

RESOLUTION NO. 2023-34

THE CITY COUNCIL OF THE CITY OF MARINA SHALL ADOPT RESOLUTION NO. 2023-, APPROVING AN AFFORDABLE HOUSING AGREEMENT FOR THE VETERANS TRANSITION CENTER AT 229-239 HAYES CIRCLE (APN 031-021-040)

WHEREAS, on November 18, 2018, at a regular meeting, the Marina City Council conducted a duly noticed public hearing, considered all public testimony, written and oral, and adopted Resolutions No. 2018-139, 140, and 141 to grant project entitlements for a seventy-one (71) unit veteran's transition center at 229-239 Hayes Circle; and

WHEREAS, pursuant to project condition of approval #8 (COA #8) prior to the issuance of a building permit an affordable housing agreement must be approved by the City; and

WHEREAS, timely approval of this agreement is necessary in order for the applicant to complete the project in an expeditious manner and to complete the financing for the project;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that does hereby:

1. Approve the Affordable Housing Agreement (Exhibit A) to this resolution.
2. Find that the action is exempt from CEQA pursuant to Sections 15061(b)(3) and 15378(b) of the CEQA Guidelines.

PASSED AND ADOPTED by the City Council of the City of Marina at a duly noticed regular meeting duly held on the 4th day of April 2023, by the following vote:

AYES, COUNCIL MEMBERS: Visscher, McCarthy, Biala, Medina Dirksen, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Marina
211 Hillcrest Avenue
Marina, California
Attention: City Manager 93933

No fee for recording pursuant to
Government Code Section 27383

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS
LIGHTFIGHTER VILLAGE**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this ____ day of April, 2023 by and between the City of Marina, a municipal corporation (the "City"), and Lightfighter Village, L.P., a California Limited Partnership (the "Owner").

RECITALS

- A. Owner owns a leasehold interest in that certain property located in the City of Marina on the former Fort Ord Base more particularly described in Exhibit A attached hereto.
- B. The City has issued a Combined Development Permit including a General Plan Land Use Map Amendment, a Conditional Use Permit and Site and Architectural Design Review for the development of seventy-one (71) permanently supportive housing units ("Development").
- C. As a condition of approval of the Combined Development Permit and the Development, the Owner is required to comply with the City's Inclusionary Housing Ordinance, Chapter 17.48, which requires that for properties located at the former Fort Ord, at least 40% of the residential units must be affordable to very low, low and moderate income housing, with at least 15% of the residential units affordable to very low income households.

D. Pursuant to Chapter 17.48.080, the Affordable Units must be restricted pursuant to recorded covenants or restrictions which ensure that the Affordable Units remain available for occupancy by very low, low and moderate income households at affordable housing cost for fifty-five (55) years.

E. The following covenants and restrictions are recorded against the Property to ensure compliance with Chapter 17.48.080.

THEREFORE, the City and the Owner hereby agree as follows.

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "30% AMI Household" means a household with a 30% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed thirty percent (30%) of Median Income.

(b) "30% Units" means the Units which, pursuant to Section 2.1 below are required to be occupied by 30% AMI Households.

(c) "50% AMI Household" means a household with a 50% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income.

(d) "50% Units" means the Units which, pursuant to Section 2.1 below are required to be occupied by 50% AMI Households.

(e) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(f) "Adjusted Income" shall mean with respect to the Tenant of each Affordable Unit, the income from all persons in the households, including nonrelated individuals, calculated using the methods to calculate income adopted by TCAC.

