

RESOLUTION NO. 2019-140

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN OPERATING AGREEMENT FOR THE DUNES ON MONTEREY BAY, INCLUDING, BUT NOT LIMITED TO, THE SPECIFIC PLAN, DEVELOPMENT AGREEMENT, THE SCHEDULE OF PERFORMANCE, AND THE 2019 PROJECT PRO FORMAS, AND AUTHORIZING THE CITY MANAGER SUBJECT TO FINAL REVIEW AND APPROVAL OF THE CITY ATTORNEY TO EXECUTE AND APPROVE THESE AGREEMENTS AND DOCUMENTS

WHEREAS, on May 31, 2005, the Marina City Council adopted Resolution No. 2005-130 approving the University Villages (now The Dunes on Monterey Bay) Specific Plan (“Specific Plan”); and

WHEREAS, concurrently with its adoption of the Specific Plan, the City Council introduced and held first reading Ordinance No. 2005-08 approving a Development Agreement (“DA”) between the City and Marina Community Partners LLC (“Developer”; collectively, the “Parties”), to implement the Specific Plan, which ordinance was adopted on June 7, 2005 and became effective as of July 8, 2005; and

WHEREAS, Section 5.6 of the Specific Plan stresses flexibility in its implementation by stating “In order to create the most desirable community possible, there is a certain amount of flexibility which needs to be provided for the Specific Plan. This flexibility allows for shifts in market demand;” and

WHEREAS, Article 3 of the DA states the intent of the Parties that Subsequent Project Approvals and Modifications to Project Approvals shall not require an amendment to the DA and that minor modifications to the Project Approvals may be made as an Administrative Amendment to the DA, without notice, hearing, CEQA review or formal action by a commission or board or the City Council; and

WHEREAS, on May 31, 2005, concurrently with its adoption of the Specific Plan the City Council approved a Disposition and Development Agreement (“DDA”) between the former Marina Redevelopment Agency (now “Successor Agency”) and Developer, which has since been modified by an Implementation Agreement dated September 6, 2006 and Second Implementation Agreement dated August 5, 2008, and Tax Increment Financing Plan and Agreement and implementing documents dated August 5, 2008; and

WHEREAS, Section 2.1 of the DDA provides that the parameters of the Development of the Project shall be as set forth in the Development Approvals as approved and as may be modified from time to time by the Developer and the City, and to the extent the description of the Development set forth in the DDA differs from that put forth in the Development Approvals, the provisions of the Development Approvals shall control, and that the description of the Development set forth in the DDA is merely for descriptive purposes; and

WHEREAS, certain issues have inhibited the ability of the City, Successor Agency and Developer to move forward with the Project, including, but not limited to, the occurrence of an event of Excused Delay (Force Majeure) which automatically extends the times for performance under the DD and DA for the duration of the event;

WHEREAS, the agreements, documents and actions approved in this Resolution will mitigate such issues to the extent that the Parties may move ahead with the Project, including, but not limited to, the termination of the Excused Delay; and

WHEREAS, in considering approval of the agreements, documents and actions referenced in this Resolution, the City has complied with the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively “CEQA”) through the preparation and certification of the University Villages Specific Plan Environmental Impact Report (EIR No. SCH No. 2004091167, referred to in this Resolution as the “EIR”), and adoption of Findings Regarding Mitigations Measures (the “Findings”), the Statement of Overriding Considerations (“Statement”) and a mitigation monitoring program (the “Mitigation Monitoring Program”), which EIR was certified by the City Council pursuant to Resolution No. 2005-127 adopted on May 31, 2005 and approved by the Redevelopment Agency as a responsible agency pursuant to Resolution No. 2005-20 (MRA) adopted on May 31, 2005; and

WHEREAS, because the approval of the requirements, documents and actions referenced in this Resolution provides for substantially the same identical physical development of the Property as that evaluated in the EIR and for the further detailed reasons set forth below, the EIR has served as the CEQA documentation for consideration of such approvals; and

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

BE IT FURTHER RESOLVED, that the City hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the EIR, the Findings, the Statement and the Mitigation Monitoring Program have served as the environmental documentation pursuant to CEQA for approval of this Resolution. Specifically, the City finds that the agreements, documents and actions approved in this Resolution provide for substantially the identical physical development of the Property as that evaluated and mitigated in the EIR, the Findings, the Statement and the Mitigation Monitoring Program. The City further specifically finds that there have not been any of the following occurrences since the approval of the EIR, the Findings, the Statement and the Mitigation Monitoring Program that would require a subsequent or supplemental environmental document in connection with approvals in this Resolution:

1. There have not been substantial changes in the assembly, disposition, development, operation and maintenance of the Property and the Development that is the subject of this Resolution which would require major revisions in the EIR and the Mitigation Monitoring Program;

2. There have not been substantial changes with respect to the circumstances under which the assembly, disposition, development, operation and maintenance of the Property and the Development implemented pursuant to this Resolution will be undertaken which would require major revisions in the EIR and the Mitigation Monitoring Program; and

3. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the EIR and the Mitigation Monitoring Program which is relevant to the approval of the EIR and the Mitigation Monitoring Program as it relates to the assembly, disposition, development, operation and maintenance of the Property and the Development to be implemented pursuant to this Resolution.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed to file a Notice of Determination in accordance with 14 Cal. Code of Regulations, Section 15075 in connection with approval of this Resolution and the agreements, documents and actions herein.

