

RESOLUTION NO. 2018-71
RESOLUTION NO. 2018-06 (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ACTING ON BEHALF OF THE CITY AND OF THE CITY COUNCIL OF THE CITY OF MARINA ACTING AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVING THE THIRD AMENDMENT TO THE OPTION AGREEMENT AMONG THE CITY OF MARINA, THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, AND WATHEN CASTANOS PETERSON HOMES, INC.

WHEREAS, the Redevelopment Agency of the City of Marina approved Resolution No. 2002-167 on October 15, 2002, approving the Option Agreement for the Marina Heights Project and the City Council approved Resolution No. 2002- on October 15, 2002 approving the Option Agreement for the Marina Heights Project, which Option Agreement was amended by that certain Implementation Agreement dated October 11, 2007, the First Amendment to the Option Agreement dated February 11, 2009 and the Second Amendment to Option Agreement dated March 18, 2016 (collectively, the "Option Agreement"); and,

WHEREAS, the City, the Successor Agency, and Wathen Castanos Peterson Homes, Inc. (collectively, the "Developer") now desire to amend the Option Agreement consistent with the provisions of the Third Amendment to Option Agreement on file with the City Clerk; and,

WHEREAS, the amendments proposed in the Third Amendment will eliminate certain restrictions on transfer of portions of the project to allow the Developer to proceed with development in expeditious manner; and

WHEREAS, the Third Amendment will also eliminate provisions of the Option Agreement that are no longer enforceable as a result of the dissolution of the Marina Redevelopment Agency; and

WHEREAS, the Third Amendment is in the best interest of the City and the Successor Agency and will assist with the development of the Project proceeding expeditiously in accordance with the entitlements and other approvals granted by the City for the Project; and

WHEREAS, the City Council and the Successor Agency have determined based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and the Environmental Impact Report certified by the City Council on March 25, 2003 as supplemented by the Supplement approved on March 3, 2004 (State Clearinghouse Number 2003020012) ("EIR") shall serve as the environmental review for the approval of the Third Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City of Marina and the Successor Agency to the Marina Redevelopment Agency hereby:

1. Finds that the above recitals are accurate.
2. Approve the Third Amendment to the Option Agreement among the City of Marina, the Successor Agency to the Marina Redevelopment Agency as successor in interest to the Redevelopment Agency of the City of Marina, and Wathen Castanos Peterson Homes, Inc. substantially in the form attached hereto subject only to such changes as are approved by the City Manager in consultation with the City Attorney.

Resolution No. 2018-71
Resolution No. 2018-06 (SA-MRA)
Page Two

PASSED AND ADOPTED by the City Council of the City of Marina acting on behalf of the City and as the governing board of the Successor Agency to the Marina Redevelopment Agency at a regular meeting held on the 19th day of June 2018 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Delgado

NOES, COUNCIL MEMBERS: Morton

ABSENT, COUNCIL MEMBERS: O'Connell

ABSTAIN, COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

THIRD AMENDMENT TO OPTION AGREEMENT

THIS THIRD AMENDMENT TO OPTION AGREEMENT (this "**Amendment**") is made as of this ____ day of February, 2018, by and among the CITY OF MARINA, a California municipal corporation (the "**City**"), the Successor Agency to the Marina Redevelopment Agency, a separate public entity ("**Successor Agency**"), and Wathen Castanos Peterson Homes, Inc., a Delaware corporation (collectively, the "**Developer**"), with reference to the following facts and circumstances (the City and the Developer are sometimes referred to herein collectively as the "**Parties**", and individually as a "**Party**"):

R E C I T A L S :

A. The City, Cypress Marina Heights, LLC and the former Redevelopment Agency of the City ("**Agency**") entered into that certain Option Agreement dated as of November 14, 2002 (the "**Option Agreement**"), pursuant to which the Agency granted to the Developer the exclusive option (the "**Option**") to acquire fee title to certain real property within the Marina Fort Ord Redevelopment Project Area No. 3 consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive, and 12th Street in the City of Marina, and more particularly described in the Option Agreement (the "**Project Site**"), under the terms and conditions set forth in the Option Agreement.

B. The Parties have amended the Option Agreement on three occasions with the: (i) October 11, 2007 Implementation Agreement, (ii) February 11, 2009 First Amendment to the Option Agreement, and (iii) March __, 2016 Second Amendment to Option Agreement (collectively the "**Amended Option Agreement**").

C. Cypress Marina heights, LLC previously exercised the Option, after which time the Amended Option Agreement constituted a Disposition and Development Agreement, and Developer acquired the Project Site.

D. The Agency was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Agency's rights and obligations under the Amended Option Agreement.

E. Cypress Marina Heights LLC and Developer entered into that certain Partial Assignment and Assumptions Agreement, whereby, Cypress Marina Heights, LLC assigned to Developer certain rights and obligations under the Amended Option Agreement.

F. The first phase of the Project consisting of roads and utilities has been substantially completed.

G. Development is underway of the first residential phase of the Project which consists of 300 homes.

G. Each of the City, the Successor Agency and Developer are requesting modifications to the Amended Option Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City, including but not limited to 210 below market rate homes.

H. The Parties now desire to amend the Amended Option Agreement pursuant to the terms of this Amendment.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Defined Terms.** All terms defined in the Amended Option Agreement when used herein shall have their respective meanings as set forth in the Amended Option Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an "Article" or a "Section" shall refer to the applicable Article or Section of the Option Agreement, unless otherwise specifically provided.

2. **Defined Terms Expressly Amended or Superseded by this Amendment.**

(a) Section 1.2.2, which defines "Affiliate" is hereby deleted in its entirety.

(b) Section 1.2.5, which defines "Assignment and Assumption Agreement" is hereby deleted in its entirety.

(c) Section 1.2.13, which defines "Developer" is hereby deleted in its entirety and replaced with the following:

"Developer" shall mean Wathen Castanos Peterson Homes Inc., its successors and assigns.

(d) Section 1.2.14 which defines "Development" is modified as follows:

The last seven words of Section 1.2.14 "in accordance with the Schedule of Benchmarks" are hereby deleted.

(e) Section 1.2.34 which defines "Parcel to be Repurchased" is hereby deleted in its entirety.

(f) Section 1.2.44 which defines "Proposed Transfer" is hereby deleted in its entirety.

(g) Section 1.2.48 which defines "Repurchase Price" is hereby deleted in its entirety.

(h) Section 1.2.49 which defines "Repurchase Option" is hereby deleted in its entirety.

(i) Section 1.2.53 which defines "Schedule of Benchmarks" is hereby deleted in its entirety.

(j) Section 1.2.57 which defines "Transfer" is hereby deleted in its entirety.

(k) Section 1.2.58 is modified as follows:

(i). The introductory clause of the first sentence of Section 1.2.58 is hereby deleted and replaced with:

“Unavoidable Delays’ shall mean delays beyond the control of the Party claiming the same due to any of the following reasons or another similar reason.”

3. **Exhibits.** Each of Exhibits D, I and J are hereby each deleted in its entirety. Accordingly, all references to Exhibits D, I and J in Section 1.3 are hereby deleted.

4. **FORA Impact Fees.**

(a) The first sentence of Section 2.3 is hereby deleted in its entirety and replaced with the following:

(i). The Developer shall pay to FORA all impact and mitigation fees adopted by FORA, as such fees may be amended from time to time, with respect to the use and development of former Fort Ord lands which are applicable to the Development of the Project Site, which fees for all of the Improvements are currently \$23,655 per residential unit (the “FORA Impact Fee”).

5. **City Impact Fees.** Section 2.4 is hereby deleted in its entirety and replaced with the following:

“Until 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all City-imposed impact and mitigation fees with respect to the Development of the Project Site, as set forth in Exhibit E. After 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all lawful City-imposed impact, mitigation and other fees with respect to the Development of the Project Site in accordance with the provisions of the Development Agreement between the City and the Developer.”

6. Section 5.6.8 is hereby deleted and is replaced with the following:

“Developer is Wathen Castanos Peterson Homes, Inc.”

7. **Development of the Project Site.** Section 7.1 is hereby modified as follows:

(a) “The words ‘and Schedule of Benchmarks’ are hereby deleted from the first sentence of Section 7.1.

(b) Section 7.2 is hereby deleted in its entirety.

8. **Limitations on Transfer.** Section 8.1 is hereby deleted in its entirety and is replaced with the following:

8.1. Transfers. The Developer is permitted to assign this Agreement or any right herein other than the the payment of the Profit Participation Payment set out in Section 6.3 Developer shall not be released from any obligations under this Agreement pursuant to any transfer until the City has received a copy of the final executed assignment and assumption agreement between Developer and the assignee that specifies the obligations being assigned or transferred.

9. **Events of Default.**

(a) 10.4.1 is hereby modified as follows:

(i). Section 10.4.1.(c) is hereby deleted in its entirety.

(ii). Section 10.4.1.(d) is hereby deleted in its entirety.

10. **Repurchase Option.** Section 10.6 is hereby deleted in its entirety.

11. **Miscellaneous Provisions.** Section 11.16 is hereby added at the end of
Article 11:

11.16. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretation.

12. **Conflict.** In the event of a conflict between terms and conditions of this Amendment and the terms and conditions of the Amended Option Agreement, the terms and conditions of this Amendment shall control.

