

FIRST IMPLEMENTATION AGREEMENT WITH RESPECT TO THE FIRST AMENDED
AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH GARDEN
GROVE MXD, INC.

May 8, 2012

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In order for the Successor Agency to borrow the funds necessary to pay the Forty-Two Million Dollars (\$42,000,000) to the Developer in accordance with Section 408, the Successor Agency agrees to pledge Four Million, Two Hundred Thousand Dollars (\$4,200,000) per annum to the person or entity to whom the Obligation will be sold (the "Obligation Counterparty"), for a period of not to exceed twenty (20) years (the "Term") to secure a debt instrument (such as, but not limited to, tax allocation bonds (the "Obligation") of the Successor Agency. The Successor Agency is hereby authorized, acting in its sole and absolute discretion, to either issue the Obligation or form a financing entity which will issue the Obligation. The Obligation Counterparty shall be selected by the Successor Agency or a financing entity of which the Successor Agency may be a party (the "Issuer"), acting in its reasonable discretion. The parties anticipate that the initial Obligation Counterparty will be CMB Infrastructure Investment Group VIII, LP.

The Developer is required by its Construction Lender to provide the Forty-Two Million Dollars (\$42,000,000) prior to the date required under the DDA, the Obligation shall be issued earlier to comply with the request of the Construction Lender but the Developer shall pay all amounts due under such Obligation until thirty (30) days after the date on which (i) the Hotel Opens for Business, or (ii) the Certificate of Occupancy for the Hotel is issued. In this regard, Developer shall be responsible for the Obligation if the conditions of payment of the Forty-Two Million Dollars (\$42,000,000) under Section 408 of the DDA have not been met and shall provide the Obligation Counterparty of such assurances of the terms of this paragraph 1 as may be required by the Successor Agency and Obligation Counterparty.

Simultaneously with the issuance of the Obligation, if required by the Obligation Counterparty, the Issuer shall enter into an agreement with the Obligation Counterparty to purchase the Obligation on or after the seventy-second (72nd) month following the date of issuance of the Obligation ("Refunding Obligation") provided that:

- (i) the purchase price of the Refunding Obligation shall equal the outstanding principal of the Obligation plus accrued interest, without premium,
- (ii) the term of the Refunding shall be for the remainder of the Term unless a different term is acceptable to the Issuer acting in its sole and absolute discretion, and
- (iii) the debt service shall not exceed Four Million, Two Hundred Thousand Dollars (\$4,200,000) per annum.

Successor Agency and the Developer agree to submit the terms of this First Implementation Agreement for validation pursuant to California Code of Civil Procedure Sections 860-870.5, including without limitation, the fact that the DDA

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and this First Implementation Agreement are Enforceable Obligations as defined in Health & Safety Code Sections 34170 *et seq.*, within 7 days following either (i) approval by the Department of Finance, or (ii) failure of the Department of Finance to request review pursuant to Health & Safety Code Section 34379(h).

Conditions Precedent. In addition to the Condition Precedent as set forth in the DDA, the effectiveness of this First Implementation agreement shall be contingent upon the following:

- (i). Validation of all of the terms hereof as described in Section 2.
- (ii). Approval by the Oversight Board.
- (iii). Approval by the Department of Finance pursuant to Health & Safety Code Section 34379(h).
- (iv). Approval of the terms of Section 1.2 of this First Implementation Agreement by Union Bank.

ENVIRONMENTAL

The First Implementation Agreement with respect to the First Amended and Restated Disposition and Development Agreement requires no CEQA analysis. CEQA analysis was completed in conjunction with, the City Council approved the planned unit development NO. PUD-126-10, enacting a new planned unit development and zoning regulations for the site of the water park hotel resort proposed to be located generally on the west side of Harbor Boulevard between Lampson Avenue and Garden Grove Boulevard in the City of Garden Grove. The development and zoning regulations will authorize the establishment of a water park themed hotel resort with ancillary restaurant, retail and meeting space on the approximately 12.2 acre site.

FINANCIAL IMPACT

The Agency had its consultant Horwath Hospitality prepare a 33433.1 report for the First Amended and Restated Disposition and Development Agreement, the financial impact is the same as set forth in there have been no economic changes to in the First Implementation Agreement with respect to the First Amended and Restated Disposition and Development Agreement.

The financial impact to the Agency remains the same as the First Amended and Restated Disposition and Development Agreement forty-seven million dollars (\$47,000,000).

