AGENDA ITEM NO. 6.a.

The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Kingsley Okereke
Dept:	City Manager	Dept:	Finance
Subject:	ADOPTION OF A RESOLUTION APPROVING THE IMPLEMENTATION AGREEMENT WITH GARDEN GROVE MXD, INC. FOR THE WATERPARK HOTEL LOCATED 12681, 12641, AND 12621 HARBOR BOULEVARD, GARDEN GROVE	Date:	October 8, 2013

OBJECTIVE

The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is being asked to consider and adopt a Resolution approving the Implementation Agreement by and between the Successor Agency and Garden Grove MXD, Inc.

BACKGROUND/DISCUSSION

On April 13, 2010, the Garden Grove Agency for Community Development ("Former Agency") and Garden Grove MXD, LLC entered into that certain First Amended and Restated Disposition and Development Agreement ("DDA"), amending and restating in its entirety that certain Disposition and Development Agreement dated May 12, 2009. Garden Grove MXD, LLC assigned its interest in the DDA to Garden Grove MXD, Inc. ("Developer").

The Former Agency and the Developer entered into the DDA for the purpose of facilitating the development and operation by the Developer of a waterpark hotel on the Site consisting of a minimum of six hundred (600) rooms and a waterpark ("Hotel"), with a possible expansion of up to two hundred (200) additional rooms, and approximately 18,000 square feet of retail, including one (1) or more restaurants, as more specifically described in the Scope of Development (Exhibit C to the DDA) (collectively, the "Developer Improvements").

The Successor Agency has taken steps pursuant to the Dissolution Act to cause the DDA to be listed as an "enforceable obligation" of the Successor Agency and the California Department of Finance ("DOF") has confirmed under Section 34177.5(i) of the Dissolution Act that the Successor Agency's determination of the DDA as an enforceable obligation as approved in a Recognized Obligation Payment Schedule is

final and conclusive. The Successor Agency and the Developer expect to take such additional steps as may be required to cause the obligations of the parties under the DDA to be honored; however, some of the ongoing obligations of the Successor Agency obligations under the DDA are subject to review by the Oversight Board created pursuant to the Dissolution Act ("Oversight Board") and the DOF, among others.

The Developer and its architect, civil engineers, consultants and attorneys have made significant progress in completing the building and construction plans for the waterpark hotel. The Developer entered into an operation and franchise Agreement with Great Wolf Lodge. The Developer has also secured financing for the project. The Developer has entered into a contract with Turner Construction for general contracting services. The Developer has set December 9, 2013, as the construction commencement date. The Developer's current construction schedule provides for completion of the Hotel by June 30, 2015. The proposed opening date of the Hotel is very important to the Developer because summer 2015 is the 60th anniversary of Disneyland, which is projected to create an increase in hotel room demand, hotel occupancy and an increase in hotel rates within the Anaheim Resort according to Horwath Hospitality, the Successor Agency's Economic consultant.

In addition, the Successor Agency has now completed all of its conditions prior to closing escrow including acquiring the site, relocating the tenants and relocating the on-site utilities off site, and is now ready to convey the land to the Developer.

The attached Implementation Agreement is now needed prior to closing escrow.

DDA Implementation

The Implementation Agreement fulfills two purposes. First, it provides for the approval of the transfer of the property under the DDA that, although not necessarily required by law, is required by the State Department of Finance ("DOF") and the title companies to be approved by the Oversight Board and DOF.

Second, Section 408 of the DDA recites that, "as a Condition Precedent to the Closing, the [Former Agency] and the Developer shall have reached agreement, in general conformity with Section 408.1 [of the DDA], each acting in their respective sole and absolute discretion, as to the scope of [Former Agency's] contingencies with respect to the [Former Agency's] obligation to issue Tax Allocation Bonds." The Implementation Agreement is also intended to serve as the agreement required by Section 408 and referenced in the immediately preceding sentence.

Section 408 of the DDA also obligates the Successor Agency, under the circumstances described therein, to pay the Developer $5,000,000 upon Commencement of Construction and $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 is issued for the Hotel (the "Remaining Covenant Consideration Due

Date"). The combination of the $5,000,000 and $42,000,000 is referred to in the DDA as "Covenant Consideration." The DDA provides that the Successor Agency shall, in accordance with the provisions of Section 408 thereof, issue its Tax Allocation Bonds to pay the $42,000,000 portion of the Covenant Consideration (the "Remaining Covenant Consideration").

The Successor Agency and Developer now desire to enter into the Implementation Agreement for the purpose of providing for the Conveyance of the Site pursuant to Health & Safety Code Section 34181(a) and to establish, in accordance with Section 408 and 408.1 of the DDA, the Successor Agency's contingencies to the issuance of Tax Allocation Bonds to pay the Remaining Covenant Consideration required by Section 408 of the DDA.

