
- 3) Advances pursuant to the 24 Month - 50% TOT Rebate shall immediately cease in the event Terranea, or any of its affiliates, receive more than \$20 million of equity or borrowed funds during the 24 month term of advances in accordance with the TOT Rebate.
- 4) Terranea, or any other affiliate of Lowe, shall pay for all costs associated with the 24 Month - 50% TOT Rebate, including, but not limited to the due diligence performed by the City, preparation of documents, reviews and audits performed to monitor

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

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performance and compliance by Terranea, representation in any legal proceedings during the term of the TOT agreement and collection of any amounts owed the City pursuant to the TOT Rebate.

- 5) During the term of the 24 Month - 50% TOT Rebate, Terranea will provide the following special discounts to residents of the City (who will register with Terranea and pay an annual fee starting at \$25 to receive the benefits):
- a. Discount of 25% off the best available room rate for a comparable room on a comparable date;
 - b. Discount of 10% off fees for use of the spa and golf course; and
 - c. Discount of 10% off food and beverage costs other than alcoholic beverages.

No advances pursuant to the proposed 24 Month - 50% TOT Rebate would be made until the following conditions are satisfied to the complete satisfaction of the City:

- A. Lowe's shall provide the City with the 2008 audited financial statements for Long Point Holdings, LLC, the owner of Long Point Development, LLC (Terranea) with an unqualified "clean" opinion.
- B. Lowe's shall provide the City and the City's Financial Advisor with a signed representation letter (tentatively dated May 21, 2009), titled "*City of Rancho Palos Verdes Terranea Project Financial Review*", signed by the Bob Lowe, Rob Lowe, Peter O'Keefe and the chief financial officer of Long Point Development, LLC.
- C. Lowe's shall provide the City with satisfactory proof that Terranea has obtained sufficient funds to begin operations in accordance with the City's approved conditions of approval and issuance of an occupancy permit and continue operations during all periods that Terranea experiences net losses and net deficit cash flow.
- D. Lowes shall provide the City with satisfactory proof that it has extended the Corus loan to the satisfaction of Corus Bank and received the final \$12.5 million of advances.
- E. Lowes shall provide the City with satisfactory proof that it has received a \$1 million final advance from Mezzanine lender ("MEZZ").
- F. Lowe's shall provide the City with satisfactory proof that Terranea has obtained sufficient cash resources to continue operations through the duration of the 24-month term of the TOT Rebate.
- G. Lowes shall provide the City with satisfactory proof and or a written representation

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

May 26, 2009

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that it is in compliance with all laws, provisions of its loan covenants with all secured creditors and provisions of all agreements with equity owners of Terranea.

- H. Terranea must be open for business and fully operating in accordance with the City's approved conditions of approval and issuance of the final occupancy permit no later than August 1, 2009.
- I. Lowe's shall reimburse the City for all costs of professional services associated with the development of the TOT Rebate, including, but not limited to, the City's financial advisor, law firm and hospitality and resort consultant.

Pros and Cons:

The foregoing alternative proposal has the following pros:

- I. It is relatively straightforward and minimizes complex issues, including legal, compliance and collection risk that are associated with the proposed 27-month TOT Rebate.
- II. It eliminates the impact that would result from the uncertainty of collection on financial forecasting, budgeting, capital project planning and other initiatives, as well as public criticism that might occur if a loan was not timely repaid.
- III. It eliminates need for developing a "collectable" means of repayment with minimal risk, such as unencumbered collateral or a guaranty and issues relating to public disclosure of a guarantor's financial statements.
- IV. It should be received favorably by all lenders. There is no additional debt, and no lien or recorded "encumbrance". It is simply a new, assignable source of working capital for the operation of Terranea.
- V. It does not adversely affect the City budget because no TOT was budgeted for the first year of Resort operations. As much as \$5 million of TOT could be available for City operations and capital improvement projects during FY10-11 during the State's on-going budget crisis.
- VI. It should significantly reduce the up-front consulting costs and legal fees that would be incurred in completing due diligence with respect to (and negotiating) the developer's proposal, as well as reduce consulting fees, legal fees and administration costs that would be incurred in connection with the developer's proposal (i.e. in monitoring capital events---such as a sale or refinancing--- that might repay the rebate, analyzing the effect of and participating in a bankruptcy of the developer, defending attacks on the ordinance, etc.).