13. **No Further Modification.** Except as set forth in this Amendment, all other terms and provisions of the Amended Option Agreement shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

“DEVELOPER”:

WATHEN CASTANOS PETERSON HOMES,
INC., a Delaware corporation

By:_____

Name:_____

Title:_____

“CITY”:

CITY OF MARINA

By:_____

Name:_____

Title:_____

APPROVED AS TO FORM:

_____,
City Attorney

PURSUANT TO RESOLUTION
NO. _____

ATTEST:

Anita Sharp

City Clerk
City of Marina

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

Honorable Mayor and City Council Members

City Council Meeting
of June 19, 2018

Honorable Board Members of the
Successor Agency of the Marina Redevelopment Agency

THE CITY COUNCIL OF THE CITY OF MARINA APPROVE THE FIRST READING OF AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND WATHEN CASTANOS PETERSON HOMES, INC. RELATED TO THE SEA HAVEN PROJECT

THE CITY COUNCIL ACTING ON BEHALF OF THE CITY AND AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVE THE THIRD AMENDMENT TO THE OPTION AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY, AND WATHEN CASTANOS PETERSON HOMES, INC.

THE CITY COUNCIL ACTING ON BEHALF OF THE CITY AND AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVE THE TERMINATION OF MEMORANDUM OF AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY AND WATHEN CASTANOS PETERSON HOMES, INC. RELATED TO THE FUNDING OF PHASE 1 OF THE STRATEGIC DEVELOPMENT CENTER

Supplemental Staff Report:

On February 21, 2018, on March 6, 201, and on June 5, 2018 the City Council, acting on behalf of the City of Marina and as the governing board of the Successor Agency to the Marina Redevelopment Agency considered various actions related to the Sea Haven (formerly Marina Heights) development project. At the June 5, 2018 meeting, the Council made several suggestions for revisions of the First Amendment to the Development Agreement and requested that the revised agreement be brought back to the Council for consideration at the June 19, 2018 meeting. Attached to this Report is a copy of the First Amendment showing the changes that have been made subsequent to the June 5, 2018 meeting. The changes are also summarized below.

- Parties to the First Amendment – As discussed in the staff report, on June 5, 2018, Cypress Marina Heights, LLC has sold a significant portion of the Sea Haven Development to Wathen Castanos Peterson Homes, Inc. In the attached First Amendment, Cypress Marina Heights, LLC has been removed as a party to the First Amendment. Cypress Marina Heights, LLC retained the cottage lots at Sea Haven and will continue to be subject to the Development Agreement unamended with respect to the development of those lots.
- Below Market Rate Homes – language has been added to Section 5 of the First Amendment to make clear that the Developer must continue to construct the below market rate homes on the same time line as market rate homes once construction has commenced. This language will ensure that the Developer cannot start construction on a below market rate home in order to obtain certificates of occupancy for market rate homes in a subsequent phase, but then abandon the construction.
- Below Market Rate Homes – Section 5 has also been revised to make clear that if the Developer holds an unsold inventory of more than eight below market rate homes, the

Developer can stop constructing below market rate homes until the unsold below market rate homes are sold.

- Replacement FORA Fee- Several changes have been made to the language related to replacing the FORA Fee in the event of dissolution of FORA, including:
 - Clarifying that the City fees imposed to replace the FORA fee may be to pay for obligations assumed by the City or obligations assumed by other regional partners, where the City is collecting the fee on behalf of the regional partner.
 - Clarifying the language on the maximum amount of the replacement FORA Fee to address inflationary increases in the fee. The language that has been added is the same inflationary fee adjuster that is used for the existing FORA Fee.
 - Language has been added to clarify that the maximum amount the Developer is obligated to pay if the City elects to replace the FORA fee with a combination of different types of fees and assessments.
 - Language has been added to make clear that the limitation on the amount of the replacement FORA Fee does not limit the City's ability to adopt other development impact fees or assessments.
- Park Fee- New language has been added to address issues that were raised by the Council regarding the development and payment of costs associated with the Sea Haven Park including:
 - The design of the Park is subject to City standard approval processes ensuring that City commissions will have input into the park design.
 - A requirement that the park be developed expeditiously.
 - Clarifying language on how the Park Fee Credit will be calculated once the total costs incurred by the developer for construction of the Park have been determined.
 - A requirement that the CC&Rs for the Sea Haven Home Owners Association require City consent to amend the provisions that require the Home Owners Association to pay the costs of maintaining the Park.
 - Clarification that park maintenance will be performed by a contractor mutually selected by the City and the Developer
 - Language that would allow the creation of a reserve fund for replacement of Park amenities provided that the total cost of maintenance and the reserve fund does not exceed \$12,000 per month.

Also attached to this report is the Third Amendment to the Option Agreement and the Termination of the Memorandum of Agreement for the Funding of Phase 1 of the Strategic Development Center. These agreements have not been changed since the June 5, 2018 meeting except to remove Cypress Marina Heights as a partner. Cypress Marina Heights assigned its rights under the Memorandum of Agreement for the Funding of the Strategic Development Center and Strategic Studies. Pursuant to that Agreement, Cypress Marina Heights advanced funds to the City for costs associated with the Strategic Development Center in exchange for a credit against development impact and processing fees. The Termination of the Memorandum of Agreement would terminate the Developer's right to the \$800,000 fee credit that has accrued.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Layne P. Long
City Manager
City of Marina

CITY COUNCIL OF THE CITY OF MARINA

ORDINANCE NO. 2018-

**AN ORDINANCE OF THE CITY OF MARINA APPROVING A FIRST
AMENDMENT TO DEVELOPMENT AGREEMENT WITH WATHEN
CASTANOS PETERSON HOMES, INC. FOR THE SEA HAVEN
PROJECT (FORMERLY MARINA HEIGHTS)**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Marina (the "City") has enacted Chapter 4.04 of the Marina Municipal Code (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, the City and Cypress Marina Heights, LLC previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the "Development Agreement"), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development of 1,050 homes (the "Project") on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement; and

WHEREAS, Cypress Marina Heights, LLC assigned portions of its rights and obligations under the Development Agreement to Wathen Castanos Peterson Homes, Inc. ("Developer"); and

WHEREAS, the City and the Developer have amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the "Implementation Agreement") (the Development Agreement, as so previously amended by the Implementation Agreement, being referred to herein as the "Amended Development Agreement").

WHEREAS, prior to its adoption of the Development Agreement, the City has approved a Specific Plan (the "Specific Plan") for the Project Site, General Plan Amendments (the "General Plan Amendments"), a Specific Plan Zoning Ordinance and Map Amendments, a Tentative Map and certified an EIR (collectively the "Project Approvals"); and

WHEREAS, consistent with the Project Approvals, the Developer is in the process of developing the Project on the Project Site; and

WHEREAS, the City and Developer have negotiated the terms of the First Amendment to the Development Agreement (the "First Amendment") amending the terms of the Amended Development Agreement; and

WHEREAS, on November 25, 2003, the City certified the Final Environmental Impact Report for the Project and on March 3, 2004 the City approved a supplement to the EIR (the "Final EIR"); and

WHEREAS, the complexity, magnitude and long term buildout of the Project would be difficult for Developer to undertake if the City had not determined, through the Amended Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project; and

WHEREAS, the First Amendment to the Development Agreement will assure both the City and Developer that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on January 25, 2018, on the First Amendment to the Development Agreement during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, following said public hearing, the Planning Commission, elected to forward the First Amendment to the Development Agreement to the City Council without recommendation; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on February 21, 2018, held a duly noticed public hearing on the First Amendment to the Development Agreement, which public hearing was continued to March 6, 2018, and a renoticed public hearing on June 5, 2018 which was continued to June 19, 2018 during which public hearings, the City Council received comments from the Developer, project consultants, City staff, and members of the general public;

THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Amended Development Agreement and the First Amendment to the Development Agreement substantially in the form on file with the City Clerk as of the date of passage of this Ordinance, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to Chapter 4.04 of the Municipal Code of the City of Marina, which was added by City Ordinance No. 2003-04, establishing procedures and requirements for consideration of development agreements pursuant to Government Code Section 65864 et seq. (the "Development Agreement Regulations").

SECTION 3. In accordance with Section 4.04.090 of the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The First Amendment to the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the Specific Plan and the General Plan, as amended;
- (b) The First Amendment to the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the Property which is subject to the Development Agreement is located;
- (c) The First Amendment to the Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The First Amendment to the Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The First Amendment to the Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
- (f) The First Amendment to the Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.
- (g) Based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and that the Final EIR shall serve as the environmental review for the approval of the First Amendment to the Development Agreement.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The Final EIR;
- (c) The City's General Plan;
- (d) The Marina Zoning Map;
- (e) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Final EIR, the Specific Plan, the General Plan Amendments, the Development Agreement, the First Amendment and other actions relating to the Property;
- (f) All documentary and oral evidence received at public hearing or submitted to the Planning Commission or City during the comment period relating to the First Amendment; and

- (g) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the First Amendment to the Development Agreement, substantially in the form on file with the City Clerk subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager prior to execution thereof, including but not limited to completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as amended and as approved by the City Council.

SECTION 6. Upon the effective date of this Ordinance as provided in Section 9 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the First Amendment to the Development Agreement on behalf of the City of Marina.

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the First Amendment to the Development Agreement and the Amended Development Agreement pursuant to the terms of the Amended Development Agreement as amended by the First Amendment, including but not limited to provisions for certain administrative amendments and transfers and assignments as authorized therein.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; as certified by the City Clerk.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Marina City Council on the 19th day of June 2018, and was passed and adopted at a regular meeting of the Marina City Council on the _____ day of _____, 2018.