Recommendation

Staff recommends that the Successor Agency:

- Adopt the attached Resolution approving the Implementation Agreement by and between the Successor Agency and Garden Grove MXD, Inc.

KINGSLEY OKEREKE
Finance Director

By: Greg Blodgett
Senior Project Manager

Attachment 1: Resolution
Attachment 2: Implementation Agreement (Water Park DDA)

Recommended for Approval

Matthew Fertal
Director

GARDEN GROVE SUCCESSOR AGENCY

RESOLUTION NO. ____

A RESOLUTION OF THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING AN IMPLEMENTATION AGREEMENT (WATER PARK DDA) BETWEEN THE SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND GARDEN GROVE MXD, INC.

WHEREAS, prior to February 1, 2012, the Garden Grove Agency for Community Development (herein referred to as the "Former Agency") was a community redevelopment agency duly organized and existing under the California Community Redevelopment Law (Health and Safety Code Sections 33000 *et seq.*), and was authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council of the City of Garden Grove ("City");

WHEREAS, Assembly Bill 1x 26, chaptered and effective on June 27, 2011, added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484, chaptered and effective on June 27, 2012 (together, the "Dissolution Act");

WHEREAS, as of February 1, 2012, the Former Agency was dissolved pursuant to the Dissolution Act and as a separate legal entity the City serves as the Successor Agency to the Garden Grove Agency for Community Development (the "Successor Agency");

WHEREAS, the Successor Agency administers the enforceable obligations of the Former Agency and otherwise unwinds the Former Agency's affairs, all subject to the review and approval by a seven-member Oversight Board (the "Oversight Board");

WHEREAS, the Former Agency and the Developer entered into that certain First Amended and Restated Disposition and Development Agreement by and between the Former Agency and Garden Grove MXD, Inc. (the "Developer"), dated as of April 13, 2010, as amended from time to time (the "DDA") for the purpose of facilitating the development and operation by the Developer of a water park hotel on certain real property owned by the Successor Agency (defined in the DDA as the "Site") consisting of a minimum of six hundred (600) rooms and a water park, with a possible expansion of up to two hundred (200) additional rooms, and approximately 18,000 square feet of retail, including one (1) or more restaurants, as more specifically described in the Scope of Development (Exhibit C to the DDA);

WHEREAS, initially capitalized terms used herein without definition shall have the meanings set forth in the DDA;

WHEREAS, the Successor Agency has taken steps pursuant to the Dissolution Act to cause the DDA to be listed as an "enforceable obligation" of the Successor Agency;

WHEREAS, on February 6, 2013, the Successor Agency received a Final and Conclusive Determination from the California Department of Finance with respect to the DDA in accordance with Section 34177.5(i) of the Dissolution Act;

WHEREAS, the DDA, specifically Section 201 thereof, requires the Successor Agency to convey the Site to the Developer, subject to the satisfaction of certain Conditions Precedent set forth in Section 205 of the DDA;

WHEREAS, pursuant to Section 408 of the DDA, the Successor Agency is obligated under the circumstances described therein to pay the Developer $5,000,000 upon Commencement of Construction and $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 is issued for the Hotel (the "Remaining Covenant Consideration Due Date");

WHEREAS, the combination of the $5,000,000 and $42,000,000 is referred to in the DDA as "Covenant Consideration";

WHEREAS, the DDA provides that the Successor Agency shall, in accordance with the provisions of Section 408 thereof, issue its Tax Allocation Bonds to pay the $42,000,000 portion of the Covenant Consideration (the "Remaining Covenant Consideration");

WHEREAS, Section 408 of the DDA recites that, "as a Condition Precedent to the Closing, the [Former Agency] and the Developer shall have reached agreement, in general conformity with Section 408.1 [of the DDA], each acting in their respective sole and absolute discretion, as to the scope of [Former Agency's] contingencies with respect to the [Former Agency's] obligation to issue Tax Allocation Bonds";

WHEREAS, the Successor Agency and the Developer desire to enter into the Implementation Agreement (Water Park DDA) ("Agreement") in substantially the form attached to this Resolution as Exhibit A and incorporated herein, which Agreement is intended to serve as the agreement required by Section 408 and referenced in the immediately preceding sentence; and

WHEREAS, the Successor Agency and Developer now desire to enter into the Agreement for the purpose of providing for the Conveyance of the Site pursuant to Section 34181(a) of the Dissolution Act and to establish, in accordance with Sections 408 and 408.1 of the DDA, the Successor Agency's contingencies to the issuance of Tax Allocation Bonds to pay the Remaining Covenant Consideration required by Section 408 of the DDA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Successor Agency hereby approves the Agreement in substantially the form attached to this Resolution. The Successor Agency Director is authorized to execute the Agreement with such revisions as the Successor Agency Director and Successor Agency

legal counsel deem appropriate to further the Successor Agency's interests. The Successor Agency Director and his authorized designees are authorized to take such actions as may be necessary or appropriate to implement the Agreement, including executing further instruments and agreements, issuing warrants, and taking other appropriate actions to perform the obligations and exercise the rights of the Successor Agency under the Agreement. A copy of the Agreement when executed shall be placed on file in the office of the Successor Agency Secretary.

