RESOLUTION NO. 2021-133

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO GIVE AN OPTION EXERCISE NOTICE TO MARINA COMMUNITY PARTNERS TO ACQUIRE THE HOTEL PORTION OF OPPORTUNITY SITE 1A IN ACCORDANCE WITH THE TERMS OF THE OPERATING AGREEMENT BETWEEN THE CITY AND MARINA COMMUNITY PARTNERS

WHEREAS, the Marina Redevelopment Agency and Marina Community Partners, LLC ("MCP") entered into the University Villages Disposition and Development Agreement dated May31, 2005 ("DDA") granting MCP the option to acquire approximately 290 acres of property for the development of a mixed-use development ("Development"); and

WHEREAS, the Marina Redevelopment Agency and MCP entered into that certain Second Implementation Agreement to the DDA in August 2008; and

WHEREAS, the Marina Redevelopment Agency was dissolved effective February 1, 2012, and the City of Marina succeeded to the former Redevelopment Agency's rights under the DDA; and

WHEREAS, the City and MCP entered into that certain Operating Agreement dated December 17, 2019 that clarified certain provisions of the DDA as well as the Specific Plan that governs the Development; and

WHEREAS, the Operating Agreement grants the City an option to acquire an approximately 9.5-acre site ('Hotel Site") that is a portion of Opportunity Site 1A if MCP is unable to meet certain conditions in the Operating Agreement related to the development of a hotel on the Hotel Site;

WHEREAS, MCP notified the City in December 2020 that it would not meet the required conditions of the Operating Agreement related to the Hotel Site and notifying the City that the City had 12 months to give MCP an Option Exercise Notice; and

WHEREAS, the City has been engaged in discussions with hotel developers related to the development of hotels and the Hotel Site and expects to enter into a Hotel Development Agreement with a developer that will call for the City to give the Option Exercise Notice by the end of December 2021 and then assign its rights to acquire the Hotel Site to the developer; and

WHEREAS, the development of a quality hotel or hotels on the Hotel Site is of vital concern to the City and the development of hotels on the Hotel Site will provide significant benefits to the City including additional transient occupancy tax, attraction of additional visitors to the community and event facilities not currently available in the City;

NOW THEREFORE BE IT RESOLVED that the City hereby finds that all of the above Recitals are true and correct and have served as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to give an option exercise notice to Marina Community Partners to acquire the Hotel Site in accordance with the terms of the Operating Agreement between the City and Marina Community Partners.

BE IT FURTHER RESOLVED that the City Manager is authorized to take such other actions as are necessary to ensure that the City's right to acquire the Hotel Site is preserved, including, but not limited to, opening escrow accounts and completing due diligence on the Hotel Site.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect from and after its passage.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th of December 2021, by the following vote.

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado
NOES, COUNCIL MEMBERS: None
ABSTAIN, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

December 7, 2021 Item No. **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 7, 2021

THE CITY COUNCIL OF THE CITY OF MARINA CONSIDER APPROVING RESOLUTION NO 2021-, AUTHORIZING THE CITY MANAGER TO GIVE AN OPTION EXERCISE NOTICE TO MARINA COMMUNITY PARTNERS TO ACQUIRE THE HOTEL SITE PORTION OF OPPORTUNITY SITE 1A IN ACCORDANCE WITH THE TERMS OF THE OPERATING AGREEMENT BETWEEN THE CITY AND MARINA COMMUNITY PARTNERS

REQUEST.
It is requested that the Marina City Council

1. Approve Resolution 2021-, authorizing the City Manager to give an option exercise notice to Marina Community Partners to acquire the Hotel Site portion of Opportunity Site 1A in accordance with the terms of the Operating Agreement between the City and Marina Community Partners.

BACKGROUND:
In May 2005, the former Marina Redevelopment Agency adopted Resolution No. 2005-21 (MRA) and the City Council adopted Resolution No. 2005-135, approving the University Villages Disposition and Development Agreement (DDA) granting Marina Community Partners, LLC (MCP) an option to acquire approximately 290 total acres in the University Villages Project site from the Redevelopment Agency. At the same meeting the City Council certified pursuant to Resolution No. 2005-127 the final Environmental Impact Report for the development project. The Redevelopment Agency approved the EIR pursuant to Resolution No. 2005-20 as a responsible agency. The City Council also approved certain land use approvals, including a specific plan for the development area, findings that the development project was consistent with the Base Reuse Plan and a Development Agreement pursuant to Government Code Section 65864.

The project was subsequently renamed The Dunes on Monterey Bay. After the approval of the DDA and the Development Agreement, the Marina Redevelopment Agency and MCP in August 2008 entered into a Second Implementation Agreement amending certain provisions of the DDA. After the dissolution of the Marina Redevelopment Agency, the City and MCP entered into an Operating Agreement in December 2019 addressing the impacts of the redevelopment dissolution and clarifying certain provisions of the DDA and the Second Implementation Agreement.