BE IF FURTHER RESOLVED, that the City hereby approves and authorizes the City Manager to approve, execute and carry out the following in substantially the form presented with this Resolution with only minor and clarifying changes approved by the City Attorney:

1. Operating Agreement (The Dunes on Monterey Bay), including all exhibits thereto;
2. Clarifying Modifications to the Schedule of Performance;
3. Housing Invoice No. 2 submitted by MCP pursuant to Section 8.4 of the DOA;
4. Execution by the City and Developer of a written acknowledgment of the duration and date of termination of the Excused Delay; and
5. Other actions necessary to implement the above agreements, documents and actions.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect from and after its passage, and the Operating Agreement referred to above shall be dated as of the date of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th of December 2019, by the following vote:

AYES; COUNCIL MEMBERS: Berkley, Urrutia, O'Connell, Morton, Delgado

NOES; COUNCIL MEMBERS: None

ABSTAIN; COUNCIL MEMBERS: None

ABSENT; COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

OPERATING AGREEMENT CLARIFYING AND MODIFYING CERTAIN PROJECT APPROVALS FOR THE SPECIFIC PLAN FOR THE DUNES ON MONTEREY BAY

This OPERATING AGREEMENT (“**Operating Agreement**”) dated as of _____, 20__, is entered into between the CITY OF MARINA, a California municipal corporation (“**City**”) and MARINA COMMUNITY PARTNERS, LLC, a Delaware limited liability company (“**MCP**”) (collectively, the “**Parties**”) making clarifications and modifications in the Project Approvals for the implementation of the Specific Plan for the Dunes on Monterey Bay (formerly University Villages).

RECITALS

A. On May 31, 2005, the Marina City Council adopted Resolution No. 2005-130 approving the University Villages (now the Dunes on Monterey Bay) Specific Plan (“**Specific Plan**”).

B. Concurrently with its adoption of the Specific Plan, the City Council introduced and held first reading on Ordinance No. 2005-08 approving a Development Agreement between the City and MCP to implement the Specific Plan, which ordinance was adopted on June 7, 2005 and became effective as of July 8, 2005 (“**Development Agreement**”).

C. Sec. 5.6 of the Specific Plan stresses flexibility in its implementation:

“In order to create the most desirable community possible, there is a certain amount of flexibility which needs to be provided for the Specific Plan. This flexibility allows for shifts in market demand.”

D. Article 3 of the Development Agreement states the intent of the Parties that Subsequent Project Approvals and Modifications to Project Approvals shall not require an amendment to the Development Agreement (Sec. 3.1.1); and provides, in part, that minor modifications to Project Approvals may be made as an Administrative Amendment, without notice, hearing, CEQA review, or formal action by a commission or board or the City Council, such as “lot line and parcel adjustments, changes in diversity, intensity, scale or scope of the Project . . .” (Sec. 3.1.4).

E. Concurrently with its adoption of the Specific Plan, the former Marina Redevelopment Agency (now “**Successor Agency**”) and MCP entered into a Disposition and Development Agreement dated May 31, 2005, as modified by Implementation Agreement dated September 6, 2006, and Second Implementation Agreement dated August 5, 2008, and Tax Increment Financing Plan and Agreement and implementing documents dated August 5, 2008 (collectively, all above described documents referred to as the “**DDA**” and, together with the Specific Plan and Development Agreement, the “**Project Approvals**”).

F. Section 2.1 of the DDA provides:

“Development Description. The parameters of the Development shall be as set forth in the Development Approvals as approved as may be modified from time to time by the Developer and the City, and to the extent the description of the Development set forth in this Agreement differs from that put forth in the Development Approvals, the provisions of the Development Approvals shall control. The description of the Development set forth in Recital C and this Article 2 is merely for descriptive purposes.”

G. The City, the Successor Agency and MCP have engaged in the dispute resolution process under the Development Agreement and DDA to address various disputes between the parties. As a result of the dispute resolution, the City and MCP, together with the Successor Agency, have agreed that certain issues have inhibited the ability to move forward with the Project, specifically Phase 2 of the Project, and have worked cooperatively to resolve those disputes.

H. The City Council has found and determined that the clarifications and modifications in the Project Approvals for the implementation of the Specific Plan set forth in this Implementation Agreement constitutes an Administrative Amendment under the Development Agreement, and that such clarifications and modifications are consistent with the City’s General Plan, Zoning Ordinance, and the Fort Ord Reuse Plan.

AGREEMENTS

NOW THEREFORE, City and MCP (the “**Parties**”) agree as follows:

1. **Affordable Housing Requirements.**

The Parties have determined, that it is impractical and not economically feasible to include for-sale affordable housing subject to long-term deed restrictions in the Project and that the inclusion of such deed restricted for-sale affordable housing will subject to the City to an on-going unfunded administrative burden over the term of such restrictions. Restricted rental housing in place of the originally contemplated for-sale housing will meet the long-term affordable housing goals of the Project and provide additional affordable housing opportunities to low income households. Therefore, the Parties agree as follows:

A. MCP may, in lieu of providing 140 units of for-sale housing affordable to low and moderate income households, provide the 140 affordable housing units in Phase 2 and Phase 3 of the Project, provided the 140 affordable housing units are provided in at least two separate rental complexes that will be located, in whole or in part, in the area of Phase 3 of the Project south of the Dunes Park as shown on Exhibit A-1 and/or on Parcel 24 adjacent to Imjin Parkway (the “Affordable Housing Complexes”) subject to a 55-year regulatory agreement; provided, however, to the extent that MCP develops affordable rental housing units in Phase 3 that were previously required to be developed in Phase 2, such units shall be deemed attributable to Phase 2 for purposes of Part 2 of the Tax Increment Financing Plan and Agreement (identified in Recital E of this Operating Agreement).