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RECOMMENDATION

It is recommended that the Successor Agency:

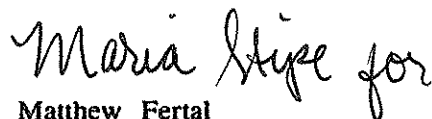
- Approve the First Amended and Restated Disposition and Development Agreement
- Authorize the Agency Director to execute any pertinent document in order to fully execute the First Implementation



GREG BLODGETT
Senior Project Manager

Attachment 1: First Implementation Agreement

Recommended for Approval



Matthew Fertal
Director

FIRST IMPLEMENTATION AGREEMENT WITH RESPECT
TO THE FIRST AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

This FIRST IMPLEMENTATION AGREEMENT WITH RESPECT TO THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "First Implementation Agreement") dated for purposes of identification only as of [_____], 2012, is entered into by and between the CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, created pursuant to California Health and Safety Code ("Health & Safety Code") Section 34173 (the "Successor Agency"), and GARDEN GROVE MXD, INC., a Colorado corporation (the "Developer").

RECITALS

A. The Garden Grove Agency for Community Development (the "Agency") and Garden Grove MXD, LLC, entered into that certain First Amended and Restated Disposition and Development Agreement dated April 13, 2010 ("DDA"), amending and restating in its entirety that certain Disposition and Development Agreement dated May 12, 2009. Garden Grove MXD, LLC assigned all of its right, title and interest in the DDA to the Developer by the Assignment and Assumption Agreement dated August 9th 2010. Capitalized terms not otherwise defined in this First Implementation Agreement shall have the meaning ascribed thereto in the DDA.

B. Pursuant to AB 1X 26, (in particular, Health & Safety Code Section 34177), the Successor Agency assumed all enforceable obligations of the Agency, including the DDA. AB 1X 26 requires that the Successor Agency "[p]erform obligations required pursuant to any enforceable obligation." Health & Safety Code Section 34177(c).

C. On April 9, 2012, the Oversight board of the Successor Agency recognized the DDA as an "enforceable obligation" by Resolution.

D. On April 9, 2012, the Oversight Board of the Successor Agency, appointed pursuant to Health & Safety Code Section 34179, approved the Successor Agency's Recognized Obligation Payment Schedule (as defined in Health & Safety Code Section 34171(h)) which included the DDA.

E. DDA Section 408 provides, in relevant part as follows:

[The] Agency shall pay to the Developer the all-cash sum of Forty-Seven Million Dollars (\$47,000,000) ("Covenant Consideration") as follows: (a) Five Million Dollars (\$5,000,000) concurrently with the Commencement of Construction of the Parking Structure, and (b) Forty-Two Million Dollars (\$42,000,000) thirty (30) days after the later of the date on which (i) the Hotel Opens for business or (ii) the Certificate of Occupancy for the Hotel [is issued]. The parties acknowledge that the Agency intends to issue its tax allocation bonds to pay the Forty Two Million dollars (\$42,000,000) described above through the issuance of tax allocation bonds (the "Tax Allocation Bonds") sized to net Forty-Two Million Dollars (\$42,000,000). As a Condition Precedent to Closing, the Agency and the Developer shall have reached agreement, in general conformity with Section 408.1 below, each acting in their respective sole and absolute discretion, as to the scope of Agency's contingencies with respect to the Agency's obligation to issue Tax Allocation Bonds.

F. In implementation of Section 408, Section 408.1(d) provides, in relevant part, as follows:

At such time as the Developer delivers written notice to the Agency, with supporting documentation, that the Covenant Consideration will be due and payable within six (6) months of the date of the notice, the Agency will proceed to promptly engage a financial adviser and fiscal consultant to review the feasibility with respect to the issuance of the Tax Allocation Bonds, and shall deliver to the Developer within thirty days of such written notice a schedule of events relative to the Agency's issuance of such Tax Allocation Bonds, and shall thereafter consult in good faith with the Developer regarding issuance of the Tax Allocation Bonds. If at any time during or prior to this period the Agency determines that it will not be able to issue Tax Allocation Bonds in amounts sufficient to pay the Covenant Consideration when due, the Agency will nonetheless issue Tax Allocation Bonds to the extent legally permissible in such amounts as it determines are feasible taking into account the factors described in Section 408, and shall pay the balance of the Covenant Consideration not paid from the proceeds of the Tax Allocation Bonds, plus interest at a rate equal to the yield of the Tax Allocation Bonds, from "Available Agency Revenues" and shall enter into such further arrangements with the Developer or its assigns as may be reasonably required to document such

payment obligation.

G. The Successor Agency and the Developer hereby enter into this First Implementation Agreement in implementation of Section 408 and Section 408.1 of the DDA.