- (g) “Affordable Units” shall mean the 30% Units and the 50% Units collectively.
- (h) “Agreement” shall mean this Regulatory Agreement.
- (i) “City” shall mean the City of Marina, a municipal corporation.
- (j) “Development” shall mean the Property and the seventy-one (71) residential units to be developed on the Property, as well as all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.
- (k) “Development Loan” any loan received by Owner for the construction and operation of the Development.
- (l) “Development Lender” means any lender of a Development Loan.
- (m) “Ground Lease” means the ground lease between Veterans Transition Center of Monterey County, as lessor and the Owner as lessee.
- (n) “HUD” means the United States Department of Housing and Urban Development.
- (o) “Median Income” shall mean the median gross yearly income, adjusted for Actual Household Size, in the County of Monterey, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.
- (p) “Owner” shall mean Lightfighter Village, L.P., a California Limited Partnership, and its successors and assigns to the Development.
- (q) “Property” shall mean the parcel of real property located in Marina, California, as more particularly described in Exhibit A.
- (r) “Rent” shall mean the total of monthly payments by the Tenant of an Affordable Unit for the following: (1) use and occupancy of the Affordable Unit and land and associated facilities, including parking; (2) any separately charged fees or service charges assessed by the Owner which are required of all Tenants, other than security deposits; (3) the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not internet, telephone service, cable television service or any other utility or service permitted to be excluded from the calculation of Rent pursuant to the terms of 25 California Code of Regulations Section 6918; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Owner, and paid by the Tenant.
- (s) “TCAC” means the California Tax Credit Allocation Committee.

(t) "TCAC 30% Rent" means the maximum rent published by TCAC for a "30% AMI Household" in Monterey County for the applicable bedroom size.

(u) "TCAC 50% Rent" means the maximum rent published by TCAC for a "50% AMI Household" in Monterey County for the applicable bedroom size.

(v) "Tenant" shall mean a household occupying an Affordable Unit.

(w) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty fifth (55) anniversary of the date a Certificate of Occupancy is issued for the Development.

(x) "Unit" shall mean one of the seventy-one (71) units to be constructed on the Property.

ARTICLE 2

AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirement.

(a) 30% Units. During the Term, the Owner shall cause eleven (11) of the Units to be rented to and occupied by, or if vacant, available for occupancy by 30% AMI Households.

(b) 50% Units. During the Term, the Owner shall cause eighteen (18) of the Units to be rented to and occupied by, or if vacant, available for occupancy by 50% AMI Households.

Section 2.2 Allowable Rent.

(a) 30% Units. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of the 30% Units may not exceed the TCAC 30% Rent for the applicable bedroom size.

(b) 50% Units. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of the 50% Units may not exceed the TCAC 50% Rent for the applicable bedroom size.

(c) Initial Rents and Rent Increases. Initial rents for all Affordable Units shall be approved by the City prior to occupancy to confirm compliance with this Agreement, which approval shall be deemed given if not denied within thirty (30) days after the City has received written request for approval. All rent increases shall also be subject to City approval to confirm compliance with this Agreement, which approval shall be deemed given if not denied within thirty (30) days after the City has received written request for approval. The City shall provide the Owner with a schedule of maximum permissible rents for the Affordable Units annually. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year without the prior written approval of the City. Owner shall provide

each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant.

Section 2.3 Increased Income of Tenants.

(a) Increase of Household Income Below Limit for 50% AMI Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that the income of the Tenant has increased to above the qualifying limit for such household's unit (i.e. a 30% AMI Household's income increases but is below a 50% AMI Household income) but below the qualifying limit of a 50% AMI Household, the Tenant may continue to occupy the Affordable Unit and the Tenant's Rent will remain at the applicable rent level set for Tenant's Affordable Unit and the Owner shall rent the next available Unit to a household that is either a 30% AMI Household or 50% AMI Household as necessary to maintain the appropriate number of units in each income category as required pursuant to Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that the Tenant has an Adjusted Income exceeding the maximum qualifying income for a 50% AMI Household but the Tenant's income does not exceed 140% of the maximum qualifying income for a 50% AMI Household, such Tenant shall be permitted to continue occupying the Unit, the Tenant's Rent shall not be increased and the Owner shall rent the next available Unit to a 30% AMI Household or a 50% AMI Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2 or if the Owner has other Units occupied by 30% AMI Households or 50% AMI Households with rents at the allowable Rents in accordance with Section 2.2, the Owner may designate one of those Units as a 30% AMI Unit or 50% AMI Unit pursuant to this Agreement to ensure that the appropriate number of units in each income category as required pursuant to Section 2.1 above is maintained.

(c) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Affordable Unit shall be deemed to be continuously occupied by a household of the same income level as the income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit shall be redetermined. In any event, Owner shall maintain the occupancy requirements set forth in section 2.1 above.