Section 3. The Chair of the Successor Agency shall sign the passage and adoption of this Resolution and thereupon the same shall take effect and be in force.

Section 4. The Successor Agency Director is hereby directed to transmit this Resolution and all exhibits hereto, each of which is incorporated herein, to the Oversight Board, the County Administrative Officer, the County Auditor-Controller and the State Department of Finance pursuant to Sections 34179(h), 34180(j) and 34181, subdivisions (a) and (f) of the Dissolution Act. The Successor Agency Director is further directed to petition the Department of Finance to provide written confirmation that its determination that the DDA and the Agreement together represent an enforceable obligation of the Successor Agency is final and conclusive and reflects the Department's approval of subsequent payments made pursuant to the DDA and the Agreement, in accordance with Section 34177.5(i) of the Dissolution Act.

DRAFT

IMPLEMENTATION AGREEMENT
(WATER PARK DDA)

This Implementation Agreement (Water Park DDA) (the "Agreement"), dated as of _____, 2013, is entered into by and between the Successor Agency to the Garden Grove Agency for Community Development (the "Successor Agency") and Garden Grove MXD, Inc. (the "Developer"), as required by that certain First Amended and Restated Disposition and Development Agreement by and between Garden Grove Agency for Community Development (the "Former Agency") and the Developer, dated as of April 13, 2010, as amended from time to time (the "DDA").

RECITALS

A. The Former Agency and the Developer entered into the DDA for the purpose of facilitating the development and operation by the Developer of a water park hotel on the Site consisting of a minimum of six hundred (600) rooms and a water park (the "Water Park Hotel" or "Hotel"), with a possible expansion of up to two hundred (200) additional rooms (the "Hotel Expansion"), and approximately 18,000 square feet of retail, including one (1) or more restaurants (the "Retail/Restaurant Component"), as more specifically described in the Scope of Development (Exhibit C to the DDA) (collectively, the "Developer Improvements").

B. Initially capitalized terms used herein without definition shall have the meanings set forth in the DDA.

C. By virtue of AB1X26 and AB1484 (the "Dissolution Act") redevelopment agencies in California such as the Former Agency have been dissolved and the performance of executory contracts of the Former Agency, such as the DDA, is being carried out by the Successor Agency, acting pursuant to the Dissolution Act.

D. The Successor Agency has taken steps pursuant to the Dissolution Act to cause the DDA to be listed as an "enforceable obligation" of the Successor Agency and the California Department of Finance ("DOF") has confirmed under Section 34177.5(i) of the Dissolution Act that the Successor Agency's determination of the DDA as an enforceable obligation as approved in a Recognized Obligation Payment Schedule is final and conclusive. The Successor Agency and the Developer expect to take such additional steps as may be required to cause the obligations of the parties under the DDA to be honored; however, ongoing performance of the Successor Agency obligations under the DDA are subject to review and oversight by the Oversight Board created pursuant to the Dissolution Act (the "Oversight Board") and the DOF, among others.

E. The DDA, specifically Section 201 thereof, requires the Successor Agency to convey certain real property described therein (the "Site") to the Developer, subject to the satisfaction of certain Conditions Precedent set forth in Section 205.

F. Pursuant to Section 408 of the DDA the Successor Agency is obligated under the circumstances described therein to pay the Developer $5,000,000 upon Commencement of Construction and $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 is issued for the Hotel (the "Remaining Covenant Consideration Due Date"). The combination of the $5,000,000 and $42,000,000 is referred to in the DDA as "Covenant Consideration." The DDA provides that the Successor Agency shall, subject to

the provisions of Section 408 thereof, issue its Tax Allocation Bonds to pay the $42,000,000 portion of the Covenant Consideration (the "Remaining Covenant Consideration").

G. Section 408 of the DDA recites that, "as a Condition Precedent to the Closing, the [Former Agency] and the Developer shall have reached agreement, in general conformity with Section 408.1 [of the DDA], each acting in their respective sole and absolute discretion, as to the scope of [Former Agency's] contingencies with respect to the [Former Agency's] obligation to issue Tax Allocation Bonds." This Agreement is intended to serve as the agreement required by Section 408 and referenced in the immediately preceding sentence.

H. Section 408.1 of the DDA also imposes specific requirements upon the parties designed to assure that the Agency will be able to issue the Tax Allocation Bonds, including limitations on superior indebtedness and affirmative, timely consideration of the issuance of tax Allocation Bonds on a basis that will allow the $42,000,000 portion of the Covenant Consideration to be paid when due, including the obligation of the Successor Agency to engage professionals and develop a calendar of events to cause the Tax Allocation Bonds to be issued.