The foregoing alternative proposal has the following cons:

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

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- VII. The City will transfer up to \$3.0 million of TOT to Terranea without repayment. It will be a permanent loss of funding for operations and capital projects during FY09-10.
- VIII. The \$3.0 million TOT alternative may not enable Lowe's to negotiate for additional equity based upon an \$8 million commitment by the City in accordance with the proposed 27-month TOT.
- IX. The \$3.0 million TOT alternative is significantly less than the \$10-12 million of working capital that Lowe's asserts is necessary to transition into an operating resort.

Alternative 3 – Defer or Reject the Request

The City Council may defer or reject the request on the grounds that: (i) the mezzanine lender or Lowe's may ultimately provide the funds if the City declines to do so, especially considering that the value of Terranea (and in particular the for-sale units) appears to be maximized by opening and operating the resort; (ii) Corus Bank's current position that its fully-secured loan is currently in default and could conceivably force the mezzanine lender to take action, possibly even paying or purchasing the Corus loan, the senior loan and then ultimately provide the working capital funds requested (in order to maximize the value of its investment and minimize its potential losses); (iii) it is conceivably possible that a sale or refinancing that would generate net sale proceeds or net refinancing proceeds could be significantly delayed (for example, if the mezzanine lender obtains control and/or ownership of the resort, a sale or refinancing will depend on its business plan for the resort); and (iv) In light of the uncertainty of the financial status of Terranea's primary lender, Corus, whether or not Terranea will receive its final construction loan draws, and whether or not Terranea will obtain sufficient additional working capital to open and operate Terranea. Although Lowe's have said that they expect to continue to own and operate Terranea, a significant amount of uncertainty appears to currently exist regarding the ultimate resolution of the Corus loan default, especially in light of Corus' unlikely survival past mid June 2009.

OTHER INFORMATION

Cost of City's Advisor's

On May 19, 2009, the City Council approved the spending authorization of up to \$50,000 for services provided by the City's Financial advisor for services related to the due diligence process and participation as a member of the City's Advisory Team. The staff report included a statement:

"Staff recommends that the May 26 staff report provide for a request for reimbursement by Lowe enterprises for consultant costs made necessary by their request for TOT financial assistance".

The Conditions of Approval include a provision that the developer, Lowe's, shall pay for the

TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE

May 26, 2009

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cost of such professionals. Approximately 8 years ago, the developer funded a trust deposit to pay for the cost of HVS to review tax revenue projections. Staff's recommendation includes a request that Terranea fund a trust deposit in the amount of \$75,000 to pay for the City's cost of professional services, including due diligence, document preparation, and other work product necessitated by the request for financial assistance.

Lowe's Suggestion to Increase TOT Rate from 10% to 12%

Lowe's initial proposal included a suggestion that the City should increase the TOT rate from 10% to 12% until the TOT Rebate advances and interest thereon are repaid in full. Lowe's suggested that the TOT rate would then return to the original 10% rate. Lowe's stated that they would support the City in an effort to secure voter approval for an increase of City's TOT rate from 10% to 12% for a period extending through the date on which the total TOT Loan has been repaid in full from all sources.

Proposed TOT Rate Increase to 12% Requires Majority Vote of the Residents

The increase of the TOT rate from 10% to 12% would require a majority affirmative vote of the registered voters during a municipal election. The City Council could act to place a ballot measure on the November 2009 ballot. The cost of submitting the ballot measure and providing public information prior to the election is unknown at this time.