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made as of this day of _____, 2018, by and between the CITY OF MARINA, a California municipal corporation (the "City"), and WATHEN CASTANOS PETERSON HOMES, INC, a Delaware corporation (~~"Wathen Castanos"~~), and ~~CYPRESS MARINA HEIGHTS, L.L.C., a California limited liability company ("Cypress Marina" and collectively with Wathen Castanos,~~ "Developer"), with reference to the following facts and circumstances (the City and Developer are sometimes referred to herein collectively as the "Parties", and each individually as a "Party"):

R E C I T A L S:

A. Cypress Marina ~~Heights, LLC~~ and the City previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the "Development Agreement"), pursuant to which the City and ~~Developer~~ Cypress Marina Heights, LLC agreed to certain matters with respect to the development of 1,050 homes (the "Project") on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement.

B. The ~~Parties~~ City and Cypress Marina Heights, LLC have amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the "Implementation Agreement") (the Development Agreement, as so previously amended by the Implementation Agreement, being referred to herein as the "Amended Development Agreement").

C. The first phase of the Project consisting of roads and utilities has been substantially completed.

D. Development is underway of the first residential phase of the Project which consists of 300 homes.

E. Cypress Marina Heights, LLC has partially assigned the Development Agreement to ~~Wathen Castanos~~ Developer pursuant to that Partial Assignment and Assumption Agreement dated April 12, 2018 and ~~Wathen Castanos~~ Developer has assumed certain obligations under the Development Agreement.

F. Each of the City and Developer are requesting modifications to the Amended Development Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City, including but not limited to 210 Below Market Rate Homes (defined herein) and construction of the Sea Haven Park.

G. The Parties now desire to amend the Amended Development Agreement pursuant to the terms of this Amendment.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Defined Terms.** All terms defined in the Amended Development Agreement when used herein shall have their respective meanings as set forth in the Amended Development Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an “Article” or a “Section” shall refer to the applicable Article or Section of the Amended Development Agreement, unless otherwise specifically provided.

2. **Defined Terms Expressly Amended or Superseded by this Amendment.**

(a) Section 1.1.2 which defines “Affiliate” is hereby deleted in its entirety.

(b) Section 1.1.4 which defines “Benchmarks” is hereby deleted in its entirety. Accordingly, the clause “but consistent with the Benchmarks,” as the same appears in the first line of Section 2.12.1, is hereby deleted.

(c) Section 1.1.9 is hereby deleted in its entirety and replaced with the following:

“**City Impact Fees**” shall mean (a) during the Original Term, only those development impact fees of the City (and only in the amounts) set forth in Exhibit B to this Agreement (the “Original City Impact Fees”); and (b) during the Extended Term, any lawful development impact fees, taxes or assessments lawfully adopted by the City and applicable to residential developments within the City in effect or adopted by the City Council after 12:01 a.m. on November 30, 2018, as such fees may be adopted or amended from time to time during the Extended Term. (the “Updated City Impact Fees”).

(d) Section 1.1.11 is hereby deleted in its entirety and replaced with the following:

“**Developer**” shall mean ~~Cypress Marina Heights, L.L.C., and~~ Wathen Castanos Peterson Homes, Inc ~~collectively,~~ and their successor and assigns.

(e) The clause “listed on Exhibit B to this Agreement” in item (iii) of Section 1.1.16 is hereby deleted.

(f) Section 1.1.30 which defines “Project Approvals” is modified to clarify Section 1.1.30.5 and to add the following permits and approvals granted or to be granted to Developer by the City for the Project to those already enumerated in Sections 1.1.30.1 through 1.1.30.6:

1.1.30.5 Tentative Tract Map No. 1478 approved by City Council Resolution

No. 2004-44

- 1.1.30.7 Resolution No. 2006-56 approving Phase 1 Final Map and a Subdivision Improvement Agreement
- 1.1.30.8 Resolution No. 2006-225 A Resolution if the City Council of the City of Marina Approving the Affordable Housing Program for the Marina Heights Subdivision
- 1.1.30.9 Resolution No. 2006-228 approving Phase 2 Final Map and a Subdivision Improvement Agreement for the First 299 Residential Units
- 1.1.30.10 Implementation Agreement Regarding that Certain Option Agreement by and among the Redevelopment Agency of the City of Marina, the City of Marina and Cypress Marina Heights L.P. and that Certain Development Agreement by and between the City of Marina and Cypress Marina Heights L.P. dated October 11, 2007
- 1.1.30.11 Resolution No. 2016-23 Issuing a Notice of Compliance by Cypress Marina Heights L.P. Relating to the Development Agreement for the Marina Heights Project
- 1.1.30.12 Resolution No. 2016-24 Approving Designating Wathen Castanos Homes as an Approved Builder Under the Marina Heights Option Agreement
- 1.1.30.13 Resolution No. 2016-84 by the City Council of the City of Marina Consenting to a Partial Assignment and Assumption Agreement for the Marina Heights Development Agreement from Cypress Marina Heights L.L.C. to WC Marina L.L.C. and a Partial Assignment and Assumption Agreement for the Marina Heights Option Agreement from Cypress Marina Heights LLC to WC Marina LLC
- 1.1.30.14 Resolution No. 2017-1 of the City Council of the City of Marina Acting on Behalf of the City of Marina and the Successor Agency to the City of Marina Redevelopment Agency Approving Designating Granville Homes and/or Valley Coastal Development, LLC as a Pre-Approved Homebuilder Pursuant to the Marina Heights Option Agreement
- 1.1.30.15 Ordinance No. 2018-___ approving First Amendment to Development Agreement by and between the City of Marina and ~~Cypress Marina Heights L.L.C.~~ Wathen Castanos Peterson Homes, Inc.

3. **New Defined Terms Added to the Amended Development Agreement by this Amendment.**

(a) **“Below Market Rate Homes”** or "BMR Homes" shall mean the 210 Residential Units consisting of 51 townhomes affordable to moderate income families, 51 townhomes and 23 cottages affordable to “workforce” families and the 85 “bridge homes” whose sales price is determined by the Option Agreement.

(b) **“Extended Term”** shall commence at 12:01 a.m. on November 30, 2018 and then terminate at 12:01 a.m. November 30, 2030.

(c) **“Market Rate Homes”** shall mean the 840 Residential Units which are not Below Market Rate Homes.

(d) **“Original Term”** shall mean the period commencing on the Effective Date and terminating at 12:01 a.m. on November 30, 2018.

4. **Term.** Section 1.2.2 is hereby deleted in its entirety and replaced with the following:

The Term of this Agreement shall commence on the Effective Date and shall continue until, and then terminate at 12:01 a.m. on November 30, 2030 (the “Term”), unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement. The term of this Agreement has been negotiated to allow for the occurrence of possible Force Majeure Events and it shall not be extended due to the occurrence of Force Majeure Events without express action of the City extending the term.

5. **Development and Timing.** The second through fifth sentences of Section 2.6.1 are hereby deleted in their entirety and replaced by the following:

The Below Market Rate Homes are an important, but complex component of the Project. The Project Approvals, including the General Plan and Specific Plan, allow a jump start to the Project, meaning a period in the early years of construction of the Project when the Developer has the right to develop 115 Market Rate Homes (the "Jump Start Homes") prior to developing the Below Market Rate Homes. The Project Approvals require that all product types be disbursed throughout the Project Site and integrated throughout the Project. Consistent with the Project Approvals, the Developer intends to construct the Below Market Rate Homes in a manner proportionate to construction of the Market Rate Homes, as shown in the following table:

Type of Product	Phase II	Phase III	Phase IV	Phase V	Total
Total BMR Homes	36	83	66	25	210
Total Market Rate Homes	264	212	222	142	840
Total Homes Per Phase	300	295	288	167	1050

As shown in the table above, and in accordance with the Project Approvals, Below Market Rate Homes will total 20% of the total Project. The percentage of Below Market Rate Homes per phase ranges from 12% to 28%.

All of the Below Market Rate Homes per phase of the Project, as shown in the table above, shall have "Commenced Construction" before the first certificate of occupancy is issued for the next phase; provided, however, that Developer may develop the phases shown in the table out of sequence. In the alternative, following completion of the Jump Start Homes, whenever Developer has Completed Construction on approximately 200 Market Rate Homes, Developer shall not receive a certificate of occupancy for additional Market Rate Homes until Developer has Commenced Construction on approximately 30 Below Market Rate Homes; provided, however, that at Project completion the total Below Market Rate Homes shall not be less than 20% of the total Project. "Commenced Construction" shall mean that Developer has received a building permit from the City ~~and~~ that site work has commenced ~~and the Developer shall use commercially best efforts to complete~~ continues to construct the home expeditiously such that the construction of each the Below Market Rate Home within the same time frame as a market rate unit Homes shall proceed on the same time line as the Market Rate Homes which are generally projected to be complete 12 months after construction commences.

Notwithstanding the above, if at any time Developer is unable to sell more than eight (8) BMR Homes for a period of six months after completion of such BMR Homes despite commercially reasonable efforts to find Qualified Buyers, the Developer shall have no obligation to Commence Construction on additional BMR Homes until the earlier of (a) the City and the Developer reaching agreement on changes to the BMR Home sales program that address constraints to the sale of the BMR Homes and the unsold homes have been sold; (b) the City providing the Developer a list of Qualified Buyers pursuant to the City's Below Market Rate Housing Policies and Procedures and the unsold homes have been sold to such Qualified Buyers; or (c) the unsold BMR Home or Homes have been sold.