B. Unless MCP and the City agree upon a different site for the Affordable Housing Complexes in accordance with subsection G below, MCP shall purchase one or more parcels located in Phase 3 for affordable rental housing and/or workforce housing for a purchase price of \$44,531.53 per residential unit multiplied by the sum of (a) the number of affordable rental housing units and/or workforce housing units to be built on such parcels and (b) the number of residential units to be located on Phase 2 land in excess of 360 units, if any ("Excess Phase 2 Units") (the "Price per Unit Method"). By way of example: calculated under the Price per Unit Method, if 140 affordable apartments are to be built on Phase 3 land and 360 market rate and workforce units are to be built on Phase 2 land, the purchase price of the applicable phase 3 parcels would be \$6,234,414 (140 units multiplied by \$44,531.53 per unit). The parties further agree that the purchase of any Phase 3 parcels for development as affordable and/or workforce housing shall not require MCP to purchase the balance of the Phase 3 parcels.

C. MCP shall, as a condition to conveyance of Phase 2, identify to the City the sites for the 140 affordable rental units and, if such sites are different from those identified in Paragraph A., above, such sites shall be subject to the City's approval. MCP will acquire the sites for the Affordable Housing Complexes no later than the date applicable under the Schedule of Performance as modified by the Conforming Clarifications to the Schedule of Performance ("**Schedule of Performance**").

D. The income mix for the units in the Affordable Housing Complexes shall be substantially as shown in the Affordable Housing Complex Estimated Unit Mix, attached hereto as Exhibit B and incorporated herein by reference. Any significant changes to the income mix for the units shall be subject to the approval of the City.

E. If for any reason MCP fails to commence construction of the 140 affordable rental units by the date set forth in the Schedule of Performance (as modified and, in addition, subject to City's performance under the Schedule of Performance), the City shall have the remedy set forth in Section 11 of this Agreement.

F. In consideration of the above modifications and completion of the affordable housing units described in subsection A. of this Section 1, MCP shall pay to the City on or before the purchase of the parcel or parcels for the Affordable Housing Complexes, as a Developer in-lieu affordable housing subsidy Two Hundred Thousand Dollars (\$200,000) for affordable housing administration costs. Such amount, together with the land purchase price, deconstruction (site clearance) costs for the affordable housing sites, allocable infrastructure costs, and direct subsidies for vertical construction shall be deemed eligible costs in Phase 3 for reimbursement from housing tax increment funds pursuant to the Tax Increment Financing Plan and Agreement.

G. During a period of up to three (3) months after the date of this Agreement, MCP and the City will explore options for developing some portion of the affordable housing units outside of the Specific Plan Area in an effort to catalyze the development of downtown Marina.

2. **Workforce Homes Requirements.**

A. MCP shall have the right, but not the obligation, to satisfy the remainder of the Workforce Housing Requirements for Phase 1 (9 units) and the Phase 3 Workforce Housing Requirements for Phase 3 (36 units) in Phase 2 (up to a total of 45 units).

B. MCP anticipates that Workforce Housing units shall be developed as its Sea House duet home model. Assumed Household Sizes for purposes of determining sales prices for the Workforce Housing shall be based on the number of bedrooms in a Workforce House, plus 2 persons.

C. MCP shall have the option, but not the obligation, to purchase Parcel 24 for a purchase price calculated under the Price per Unit Method to locate units of Workforce Housing.

D. If the market rate purchase price for a comparable unit with an equal number of bedrooms and comparable square footage to a Workforce Home is not more than \$40,000 more than the purchase price for a Workforce Home, as such purchase price for the Workforce Home is calculated pursuant to DDA and the Below Market Rate Housing Implementation Agreement ("Workforce Homes") dated as of April 1, 2015 ("**Workforce Housing Implementation Agreement**"), the Workforce Home may qualify as Workforce Housing without a requirement for a note and deed of trust or implementation of an equity sharing program for the purchase of such housing, provided (i) the Workforce Home is sold at an Affordable Workforce Housing Cost; (ii) is sold to a verified income eligible Workforce Household; and (iii) MCP substantially complies with the requirements of the Workforce Housing Implementation Agreement in the sale of such Workforce Homes, as modified in this Section 2.

E. Illustrative examples:

(i) If the market price for a given home is \$710,000, and the workforce housing formula price for that home is \$660,000, the home would be sold for \$660,000 and include the shared equity/appreciation restrictions, because the market price is more than \$40,000 above the workforce housing price.

(ii) If the market price for a given home is \$690,000, and the workforce housing formula price for that home is \$660,000, the home would be sold for \$660,000 (the workforce housing formula governs price regardless of market), but would not include the shared equity/appreciation restrictions, because the market price is less than \$40,000 over the workforce housing price.

F. The City Manager, in consultation with the City Attorney, is authorized to execute conforming changes to the Workforce Housing Implementation Agreement.

3. **FORA Fee.**

Section 4.5 of Exhibit D to the Development Agreement is added as set forth in the Amended and Restated Exhibit D (attached hereto) to be effective only when the Fort Ord Reuse Authority ("**FORA**") is dissolved and to the extent that no provision is made upon such dissolution for the continuation of FORA fees, in whole or in part, by the County or other public agency.

4. **FORA Credits to MCP for Deconstruction Costs; Allocation of Phase 2 and Phase 3 Purchase Prices.**

A. FORA has claimed the amount of Seven Million, Six Hundred Fifty Thousand Dollars (\$7,650,000) as its share of the purchase price for Phase 2 (50% of the price set forth in the original DDA). In order to assure the City that its 50% share of the purchase price for Phase 2 will not be diminished but will remain at Six Million Two Hundred Eighty-Three Thousand Dollars (\$6,283,000 which include a Phase 1 credit of \$467,000) (50% of the purchase price adjusted in the Second Implementation Agreement), MCP agrees to deposit into escrow an additional amount of Nine Hundred Thousand Dollars (\$900,000), so that FORA and the City will each be allocated its claimed respective share of the Phase 2 land price. The purchase price shall be calculated as set forth in the Examples in subsection C below.