I. Under Section 408.1(d) of the DDA, if the Successor Agency determines it will not be able to issue Tax Allocation Bonds to pay the $42,000,000 portion of the Covenant Consideration in full, the Agency "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" (defined below as the "Section 408.1(d) Payments").

J. The Developer has asserted that it and its lenders and investors require further assurances of the Successor Agency's obligation and ability to issue Tax Allocation Bonds secured by tax increment revenues of the Successor Agency (now Redevelopment Property Tax Trust Funds) pursuant to the DDA and the Dissolution Act and, failing that, the parties desire to enter into further arrangements with the Developer regarding the Section 408.1(d) Payments in accordance with the terms of the DDA

K. The Successor Agency and Developer now desire to enter into this Agreement for the purpose of providing for the Conveyance of the Site pursuant to Health & Safety Code Section 34181(a) and to establish, in accordance with Section 408 and 408.1 of the DDA, the Successor Agency's contingencies to the issuance of Tax Allocation Bonds to pay the Remaining Covenant Consideration required by Section 408 of the DDA and other matters properly relating to the Agency's obligations under Sections 408 and 408.1.

AGREEMENT

1. Conditions Precedent to the Closing.

1.1 Satisfaction of Agency's Conditions Precedent. Section 205.1 of the DDA sets forth certain Agency's Conditions Precedent which must be fulfilled (or waived in writing by the Successor Agency) as a condition to the Closing. Successor Agency and Developer hereby agree that each of the following Agency's Conditions Precedent have been, or shall be, fulfilled in the manner described below prior to the Closing.

(a) No Default. No Default currently exists under the DDA and the parties will confirm at Closing that no Defaults exist at the time of Closing.

(b) Execution of Documents. All documents required by the DDA shall be executed by Developer and delivered into Escrow prior to the Closing.

(c) Payment of Funds. Developer shall deposit into Escrow all required costs of Closing prior to the Closing in accordance with Section 201.5 of the DDA.

(d) Land Use Approvals. Developer has received all Land Use Approvals required for the Developer Improvements and the Project, with the sole exception of grading and building permits. Developer shall have obtained all building permits prior to or concurrently with the Closing, or such building permits shall be ready to issue conditioned solely on the payment of fees by Developer at Closing.

(e) Insurance. Developer shall have provided evidence that Developer has obtained all insurance required by Section 306 of the DDA prior to the Closing.

(f) Financing. Developer has obtained the Construction Financing described in Exhibit A, which is attached hereto and incorporated herein ("Evidence of Financing"). Successor Agency hereby approves the Evidence of Financing.

(g) Declaration. The Declaration to be executed and recorded pursuant to the DDA shall be in substantially the form attached hereto as Exhibit B and incorporated herein.

(h) Agency's Acquisition of the Third Party Property. The Successor Agency holds fee title to all Third Party Property. Subject to satisfaction of the Conditions Precedent, the Third Party Property is available for conveyance to Developer at the Closing pursuant to the DDA.

(i) Approval of Hotel Operator, Franchisor and Franchise Agreement. Successor Agency hereby approves _____ as the Hotel Operator and [Great Wolf Lodge Resort] as the Franchisor. The Franchise Agreement shall be in substantially the form attached hereto as Exhibit C and incorporated herein.

(j) Pre-leasing and Approval of Tenant. [In accordance with Exhibit M to the DDA,] _____ and _____ are hereby approved as the Tenant(s)/Operator(s).

(k) Hazardous Material Insurance. The parties hereby acknowledge, agree and confirm that the DDA does not require Developer to obtain Hazardous Material Insurance, as a Condition Precedent to Closing or otherwise.

(l) Agency Improvements. Successor Agency hereby finds and determines that the estimated actual and direct third party costs of the Agency Improvements will not exceed Twenty Million, Eight Hundred Thirty Five Thousand Dollars ($20,835,000).

(m) Tax Allocation Bonds. This Agreement shall serve as the Agreement described in Section 408 of the DDA.

(n) CFD and CFD Bonds. The parties have determined that the formation of a CFD and presentation to the Successor Agency (or City) of CFD Bonds shall not be a Condition Precedent to the Closing.

1.2 Satisfaction of Developer's Conditions Precedent. Section 205.2 of the DDA sets forth certain Developer's Conditions Precedent which must be fulfilled (or waived in writing by the Developer) as a condition to the Closing. Successor Agency and Developer hereby agree that each of the following Developer's Conditions Precedent have been, or shall be, fulfilled in the manner described below prior to the Closing.

(a) No Default. No Default currently exists under the DDA and the parties will confirm at Closing that no Defaults exist at the time of Closing.

(b) Execution of Documents. All documents required by the DDA shall be executed by Successor Agency and delivered into Escrow prior to the Closing.