The City is expected to administer the affordable housing program for the Project, including but not limited to providing the Developer with a list of qualified buyers (the "Qualified Buyers List") for the Below Market Rate Homes. To the extent that the City is delayed in providing the Qualified

Buyers List to Developer, the Developer may select Qualified Buyers for the Below Market Rate homes, provided, however, City Staff must verify the Qualified Buyers eligibility for the Below Market Rate Homes on or before the tenth (10th) business day after the date on which the Developer provides the Qualified Buyers List to the City. City shall not withhold certificates of occupancy for Market Rate Homes under this Section if the City has caused a delay in the development of the Below Market Rate Homes.

6. **Fees.** Section 2.7.1 is hereby deleted in its entirety and replaced with the following:

~~(a)~~2.7.1.1 During the Original Term, Developer shall be obligated to pay only the Original City Impact Fees as set forth in Exhibit B attached hereto and incorporated herein by this reference, and the City shall not impose or exact any additional fees, whether through the exercise of the police power, the taxing power, or any other means. During the Extended Term, Developer shall be obligated to pay the Updated City Impact Fees. Notwithstanding anything set forth in this Section 2.7.1-1 or in Section 2.3, during the Extended Term the Developer shall be obligated to pay any lawful and lawfully imposed fees, taxes or assessments adopted by the City subsequent to the Effective Date applicable to residential development projects within the City, including new development impact fees that were not previously included in the Original City Impact Fees.

~~(b)~~2.7.1.2 FORA Fee. (a) City and Developer acknowledge that (i) Developer is currently obligated to pay at time of issuance of building permit a one-time special assessment per residential unit levied by the Fort Ord Reuse Authority (“FORA”) Basewide Community Facilities District in the amount of \$23,837, which may be adjusted (the “FORA Fee”); (ii) FORA may be dissolved in 2020 and some or all of its obligations may be transferred to local agencies. In the event that FORA is dissolved Developer acknowledges that it will no longer be obligated to pay the FORA Fee to FORA-~~but~~- Developer further acknowledges that City may assume certain obligations of FORA currently paid by FORA with the FORA Fee ~~and~~-or assume obligations to collect fees or assessments from property owners and developers to pay for obligations currently covered by the FORA Fee and assumed by other public entities and that City will need to collect a fee comparable to the ~~FORA~~-FORA Fee to cover such obligations.

(b) Developer agrees to cooperate with the City in addressing the replacement of the FORA Fee, including the following:

(i) ~~(e)~~Developer shall vote for inclusion of any property owned by Developer for which the FORA Fee has not already been paid within

assessment districts or community facilities districts formed by the City or another regional entity, and shall pay such fees as may be imposed by such assessment districts or community facilities districts, provided such fees are lawful and lawfully imposed, and such fees do not exceed the FORA Fee in effect at the time of FORA's dissolution subject to ~~adjustments based on the increase in the Consumer Price Index consistent with the FORA Fee adjustments, which adjustments will not be imposed not more often than once annually~~ annual adjustments equal to the lesser of (1) five percent (5%) or (2) the percentage change since the immediately preceding fiscal year in the Engineering News Record's Construction Cost Index applicable to the Marina area ("FORA Fee Adjuster").

- (ii) ~~(d)~~ As part of the consideration for City's agreement to extend the term of this Agreement as set forth above, Developer agrees in the event that FORA is dissolved with respect to any property owned by Developer for which the FORA Fee has not already been paid ~~and to the extent that the FORA Fee is not fully replaced by an assessment district or community facilities district~~, to pay to the City ~~an amount equal to a new fee to replace the FORA fee at the time of FORA's dissolution Fee~~ a new fee to replace the FORA fee at the time of FORA's dissolution (the "New Fee"), provided that such New Fee:
- (A) ~~(i)~~ is required to be paid upon issuance of a building permit and not before,
 - (B) ~~(ii)~~ is a one-time fee or assessment;
 - (C) ~~(iii)~~ the City shall be responsible for distributing such applicable portions of the New Fee to other regional agencies, if any, that assume obligations that were previously funded by the FORA Fee; and,
 - (D) ~~(iv)~~ whether the New Fee is a single fee and/or assessment or multiple fees and/or assessments, it shall not in the aggregate exceed the ~~amount of the FORA Fee subject to adjustments based on the Consumer Price Index consistent with the FORA Fee adjustments, which adjustment shall not be imposed not more often than once annually~~ lesser of (1) the amount of the FORA Fee at the time of FORA's dissolution as increased by the FORA Fee Adjuster; or (2) the amount that when added to any FORA related development impact fee adopted by the City or other local entities or any special assessment or special tax imposed pursuant to subsection (b)(i) above does not exceed the FORA Fee at the of FORA's dissolution as adjusted by the FORA Fee Adjuster.

Notwithstanding anything set forth in this paragraph or the provisions of Sections

6.2 and 6.3, the provisions of this Section shall not be applicable to individual homeowners or assignees who took title to portions of the Property prior to the Effective Date of this ~~First~~ Amendment and provided further, in no event shall the New Fee pursuant to subsection (~~eb~~)(ii) and any assessment or special tax pursuant to subsection (~~eb~~)(i) ~~shall not in the aggregate exceed the FORA Fee at the time of FORA's dissolution subject to adjustments based on the Consumer Price Index consistent with the FORA Fee adjustments~~ increased by the FORA Fee Adjuster. The limitations set forth herein on the amount of any fee imposed by the City or adopted by the City to replace the FORA Fee shall not in any way limit the City's ability to adopt and impose other development impact fees, special taxes, or assessments unrelated to the replacement of the FORA Fee.

7. **Park Fees.** Section 2.8.2 is hereby deleted in its entirety and replaced with the following:

During the Original Term, Developer shall pay Park Development Fees ("Park Fees") set forth in Exhibit B to this Agreement as part of the City Impact Fees. During the Extended Term, Developer shall pay the Park Fees included in the Updated City Impact Fees. The Park Fees shall be paid at the time of issuance of building permits for the applicable Residential Units. In addition to the Park Fees, ~~Wathen-Castanos~~ Developer is obligated, pursuant to the conditions of approval of the Project, to pay up to \$1.5 million for improvements to the adjacent 18 acre park ("Sea Haven Park") as such amount is increased by the increase in the Consumer Price Index since the approval of the Original Agreement in 2004 ("Sea Haven Park Fee"). The City and ~~Wathen-Castanos~~ Developer agree that the Sea Haven Park Fee owed as increased by the increase in the Consumer Price Index is Two Million One Hundred Thousand Dollars (\$2,100,000) as of the Effective Date of this Amendment.

~~Wathen-Castanos~~ Developer shall construct the Sea Haven Park, at ~~Wathen Castanos'~~ Developer's expense, subject to the following conditions and limitations:

- (i) ~~(i)~~ The total cost of the Sea Haven Park to be paid by ~~Wathen Castanos~~ Developer shall not exceed Three Million Dollars (\$3,000,000) including, but not limited to, design, engineering, construction and improvements. Nothing herein shall preclude the City from contributing additional funds to the construction of the Sea Haven Park.
- (ii) The design of the Sea Haven Park shall be subject to review and approval by the City in accordance with the City's standard approval process.

(iii) The Sea Haven Park shall be constructed expeditiously.

(~~iii~~iv) Upon completion of the Sea Haven Park, ~~Wathen-Castanos~~
Developer shall be relieved of the Sea Haven Park Fee;

(~~iii~~v) Upon completion of the Sea Haven Park, ~~Wathen-Castanos~~
Developer shall receive a fee credit, in an amount not to exceed
nine hundred thousand dollars (\$900,000) toward the Park Fees to
be paid on the 750 units in Phases III-V (“Park Fee Credit”), with
the Park Fee Credit to be divided equally among the 750 units in
Phases III-V and to be taken for each unit only at such time as
~~Wathen-Castanos~~ Developer is issued a building permit for the unit.
The ~~City and Wathen-Castanos~~ amount of the Park Fee Credit shall
be determined by the City and Developer after completion of the
Sea Haven Park based on Developer's submission of certified costs
evidencing the total amount spent by the Developer for the
development of the Sea Haven Park and shall not exceed the lesser
of (A) Nine Hundred Thousand Dollars (\$900,000) and (B) the total
amount spent by the Developer for the development of the Sea
Haven Park minus the Sea Haven Park Fee. The City and
Developer shall enter into a separate development and
reimbursement agreement prior to the construction of the Sea
Haven Park; and

(~~iv~~vi) Upon completion of the Sea Haven Park, the cost of the Sea Haven
Park maintenance shall be paid by the Sea Haven Home Owners
Association. The maintenance cost to the Home Owners
Association shall not exceed \$12,000.00 per month. The City and
Sea Haven Home Owner's Association shall enter into a
maintenance agreement to be recorded against the property
addressing the maintenance standards and responsibilities prior to
completion of the Sea Haven Park and the City shall be a third party
beneficiary of the covenants, conditions and restrictions of the Sea
Haven Home Owners Association with respect to the provisions
governing maintenance of the Sea Haven Park and such provisions
shall not be subject to amendment without the consent of the City.
Maintenance of the Sea Haven Park shall be performed by a
contractor mutually selected by the City and the Developer and
hired by the City. Maintenance costs may include establishment of
reserve funds to replace park amenities as long as such costs do not
exceed \$12,000 per month.

8. **Amendment of Agreement and Subsequent Approvals.** The following paragraphs are added to the end of Article 3:

3.2.3. The Parties acknowledge that as the Project is developed, the Project Approvals may require modification or additional permits may be issued by the City (the "Subsequent Approvals"). In the event that Subsequent Approvals are approved or issued by the City, they shall automatically become part of the "Project Approvals."

3.2.4. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretations.