B. FORA is expected to claim the amount of Thirteen Million Three Hundred Fifty Thousand Dollars (\$13,250,000) as its share of the total purchase price for Phase 3 (50%) of the price set forth in the original DDA). In order to assure the City that its 50% share of the purchase price for Phase 3 will not be diminished but will remain at Eleven Million Seven Hundred Fifty Thousand Dollars (\$11,750,000) (50% of the purchase price adjusted in the Second Implementation Agreement), MCP agrees to deposit into escrow an additional amount of One Million Six Hundred Thousand Dollars (\$1,600,000), so FORA and the City will each be allocated its respective share of the Phase 3 land price. The purchase price shall be calculated as set forth in the Examples in subsection C below.

C. **Examples of Purchase Price Payable by MCP**

(i) For Phase 2, the City's 50% share of the Purchase Price would be \$6,283,000, consisting of (a) the City's 50% share of the land sale proceeds for Phase 2 of \$6,675,000 (50% of 13,500,000), less (b) a Phase 1 credit of \$467,000; and

(ii) For Phase 3, assuming MCP has previously purchased Phase 3 site(s) for the affordable rental housing complex for \$6,234,414, the City's 50% share of the Purchase Price would be \$8,632,793, consisting of (a) the City's 50% share of the land sale proceeds for Phase 3 of \$11,750,000 (50% of \$23,500,000) less (b) the City's 50% share of the land sale payment for the affordable housing complexes, or \$3,117,207 (50% of \$6,234,414).

In addition to the City's 50% share of the Purchase Price, as identified in the above examples, the total amount deposited into escrow by MCP with respect to the purchase of Phases 2 and 3, respectively, will include the remaining portion, if any, of FORA's 50% share of the land sale proceeds after the applicable credits to MCP for deconstruction pursuant to the Memorandum of Agreement and the Settlement Agreement, both referenced in Paragraph D., below.

D. **Effect of FORA Dissolution.** FORA, MCP and the Marina Redevelopment Agency entered into a Memorandum of Agreement dated August 25, 2005 (the "**MOA**") and FORA and MCP entered into a Settlement Agreement dated August 15, 2019 (the "**Settlement Agreement**") related to the payment of deconstruction costs associated with the Project. To the extent that the City receives any portion of FORA's share of land sales proceeds after the

dissolution of FORA, the City will provide a land sales proceeds credit toward deconstruction costs as contemplated in the MOA and the Settlement Agreement but only from FORA's share of land sales proceeds actually received by the City. Any land sales credits for deconstruction provided pursuant to this subsection shall be subject to the terms of the MOA and the Settlement Agreement which limit the total reimbursement to be received by MCP from FORA in cash and land sales proceeds credits for deconstruction for the Project to a maximum of (i) \$46,000,000 or (ii) actual deconstruction costs, whichever is less. In no event shall any land sales credits for deconstruction be paid from the City's share of land sales proceeds. Deconstruction costs related to the site for the Affordable Housing Complexes to be reimbursed from Available LMIHF funds are not eligible for land sale credits.

5. **Non-Housing Tax Increment Reimbursement.**

A. The Parties acknowledge and stipulate that development of the Project has been hindered and delayed for a period commencing February 1, 2012 and ending October 1, 2019 (the “**Force Majeure Period**”) due to force majeure (“**Excused Delay**”, as defined in Section 12.4 of the DDA), requiring adjustments in the Schedule of Performance and other provisions of the DA, DDA and implementing documents, including provisions pertaining to reimbursements to MCP for costs associated with the development of affordable housing in the Project. Therefore the Payment Obligation Period (as defined in Part I., Section 3 of the Tax Increment Financing Plan and Agreement) shall be extended due to the Force Majeure Period to October 2037.

6. **Housing Tax Increment Reimbursement**

A. By way of clarification and not constituting a substantive change with respect to the completion of the Affordable Housing required in the Project and reimbursement to MCP for its costs associated with the development of that Affordable Housing, the Parties stipulate as follows:

(i) the estimated amount \$18 Million allocated for reimbursement to MCP for costs associated with providing Horizontal Improvements of direct benefit to Affordable Housing is hereby adjusted based on the Consumer Price Index (San Francisco Bay Area) (“CPI”) for the Force Majeure Period to \$22,680,000; and

(ii) upon commencement of the Affordable Housing Complexes, MCP shall have commenced construction of the last segment of Affordable Housing to be provided by MCP in the Project and shall be entitled to receive payment of Available LMIHF Funds up to an amount sufficient to reimburse MCP up to the full amount of Eligible LMIHF Costs associated with vertical improvements in the development of the Affordable Housing in the Project, including Eligible LMIHF Costs incurred in Phase 3 and any remaining unreimbursed Eligible LMIHF Costs incurred in Phase 1 and 2 and the full amount of Eligible LMIHF Costs associated with horizontal improvements up to the adjusted amount set forth in subject section (A)(i) above.

B. In addition, the parties further agree that the Payment Obligation Period (as defined in Part II., Section 3 of the Tax Increment Financing Plan and Agreement) shall be extended due to the Force Majeure Period to October 2027.

