

Resolution Confirming the Determination that the First Amended and Restated
Disposition and Development Agreement between the Former Agency and Garden
Grove MXD, Inc. is an Enforceable Obligation

July 24, 2012

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The DDA is an "enforceable obligation" under settled California contract law and pursuant to the definition of "enforceable obligation" set forth in Section 34171(d) of the Dissolution Act. Certain salient terms of the DDA are described below. Some of these obligations are included in the ROPS III, because these obligations require payments between January 1, 2013 and June 30, 2013; other obligations set forth in the DDA and described below will be included in future Recognized Obligation Payment Schedules.

1. The DDA states that, in consideration for the construction of the Project by the Developer and provided Developer is not in Breach and/or Default under the DDA, the Former 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) is to be paid concurrently with the "Commencement of Construction of the Parking Structure" as defined in the DDA which will be included in a future Recognized Obligation Payment Schedule.

(b) Forty-Two Million Dollars (\$42,000,000) is to be paid 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 by the City. Pursuant to Section 408 of the DDA, the Successor Agency intends to issue bonds or other obligations to pay the net amount of Forty-Two Million Dollars (\$42,000,000) to the Developer as set forth in the DDA. If and to the extent such obligations are issued prior to completion of the Hotel, debt service on such obligations shall not be payable from the Trust Fund (as described below).

2. The Successor Agency will receive an allocation from the Redevelopment Property Tax Trust Fund ("Trust Fund") of approximately \$4,200,000 per year for 20 years to pay the debt service on the obligations. The debt service amount will be stated on a subsequent Recognized Obligation Payment Schedule once the obligation is incurred by the Successor Agency, and prior to the hotel opening.

3. The DDA requires the Successor Agency to convey the 12 acre Site to the Developer for the Project at no cost to the Developer.

4. The Successor Agency is required to incur certain "Agency Improvements Costs" as defined in the DDA in the amount of \$1,500,000. These are included on the ROPS III being presented to the Successor Agency for approval as a separate action. The "Agency Improvements" are defined in the DDA to include: Street improvements, relocation benefits to eligible occupants, demolition, all offsite infrastructure, roadway and traffic improvements, and traffic mitigation measures.

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Due to uncertainty created by the passage of the Dissolution Act, the Developer has
endured a period of enforced delay and will therefore need to amend and extend
the Schedule of Performance in the DDA to accommodate this delay.

RECOMMENDATION


Staff recommends the Successor Agency approve the attached Resolution
confirming the determination that the DDA is an enforceable obligation properly
included on the ROPS III


KINGSLEY OKEREKE
Finance Director


By: Greg Blodgett
Senior Project Manager

Attachment 1: Successor Agency Resolution

Recommended for Approval



Matthew Fertal
Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT CONFIRMING THE DETERMINATION THAT THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE FORMER AGENCY AND GARDEN GROVE MXD, INC., IS AN ENFORCEABLE OBLIGATION PROPERLY INCLUDED ON THE RECOGNIZED OBLIGATION PAYMENTS SCHEDULE

WHEREAS, the City of Garden Grove, Acting as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is acting as Successor Agency to the Garden Grove Agency for Community Development ("Former Agency") pursuant to ABx1 26, which added Parts 1.8 and 1.85 to Division 24 of the Health & Safety Code ("Dissolution Act"); and

WHEREAS, the Former Agency entered into a First Amended and Restated Disposition and Development Agreement ("DDA") with Garden Grove MXD, LLC, which assigned its rights to Garden Grove MXD, Inc. ("Developer"), dated as of April 13, 2010 (prior to the effective date of the Dissolution Act); and

WHEREAS, the Former Agency and the Successor Agency included the DDA as an enforceable obligation on the Enforceable Obligation Payment Schedules and as a current obligation in the Recognized Obligation Payment Schedule for the period of January 1, 2012 to June 30, 2012 and for the period July 1, 2012 to December 31, 2012 prepared pursuant to the Dissolution Act; and

WHEREAS, the Successor Agency now intends to include the DDA as an enforceable obligation on the Recognized Obligation Payment Schedule for the period of January 1, 2013 to June 30, 2013 ("ROPS III") which is anticipated to be adopted by the Successor Agency on July 24, 2012; and