9. **Default.** Section 4.1.2.1 is hereby deleted in its entirety.

10. **Restrictions on Transfer.** Article 5 is hereby deleted in its entirety.

11. **Schedule of Benchmarks.** Exhibit D to the Development Agreement, as modified by the Implementation Agreement, is hereby deleted in its entirety.

12. **Conflict.** In the event of a conflict between terms and condition of this Amendment and the terms and conditions of the Amended Development Agreement, the terms and conditions of this Amendment shall control.

13. **No Further Modification.** Except as set forth in this Amendment, all other terms and provisions of the Amended Development Agreement are hereby ratified and confirmed and shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

"DEVELOPER":

~~CYPRESS MARINA HEIGHTS, L.L.C. a
California limited liability company~~

~~By: Cypress Marina Partners L.L.C.,
a California limited liability company
Its: Manager~~

By: _____
Name: Mark A. Shoberg

~~Title: Manager~~

WATHEN CASTANOS PETERSON
HOMES, INC.,

By: _____
Its: _____

“CITY”:

CITY OF MARINA

By: _____
Name: _____
Title: _____

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “Amendment”) is made as of this day of _____, 2018, by and between the CITY OF MARINA, a California municipal corporation (the “City”), and WATHEN CASTANOS PETERSON HOMES, INC, a Delaware corporation (“Developer”), with reference to the following facts and circumstances (the City and Developer are sometimes referred to herein collectively as the “Parties”, and each individually as a “Party”):

R E C I T A L S:

A. Cypress Marina Heights, LLC and the City previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the “Development Agreement”), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development of 1,050 homes (the “Project”) on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina (the “Project Site”), which is more particularly described in the Development Agreement.

B. The City and Cypress Marina Heights, LLC have amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the “Implementation Agreement”) (the Development Agreement, as so previously amended by the Implementation Agreement, being referred to herein as the “Amended Development Agreement”).

C. The first phase of the Project consisting of roads and utilities has been substantially completed.

D. Development is underway of the first residential phase of the Project which consists of 300 homes.

E. Cypress Marina Heights, LLC has partially assigned the Development Agreement to Developer pursuant to that Partial Assignment and Assumption Agreement dated April 12, 2018 and Developer has assumed certain obligations under the Development Agreement.

F. Each of the City and Developer are requesting modifications to the Amended Development Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City, including but not limited to 210 Below Market Rate Homes (defined herein) and construction of the Sea Haven Park.

G. The Parties now desire to amend the Amended Development Agreement pursuant to the terms of this Amendment.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and

agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Defined Terms.** All terms defined in the Amended Development Agreement when used herein shall have their respective meanings as set forth in the Amended Development Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an “Article” or a “Section” shall refer to the applicable Article or Section of the Amended Development Agreement, unless otherwise specifically provided.

2. **Defined Terms Expressly Amended or Superseded by this Amendment.**

(a) Section 1.1.2 which defines “Affiliate” is hereby deleted in its entirety.

(b) Section 1.1.4 which defines “Benchmarks” is hereby deleted in its entirety. Accordingly, the clause “but consistent with the Benchmarks,” as the same appears in the first line of Section 2.12.1, is hereby deleted.

(c) Section 1.1.9 is hereby deleted in its entirety and replaced with the following:

“**City Impact Fees**” shall mean (a) during the Original Term, only those development impact fees of the City (and only in the amounts) set forth in Exhibit B to this Agreement (the “Original City Impact Fees”); and (b) during the Extended Term, any lawful development impact fees, taxes or assessments lawfully adopted by the City and applicable to residential developments within the City in effect or adopted by the City Council after 12:01 a.m. on November 30, 2018, as such fees may be adopted or amended from time to time during the Extended Term. (the “Updated City Impact Fees”).

(d) Section 1.1.11 is hereby deleted in its entirety and replaced with the following:

“**Developer**” shall mean Wathen Castanos Peterson Homes, Inc. and their successor and assigns.

(e) The clause “listed on Exhibit B to this Agreement” in item (iii) of Section 1.1.16 is hereby deleted.

(f) Section 1.1.30 which defines “Project Approvals” is modified to clarify Section 1.1.30.5 and to add the following permits and approvals granted or to be granted to Developer by the City for the Project to those already enumerated in Sections 1.1.30.1 through 1.1.30.6:

1.1.30.5 Tentative Tract Map No. 1478 approved by City Council Resolution No. 2004-44

1.1.30.7 Resolution No. 2006-56 approving Phase 1 Final Map and a Subdivision Improvement Agreement

- 1.1.30.8 Resolution No. 2006-225 A Resolution if the City Council of the City of Marina Approving the Affordable Housing Program for the Marina Heights Subdivision
- 1.1.30.9 Resolution No. 2006-228 approving Phase 2 Final Map and a Subdivision Improvement Agreement for the First 299 Residential Units
- 1.1.30.10 Implementation Agreement Regarding that Certain Option Agreement by and among the Redevelopment Agency of the City of Marina, the City of Marina and Cypress Marina Heights L.P. and that Certain Development Agreement by and between the City of Marina and Cypress Marina Heights L.P. dated October 11, 2007
- 1.1.30.11 Resolution No. 2016-23 Issuing a Notice of Compliance by Cypress Marina Heights L.P. Relating to the Development Agreement for the Marina Heights Project
- 1.1.30.12 Resolution No. 2016-24 Approving Designating Wathen Castanos Homes as an Approved Builder Under the Marina Heights Option Agreement
- 1.1.30.13 Resolution No. 2016-84 by the City Council of the City of Marina Consenting to a Partial Assignment and Assumption Agreement for the Marina Heights Development Agreement from Cypress Marina Heights L.L.C. to WC Marina L.L.C. and a Partial Assignment and Assumption Agreement for the Marina Heights Option Agreement from Cypress Marina Heights LLC to WC Marina LLC
- 1.1.30.14 Resolution No. 2017-1 of the City Council of the City of Marina Acting on Behalf of the City of Marina and the Successor Agency to the City of Marina Redevelopment Agency Approving Designating Granville Homes and/or Valley Coastal Development, LLC as a Pre-Approved Homebuilder Pursuant to the Marina Heights Option Agreement
- 1.1.30.15 Ordinance No. 2018-___ approving First Amendment to Development Agreement by and between the City of Marina and Wathen Castanos Peterson Homes, Inc.

3. **New Defined Terms Added to the Amended Development Agreement by this Amendment.**

(a) “**Below Market Rate Homes**” or "BMR Homes" shall mean the 210 Residential Units consisting of 51 townhomes affordable to moderate income families, 51

townhomes and 23 cottages affordable to “workforce” families and the 85 “bridge homes” whose sales price is determined by the Option Agreement.

(b) “**Extended Term**” shall commence at 12:01 a.m. on November 30, 2018 and then terminate at 12:01 a.m. November 30, 2030.

(c) “**Market Rate Homes**” shall mean the 840 Residential Units which are not Below Market Rate Homes.

(d) “**Original Term**” shall mean the period commencing on the Effective Date and terminating at 12:01 a.m. on November 30, 2018.

4. **Term.** Section 1.2.2 is hereby deleted in its entirety and replaced with the following:

The Term of this Agreement shall commence on the Effective Date and shall continue until, and then terminate at 12:01 a.m. on November 30, 2030 (the “Term”), unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement. The term of this Agreement has been negotiated to allow for the occurrence of possible Force Majeure Events and it shall not be extended due to the occurrence of Force Majeure Events without express action of the City extending the term.

5. **Development and Timing.** The second through fifth sentences of Section 2.6.1 are hereby deleted in their entirety and replaced by the following:

The Below Market Rate Homes are an important, but complex component of the Project. The Project Approvals, including the General Plan and Specific Plan, allow a jump start to the Project, meaning a period in the early years of construction of the Project when the Developer has the right to develop 115 Market Rate Homes (the "Jump Start Homes") prior to developing the Below Market Rate Homes. The Project Approvals require that all product types be disbursed throughout the Project Site and integrated throughout the Project. Consistent with the Project Approvals, the Developer intends to construct the Below Market Rate Homes in a manner proportionate to construction of the Market Rate Homes, as shown in the following table:

Type of Product	Phase II	Phase III	Phase IV	Phase V	Total
Total BMR Homes	36	83	66	25	210
Total Market Rate Homes	264	212	222	142	840
Total Homes Per Phase	300	295	288	167	1050

As shown in the table above, and in accordance with the Project Approvals, Below Market Rate Homes will total 20% of the total Project. The percentage

of Below Market Rate Homes per phase ranges from 12% to 28%.

All of the Below Market Rate Homes per phase of the Project, as shown in the table above, shall have "Commenced Construction" before the first certificate of occupancy is issued for the next phase; provided, however, that Developer may develop the phases shown in the table out of sequence. In the alternative, following completion of the Jump Start Homes, whenever Developer has Completed Construction on approximately 200 Market Rate Homes, Developer shall not receive a certificate of occupancy for additional Market Rate Homes until Developer has Commenced Construction on approximately 30 Below Market Rate Homes; provided, however, that at Project completion the total Below Market Rate Homes shall not be less than 20% of the total Project. "Commenced Construction" shall mean that Developer has received a building permit from the City, that site work has commenced and the Developer continues to construct the home expeditiously such that the construction of the Below Market Rate Homes shall proceed on the same time line as the Market Rate Homes which are generally projected to be complete 12 months after construction commences.