7. **Hotel Requirements**

In the event that MCP provides the City with written notice that it is unable, despite commercially reasonable efforts, to enter into an agreement with a hotel developer for a hotel development consisting of not less than a 150 room hotel to be located on Opportunity Sites 1A on terms required by a hotel developer by the date set forth in the Schedule of Performance for approval of the Hotel Site Plan/Architectural Design, MCP hereby grants to the City an option to purchase Opportunity Site 1A ("**Hotel Site**"), such option to be effective upon the date of such notice, and MCP shall be relieved of the obligation to provide for the development of a hotel in the Project. The City's purchase price for the Hotel Site shall be Three Million Six Hundred Thousand Dollars (\$3,600,000) which represents MCP's costs of land acquisition and horizontal infrastructure/utility improvements benefitting the Hotel Site, together with MCP's planning and design costs with respect to the Hotel Site. The City shall have twelve (12) months from the date set forth in the Schedule of Performance for the approval of the Hotel Site Plan/Architectural Design to give MCP notice of its intent to exercise the its purchase option ("**Option Exercise Notice**"). If the City gives the Option Exercise Notice, escrow on the conveyance of the Hotel Site shall close within sixty (60) days of the date of the Option Exercise Notice.

8. **Dunes Linear and Dunes Park.**

A. Linear Parks – Park improvements for the Dunes Linear Park in Phases 2 and 3 as shown on the map of the Project Site attached hereto as Exhibit A-1, and incorporated herein by reference, shall be based on a width dimension of 70 feet. To the extent that the Specific Plan contemplated a community center on Parcel G, the Parties agree that the DDA and the Development Agreement do not require MCP to construct a community center on Parcel G. The City shall allow MCP to further value engineer the park landscaping improvements to achieve additional water conservation goals.

B. Dunes Park – Upon written notice from the City to MCP of the commencement of construction of the of the Dunes Park improvements as evidenced by a notice to proceed issued by the City to its contractor, MCP shall pay the City Four Million Six Hundred Seventy Thousand, Five Hundred Eighty-One Dollars (\$4,670,581), which represents an annual adjustment based on the Consumer Price Index (San Francisco-Bay Area) ("CPI") for the period between 2005 to 2021, from the payment of Three Million Dollars (\$3,000,000) set forth in the DDA, which payment shall be used by the City for construction of park improvements on the Dunes Park site, provided however, that if the City does not have a source of funds for the deconstruction work on the Dunes Park Site, MCP shall make the payment of the amount set forth above upon request by the City to pay for such deconstruction.

C. Dunes Park – At the time of commencement of construction of the Affordable Housing Complexes, MCP shall pay the City an additional Three Million Eight Hundred Thousand Dollars (\$3,800,000), to be used for construction of the Dunes Park improvements. Payments made by MCP under this subsection C or subsection B above, shall be

proportionally eligible as a direct affordable housing cost eligible for reimbursement as Phase 3 eligible housing costs pursuant to the Tax Increment Financing Plan and Agreement and consistent with the prior Housing Invoices submitted by MCP to the City.

D. Dunes Park – The City shall be responsible for design, building removal and site preparation, bidding and construction, and payment for such costs. Funds contributed toward park improvements under subsections B. and C., above, shall be expended for construction of park improvements and/or deconstruction of existing improvements within 36 months of receipt by the City.

9. **Relinquishment of Arts District Parcel and Chapel Building.**

MCP agrees to relinquish and City agrees to accept for development by the City in accordance with the Specific Plan, those portions of the Project identified for development as an Arts District and the Chapel Building as shown on the map of the Project site, attached hereto as Exhibit A-1. The sites and improvements comprising the Arts District and Chapel shall be excluded from MCP's purchase of Phase 2, but without any reduction in the purchase price for Phase 2. MCP will assist the City with grant applications and planning for the maintenance and improvements of the Arts District and Chapel without incurring any financial obligations on the part of MCP.

10. **Promenade Minimum Improvements.**

MCP shall build not less than 27,285 square feet of commercial retail space improvements, (the remaining Phase 1 Minimum retail improvements) together with backbone infrastructure improvements (as defined in Exhibit A-2), by the date set forth in the Schedule of Performance.

11. **Building Permit Monitoring.**

Section 4.1.4 is added to the Development Agreement, to provide as follows:

“4.1.4 Notwithstanding any provision in Article 4 of this Development Agreement or Article 11 of the DDA to the contrary, the City shall have the right to suspend the issuance of building permits (as described in Section 4.1.4.2 below) for market-rate housing only in the Project (but in no event for Affordable Housing or Workforce Housing), as its sole remedy, for a failure of Developer to satisfy any of the obligations set forth in Section 4.1.4.1 below by the outside date set forth in the Schedule of Performance (including any and all extensions), provided however, that (i) the Developer has been provided written notice and an opportunity to cure under Section 4.1.1 of this Development Agreement and/or Section 11.4 of the DDA; (ii) the date(s) for performance has not been extended by an Excused Delay, an agreement between Developer and City or otherwise; and (iii) City has met all of its obligations and taken all necessary actions to process approvals pertaining to such Developer obligations within the dates set forth in the Schedule of Performance:

4.1.4.1 The specific Developer obligations that are subject to this remedy are the following:

- (a) Substantial completion of deconstruction in Phase 2: (Jan. 2021);
- (b) Substantial completion of vertical improvements for approximately 27,285 sq. ft. of commercial pads in the Promenade (Dec. 2022); and
- (c) Commencement of construction of the Affordable Housing Complexes (Jan. 2023) and payment of the applicable purchase price for the site(s) of the Affordable Housing Complexes.

4.1.4.2 Temporary suspension of the issuance of building permits for the market-rate housing in the Project shall apply to applications for building permits for market-rate housing as follows:

- (a) With respect to a failure to satisfy the obligation in paragraphs (a), (b) and (c) of Section 4.1.4.1, after 150 building permits have been issued for market-rate housing in Phase 2.