NOW, THEREFORE, in implementation of the DDA, the Successor Agency and the Developer hereby agree as follows:

1. Implementation of Successor Agency's Obligations Under Section 408 and Section 408.1(d) of the DDA. In implementation of the Successor Agency's obligations to the Developer under the Section 408 and Section 408.1(d) of the DDA, and subject to the Conditions Precedent in the DDA, and the conditions precedent described in Section 3 below, the Successor Agency and the Developer agree to implement the Successor Agency's obligation to provide Covenant Consideration pursuant to Section 408 of the DDA as follows:

1.1. Five Million Dollars (\$5,000,000). The Successor Agency is holding the sum of Five Million Dollars, as encumbered cash, and will continue to do so until either (i) used to fund the Successor Agency's obligations under the DDA upon Commencement of Construction of the Parking Structure or (ii) release to the Auditor Controller of the County of Orange in the event of termination of the DDA.

1.2. Forty-Two Million Dollars (\$42,000,000). In order for the Successor Agency to borrow the funds necessary to pay the Forty-Two Million Dollars (\$42,000,000) to the Developer in accordance with Section 408, the Successor Agency agrees to pledge Four Million, Two Hundred Thousand Dollars (\$4,200,000) per annum to the person or entity to whom the Obligation will be sold (the "Obligation Counterparty"), for a period of not to exceed twenty (20) years (the "Term") to secure a debt instrument (such as, but not limited to, tax allocation bonds (the "Obligation") of the Successor Agency. The Successor Agency is hereby authorized, acting in its sole and absolute discretion, to either issue the Obligation or form a financing entity which will issue the Obligation. The Obligation Counterparty shall be selected by the Successor Agency or a financing entity of which the Successor Agency may be a party (the "Issuer"), acting in its reasonable discretion. The parties anticipate that the initial Obligation Counterparty will be CMB Infrastructure Investment Group VIII, LP.

1.3. Early Funding of Forty-Two Million Dollars (\$42,000,000). The Developer is required by its Construction Lender to provide the Forty-Two Million Dollars (\$42,000,000) prior to the date required under the DDA, the Obligation shall be issued earlier to comply with the request of the Construction Lender but the Developer shall pay all amounts due under such Obligation until thirty (30) days after the date on which (i) the Hotel Opens for Business, or (ii) the Certificate of Occupancy for the Hotel is issued. In this regard, Developer shall be responsible for the Obligation if the conditions of payment of the Forty-Two Million Dollars (\$42,000,000) under Section

408 of the DDA have not been met and shall provide the Obligation Counterparty of such assurances of the terms of this paragraph 1 as may be required by the Successor Agency and Obligation Counterparty.

1.4. Purchase of Obligation After 72 Months. Simultaneously with the issuance of the Obligation, if required by the Obligation Counterparty, the Issuer shall enter into an agreement with the Obligation Counterparty to purchase the Obligation on or after the seventy-second (72nd) month following the date of issuance of the Obligation (“Refunding Obligation”) provided that:

- (i) the purchase price of the Refunding Obligation shall equal the outstanding principal of the Obligation plus accrued interest, without premium,
- (ii) the term of the Refunding shall be for the remainder of the Term unless a different term is acceptable to the Issuer acting in its sole and absolute discretion, and
- (iii) the debt service shall not exceed Four Million, Two Hundred Thousand Dollars (\$4,200,000) per annum.

2. Validation. Successor Agency and the Developer agree to submit the terms of this First Implementation Agreement for validation to a court either pursuant to California Code of Civil Procedure Sections 860–870.5 or such other methods as may be determined by the parties (e.g., writ of *mandamus*) seeking validation of this First Implementation Agreement, including without limitation, the fact that the DDA and this First Implementation Agreement are Enforceable Obligations as defined in Health & Safety Code Sections 34170 *et seq.*, within 7 days following either (i) approval by the Department of Finance, or (ii) failure of the Department of Finance to request review pursuant to Health & Safety Code Section 34379(h).

3. Conditions Precedent. In addition to the Condition Precedent as set forth in the DDA, the effectiveness of this First Implementation agreement shall be contingent upon the following:

- (i). Validation of all of the terms hereof as described in Section 2.
- (ii). Approval by the Oversight Board.
- (iii). Approval by the Department of Finance pursuant to Health & Safety Code Section 34379(h).
- (iv). Approval of the terms of Section 1.2 of this First Implementation Agreement by Union Bank.

4. Continued Enforceability of DDA. Except as set forth in this First Implementation Agreement, the DDA shall remain in full force and effect in accordance with its terms.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

SUCCESSOR AGENCY:

**THE CITY OF GARDEN GROVE,
ACTING AS SUCCESSOR AGENCY
TO THE GARDEN GROVE AGENCY
FOR COMMUNITY DEVELOPMENT**

Dated: _____, 20__

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Title: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

DEVELOPER:

GARDEN GROVE MXD, Inc. a Colorado corporation

By: McWhinney Real Estate Services, Inc., a Colorado corporation, Manager

Dated: _____, 20__

By: _____
Douglas L. Hill
Chief Operating Officer