(c) Review and Approval of Title. Developer hereby approves the condition of title to the Site, as provided in Section 202 to the DDA.

(d) Site Condition. Developer hereby approves the Site Condition and confirms that the Site Condition is satisfactory in accordance with Sections 201.4, 204 and 301.2 of the DDA.

(e) Relocation, Demolition and Clearance of the Site. The Site has been cleared of all above-ground structures and all substructures under existing buildings. All prior occupants of the Site have been relocated.

(f) Title Policy. Subject to DOF approval of this Agreement, the Title Company is prepared to issue to Developer the policy of title insurance in the form of the proforma title policy attached to this Agreement as Exhibit E and incorporated herein.

(g) Land Use Approvals. Developer has received all Land Use Approvals required for the Developer Improvements and the Project, with the sole exception of building permits. Developer shall have obtained all building permits prior to or concurrently with the Closing, or such building permits shall be ready to issue conditioned solely on the payment of fees by Developer at Closing.

(h) Financing. Developer has obtained the Construction Financing described in Exhibit A (i.e. the Evidence of Financing). Developer hereby represents and warrants to the Successor Agency that an institutional lender shall issue the debt portion of such Construction Financing and that the debt portion of such Construction Financing plus Developer's equity [and any Tenant commitments to reimburse Developer for the cost of certain Developer Improvements], all as described in the Evidence of Financing, is at least equal to the cost of the Developer Improvements and is conditioned only upon Closing. Further, Developer hereby represents and warrants to the Successor Agency that the Construction Financing described in the Evidence of Financing will be ready to close and fund at the Closing as required by the DDA.

(i) Agency's Acquisition of the Third Party Property. As noted above, the Successor Agency holds fee title to all Third Party Property. The Third Party Property is available for conveyance to Developer at the Closing pursuant to the DDA. **[Confirm]**

(j) Adverse Conditions. Construction of the Agency Improvements is complete. This Condition Precedent has therefore been satisfied.

(k) Approval of Hotel Operator, Franchisor and Franchise Agreement. As noted above, the Successor Agency approved Great Wolf as the Hotel Operator and Great Wolf Lodge Resort as the Franchisor.

(l) Pre-leasing and Approval of Tenant. In accordance with Exhibit M to the DDA, Successor Agency have approved the Tenant(s)/Operator(s).

(m) Declaration. The Declaration to be executed and recorded pursuant to the DDA shall be in substantially the form attached hereto as Exhibit B and incorporated herein.

(n) Development Agreement. The Development Agreement to be executed and recorded pursuant to the DDA shall be in substantially the form attached hereto as Exhibit D and incorporated herein.

(o) Tax Allocation Bonds. This Agreement shall serve as the Agreement described in Section 408 of the DDA.

(p) CFD and CFD Bonds. The parties have determined that the formation of a CFD and presentation to the Successor Agency (or City) of CFD Bonds shall not be a Condition Precedent to the Closing.

1.3 Additional Condition Precedent—Oversight Board and DOF Approval. The parties acknowledge and agree that this Agreement and the Closing are subject to approval by the Oversight Board and review (and approval), if requested, by the DOF, [in accordance with Health & Safety Code Sections 34181(a) and (f) and 34179(h)]. Immediately upon the execution of this Agreement, the Successor Agency shall submit this Agreement and all Exhibits attached hereto (collectively, the "Implementation Documents") to the Oversight Board for approval. The Condition Precedent described in this Section 1.3 shall be deemed satisfied upon (i) approval hereof by the Oversight Board and (ii) such Oversight Board action becoming effective within the time periods prescribed by applicable law, either by no review of such Oversight Board action being timely requested by DOF or by DOF approval or lack of objection thereto.

1.4 Developer's Representations and Warranties re Conditions Precedent. Developer hereby represents, warrants and confirms to the Successor Agency that the method of satisfying the Conditions Precedent described in Sections 1.1 and 1.2 of this Agreement comply with and conform to the terms of the DDA and does not constitute an amendment to or modification of any requirement of the DDA or a waiver of the terms, provisions or requirements of the DDA.

2. Implementation of Section 408.

2.1 Authority for Issuance of Tax Allocation Bonds.

(a) Section 408 of the DDA expressly states the intention of the parties that the Successor Agency issue Tax Allocation Bonds to pay the Remaining Covenant Consideration on or before the Remaining Covenant Consideration Due Date.

(b) Health & Safety Code Section 34177.5(a)(4) expressly provides the Successor Agency with the authority, rights, and powers of the Former Agency for the purpose of issuing bonds or incurring other indebtedness to make payments under enforceable obligations, such as the DDA, when the enforceable obligations include the irrevocable pledge of property tax increment or other funds and the obligation to issue bonds secured by that pledge.