4.1.4.3 If the City wants to exercise its rights as set forth above in the first paragraph of this Section 4.1.4, City shall provide 30 days' advance written notice to Developer that it is invoking its right to suspend the issuance of building permits for market-rate housing. Any such suspension shall be terminated upon the date that Developer has substantially satisfied the obligation to which the remedy applies. Notwithstanding anything set forth in the above, the City and MCP each retains all of its respective rights and remedies with respect to the other party's failure to meet any other dates set forth in the Schedule of Performance, including those dates that are dependent upon the dates set forth in Section 4.1.4.1.

12. **Water Allocation**

If MCP fails to acquire Phase 3 by the time set forth in the Schedule of Performance, any water allocation for the remaining portion of Phase 3 (aside from the water allocation necessary for the Affordable Housing Complexes) shall be returned to the City.

13. **Phase 3 Property Conveyance**

If the City/Successor Agency have met all of its conditions to closing for conveyance of Phase 3 and MCP fails to acquire Phase 3 by the outside date set forth in the Schedule of Performance, MCP's rights to acquire the Phase 3 property or any portion thereof that MCP has not previously acquired shall be terminated and the DDA and the Development Agreement for any unacquired portion of Phase 3 shall be automatically terminated.

14. **Expedited Processing and Approval of Key Project Development Entitlements.**

City acknowledges the critical importance of having an expedited approval process for design review and other approvals to implement the Project, and agrees to provide such expedited approval process at the request of MCP, subject to the provisions of Section 2.5.4. of the Development Agreement.

15. **Extension of Term of Development Agreement.**

A. City acknowledges that as provided in Section 1.2.2 of the Development Agreement, the term of the Development Agreement has been extended by ____ days to _____ by reason of two events of Force Majeure cumulatively totaling more than 270 days.

B. Within fifteen (15) days of City execution of this Operating Agreement, MCP and the City shall extend the term of the Development Agreement, in writing, as a ministerial act, in the form of an Administrative Amendment under Section 3.1.7 of the Development Agreement, which extension shall be recorded in the Official Records of Monterey County.

16. **References to 2019 Pro Forma.**

The 2019 Pro Forma is on file with the City Clerk. The 2019 Pro Forma shows assumption and estimates of revenues, costs and economic projections for the Project, may be referenced by the Parties when necessary for clarification and interpretation of this Operating Agreement, the Development Agreement, as amended, the Project Proposals, and the DDA, and all related agreements and documents relating to the Project.

17. **Disposition and Development Agreement.**

City has determined, and MCP concurs, that no amendment, modification or further clarification is required in the terms of the DDA in that the DDA provides in Section 2.1 that the description of the Project in the DDA is merely for descriptive purposes and that the Development Approvals control. A copy of this Operating Agreement has been provided to the Successor Agency and shall be deemed and accepted by the Successor Agency and MCP as automatically incorporated into the DDA with respect to descriptions of the Project and other conditions of performance and approvals required by MCP and the Successor Agency under the DDA.

18. **Defined Terms**

Defined terms not otherwise defined herein shall have the meaning set forth in the DDA and/or the Development Agreement.

[Signatures on following page]

SIGNATURE PAGE TO IMPLEMENTATION AGREEMENT

City and MCP have executed this Agreement effective as of date above shown.

CITY OF MARINA

**MARINA COMMUNITY PARTNERS,
LLC**

By: _____
City Manager

By: _____
Authorized Representative

Acknowledgement and Acceptance

Successor Agency to the Marina
Redevelopment Agency

By: _____

Its: _____

11/26/2019

CONFIDENTIAL MEDIATION
[DISCUSSION DRAFT]

EXHIBIT A-1
MAP OF PROJECT SITE

EXHIBIT A-2
PROMENADE INFRASTRUCTURE IMPROVEMENTS

[illegible]

MARINA
COMMUNITY
PARTNERS, LLC

EXHIBIT B
AFFORDABLE HOUSING COMPLEXES PROJECTED AFFORDABILITY
BREAKDOWN

Exhibit B
Affordable Housing Complex Estimated Unit Mix

Transaction Summary

Marina - The Dunes with State Tax Credits - Scenario 1

Unit Mix & Affordability	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Total Units	% of Affordable
50% TCAC	0	40	41	10	0	91	65.5%
80% TCAC	0	16	29	3	0	48	34.5%
Affordable	0	56	70	13	0	139	100.0%
Market/Mgr	0	0	0	1	0	1	
Total Units	0	56	70	14	0	140	

USA Properties Fund, Inc.

Summary
 12/03/2018 02:00:19
 C:\Users\masketron\Desktop\PF_Marina_Aff_Model_TC_Scenario1_W_State_Tax_Credits_082619_1\Updated_Renits

EXHIBIT D TO THE DEVELOPMENT AGREEMENT

AMENDED AND RESTATED EXHIBIT D TO DEVELOPMENT AGREEMENT

FEES, CONDITIONS AND MONETARY EXACTIONS APPLICABLE TO THE PROJECT

[Note: Unless expressly noted, there are no changes to Exhibit D to Development Agreement approved June 7, 2005, Effective July 8, 2005]

[First Paragraph conformed to change in DDA by Second Implementation Agreement dated as of August 5, 2008]. The provisions of this Exhibit D are deemed reasonable by the City in light of the processing and development of the Project and taking into consideration the payments to the Marina Redevelopment Agency (shared with FORA) of the total Purchase Price of \$43,000,000 to be paid by the Developer to the Agency for the Property pursuant to the terms of the DDA, which Purchase Price was established by the Agency as the fair reuse value of the Property based on a pro forma analysis of the Project approved on August 5, 2008 (the “2008 Project Pro Forma”) and a reuse valuation approved on August 5, 2008 (the “2008 Reuse Valuation”) that included assumptions, among others, as to the Developer’s costs of fees and monetary exactions for the Project.