Incremental TOT Resulting From Rate Increase for Lowe's Benefit

Notwithstanding whether the voters would approve an increase, the incremental 2% increase of the TOT would be retained by the City and applied to repayment of the TOT advances and the interest thereon. It's important to note that the incremental TOT (and repayment) would be funded by taxpayers, not Terranea. For every incremental dollar of TOT paid by taxpayers staying at Terranea, Terranea's balance owed the City would be reduced by the same dollar. If there is no timely sale or re-financing of Terranea, Staff estimates that it would take about 16 years of an increased TOT rate to repay the TOT Loan provided to Terranea.

Attachments:

Memorandum to City Council, Dated May 4, 2009, TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIENT OCCUPANCY TAX REVENUE – NET PROCEEDS AVAILABLE



MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: DENNIS McLEAN, DIRECTOR OF FINANCE & INFORMATION TECHNOLOGY

DATE: MAY 4, 2009

SUBJECT: LATE CORRESPONDENCE - TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIT OCCUPANCY TAX REVENUE – NET PROCEEDS AVAILABLE

REVIEWED: CAROLYN LEHR, CITY MANAGER

The source of repayment of the proposed Transit Occupancy Tax (“TOT”) Loan with an affiliate entity of Lowe Enterprises (the “Lowe’s”), as described in the Staff Report, dated May 4, 2009, is based upon the following:

- 3) “The City will have the right to be repaid from any sale, re-financing or re-capitalization of the project through receipt of 100% of the “net sale proceeds” or “net financing proceeds” as the case may be. If initial re-financings or re-capitalizations do not furnish sufficient proceeds, the obligation survives through all subsequent events until the loan is fully repaid. (Net proceeds are what are left after refinancing or repayment of the Corus loan, the mezzanine loan and the Turner loan – the “member loans” will be treated as equity.) *Note: Lowe’s requested that Staff advise the Council that its movement from 5% of net proceeds to 100% of net proceeds was significant. Staff believes it was essential to improve the security of repayment for the City.*
- 4) The City Council would establish an ordinance that would contain provisions that the present owner and all future owners will be bound to these terms and conditions until the TOT loan has been repaid in full. Both the City and Lowe’s would continue to develop an agreeable mechanism to secure repayment of the TOT Loan.”

**TERRANEA RESORT – REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE
TRANSIT OCCUPANCY TAX REVENUE – NET PROCEEDS AVAILABLE**

May 4, 2009

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If the Council is inclined and directs Staff to undertake a more complete legal, economic and financial review, the review would include an assessment of the net proceeds that may be available to repay the City. However, this Memorandum also serves the purpose of providing the City Council with advance caution that such a calculation will not be conclusive. Among other unknown factors, the net proceeds available to repay the City will be dependent upon the future market value of the Terranea Resort and the future sales activity of sales of “for sale units” that would provide proceeds to pay senior and junior debt. It appears as though the range between a best case and worst case scenario may swing by \$250 million.

A conclusive determination is virtually impossible during any period in which the “for sale units” are on the market. The re-financing transaction itself depends upon improved conditions in the credit markets and the presence of willing lenders in the future. Upon completing an assessment, Staff may not be able to offer a meaningful conclusion regarding whether or not net proceeds will be available to repay the proposed TOT Loan on or before December 31, 2013.



May 18, 2009

Mayor Larry Clark and Members of the City Council
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

Dear Mayor Clark and Rancho Palos Verdes City Council:

As the primary voluntary organization uniting businesses, professional people and the community in the cities of Rancho Palos Verdes, Palos Verdes Estates, Rolling Hills and Rolling Hills Estates, the Palos Verdes Peninsula Chamber of Commerce has been observing the progress of Terranea resort since Lowe Enterprises offered its vision for the project in 1997. Past Chamber Board Chairs and Members have stood before the City Council in support of the Terranea Resort and the positive impact the resort will have on the local economy and the City of Rancho Palos Verdes.