(c) Section 408 of the DDA expressly contemplates that the Successor Agency will pledge tax revenues to the Tax Allocation Bonds, subject to the fulfillment of certain conditions, and describes the tax revenues to be pledged to the Tax Allocation Bonds, if issued.

(d) Section 408.1(d) of the DDA provides that, if the Successor Agency determines that it will not be able to issue Tax Allocation Bonds as required by the DDA in amounts sufficient to pay the Remaining Covenant Consideration on or before the Remaining Covenant Consideration Due Date, then the Successor Agency will issue Tax Allocation Bonds in such amounts as it determines are feasible, and shall pay the balance of the Remaining Covenant Consideration, plus interest at a rate equal to the yield of the Tax Allocation Bonds, from Available Agency Revenues (the "Section 408.1(d) Payments").

(i) The Successor Agency and Developer acknowledge and agree that the Successor Agency is willing and able to issue Tax Allocation Bonds in an amount sufficient to pay the Remaining Covenant Consideration on or before the Remaining Covenant Consideration Due Date, provided the Successor Agency shall be under no obligation to issue such Tax Allocation Bonds if such issuance is lawfully disapproved by the Oversight Board and/or DOF under the Dissolution Law.

(ii) In the event the Oversight Board or DOF lawfully disapproves the issuance of the Tax Allocation Bonds or the Successor Agency otherwise determines in accordance with Section 408.1(d) of the DDA that it will not be able to issue Tax Allocation Bonds, the Successor Agency and Developer hereby acknowledge and agree that the DDA requires the Successor Agency to make the Section 408.1(d) Payments from Available Agency Revenues and that this obligation (A) requires the Successor Agency to pledge Available Agency Revenues to the Developer, (B) requires the Successor Agency to make Section 408.1(d) Payments to the Developer secured by such pledge, (C) requires the parties to mutually agree upon a reasonable interest rate to apply to the Section 408.1(d) Payments, and (D) requires the Successor Agency to provide further assurances to the Developer or its assigns that the Successor Agency will make the Section 408.1(d) Payments.

(A) Clauses (A) and (B) above clearly satisfy the criteria in Health and Safety Code Section 34177.5(a)(4) for the issuance of tax allocation bonds to refund the Successor Agency's enforceable obligation to make the Section 408.1(d) Payments to the Developer.

(B) With respect to clause (C) above, the parties hereby agree that in the event Tax Allocation Bonds are not issued the interest rate described in Section 408.1(d) of the DDA shall be a rate designed to equal the rate which would have applied had the Tax Allocation Bonds been issued, namely, an interest rate equal to the average interest rate applicable to other tax allocation bonds issued by successor agencies with comparable credit characteristics to the Successor Agency (adjusted for differences as appropriate) in the ninety (90) day period prior to the Remaining Covenant Consideration Due Date (the "Section 408.1(d) Interest Rate"), as determined by a fiscal consultant selected by the Successor Agency, which determination shall be final and conclusive absent manifest error. Within [thirty (30)] days following the Developer's notice to the Successor Agency, provided pursuant to Section 408.1(d), that the Remaining Covenant Consideration will be due and payable within six (6) months of the date of the notice, the Successor Agency shall engage a fiscal consultant mutually acceptable to the Successor Agency and Developer and such fiscal consultant shall determine the Section 408.1(d) Interest Rate. The cost of the fiscal consultant shall be paid by the Developer.

(C) This Agreement (including Section 2.4 hereof) is intended to provide the assurances to the Developer described in clause (D) above, as required by Section 408.1(d) of the DDA.

2.2 Description of the Pledge; Available Agency Revenues.

(a) Pledge Securing Section 408.1(d) Payments. The Successor Agency commits Available Agency Revenues to Developer for the payment of Section 408.1(d) Payments. Section 408.1(d) of the DDA defines Available Agency Revenues to mean "tax increment allocated to the [Successor Agency] pursuant to the Redevelopment Law following payment, if any, and all obligations having a prior lien on such tax increment within the meaning of Health & Safety Code Sections 33641.5 and 33671.5, less (i) housing set aside, (ii) any future SERAF or similar obligations if lawful, and/or (iii) statutory pass-throughs and other existing pass-throughs.

(b) Pledge Securing Tax Allocation Bonds. In furtherance of the Successor Agency's enforceable obligation to issue the Tax Allocation Bonds required by Section 408 of the DDA, Section 408.1 of the DDA imposes the following obligations on the Successor Agency which, taken together, define the pledge of tax increment the Successor Agency is required to make to the Tax Allocation Bonds when issued:

(i) Section 408.1(a) of the DDA prohibits the Successor Agency from issuing any bonds or otherwise incurring any indebtedness secured by a lien on tax increment revenues superior to or on a parity with the lien to be established for the Tax Allocation Bonds, excepting only (i) obligations secured by tax increment revenues chargeable to the Agency's Low and Moderate Income Housing Fund, and (ii) any obligations issued for the principal purpose of refinancing the Successor Agency's obligations with Union Bank of California in the then-current principal amount of Thirty-Two Million Dollars ($32,000,000) (inclusive of costs of issuance, and required reserves, etc.) (the "Union Bank Loan").