WHEREAS, upon approval of the ROPS III by the Successor Agency, the ROPS III will be submitted to the Oversight Board for approval and transmitted to the County Administrative Officer, County Auditor-Controller, State Controller's Office, and State Department of Finance, all pursuant to Sections 34177(l) and 34180(g) of the Health & Safety Code; and

WHEREAS, Health & Safety Code Section 34189(a), added by the Dissolution Act, provides that, "[c]ommencing on the effective date of [the Dissolution Act], all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative"; and

WHEREAS, Health & Safety Code Section 34173(b), added by the Dissolution Act, provides that, "[e]xcept for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to [the Dissolution Act], *all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the*

Community Redevelopment Law, are hereby vested in the successor agencies.” (emphasis added); and

WHEREAS, Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E), added by ABx1 26, define “enforceable obligation” to include “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Health & Safety Code Section 34177(c), added by ABx1 26, requires the Successor Agency to “[p]erform obligations required pursuant to any enforceable obligation”; and

WHEREAS, the DDA was duly approved and fully executed prior to the effective date of the Dissolution Act; and

WHEREAS, the DDA is a legally binding and enforceable agreement that does not violate the debt limit or public policy; and

WHEREAS, in order to meet its obligations under the DDA, the Successor Agency will be required to enter into future agreements, including an implementation agreement as contemplated under Section 408 of the DDA; and

WHEREAS, the Successor Agency reaffirms the provisions of the DDA which provides that, in consideration for the construction by the Developer of the Project (as defined in the DDA) and provided Developer is not in Breach and/or Default thereunder, the Successor Agency shall pay to the Developer the all cash sum of Forty-Seven Million Dollars (\$47,000,000) as follows:

1. Five Million Dollars (\$5,000,000) is to be paid concurrently with the “Commencement of Construction of the Parking Structure” as defined in the DDA. This cost will be included on a future Recognized Obligation Payment Schedule, consistent with the timing of the Successor Agency’s obligation to make this payment upon the Commencement of Construction of the Parking Structure.
2. Forty-Two Million Dollars (\$42,000,000) is to be paid 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 by the City. Pursuant to Section 408 of the DDA, the Successor Agency intends to issue bonds or other obligations to pay the net amount of Forty-Two Million Dollars (\$42,000,000) to the Developer as set forth in the DDA. If and to the extent such obligations are issued prior to completion of the Hotel, debt service on such obligations shall not be payable from the Trust Fund (as described below).

WHEREAS, in order to meet the debt service on the obligations described above, the Successor Agency will receive an allocation from the Redevelopment Property Tax Trust Fund (“Trust Fund”) of approximately \$4,200,000 per year for 20 years. The annual debt service amount will be included on subsequent Recognized Obligation Payment Schedules beginning in the period prior to the Hotel opening; and

WHEREAS, the DDA requires the Successor Agency to convey the 12 acre Site to the Developer for the Project at no cost to the Developer; and

WHEREAS, the DDA requires the Successor Agency to pay certain Agency Improvements Costs in the amount of \$1,500,000. These Agency Improvements Costs are anticipated to be included on the ROPS III being considered by the Successor Agency concurrently herewith. The "Agency Improvements" are defined in the DDA to include: Street improvements, relocation benefits to eligible occupants, demolition, all offsite infrastructure, roadway and traffic improvements, and traffic mitigation measures; and

WHEREAS, due to uncertainty created by the passage of the Dissolution Act, the Developer has endured a period of enforced delay and will therefore need to amend and extend the Schedule of Performance in the DDA to accommodate this delay.

WHEREAS, by this Resolution, the Successor Agency desires to confirm its prior determination that the DDA is an enforceable obligation of the Former Agency and the Successor Agency and to further confirm its intent to include amounts due thereunder on the applicable ROPS.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ACTING 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 finds and determines that the DDA is an enforceable obligation pursuant to Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E) and confirms its intent to include amounts required to be paid by the Successor Agency under the DDA between January 1, 2013 and June 30, 2013 on the ROPS III.

Section 3. This Resolution shall be effective immediately upon adoption.

Section 4. The Secretary on behalf of the Successor Agency shall certify to the adoption of this Resolution.