Our 450 members include a broad array of business in the Palos Verdes community, from large institutions to independent entrepreneurs and non-profit organizations. The Chamber has closely followed Lowe Enterprises' request to the City of Rancho Palos Verdes for the temporary sharing and deferred repayment of Terranea Resort's Transient Occupancy Taxes (TOT). Lowe Enterprises Chairman and CEO Robert Lowe and Terranea Executive Vice President and Managing Director Terri Haack have met with Chamber membership and the Chamber's Legislative Affairs Committee to discuss the details of the request.

With full understanding of the current issues at stake, and because of the major positive impact the opening of Terranea will have on the local economy and business climate, the Palos Verdes Peninsula Chamber of Commerce Board of Directors endorses Terranea's proposal and urges the Council to approve it.

During these highly challenging economic times, it is essential to the economic prosperity of Rancho Palos Verdes – as well as to the other municipalities in the surrounding area – that Terranea open on schedule. Without Terranea, the City would not receive the TOT taxes. And although Terranea is requesting a deferral of TOT just before opening due to the economic downturn, it is not uncommon for cities to help large tax generators such as hotels.

Continued strong and successful management of Terranea will provide enormous support for our local economy. Terranea has already made significant purchases for supplies, goods and services from Chamber members and plans to continue purchases from local businesses. Guests will receive copies of the Chamber's Business and Community Guide encouraging guests and visitors to patronize RPV and local businesses, retail stores and restaurants, recreation and amenities. Terranea guest services will include shuttles to Golden Cove Center and other local shopping, dining and recreation areas on the Peninsula. This will generate badly needed revenue for struggling businesses, and sales tax revenue to the City, contributing to our local economy.

Additional support from the project will come in many forms. Direct and immediate economic benefits from Terranea guests are expected to result in increased spending at local businesses. This revenue is in addition to the estimated \$65 million in TOT funds Rancho Palos Verdes will receive over the first 10 years of Terranea's operation. Over \$1 million in retail sales, property and golf taxes will be paid during the first 27 months of operation. Finally, Rancho Palos Verdes residents will benefit from discounts on room rates, spa services and restaurant food and beverages.

Terranea is currently the single largest new job generator in the Los Angeles County region, creating an estimated 600 new, permanent jobs at the height of the recession. This will provide further economic benefits for the community. Terranea has given jobs to local residents... 34% of the new hires reside on the Palos Verdes Peninsula and approximately 70% of the total number of associates live in the South Bay region. Associates will be encouraged to volunteer for local non-profit groups (with time off to do so) which will help raise funds and awareness for our Chamber Member charitable organizations. The resort facilities also offer the largest conference space in the region for business meetings and fundraising events. The resort is attracting national and global businesses and guests to the region. Some may choose to purchase homes in Rancho Palos Verdes or on the Peninsula in the future.

There are many levels of economic benefits to the City and our communities with the successful launch of Terranea. Taxes paid by the resort will also help to support our schools, which are facing drastic revenue reductions. Revenue generated will help the City continue to provide excellent service in the areas of police and fire protection, road maintenance and other municipal services. With the defeat of the Propositions and the possibility of the State borrowing from the cities to help balance the State budget, revenues generated by Terranea will help counterbalance potential future losses.

The long term benefits to the City of Rancho Palos Verdes far outweigh the short term deferral of TOT revenue. Extraordinary circumstances call for extraordinary steps and leadership. The Palos Verdes Peninsula Chamber of Commerce strongly urges the City of Rancho Palos Verdes to approve Terranea's TOT request.

Sincerely,



Randy Bowers
Chairman of the Board
Palos Verdes Peninsula Chamber of Commerce

Palos Verdes Peninsula Chamber of Commerce Officers and Directors 2009

Officers:

Chairman:	Randy Bowers, Malaga Bank
Chair-Elect:	Sharon Ryan, An Uncommon Journey
Secretary/Treasurer:	Steven Kovary, Steven A. Kovary, CPA
Past Chair:	Chuck Smyth, Chasmar Insurance