Section 2.4 Income and Rent Calculations. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, the City will provide the Owner with other income and rent determinations which are reasonably similar with respect to methods of calculations to those previously published by TCAC.

Section 2.5 Tenant Selection. Owner shall comply with the City's BMR Program Administrative Policies and Procedures as they currently exist or as they may be updated from time to time in the selection of Tenants, including complying with any preferences in such Guidelines, to the fullest extent allowed by applicable TCAC rules and regulations.

Section 2.6 Nondiscrimination. Owner shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of

any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, sexual preference or orientation, age, marital status, family status, source of income, physical or mental disability, veteran status, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, or any other arbitrary basis. Owner shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification. The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Affordable Units, provided, however, to the extent allowed by TCAC, subsequent income certifications may be tenant certified. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request.

Section 3.2 Annual Report to City. The Owner shall submit to the City (a) not later than the sixtieth (60th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income and rent data for all Affordable Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of Health and Safety Code Section 33418.

Section 3.3 Additional Information. The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Owner which pertain to the Development.

Section 3.4 Records. The Owner shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

Section 3.5 Expenses. Owner shall annually pay to City City's monitoring and enforcement fees for the Affordable Units in accordance with City's Master Fee Schedule. The

monitoring or enforcement fee shall be either City's actual expenses incurred for monitoring or enforcing the terms of this Agreement, including staff time and third party costs or the amount set forth in the Master Fee Schedule, as determined by City.

Section 3.6 On-site Inspection. The City shall have the right to perform an on-site inspection of the Development at least one (1) time per year. The Owner agrees to cooperate in such inspection. If City desires to inspect the interior of the residential units, City shall give Owner sufficient written notice to allow Owner to give seventy-two (72) hours notice to residents.

ARTICLE 4 OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Development. The Owner shall ensure that the Development complies with the City of Marina's BMR Housing Program Administrative Policies and Procedures as it currently exists and as it may be amended from time to time. The Owner shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times. The City hereby approves _____ as the Management Agent (as defined in Section 5.2).

Section 5.2 Management Agent; Periodic Reports. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner

shall submit for the City's approval the identity of any proposed Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the detailed reasons therefor (a "Management Default Notice"). If the issues set forth in the Management Default Notice are not cured within sixty (60) days of delivery of the Management Default Notice, or if such default cannot be cured within sixty (60) days, if the cure is not commenced within sixty (60) days and diligently prosecuted thereafter, City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Owner shall, subject to the rights of any Development Lender, promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.6.

Section 5.5 Approval of Management Policies. The Owner shall submit its written management policies with respect to the Development to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance. The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in

accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

The City places prime importance on quality maintenance to ensure that all affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of fifteen (15) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property. Owner shall promptly pay to the City, upon demand, any costs incurred by the City in connection with work of protection, maintenance, and preservation undertaken by the City pursuant to this section, and the City may attach a lien on the Property, or to assess the Property, in the amount of such expenditures if Owner does not promptly reimburse the City upon demand.

ARTICLE 6 MISCELLANEOUS

Section 6.1 Lease Provisions. The Owner shall use a form of Tenant lease approved by the City. The form of Tenant lease shall also comply with all requirements of this Agreement, and shall, among other matters, to the extent permitted by the Ground Lease, Development Lenders and applicable laws:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (2) to qualify as a 30% AMI Household or 50% AMI Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Owner and the Tenant; however the Rent may not be raised more often than once every twelve (12) months after such initial year. The Owner shall provide each Tenant with at least sixty (60) days' written notice of

any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above.

Section 6.2 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Owner shall not give preference to any particular class or group of persons in renting or selling the Units, that the Affordable Units are required to be leased to income qualified households and in accordance with the City's BMR Housing Program Administrative Policies and Procedures unless required by the Ground Lease or the terms of any Development Loan. The Owner shall obtain the City's approval prior to implementing any preference for any particular class or group of person. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g. SSI, Housing Vouchers), age, ancestry, veteran status, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall the Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit.

Section 6.3 Section 8 Certificate Holders. The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

Section 6.4 Term. The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

Section 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11 as such statutes may be amended from time to time. Such notice requirements include: (i) a three year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to expiration of the Term; (ii) a twelve

(12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)).