(ii) Section 408.1(a) of the DDA further prohibits the Successor Agency from taking any action, including but not limited to the issuance of its bonds, notes or other obligations, which causes or which, with the passage of time would cause, any of the limitations set forth in the Redevelopment Plan to be exceeded or violated, as such limitations relate to the

maximum amount of tax increment to be allocated to the Successor Agency for the Project Area, or the bonded indebtedness limit for the Project Area.

(iii) The Successor Agency is required by Section 408.1(b) to comply with California Health and Safety Code Sections 33690 and 33690.5 (the "SERAF Statute") in full and at such time as the Agency is required to do so under applicable law so as to not be subject to any of the penalties associated with such statute under Health & Safety Code Section 33691, if such penalties would materially adversely affect the Successor Agency's ability to issue the Tax Allocation Bonds. In addition, to the extent permitted by law (and with limited exceptions), the Successor Agency is required to take such steps as may be legally required to cause the SERAF Statute payment obligation to be junior and subordinate to the Tax Allocation Bonds. [The Former Agency complied fully with the SERAF Statute and the Successor Agency has no outstanding obligation under the SERAF Statute that would be senior to the Tax Allocation Bonds.]

(iv) Section 408.1(c) of the DDA requires the Successor Agency to request subordination of its tax sharing obligations to taxing entities under Health & Safety Code Sections 33607.5 and 33607.7 as needed. The parties have determined that, in light of the Senior Lien Pledge described below, no such subordination shall be required.

(c) Confirmation of Senior Lien Pledge. As of the date of this Agreement, the following Successor Agency obligations (the "Senior Obligations") are secured by a pledge of Redevelopment Property Tax Trust Funds:

(i) The Union Bank Loan;

(ii) The Agency's 2003 Tax Allocation Refunding Bonds (Garden Grove Community Project) (the "2003 Bonds"), which may be refunded pursuant to Health & Safety Code Section 34177.5(a)(1) to achieve savings. The Developer hereby approves the refunding of the 2003 Bonds for savings in accordance with Health & Safety Code Section 34177.5(a)(1); and

(iii) Certain senior pass through agreements; and

(iv) Certain tax sharing obligations pursuant to Health & Safety Code Sections 33607.5, 33607.7 and 33676, if any.

The Successor Agency acknowledges and agrees that its expectation is to implement Sections 408 and 408.1(d) through the issuance of Tax Allocation Bonds having a pledge of and lien on former tax increment of the Successor Agency on a parity with that pledged to the 2003 Bonds, upon receipt of Union Bank's consent to such issuance. This pledge is set forth in the Indenture of Trust of the Successor Agency dated as of August 1, 2003 related to the 2003 Bonds and is referred to herein as the "Senior Lien Pledge". Under Section 408.1(a)-(c) the Successor Agency made covenants designed to prevent it from incurring obligations that would be senior in right of payment to the Senior Lien Pledge. By this Agreement and in implementation of Section 408, the parties agree that the Tax Allocation Bonds shall be secured by the Senior Lien Pledge, or any similar pledge made in accordance with the refunding of the 2003 Bonds in accordance with Section 34177.5(a)(1) of the Dissolution Act.

(d) Pledge of Redevelopment Property Tax Trust Funds under the DDA. Based on the foregoing, the parties acknowledge and agree that the Successor Agency's obligation to

issue Tax Allocation Bonds pursuant to Section 408 of the DDA is equivalent to and constitutes (i) a pledge of all Redevelopment Property Tax Trust Fund moneys received by the Agency, except to the extent of the prior express pledges under the Senior Obligations (and provided that the holders of the Senior Obligations may agree to subordinate the Senior Obligations to the Tax Allocation Bonds or permit the Tax Allocation Bonds to be issued on a parity with such Senior Obligations), within the meaning of Health and Safety Code Section 34177.5(a)(4), and (ii) obligates the Successor Agency to issue bonds secured by that pledge.

2.3 Contingencies to Tax Allocation Bond Issuance. Section 408 contemplates that the parties will enter into an agreement "as to the scope of [Successor Agency's] contingencies with respect to the [Successor Agency's] obligation to issue Tax Allocation Bonds." Such contingencies are set forth below:

(a) Union Bank, N.A. shall have consented, in writing, to the issuance of the Tax Allocation Bonds, which consent may permit such bonds to be issued on a parity basis with the Union Bank Loan.

(b) The terms of the Tax Allocation Bonds, including the principal amount thereof and interest rate thereon, shall be commercially reasonable and in accordance with sound underwriting standards and public financial management practices, as determined by the Successor Agency in its reasonable discretion) and shall be in accordance with the requirements of Section 34177.5(h) of the Dissolution Act.