Vice Chair Membership:	George Walker, Vistage
Vice Chair Economic Development/Com. Affairs:	Liz Griggs, Promenade on the Peninsula
Vice Chair Business Advocacy:	Kathy Gould, Palos Verdes Library District

Directors:

Kathy Berg – Kathy Berg Public Relations
Allen Bond – Countrywide Home Loans
Michael Brophy – Marymount College
Gerry Carrese – Coldwell Banker
Jackie Crowley – RE/MAX Palos Verdes
Barbara Dye – Rolling Hills Preparatory School
Tracy Farman – Ladies Workout Express
Terri Haack – Terranea Resort
Sherry Kramer – Continental Development Corporation
Marilyn Lyon – South Bay Environmental Services Center
Marc Massari – Raymond James & Associates
Shawn Nejad – Rancho Palos Verdes Flowers
Art Yoon – Cox Communications

Dennis

Sea Bluff Homeowners Association

Board of Directors

Sandie Nelson, President
Dave Emenhiser, Vice President
Dick Jones, Member
Jolaine Merrill, Member
Joe Raiti, Member
Becky Poe-Anderson, Member
Bob Nelson, Secretary/Treasurer

RECEIVED

MAY 20 2009

PLANNING, BUILDING AND
CODE ENFORCEMENT

City Council

City of Rancho Palos Verdes

May 20, 2009

**TERRANEA RESORT AND SPA
Transit Occupancy Tax Rebate Proposal
HOMEOWNER VOTE RESULTS**

Mayor Clark and Council Members,

It is our understanding on May 26th you will be reconsidering Terranea Resort's proposal to have our City rebate their transit occupancy Tax (TOT) for the period of their 1st 27 months of operation. Then Terranea Resort will repay our City the full amount of our City's rebate.

We understand the purpose of their request is to provide our new neighbor and substantial employer, roughly \$8 million of funding during their initial startup period.

We are so close to the end of what Sea Bluff homeowners recognize has been a 10-year struggle, we felt they deserved to know what was said at your previous meeting on this issue and have a chance to voice their opinion on our City providing our new neighbor this funding.

So we took a homeowner vote using the following methodology: 60 homes, 60 ballots. Ballots returned, in pre-paid envelopes, to Horizon Management, Inc. who counted and provided results.

Question: Do you favor Rancho Palos Verdes rebating Terranea Resort's Transit Occupancy Tax for a period of 27 months, to be paid back to our City at that point?

Total ballots sent out: 60

Total ballots returned: 35 (58%) *not bad, look at turnout for recent election*

Of the 35 returned:

Voted 'yes': 27 (77%) So a supermajority of those voting, voted in favor of rebating Terranea's TOT.

Voted 'no': 8 (23%)

In our May 19, 2009, Board Meeting, our Board was apprised of this vote.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sandra M. Nelson

Sandra M. Nelson
President, Sea Bluff HOA
6612 Channelview Court
Rancho Palos Verdes, CA 90275
Tel: 310-544-4632

Date *5/20/09*

cc: *Todd Majcher, Destination Resorts*

Dennis Mclean

From: MathysRW@aol.com
Sent: Tuesday, May 05, 2009 12:59 AM
To: cc@RPV.com
Subject: Terranea

Mayor Clark and members of the RPV City Council

I wish to complement the Council on it's very professional handling of the Terranea request for financial assistance at this crucial time in the projects development. I would have to agree with those who feel there should be some interest consideration to encourage rapid return of the money.

I would like to inject a concern that I feel is important. In the past, I have experienced delays, in what started out to be smooth running projects, from such things as sub contractor labor problems or endless rain storms, that shut down the project. Once you loose your momentum, you can never get the project back on tract. Terranea is on a roll. A delay in the opening in June could have a devastating negative impact on the success we are all waiting for. It's money in our pocket. Further more, Lowe has done an outstanding job so far and I'm sure they will continue to make the project a big success. I would hate to see them loose the Hotel to Trump or some one else who might not have the success track record that Lowe has. Therefore, I would urge the Council to continue working with Terranea to insure they are able to open on time and move on to the benefit of all of us.
Ray Mathys

Remember Mom this Mother's Day! [Find a florist near you now.](#)

Dennis Mclean

From: rschack2008 [rschack2008@cox.net]
Sent: Monday, May 11, 2009 4:23 PM
To: cc@rpv.com
Subject: Terranea Financial Assistance

We read with interest the report concerning Terranea's request for financial assistance using future Occupancy Tax Revenue. We are not opposed to the concept. We believe the RPV City Council should be most concerned with the viability of the project and its long-term tax benefits. We would approve of the city adopting an agreement that would ensure Terranea's success.