Developer shall pay, in the amounts and at the times set forth in, and subject to the terms of, this Exhibit D, the following fees and monetary exactions, which shall be the sole obligation of the Developer to pay City-imposed processing fees, impact fees or other monetary exactions with respect to the development of the Project.

1. CITY PROCESSING FEES FOR SUBSEQUENT DEVELOPMENT APPROVALS

Except as otherwise limited in this Exhibit D, Developer shall pay City processing fees for Subsequent Development Approvals as established pursuant to applicable law and in effect at the time on a city-wide basis at the time of the completed applications for such Subsequent Development Approvals, including City’s reasonable costs of processing any subsequent environmental review required under CEQA with respect to such applications.

2. CITY PLAN CHECK AND INSPECTION FEES

Processing fees for plan checking and inspection, including costs of outside consultants, for construction of the Project shall be paid as allocated to the uses set forth in Table 1 to this Exhibit D (which amounts include fees for the Strong Motion Instrumentation Program and Building Department Training) and are estimated for purposes of the Project Pro Forma and Reuse Valuation at Four Million Five Hundred Thousand Dollars (\$4,500,000). Actual fees will depend on actual costs for such services in relation to the activity to plan check, inspect and process permits necessary for the Project as provided for in Table 1 as provided by the City’s Strategic Development Center, but in no event shall this total exceed Six Million Seven Hundred Thousand (\$6,700,000). Actual costs could be less or more than the \$4,500,000 estimate but shall not exceed the limit set in this paragraph. At agreed upon reporting intervals, City and Developer will review

cost estimates and budget projections for permit, inspection and processing fee activity. In the event it is determined during any periodic review that the Developer or Affiliate of Developer under the construction of the vertical improvements (exclusive of hotels) have paid more processing fees than the actual costs to the City of providing the services for which those fees were paid, the Developer or its Affiliate, as the case may be, shall be given a credit by the City in the amount of such overpayment as an offset against future fees payable by the Developer or its Affiliate, and, following the final accounting, shall refund the amount of any then remaining overpayment.

For purposes of this Agreement, plan check and inspection fees shall include the City's General Plan Fee. The Developer shall pay the City's General Plan fee at the time of recordation of the first Final Subdivision Map for each Phase of the Development. The City's General Plan fee is set at \$500 per acre and payments to be made by the Developer of the General Plan fee shall be based on the gross acreage of the particular Phase of Development.

3. CITY IMPACT AND OTHER DEVELOPMENT FEES AND MONETARY EXACTIONS

On the Effective Date of this Agreement, City is in the process of updating its capital improvement program (the "City CIP") and is considering adoption of a schedule of impact fees and development and other monetary exactions, in accordance with Section 66000 et seq. of the Government Code (referred to herein as "AB 1600") to implement the City CIP. The establishment and limitations on such fees as set forth in Table 2 to this Exhibit are deemed by the City to be necessary and reasonable and consistent with its contemplated actions.

Impact, development and other monetary exactions payable with respect to the development of the Project shall be established and fixed by the City, in accordance with the provisions of AB 1600, but shall not exceed in any event, as applicable to the Project, the amounts set forth in Table 2 for the various land uses in the Project, subject to reduction based upon the AB 1600 analysis and subject to increase only for escalation in accordance with the construction cost index, identified in the City's fee adoption ordinances, to be adopted by the City in connection with the imposition of such fees. Such fees include all fees applicable to the public facilities and improvements for which Developer and the Project are required to pay impact fees under the Specific Plan and the Development Approvals, including costs or fees for mitigation measures under the EIR Mitigation Monitoring Program.

City and Developer agree that, as set forth in Table 2 to this Exhibit D, the maximum impact fees payable with respect to the specific land uses developed in the Project shall be the amounts, subject only to escalation in accordance with the construction cost index referenced above, as follows:

- | | | |
|----|----------------------------------|-----------------------|
| 1. | Single family residential units: | \$13,730.02 per unit. |
| 2. | Townhomes: | \$11,169.90 per unit. |
| 3. | Multi-family residential: | \$11,654.61 per unit. |
| 4. | Senior housing | \$7,436.48 per unit. |
| 5. | Retail: | \$24.21 per sq. ft. |
| 6. | Office: | \$7.74 per sq. ft. |

Exhibit D
Page 18

- | | | |
|----|-------------|--------------------|
| 7. | Hotel: | \$5,875 per room |
| 8. | Industrial: | \$4.02 per sq. ft. |

The limitation on Impact Fees set forth in this Section 3 for a hotel are assumed to include the total fees payable to the City, and City agrees that there shall be no additional Impact Fees charged hotels for ancillary space in conjunction with the operation of a hotel, including, but not limited to, management functions, restaurants, convention, meeting, recreational and activity space.

4. FORA FEES

The Developer and the Project shall be responsible for the payment to FORA of its fees for the development of the private improvements as established from time to time by FORA for its base-wide capital improvements program (the “FORA CIP”).

City shall cooperate with the Developer, at no cost to the City, to maintain the FORA Fees at an amount not exceeding the range assumed in the Project Pro Forma and the Reuse Valuation.

4.5 FORA DISSOLUTION

[Section 4.5 is added by Section 3 of the Operating Agreement between the City and Marina Community Partners dated as of _____.]

This Section 4.5 shall be effective only in the event that FORA is dissolved and to the extent that no provision is made upon such dissolution for the continuation of FORA fees, in whole or in part, as follows:

Prior to the dissolution of FORA, the Developer and the Project were responsible for the payment to FORA of its fees (the “FORA Fee”) for the development of the public improvements as established from time to time by FORA for its base-wide capital improvements program (the “FORA CIP”).

a. 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 any 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 area ("FORA Fee Adjuster").