(c) The underwriter's discount shall not exceed _____.

(d) The Oversight Board and DOF shall have approved the issuance of the Tax Allocation Bonds in accordance with the DDA, as implemented pursuant to this Agreement.

(e) All conditions precedent to the issuance of the Tax Allocation Bonds as may be set forth in a bond purchase agreement to be entered into between the Successor Agency and the initial underwriter/purchaser of the Tax Allocation Bonds, as determined in good faith by the Successor Agency, including delivery of the opinion of nationally recognized bond counsel (which may be Stradling Yocca Carlson & Rauth, a Professional Corporation) to the effect that the Tax Allocation Bonds represent the valid and binding obligations of the Successor Agency enforceable in accordance with their terms, subject to customary exclusions (which the parties acknowledge may in turn be conditioned upon a judicial validation of the bonds or receipt by the Successor Agency of a final and conclusive determination that the Implementation Agreement forms part of an "enforceable obligation, delivered by DOF under Section 34177.5(i) of the Dissolution Act.

(f) All conditions precedent to the Developer's right to payment of the Remaining Covenant Consideration shall have been met in accordance with the DDA, including this Implementation Agreement.

2.4 Confirmation of Successor Agency Obligation to Issue Tax Allocation Bonds. Subject to satisfaction of the contingencies described in Section 2.3, the Successor Agency shall issue Tax Allocation Bonds pursuant to Section 408 of the DDA in order to make the Remaining Covenant Consideration payment required by the DDA on or before the Remaining Covenant Consideration Due Date. The Successor Agency has approved the issuance of Tax Allocation Bonds (concurrently and on a parity with a refunding of the 2003 Bonds pursuant to Health and Safety Code

Section 34177.5(a)(1)) and has obtained Oversight Board approval of such action. The Oversight Board resolution approving the issuance of the Tax Allocation Bonds by the Successor Agency has been forwarded to DOF. The Successor Agency shall issue the Tax Allocation Bonds upon satisfaction of the conditions set forth in Section 2.3 hereof. If issuance of such Tax Allocation Bonds in the full amount of the Remaining Covenant Consideration is not reasonably possible, the Successor Agency shall make the Section 408.1(d) Payments to the Developer from Available Agency Revenues, at the Section 408.1(d) Interest Rate (or at the same interest rate applicable to the Tax Allocation Bonds if issued by the Successor Agency for less than the full amount of the Remaining Covenant Consideration). In such event, the Successor Agency's obligation to make the Section 408.1(d) Payments to the Developer shall be evidence by a Promissory Note in substantially the form attached hereto as Exhibit F and incorporated herein.

2.5 Miscellaneous. The parties acknowledge and agree that the language in the final sentence to Section 408 to the effect that "the Agency's obligations hereunder are unsecured" was and is intended to refer to the obligations prior to the time the obligation to issue Tax Allocation Bonds ripens and the Agency's contingencies referenced in Section 408 are met, including contingencies with respect to the Union Bank Loan.

3. No City Liability. Developer acknowledges and agrees that the City is not a party to the DDA or this Agreement and shall have no liability under the DDA or hereunder. Developer shall not assert any claims against the City based on the performance or non-performance of the Successor Agency under the DDA or hereunder.

4. Indemnification. In addition to Developer's indemnification obligations under the DDA, including Section 307 thereof, Developer shall indemnify, defend and hold harmless the Successor Agency and City and their respective representatives, officers, employees and agents from and against any and all Liabilities which result from any challenge to this Agreement or any failure or refusal to approve this Agreement by the Oversight Board or DOF or other governmental entity (other than the Successor Agency).

5. General Provisions.

5.1 Prompt Performance. Time is of the essence with respect to the performance of each obligation, covenant and condition set forth in this Agreement.

5.2 Further Assurances. The parties hereto agree to cooperate with each other and execute any documents reasonably necessary to carry out the intent and purpose of this Agreement.

5.3 Captions. Captions in this Agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.

5.4 No Other Amendments, Modifications, or Clarifications. Except as expressly provided in this Agreement, the DDA remains in full force and effect without amendment, modification or clarification.

5.5 Execution Authorized. Subject to Section 1.3, each party hereto hereby warrants and represents to each of the other parties hereto that it has legal authority to enter into this

Agreement and that all resolutions or other actions necessary to enable it to enter into this Agreement have been taken.

5.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and which together will constitute one instrument.

[Signatures appear on following page.]

SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

_____

Matthew Fertal, Director

Attest:

_____

Successor Agency Secretary

Approved as to Form:

_____

Stradling Yocca Carlson & Rauth,
as Successor Agency Counsel

Approved as to Form:

_____

City Attorney

GARDEN GROVE MXD, INC.,
a _____ corporation

_____

By:_____