We recognize that the Trump organization may view things differently. Because of the lack of cooperation from them we would oppose any accommodation of their wishes provided there are no legal ramifications.

Finally we have not purchased, nor do we intend to purchase any property in the project so we have no personal financial interest in the matter.

Ralph & Gloria Schack
30205 Avenida De Calma
Rancho Palos Verdes

Dennis Mclean

From: Michael Barth [michael.barth@barthlaw.com]
Sent: Thursday, May 07, 2009 4:27 PM
To: cc@rpv.com
Subject: Terranea Resort

The Honorable Mayor Clark
Honorable Council Members Gardner, Long, Stern and Wolowicz

Dear Mayor and Council Members:

I followed (and continue to follow) with interest the request by Terranea for a loan of up to \$8 million from the Transit Occupancy Tax revenue. I have read the Staff Report to you on this subject from Dennis McLean under date of May 4, 2009, watched the presentations and discussion during the May 4, 2009 Council Meeting and have read many subsequent news reports on the request. After reading, listening and thinking I have decided that I **support the request**. As you think through the request you will require not only logical thought but the ability to read tea leaves and to balance interests with the wisdom of Solomon. I reached my conclusion of support based upon my belief that (1) approval of this request will reduce the City's revenue in the short term and increase it thereafter and (2) Terranea may open on a timely basis or worse not survive without additional cash resources.

In reaching these conclusions I had to decide for myself if there are sources of financing available other than the City; if it is proper for the City to provide some of those cash resources; and the importance of repayment of the financing requested in full and in a timely fashion. I do hope that after your individual analysis of these issues, and others, that you conclude as I have that it is good policy for our City to help Terranea today so that it can help our City tomorrow. Thank you for taking the time to consider my point of view.

Michael A. Barth

Dennis Mclean

From: mjcasaburi@aol.com
Sent: Tuesday, May 05, 2009 8:57 AM
To: CC@rpv.com
Subject: Terranea "Bailout"

Good morning City Council,

I know that at least Councilman Stern is expecting emails ... so here comes mine!

I watched almost all of last night's (special) Council Meeting. I have not followed the Terranea project very closely, and I am certainly not an expert on RPV finances ... or finances in general. I try to familiarize myself with major issues and have been supportive of almost everything the city or school district have asked for in the last 23 years that I've been a RPV resident. I try to elect people I think I can trust and then let them do their job.

I know that The City is conscientious and conservative about financial planning ... and I know that the last year has taught us all that we cannot predict what is around the corner with respect to finances. Therefore, I would be surprised if The City has "spent" (or firmly designated) expected revenues from the T.O.T. from Terranea. As was stated last night, the Marineland site has not contributed anything to the city for about 20 years (other than the vast ocean view and the occasional opportunity to see our city in movies). Therefore, **if Terranea were to "borrow" back what is NEW revenue that it is generating for RPV ... that doesn't seem so terrible to me.** It is not as if they are reaching into my property tax dollars, sitting in a safe at city hall, with the potential of not repaying them. Wouldn't they merely be *delaying* what is *hoped to be* new revenue?

Another thought, the City and the Council seem to speak so well of the Lowe Enterprises and interactions with them. The project seems to have progressed along with little acrimony. That **is certainly not** the case always ... maybe nice people and good behavior should be rewarded?!