Notwithstanding the above, if at any time Developer is unable to sell more than eight (8) BMR Homes for a period of six months after completion of such BMR Homes despite commercially reasonable efforts to find Qualified Buyers, the Developer shall have no obligation to Commence Construction on additional BMR Homes until the earlier of (a) the City and the Developer reaching agreement on changes to the BMR Home sales program that address constraints to the sale of the BMR Homes and the unsold homes have been sold; (b) the City providing the Developer a list of Qualified Buyers pursuant to the City's Below Market Rate Housing Policies and Procedures and the unsold homes have been sold to such Qualified Buyers; or (c) the unsold BMR Home or Homes have been sold.

The City is expected to administer the affordable housing program for the Project, including but not limited to providing the Developer with a list of qualified buyers (the "Qualified Buyers List") for the Below Market Rate Homes. To the extent that the City is delayed in providing the Qualified Buyers List to Developer, the Developer may select Qualified Buyers for the Below Market Rate homes, provided, however, City Staff must verify the Qualified Buyers eligibility for the Below Market Rate Homes on or before the tenth (10th) business day after the date on which the Developer provides the Qualified Buyers List to the City. City shall not withhold certificates of occupancy for Market Rate Homes under this Section if the City has caused a delay in the development of the Below Market Rate Homes.

6. **Fees.** Section 2.7.1 is hereby deleted in its entirety and replaced with the following:

2.7.1.1 During the Original Term, Developer shall be obligated to pay only the Original City Impact Fees as set forth in Exhibit B attached hereto and incorporated herein by this reference, and the City shall not impose or exact any additional fees, whether through the exercise of the police power, the taxing power, or any other means. During the Extended Term, Developer shall be obligated to pay the Updated City Impact Fees. Notwithstanding anything set forth in this Section 2.7.1.1 or in Section 2.3, during the Extended Term the Developer shall be obligated to pay any lawful and lawfully imposed fees, taxes or assessments adopted by the City subsequent to the Effective Date applicable to residential development projects within the City, including new development impact fees that were not previously included in the Original City Impact Fees.

2.7.1.2 FORA Fee. (a) City and Developer acknowledge that (i) Developer is currently obligated to pay at time of issuance of building permit a one-time special assessment per residential unit levied by the Fort Ord Reuse Authority (“FORA”) Basewide Community Facilities District in the amount of \$23,837, which may be adjusted (the “FORA Fee”); (ii) FORA may be dissolved in 2020 and some or all of its obligations may be transferred to local agencies. In the event that FORA is dissolved Developer acknowledges that it will no longer be obligated to pay the FORA Fee to FORA. Developer further acknowledges that City may assume certain obligations of FORA currently paid by FORA with the FORA Fee or assume obligations to collect fees or assessments from property owners and developers to pay for obligations currently covered by the FORA Fee and assumed by other public entities and that City will need to collect a fee comparable to the FORA Fee to cover such obligations.

(b) Developer agrees to cooperate with the City in addressing the replacement of the FORA Fee, including the following:

- (i) Developer shall vote for inclusion of any property owned by Developer for which the FORA Fee has not already been paid within assessment districts or community facilities districts formed by the City or another regional entity, and shall pay such fees as may be imposed by such assessment districts or community facilities districts, provided such fees are lawful and lawfully imposed, and such fees do not exceed the FORA Fee in effect at the time of FORA’s dissolution subject to annual adjustments equal to the lesser of (1) five percent (5%) or (2) the percentage change since the immediately preceding fiscal year in the

Engineering News Record's Construction Cost Index applicable to the Marina area ("FORA Fee Adjuster").

- (ii) As part of the consideration for City's agreement to extend the term of this Agreement as set forth above, Developer agrees in the event that FORA is dissolved with respect to any property owned by Developer for which the FORA Fee has not already been paid, to pay to the City a new fee to replace the FORA Fee (the "New Fee"), provided that such New Fee:
 - (A) is required to be paid upon issuance of a building permit and not before,
 - (B) is a one-time fee or assessment;
 - (C) the City shall be responsible for distributing such applicable portions of the New Fee to other regional agencies, if any, that assume obligations that were previously funded by the FORA Fee; and,
 - (D) whether the New Fee is a single fee and/or assessment or multiple fees and/or assessments, it shall not in the aggregate exceed the lesser of (1) the amount of the FORA Fee at the time of FORA's dissolution as increased by the FORA Fee Adjuster; or (2) the amount that when added to any FORA related development impact fee adopted by the City or other local entities or any special assessment or special tax imposed pursuant to subsection (b)(i) above does not exceed the FORA Fee at the of FORA's dissolution as adjusted by the FORA Fee Adjuster.

Notwithstanding anything set forth in this paragraph or the provisions of Sections 6.2 and 6.3, the provisions of this Section shall not be applicable to individual homeowners or assignees who took title to portions of the Property prior to the Effective Date of this Amendment and provided further, in no event shall the New Fee pursuant to subsection (b)(ii) and any assessment or special tax pursuant to subsection (b)(i) exceed the FORA Fee at the time of FORA's dissolution increased by the FORA Fee Adjuster. The limitations set forth herein on the amount of any fee imposed by the City or adopted by the City to replace the FORA Fee shall not in any way limit the City's ability to adopt and impose other development impact fees, special taxes, or assessments unrelated to the replacement of the FORA Fee.

7. **Park Fees.** Section 2.8.2 is hereby deleted in its entirety and replaced with the following:

During the Original Term, Developer shall pay Park Development Fees

("Park Fees") set forth in Exhibit B to this Agreement as part of the City Impact Fees. During the Extended Term, Developer shall pay the Park Fees included in the Updated City Impact Fees. The Park Fees shall be paid at the time of issuance of building permits for the applicable Residential Units. In addition to the Park Fees, Developer is obligated, pursuant to the conditions of approval of the Project, to pay up to \$1.5 million for improvements to the adjacent 18 acre park ("Sea Haven Park") as such amount is increased by the increase in the Consumer Price Index since the approval of the Original Agreement in 2004 ("Sea Haven Park Fee"). The City and Developer agree that the Sea Haven Park Fee owed as increased by the increase in the Consumer Price Index is Two Million One Hundred Thousand Dollars (\$2,100,000) as of the Effective Date of this Amendment.

Developer shall construct the Sea Haven Park, at Developer's expense, subject to the following conditions and limitations:

- (i) The total cost of the Sea Haven Park to be paid by Developer shall not exceed Three Million Dollars (\$3,000,000) including, but not limited to, design, engineering, construction and improvements. Nothing herein shall preclude the City from contributing additional funds to the construction of the Sea Haven Park.
- (ii) The design of the Sea Haven Park shall be subject to review and approval by the City in accordance with the City's standard approval process.
- (iii) The Sea Haven Park shall be constructed expeditiously.
- (iv) Upon completion of the Sea Haven Park, Developer shall be relieved of the Sea Haven Park Fee;
- (v) Upon completion of the Sea Haven Park, Developer shall receive a fee credit, in an amount not to exceed nine hundred thousand dollars (\$900,000) toward the Park Fees to be paid on the 750 units in Phases III-V ("Park Fee Credit"), with the Park Fee Credit to be divided equally among the 750 units in Phases III-V and to be taken for each unit only at such time as Developer is issued a building permit for the unit. The amount of the Park Fee Credit shall be determined by the City and Developer after completion of the Sea Haven Park based on Developer's submission of certified costs evidencing the total amount spent by the Developer for the development of the Sea Haven Park and shall not exceed the lesser of (A) Nine Hundred Thousand Dollars (\$900,000) and (B) the total

amount spent by the Developer for the development of the Sea Haven Park minus the Sea Haven Park Fee. The City and Developer shall enter into a separate development and reimbursement agreement prior to the construction of the Sea Haven Park; and

- (vi) Upon completion of the Sea Haven Park, the cost of the Sea Haven Park maintenance shall be paid by the Sea Haven Home Owners Association. The maintenance cost to the Home Owners Association shall not exceed \$12,000.00 per month. The City and Sea Haven Home Owner's Association shall enter into a maintenance agreement to be recorded against the property addressing the maintenance standards and responsibilities prior to completion of the Sea Haven Park and the City shall be a third party beneficiary of the covenants, conditions and restrictions of the Sea Haven Home Owners Association with respect to the provisions governing maintenance of the Sea Haven Park and such provisions shall not be subject to amendment without the consent of the City. Maintenance of the Sea Haven Park shall be performed by a contractor mutually selected by the City and the Developer and hired by the City. Maintenance costs may include establishment of reserve funds to replace park amenities as long as such costs do not exceed \$12,000 per month.

8. **Amendment of Agreement and Subsequent Approvals.** The following paragraphs are added to the end of Article 3:

3.2.3. The Parties acknowledge that as the Project is developed, the Project Approvals may require modification or additional permits may be issued by the City (the "Subsequent Approvals"). In the event that Subsequent Approvals are approved or issued by the City, they shall automatically become part of the "Project Approvals."

3.2.4. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretations.

9. **Default.** Section 4.1.2.1 is hereby deleted in its entirety.

10. **Restrictions on Transfer.** Article 5 is hereby deleted in its entirety.

11. **Schedule of Benchmarks.** Exhibit D to the Development Agreement, as modified by

the Implementation Agreement, is hereby deleted in its entirety.

12. **Conflict.** In the event of a conflict between terms and condition of this Amendment and the terms and conditions of the Amended Development Agreement, the terms and conditions of this Amendment shall control.