Section 6.6 Covenants to Run With the Land. The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Development or the Property from the requirements of this Agreement.

Section 6.7 Enforcement by the City. If the Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Owner in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, or such longer period as reasonably approved by the City, in writing the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages.

(b) Other Remedies. The City may exercise any other remedy provided under this Agreement or by law.

Owner's limited partners shall have the right to cure on behalf of Owner and City shall accept a cure therefrom as if such cure was made or tendered by Owner.

Section 6.8 Attorneys Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.9 Recording and Filing. The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Monterey.

Section 6.10 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.11 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 6.12 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Monterey.

Section 6.13 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Owner: Lightfighter Village, L.P.
c/o EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan

With a Copy to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 West 5th Street
Los Angeles, CA 90071
Attn: Nicole Deddens

City: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

Section 6.14 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

Section 6.15 Rights of Mortgagee. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Development or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Development or the Property that such violation has occurred, provided that Owner has provided City with notice of such mortgage or deed of trust including addresses for the holders of such mortgages or deed of

trust and provided further, the City's failure to give such notice shall not defeat or render invalid any notice of default given by the City to the Owner or prohibit the City from exercising any of its remedies.

Section 6.16 IN WITNESS WHEREOF, the City and the Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

OWNER:

LIGHTFIGHTER VILLAGE, L.P.,
a California limited partnership

By: Lightfighter Village GP, LLC,
a California Limited Liability Company
its managing general partner

By: EAH Inc.,
a California nonprofit public benefit
corporation,
its managing member

By: _____
Name: Welton Jordan
Title: Assistant Secretary

ATTEST:

CITY:

City of Marina, a municipal corporation

By: _____

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

The land is situated in the City of Marina, County of Monterey, State of California, and is described as follows:

February 15, 2023

Item No. **10g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 4, 2023

**THE CITY COUNCIL SHALL CONSIDER ADOPTING RESOLUTION
NO. 2023-, APPROVING AN AFFORDABLE HOUSING AGREEMENT
FOR THE VETERANS TRANSITION CENTER AT 229-239 HAYES
CIRCLE (APN 031-021-040)**

RECOMMENDATION: City Council shall consider

1. Adopting a resolution approving the affordable housing agreement for the Veteran's Transition Center.
2. Find that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3) and 15378(b).

BACKGROUND:

In November of 2018 the City Council approved the Veteran's Transition Center at 229-239 Hayes Circle. The proposed project is a three story, seventy-one (71) unit apartment structure intended to provide supportive housing for veterans, with priority on homeless veterans. The facility will allow veterans to reside at the service-based property in perpetuity, as opposed to transition housing which limits the tenure of tenants. The project involves the demolition of the existing house on site, a vacant duplex structure and construction of a 54,480 square foot three story 71-unit apartment complex organized into a main building and family wing connected via a covered walkway. Seventy (70) units will be rented, and one (1) unit is reserved for the onsite manager. When the City Council approved the project in 2018, condition of approval #8 was placed on the permit requiring approval of an affordable housing agreement prior to the issuance of a building permit.

COA #8. Affordable Housing Agreement/Program – Prior to issuance of the first construction permit, the Owner/Applicant shall develop, sign, notarize and record an Affordable Housing Agreement with the City of Marina. Such agreement shall clearly identify the number of affordable units, the income level of affordability, the estimated rent to be collected for each unit, and the term (length) of all affordability restrictions.

To meet the applicant's construction schedule and to complete financing of the project by April 15, 2023, approval of the agreement by the Council in a timely manner is necessary.

DISCUSSION:

City staff have reviewed the document along with legal counsel and recommend of approval by the Council at this time.

FISCAL IMPACT:

None.

ENVIRONMENTAL REVIEW:

This action is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) because there is no possibility that receiving an update on the Housing Element's Programs status will have a significant effect on the environment. As a separate and independent basis, this report is also exempt under CEQA Guidelines Section 15378(b).

CONCLUSION:

This request is submitted for City Council consideration and comment.

REVIEWED/CONCUR:

Guido F. Persicone, AICP
Community Development Director
City of Marina

Layne Long
City Manager
City of Marina

Exhibit A – Draft Affordable Housing Agreement.