I applaud your efforts and encourage you to put in place the best safeguards for repayment of the "borrowed" T.O.T. that can be formulated in a reasonable period of time. I also hope that there can be an ending date certain for the "loan" (no extensions). Without Terranea, we would not be expecting this increase in our 'allowance'. From my standpoint, I think we should be able to wait a short time longer to receive it. (Yesterday it was announced that there will be no yearly Cost of Living increase for Social Security for the next two years ... people will just have to wait.)

Respectfully,

Mary Casaburi

Shopping for Mom? [Save yourself a little time and money on AOL Shopping.](#)

5/21/2009

Dennis Mclean

From: Bob & Melissa Clifford [clif2@cox.net]
Sent: Tuesday, May 12, 2009 6:11 PM
To: cc@rpv.com
Cc: clif2@cox.net
Subject: Terranea request
Attachments: Melissa Clifford.vcf

Gentlemen,

As a homeowner in RPV, I am writing regarding the pending financial assistance requested by Terranea on May 5, 2009.

The beauty & quality of this resort as created by the Lowe's organization and the revenue importance of Terranea to our city are clear. Terranea needs help from RPV and RPV needs all that Terranea has to offer. Terranea and RPV are, in reality, partners. Helping our partner makes sense.

In the current economic environment, RPV has far more to gain from helping Terranea open on time and proceed in fulfilling all the advance reservations that have already been made. Our citizens are greatly anticipating all of the amenities that will be available to us. We do not want the Trump organization to "steal" another local development and change its quality and relationship to our city. Every aspect of this development has been designed and built to greatly enhance its magnificent location.

Do not hesitate to act out of fear of the faction in our city that is always negative, always critical & always in favor of doing nothing. Many years have been invested in building a strong and valued partnership with Bob Lowe and his organization. The Lowe organization has worked respectfully, responsibly and patiently to meet all of our city's requirements in creating a world class resort. Now they are faced with the worst economic environment since the Great Depression. Terranea will be a huge asset to our city and to California and beyond. Please do all you can to assist Terranea to open and fulfill the dream they have worked so hard to bring to reality.

Partners help one another. Please do not jeopardize the future success of Terranea by refusing to help them in a small way now. The rewards for RPV and its citizens far out-weigh the inconvenience of waiting a few more years for the full financial benefits. Do everything you can to preserve this worthy partnership. Remember how long it has been since Marineland suddenly closed and our community began its mourning for what had been lost. Give us back something to be proud of and to enjoy in this historically significant location.

I urge each council member to agree to Bob Lowe's request so Terranea can open on time.

Robert P. Clifford
32735 Seagate Drive
Rancho Palos Verdes, CA 90275

5/21/2009

Dennis Mclean

From: esmatsuda@cox.net
Sent: Monday, May 04, 2009 3:21 PM
To: cc@RPV.com
Cc: esmatsuda@cox.net
Subject: Terranea Resort - Tonight's Vote

Dear Mayor Clark and Council Members Gardner, Long, Stern and Wolowicz,

I understand that the City is considering a loan of TOT receipts to the Terranea Resort to help cover expected early operating losses. I urge the City to make this loan and ask you to vote yes on this proposal.

We are in the middle of the worst economic challenges we have ever experienced in recent times. We are all affected. Hotels, including Terranea Resort, are not immune to this severe downturn.

Terranea will provide millions of dollars to our city for years to come. The City should do everything it can to help Terranea get through this period. We have waited almost 25 years for something to happen on the Marineland site. Please don't be shortsighted. Let's make sure they have the opportunity to get off to a good solid start.

I urge you to support the TOT loan to Terranea.

Sincerely,

Elaine Matsuda
Sea Bluff

Dennis Mclean

From: bahhoff@cox.net
Sent: Wednesday, May 06, 2009 9:28 AM
To: citymanager@rpv.com
Subject: Terranea Resort- Please distribute to Council Members

May 6, 2008

Dear Mayor Clark and Council Members Gardner, Long, Stern and Wolowicz,

I read in the newspaper today that the City is considering a loan of the TOT to Terranea. Obviously these are dire economic times. The last thing the City needs is for this resort not to open or to go bankrupt. The TOT would not be gathered if the resort does not open -- so it seems in our best interests to insure the resorts success.