13. **No Further Modification.** Except as set forth in this Amendment, all other terms and provisions of the Amended Development Agreement are hereby ratified and confirmed and shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

“DEVELOPER”:

WATHEN CASTANOS PETERSON
HOMES, INC.,

By: _____

Its: _____

“CITY”:

CITY OF MARINA

By: _____

Name: _____

Title: _____

RESOLUTION NO. 2018 –
RESOLUTION NO. 2018- (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
ACTING ON BEHALF OF THE CITY AND OF THE CITY COUNCIL OF THE
CITY OF MARINA ACTING AS THE GOVERNING BOARD OF THE
SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY
APPROVING THE THIRD AMENDMENT TO THE OPTION AGREEMENT
AMONG THE CITY OF MARINA, THE SUCCESSOR AGENCY TO THE
MARINA REDEVELOPMENT AGENCY, AND WATHEN CASTANOS
PETERSON HOMES, INC.

WHEREAS, the Redevelopment Agency of the City of Marina approved Resolution No. 2002-167 on October 15, 2002, approving the Option Agreement for the Marina Heights Project and the City Council approved Resolution No. 2002- on October 15, 2002 approving the Option Agreement for the Marina Heights Project, which Option Agreement was amended by that certain Implementation Agreement dated October 11, 2007, the First Amendment to the Option Agreement dated February 11, 2009 and the Second Amendment to Option Agreement dated March 18, 2016 (collectively, the "Option Agreement"); and,

WHEREAS, the City, the Successor Agency, and Wathen Castanos Peterson Homes, Inc. (collectively, the "Developer") now desire to amend the Option Agreement consistent with the provisions of the Third Amendment to Option Agreement on file with the City Clerk; and,

WHEREAS, the amendments proposed in the Third Amendment will eliminate certain restrictions on transfer of portions of the project to allow the Developer to proceed with development in expeditious manner; and

WHEREAS, the Third Amendment will also eliminate provisions of the Option Agreement that are no longer enforceable as a result of the dissolution of the Marina Redevelopment Agency; and

WHEREAS, the Third Amendment is in the best interest of the City and the Successor Agency and will assist with the development of the Project proceeding expeditiously in accordance with the entitlements and other approvals granted by the City for the Project; and

WHEREAS, the City Council and the Successor Agency have determined based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and the Environmental Impact Report certified by the City Council on March 25, 2003 as supplemented by the Supplement approved on March 3, 2004 (State Clearinghouse Number 2003020012) ("EIR") shall serve as the environmental review for the approval of the Third Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City of Marina and the Successor Agency to the Marina Redevelopment Agency hereby:

1. Finds that the above recitals are accurate.
2. Approve the Third Amendment to the Option Agreement among the City of Marina, the Successor Agency to the Marina Redevelopment Agency as successor in interest to the Redevelopment Agency of the City of Marina, and Wathen Castanos Peterson Homes, Inc. substantially in the form attached hereto subject only to such changes as are approved by the City Manager in consultation with the City Attorney.

Resolution No. 2018-
Resolution No. 2018- (SA-MRA)
Page Two

PASSED AND ADOPTED by the City Council of the City of Marina acting on behalf of the City and as the governing board of the Successor Agency to the Marina Redevelopment Agency at a regular meeting held on the 19th day of June 2018 by the following vote:

AYES, COUNCIL MEMBERS:
NOES, COUNCIL MEMBERS:
ABSENT, COUNCIL MEMBERS:
ABSTAIN, COUNCIL MEMBERS:

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

THIRD AMENDMENT TO OPTION AGREEMENT

THIS THIRD AMENDMENT TO OPTION AGREEMENT (this "**Amendment**") is made as of this ____ day of February, 2018, by and among the CITY OF MARINA, a California municipal corporation (the "**City**"), the Successor Agency to the Marina Redevelopment Agency, a separate public entity ("**Successor Agency**"), and Wathen Castanos Peterson Homes, Inc., a Delaware corporation (collectively, the "**Developer**"), with reference to the following facts and circumstances (the City and the Developer are sometimes referred to herein collectively as the "**Parties**", and individually as a "**Party**"):

R E C I T A L S :

A. The City, Cypress Marina Heights, LLC and the former Redevelopment Agency of the City ("**Agency**") entered into that certain Option Agreement dated as of November 14, 2002 (the "**Option Agreement**"), pursuant to which the Agency granted to the Developer the exclusive option (the "**Option**") to acquire fee title to certain real property within the Marina Fort Ord Redevelopment Project Area No. 3 consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive, and 12th Street in the City of Marina, and more particularly described in the Option Agreement (the "**Project Site**"), under the terms and conditions set forth in the Option Agreement.

B. The Parties have amended the Option Agreement on three occasions with the: (i) October 11, 2007 Implementation Agreement, (ii) February 11, 2009 First Amendment to the Option Agreement, and (iii) March __, 2016 Second Amendment to Option Agreement (collectively the "**Amended Option Agreement**").

C. Cypress Marina heights, LLC previously exercised the Option, after which time the Amended Option Agreement constituted a Disposition and Development Agreement, and Developer acquired the Project Site.

D. The Agency was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Agency's rights and obligations under the Amended Option Agreement.

E. Cypress Marina Heights LLC and Developer entered into that certain Partial Assignment and Assumptions Agreement, whereby, Cypress Marina Heights, LLC assigned to Developer certain rights and obligations under the Amended Option Agreement.

F. The first phase of the Project consisting of roads and utilities has been substantially completed.

G. Development is underway of the first residential phase of the Project which consists of 300 homes.

G. Each of the City, the Successor Agency and Developer are requesting modifications to the Amended Option Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City, including but not limited to 210 below market rate homes.

H. The Parties now desire to amend the Amended Option Agreement pursuant to the terms of this Amendment.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Defined Terms.** All terms defined in the Amended Option Agreement when used herein shall have their respective meanings as set forth in the Amended Option Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an "Article" or a "Section" shall refer to the applicable Article or Section of the Option Agreement, unless otherwise specifically provided.

2. **Defined Terms Expressly Amended or Superseded by this Amendment.**

(a) Section 1.2.2, which defines "Affiliate" is hereby deleted in its entirety.

(b) Section 1.2.5, which defines "Assignment and Assumption Agreement" is hereby deleted in its entirety.

(c) Section 1.2.13, which defines "Developer" is hereby deleted in its entirety and replaced with the following:

"Developer" shall mean Wathen Castanos Peterson Homes Inc., its successors and assigns.

(d) Section 1.2.14 which defines "Development" is modified as follows:

The last seven words of Section 1.2.14 "in accordance with the Schedule of Benchmarks" are hereby deleted.

(e) Section 1.2.34 which defines "Parcel to be Repurchased" is hereby deleted in its entirety.

(f) Section 1.2.44 which defines "Proposed Transfer" is hereby deleted in its entirety.

(g) Section 1.2.48 which defines "Repurchase Price" is hereby deleted in its entirety.

(h) Section 1.2.49 which defines "Repurchase Option" is hereby deleted in its entirety.

(i) Section 1.2.53 which defines "Schedule of Benchmarks" is hereby deleted in its entirety.

(j) Section 1.2.57 which defines "Transfer" is hereby deleted in its entirety.

(k) Section 1.2.58 is modified as follows:

(i). The introductory clause of the first sentence of Section 1.2.58 is hereby deleted and replaced with:

“Unavoidable Delays’ shall mean delays beyond the control of the Party claiming the same due to any of the following reasons or another similar reason.”

3. **Exhibits.** Each of Exhibits D, I and J are hereby each deleted in its entirety. Accordingly, all references to Exhibits D, I and J in Section 1.3 are hereby deleted.

4. **FORA Impact Fees.**

(a) The first sentence of Section 2.3 is hereby deleted in its entirety and replaced with the following:

(i). The Developer shall pay to FORA all impact and mitigation fees adopted by FORA, as such fees may be amended from time to time, with respect to the use and development of former Fort Ord lands which are applicable to the Development of the Project Site, which fees for all of the Improvements are currently \$23,655 per residential unit (the “FORA Impact Fee”).

5. **City Impact Fees.** Section 2.4 is hereby deleted in its entirety and replaced with the following:

“Until 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all City-imposed impact and mitigation fees with respect to the Development of the Project Site, as set forth in Exhibit E. After 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all lawful City-imposed impact, mitigation and other fees with respect to the Development of the Project Site in accordance with the provisions of the Development Agreement between the City and the Developer.”

6. Section 5.6.8 is hereby deleted and is replaced with the following:

“Developer is Wathen Castanos Peterson Homes, Inc.”

7. **Development of the Project Site.** Section 7.1 is hereby modified as follows:

(a) “The words ‘and Schedule of Benchmarks’ are hereby deleted from the first sentence of Section 7.1.

(b) Section 7.2 is hereby deleted in its entirety.

8. **Limitations on Transfer.** Section 8.1 is hereby deleted in its entirety and is replaced with the following:

8.1. Transfers. The Developer is permitted to assign this Agreement or any right herein other than the the payment of the Profit Participation Payment set out in Section 6.3 Developer shall not be released from any obligations under this Agreement pursuant to any transfer until the City has received a copy of the final executed assignment and assumption agreement between Developer and the assignee that specifies the obligations being assigned or transferred.

9. **Events of Default.**

(a) 10.4.1 is hereby modified as follows:

(i). Section 10.4.1.(c) is hereby deleted in its entirety.

(ii). Section 10.4.1.(d) is hereby deleted in its entirety.

10. **Repurchase Option.** Section 10.6 is hereby deleted in its entirety.

11. **Miscellaneous Provisions.** Section 11.16 is hereby added at the end of
Article 11:

11.16. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretation.

12. **Conflict.** In the event of a conflict between terms and conditions of this Amendment and the terms and conditions of the Amended Option Agreement, the terms and conditions of this Amendment shall control.