Since the approval of the Operating Agreement, MCP has taken title to Phase 2 of the Project, paying the City a total of $6,283,000 for the Phase 2 property. Additionally, MCP has completed deconstruction of the military buildings on Opportunity Sites 1A and B and is prepared to commence construction of the housing to be developed as part of Phase 2.

Among other provisions, the Operating Agreement made clarifying changes to the schedule of performance that required that MCP obtain approval of the Hotel Site Plan/Architectural Design for the hotel to be constructed on Opportunity Site 1A no later than December 2020. The Operating Agreement also required that MCP enter into an agreement with a hotel developer for a hotel development consisting of not less than 150 rooms by December 2020. The Operating Agreement granted the City an option to acquire the approximately 9.5-acre Hotel Site located on Opportunity

Site 1A with the backbone infrastructure and utility improvements to the Hotel Site installed if MCP was unable to enter into an agreement with the hotel developer by December 2020. Pursuant to the Operating Agreement, the City's option grants the City the right to acquire the Hotel Site for a purchase price of $3,600,000.

On December 22, 2020, MCP gave the City notice that it would not be able to enter into an agreement with a hotel developer as called for in the Operating Agreement and acknowledging the City's option to acquire the Hotel Site. Under the terms of the Operating Agreement, the City has one year to exercise its option by giving an Option Exercise Notice. Once the City gives the Option Exercise Notice, the City has 60 days to close escrow on the Hotel Site.

ANASLYSIS:

Since MCP gave the City notice that it would not meet the deadline for entering into an agreement with a hotel developer, the City has been engaged in discussions with several hotel developers in an effort to attract a high-quality hotel development to the Hotel Site. On August 17, 2021, the City Council heard presentations from four hotel developers interested in the Hotel Site. Based on direction from the City Council, after that meeting staff has been diligently negotiating the terms of a Hotel Development Agreement with Harvey Dadwal (Developer). The Developer is proposing to develop the Hotel Site in two phases. The first phase would consist of a dual hotel comprised of a 90 room Element hotel and a 110 room AC Hotel, as well as additional amenities and parking. Phase Two would consist of an additional 100 room hotel. The Developer has demonstrated a feasible financing plan for Phase One of the proposed development and has evidenced sufficient cash to pay the required $3.6 million purchase price for the Hotel Site. A subsequent item on tonight's agenda presents the terms of the Hotel Development Agreement between the City and the Developer for the proposed hotel development on the Hotel Site. The terms of that Hotel Development Agreement call for the City to give the Option Exercise Notice to MCP required under the Operating Agreement and to assign its rights to acquire the Hotel Site to the Developer if certain conditions are met as set forth in the Hotel Development Agreement.

In order to preserve the City's option to acquire the Hotel Site under the terms of the Operating Agreement, the City needs to give an Option Exercise Notice to MCP by the end of the year. Once the Option Exercise notice is given, there will be a 60-day escrow period during which time the City and the Developer are expected to finalize the terms of the Hotel Development Agreement and the Developer will satisfy the conditions in the Hotel Development Agreement required before the City assigns its right to acquire the Hotel Site. If for any reason the Developer cannot meet the terms in the Hotel Development Agreement necessary for the City to assign its rights to acquire the Hotel Site, then the City will have sufficient time to acquire the Hotel Site in accordance with the terms of the Hotel Development Agreement and the seek an alternative hotel developer.

CEQA

The certified and approved EIR has served as the environmental documentation for the approval of the Option Exercise Notice and the City giving the Option Exercise Notice does not change the analysis, recommendations and conclusions of the EIR or the mitigation measures adopted in May of 2005. The Option Exercise Notice does not in and of itself contemplate any development that differs from that originally proposed and studied for the EIR. However, before the City grants final regulatory approval of any development of the Hotel Site, the City will once again evaluate the development proposed to determine if it is consistent with the EIR and whether additional environmental analysis is required.

The giving of the Option Exercise Notice does not change the number of hotel rooms allowed in the development plan area or change the land uses for any properties within the development plan area. Additionally, there have not been any substantial changes to the project since the certification of the EIR, no new information has become available to the City that was not known at the time of certification of the EIR and there have not been any substantial changes with respect to the circumstances under which the project is being undertaken.

For these reasons the City have concluded that no additional environmental analysis is required and that the Certified EIR is the appropriate environmental document for the actions discussed above and authorized in the resolution.

FISCAL IMPACT

Giving the Option Exercise Notice would not have a fiscal impact on the City, but if for any reason the Developer is unable to proceed with acquisition of the Hotel Site, the City Council would, before expiration of the 60-day period, have to authorize the expenditure of $3.6 million to purchase the Hotel Site.

Respectfully submitted

Karen Tiedemann
Special Counsel

REVIEWED/CONCUR

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Layne Long
City Manager
City of Marina