The City and the Citizens of RPV have waited a long time to gather receipts from the old Marineland Site. It would seem wise to make sure the project is a success and thus the City gains the revenue.

I hope you will support the TOT loan to Terranea.

Sincerely,

Bruce A. Hoffman
101 Spindrift Dr.
RPV

Dennis Mclean

From: Paul Tetreault [paul@agajanianlaw.com]
Sent: Monday, May 04, 2009 4:31 PM
To: cc@rpv.com
Subject: TERRANEA RESORT- REQUEST FOR FINANCIAL ASSISTANCE USING FUTURE TRANSIT OCCUPANCY TAX REVENUE

Mayor Clark and Members of the City Council:

I have reviewed Staff's report on the request by Terranea/Lowe Enterprises for a TOT loan.

I understand the economics and difficult situation Lowe's is in. Ocean Trails suffered a geological disaster that sent it into BK and a very long delayed opening. Terranea may be headed for a similar rocky beginning due to the economy. Two things come to mind: 1) This is why city projects must be budgeted based upon current revenues, not contingent; and 2) this project was largely "sold" to the public and CC by projected TOT revenue. The added income to our City helped offset increased traffic, lost views, burden on infrastructure and other environmental impacts. But now, we are being asked to forego any of the TOT revenue for at least four years and possibly eleven. Plus, it is not secured and the loan may never be repaid. If the deal is made and Lowe's or a successor files for BK, what if anything will the City get back?

I doubt that the CC would have agreed to the role as an investor in the project at the outset. Yet that is what Lowe's is asking for now. Had we agreed to be an investor in the beginning then the City could have negotiated a better position for itself in terms of investment security. It appears that we will be at or near the rear of any line of creditors in Bankruptcy Court.

This is not to say that the CC should deny the request. If the project can get off the ground and survive its first 18 months or so, it promises to be a major employer in the City, generate millions in deferred TOT revenue, additional tax revenue from operations of the golf course, restaurants and spa, and bring tourists to RPV who will spend money elsewhere in the City, return even more tax revenue and create or retain more jobs. These are all good things. But in the meantime RPV, which has relatively modest revenue, will become a large-scale investor in a questionable project at a time when cities across the nation are on the verge of economic collapse.

Efforts should be made to achieve some return of revenue from the deferred TOT or TOT loan even if the owners go bankrupt. It will be tough to explain what happened if we end up providing significant financing or capital for the development and get none of the investment back. If that happens then in hindsight it will have been better if the project were allowed to fail

Paul Tetreault

Dennis Mclean

From: Nelsongang@aol.com
Sent: Monday, May 04, 2009 9:30 AM
To: cc@rpv.com
Cc: TMajcher@LoweEnterprises.com
Subject: Terranea Resort: City Council May 4, 2009

Mayor Clark, Members of our City Council, copy Todd Majcher, VP

Just a brief note to continue our support for our new neighbor Terranea and those specific items presented to you tonight for approval. 108 or so pages is a lot to read but the staff summary made the job easy.

Sea Bluff HOA wrote its first letter of support in 1999, argued long and hard over these many years to bring Terranea to our RPV community and is delighted to be just days from opening.

We appreciate your support and hope you'll find no show stoppers in these requests.

Bob Nelson
Secretary / Treasurer
Sandie Nelson
President
Sea Bluff Homeowners Association

2009 3 Free CREDIT SCORES: See Your 3 Credit Scores from All 3 Bureaus FREE!
(<http://pr.atwola.com/promock/100126575x1221797372x1201397989/aol?redir=https:%2F%2Fwww.freescore.com%2FOffers%2FStart%2FFreeCreditReportAndScore.aspx%3FID%3D91831F371F138345B53A153F49D4D872%26siteid%3De927580bf7>)