13. **No Further Modification.** Except as set forth in this Amendment, all other terms and provisions of the Amended Option Agreement shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

“DEVELOPER”:

WATHEN CASTANOS PETERSON HOMES,
INC., a Delaware corporation

By:_____

Name:_____

Title:_____

“CITY”:

CITY OF MARINA

By:_____

Name:_____

Title:_____

APPROVED AS TO FORM:

_____,
City Attorney

PURSUANT TO RESOLUTION
NO. _____

ATTEST:

Anita Sharp

City Clerk
City of Marina

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

RESOLUTION NO. 2018 –
RESOLUTION NO. 2018- (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
ACTING ON BEHALF OF THE CITY AND OF THE CITY COUNCIL OF THE
CITY OF MARINA ACTING AS THE GOVERNING BOARD OF THE
SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY
APPROVING THE TERMINATION OF MEMORANDUM OF AGREEMENT
BETWEEN WATHEN CASTANOS PETERSON HOMES, INC. AND THE CITY
OF MARINA/MARINA REDEVELOPMENT AGENCY FOR THE FUNDING
OF PHASE 1 OF THE STRATEGIC DEVELOPMENT CENTER AND
STRATEGIC STUDIES

WHEREAS, the City, the former Redevelopment Agency of the City (the "Agency") and Cypress Marina Heights, LLC entered into that certain Memorandum of Agreement for the Funding of Phase 1 of the Strategic Development Center and Strategic Studies dated as of December 14, 2004 (the "Memorandum of Agreement") pursuant to which Developer agreed to make certain payments requested by the City and the Agency to assist in the funding of the establishment and operation of the Strategic Development Center as well as the funding of certain Strategic Studies; and,

WHEREAS, in the Memorandum of Agreement the Parties acknowledged that the fees for the Marina Heights Project (now known as Sea Haven) had been memorialized in that certain Option Agreement dated November 14, 2002 (the "Option Agreement") and that certain Development Agreement dated as of March 3, 2004 (the "Development Agreement"); and,

WHEREAS, Cypress Marina Heights, LLC assigned its rights and obligations under the Memorandum of Agreement to Wathen Castanos Peterson Homes, Inc. (the "Developer"); and

WHEREAS, the City and the Agency agreed that funds advanced by the Developer for costs associated with the establishment and operation of the Strategic Development Center and the cost of the Strategic Studies were to be credited against future fees to be paid by the Developer pursuant to the Option Agreement and Development Agreement; and

WHEREAS, between September 16, 2004 and July 2, 2013, the Developer advanced funds to the City in the amount of \$887,561, a portion of which was credited toward fees owed to the City related to processing of certain approvals, leaving the Developer with a credit of \$804,566; and

WHEREAS, the City, Successor Agency and the Developer now desire to enter into this Termination of the Memorandum of Agreement concurrently with the consideration of the a First Amendment to the Development Agreement and the Third Amendment to the Option Agreement whereby the Developer agrees to waive its fee credit in the amount of \$804,566 in conjunction with the approval of the First Amendment to the Development Agreement and the Third Amendment to the Option Agreement; and

WHEREAS, the City Council and the Successor Agency have determined based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and the Environmental Impact Report certified by the City Council on March 25, 2003 as supplemented by the Supplement approved on March 3, 2004 (State Clearinghouse Number 2003020012) ("EIR") shall serve as the environmental review for the approval of the Memorandum of Agreement.

Resolution No. 2018-
Resolution No. 2018- (SA-MRA)

NOW, THEREFORE, BE IT RESOLVED that the City of Marina and the Successor Agency to the Marina Redevelopment Agency hereby:

1. Finds that the above recitals are accurate.
2. Approve the Termination of the Memorandum of Agreement for the Funding of Phase 1 of the Strategic Development Center and Strategic Studies substantially in the form attached hereto subject only to such changes as are approved by the City Manager in consultation with the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina acting on behalf of the City and as the governing board of the Successor Agency to the Marina Redevelopment Agency at a regular meeting held on 19th day of June 2018 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT, THE THIRD AMENDMENT TO OPTION AGREEMENT AND THIS TERMINATION OF MEMORANDUM OF AGREEMENT TAKEN TOGETHER ARE A "PACKAGE" THAT MEMORIALIZE ONE TRANSACTION. THIS TERMINATION OF MEMORANDUM OF AGREEMENT WILL NOT BECOME EFFECTIVE UNTIL THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT, INCLUDING AN EXTENSION OF THE TERM UNTIL NOVEMBER 30, 2030 AND THE THIRD AMENDMENT TO OPTION AGREEMENT BECOME FINAL MEANING THAT ALL CHALLENGE PERIODS HAVE EXPIRED WITHOUT CHALLENGE OR ANY CHALLENGE HAS BEEN FINALLY RESOLVED.

TERMINATION OF MEMORANDUM OF AGREEMENT BETWEEN WATHEN CASTANOS PETERSON HOMES, INC., AND THE CITY OF MARINA/MARINA REDEVELOPMENT AGENCY FOR THE FUNDING OF PHASE 1 OF THE STRATEGIC DEVELOPMENT CENTER AND STRATEGIC STUDIES

This Termination of Memorandum of Agreement Between Wathen Castanos Peterson Homes, Inc., and the City of Marina/Marina Redevelopment Agency for the Funding of Phase 1 of the Strategic Development Center and Strategic Studies (this "**Termination of Agreement**") is made as of _____, 2018 by and among the CITY OF MARINA, a California municipal corporation (the "**City**"), the Successor Agency to the Marina Redevelopment Agency, a separate public entity (the "**Successor Agency**"), and Wathen Castanos Peterson Homes, Inc., (the "**Developer**"), with reference to the following facts and circumstances (the City, the Successor Agency and the Developer are sometimes referred to herein collectively as the "**Parties**", and individually as a "**Party**");

R E C I T A L S :

A. The City, the former Redevelopment Agency of the City (the "**Agency**") and Cypress Marina Heights, LLC, entered into that certain Memorandum of Agreement for the Funding of Phase 1 of the Strategic Development Center and Strategic Studies dated as of December 14, 2004 (the "**Memorandum of Agreement**") pursuant to which Cypress Marina Heights, LLC agreed to make certain payments requested by the City and the Agency to assist in the funding of the establishment and operation of the Strategic Development Center as well as the funding of certain Strategic Studies. Cypress Marina Heights, LLC assigned its rights and obligations regarding the Sea Haven development to Wathen Castanos Peterson Homes, Inc.

B. In the Memorandum of Agreement the Parties acknowledged that the fees for the Marina Heights Project (now known as Sea Haven) had been memorialized in that certain Option Agreement dated November 14, 2002 (the "**Option Agreement**") and that certain Development Agreement dated as of March 3, 2004 (the "**Development Agreement**").

C. The City and the Agency agreed that funds advanced by the Developer for costs associated with the establishment and operation of the Strategic Development Center and the cost of the Strategic Studies were to be credited against future fees to be paid by the Developer pursuant to the Option Agreement and Development Agreement.

D. Between September 16, 2004 and July 2, 2013, the Developer advanced funds to the City in the amount of \$887,561. A portion of the amount advanced by the Developer in the amount of \$82,995 was credited toward fees owed to the City related to processing of certain approvals, leaving the Developer with a credit of \$804,566.

E. This Termination of Agreement will be considered by the City Council concurrently with its consideration of the First Amendment to Development Agreement and the Third Amendment to Option Agreement as these three agreements memorialize one transaction.

F. The City and the Developer intend to amend the Development Agreement as set out in the First Amendment to Development Agreement; the Parties intend to amend the Option Agreement as set out in the Third Amendment to Option Agreement and the Parties intend to Terminate the Memorandum of Agreement as set out in the Termination of Memorandum of Agreement.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Defined Terms.** All terms defined in the Memorandum of Agreement when used herein shall have their respective meanings as set forth in the Memorandum of Agreement unless expressly superseded by the terms of this Termination of Agreement. All references in this Termination of Agreement to an "Article" or a "Section" shall refer to the applicable Article or Section of the Memorandum of Agreement, unless otherwise specifically provided.

2. **Waiver of Fee Credits.** Developer agrees that in consideration of the extension of the term of the Development Agreement until November 30, 2030, and other amendments contained in the First Amendment to Development Agreement and Third Amendment to Option Agreement, Developer agrees to waive the \$804,566 in fee credits it accrued pursuant to the Memorandum of Agreement.

3. **Effective Date.** This Termination of Agreement shall not become effective until the First Amendment to Development Agreement and Third Amendment to Option Agreement become final meaning that all challenge periods, including all applicable statutes of limitation for legal challenges and the time to bring all applicable administrative appeals, have expired without a challenge having been filed, or, if a challenge is filed, any such challenge is finally resolved and all avenues of appeal, administrative and legal, are exhausted and the First Amendment to Development Agreement has become effective with a termination date no earlier than November 30, 2030.

4. **Conflict.** In the event of a conflict between terms and conditions of this Termination of Agreement and the terms and conditions of the Memorandum of Agreement, the terms and conditions of this Termination of Agreement shall control.

5. **Counterparts.** This Termination of Agreement may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Termination of Agreement as of the day and year first above written.

"DEVELOPER":

WATHEN CASTANOS PETERSON HOMES.
INC., a Delaware corporation

By: _____

Its: _____

"CITY":

CITY OF MARINA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

PURSUANT TO RESOLUTION
NO. _____

ATTEST:

Anita Sharp
Deputy City Clerk
City of Marina

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____