(ii) 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 levied for base-wide capital improvements that the FORA Fee was levied for,

(b) is required to be paid upon issuance of a building permit and not before,

(c) is a one-time fee or assessment; and

(d) 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.

b. Whether the New Fee is a single fee and/or assessment or multiple fees and/or assessments, it shall be payable upon issuance of a building permit and 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 (a)(i) above, does not exceed the FORA Fee in effect on FORA's dissolution, as adjusted by the FORA Fee Adjuster.

c. The provisions of this Section 4.5 shall not be applicable to individual homeowners or assignees who took title to portions of the Property prior to the effective date of this Section 4.5 and provided further, in no event shall the New Fee pursuant to subsection (a)(ii) plus any assessment or special tax pursuant to subsection (a)(i) exceed the FORA Fee at the time of FORA's dissolution, as 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.

5. MCWD CONNECTION AND SERVICE CHARGES

The Developer and the Project shall be responsible for payment of connection charges imposed by the Marina Coast Water District ("MCWD") for water and sewer services to private

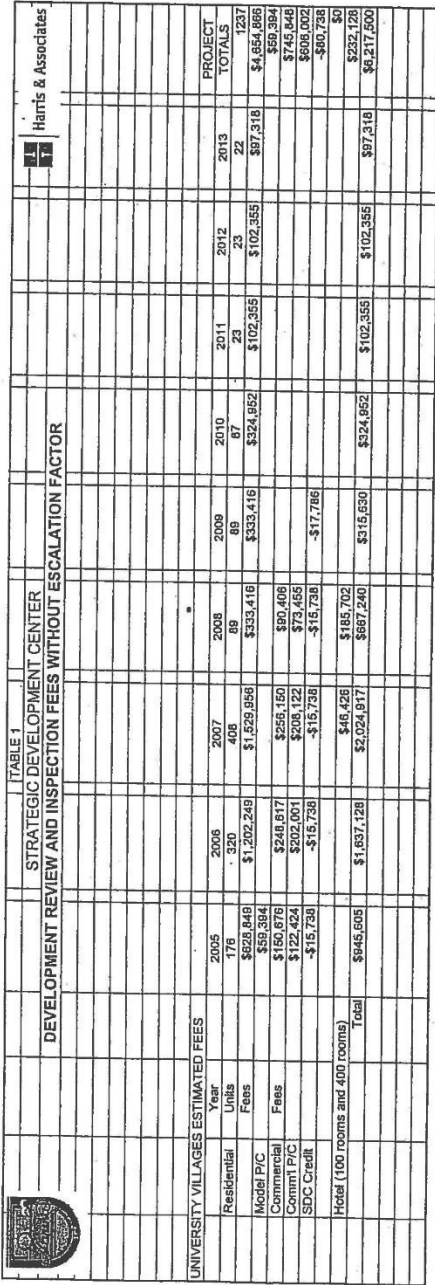
improvements, estimated to not exceed the following as assumed in Project Pro Forma and Reuse Valuation: Thirty-Eight Hundred Dollars (\$3,800) per equivalent dwelling unit.

City will cooperate with the Developer to maintain the MCWD charges as not to exceed the range assumed in the Project Pro Forma and Reuse Valuation.

6. SCHOOL FEES

The Developer and the Project shall be responsible for statutory school fees for school facilities as imposed by the Monterey Peninsula Unified School District. City will cooperate with the Developer to maintain school fees estimated at the not-to-exceed the range assumed in the Project Pro Forma and Reuse Valuation.

TABLE 1 TO EXHIBIT D
[SEE TABLE ATTACHED]



UV Fee Projection Without 3% Esc Factor 2005 Fees.xlsg

TABLE 2 TO EXHIBIT D
[SEE TABLE ATTACHED]

TABLE 2

UNIVERSITY VILLAGES

Summary of Impact Fees

Land Use	Traffic Intersections	Roadways	Parks	Facilities	Airport	Public Safety - Fire Department	Total
Residential (Per Unit)							
Single Family Dwellings							
Town homes	\$2,067.38	\$3,322.31	\$6,365.58	\$1,394.73		\$580.02	\$13,730.02
Senior ^(A)	\$1,266.23	\$2,034.86	\$5,894.06	\$1,394.73		\$580.02	\$11,169.90
Multi-Family Dwellings	\$648.07	\$1,041.46	\$3,772.20	\$1,394.73		\$580.02	\$7,436.48
Non Residential	\$1,452.16	\$2,333.65	\$5,894.06	\$1,394.73		\$580.02	\$11,654.61
Office (per Building ft^2)	\$2.19	\$3.52	-	\$1.09		\$0.93	\$7.74
Hotels (room)	\$1,626.17	\$2,613.28	-	\$1,162.27		\$473.29	\$5,875.00
Commercial / Retail (per Building ft^2)	\$8.82	\$14.18	-	\$0.66		\$0.56	\$24.21
Industrial (per Building ft^2)	\$1.39	\$2.23	-	\$0.22		\$0.19	\$4.02

TABLE 2 TO EXHIBIT D
Page 1

661\05\262915.2

Conforming Clarifications to the Schedule of Performance
November 22, 2019

Project Milestones (Remaining) (1)	Responsible Party	New SOP Outside Date (3)
Phase 2 Development – Approval of Tentative Subdivision/Parcel Maps	City	May 2020
Phase 1 Minimum – Approval of Site Plan/Architectural Design Review – Promenade (if requested by MCP)	City	Feb 2022
Phase I Minimum – completion of vertical improvements for minimum retail in Promenade (approximately 27,285 sq. ft. of commercial pads) (4)	MCP	Dec 2022
Phase 1C – Completion of vertical improvements	MCP	May 2020
Phase 2 – commence deconstruction	MCP	Oct 2020
Phase 2 – complete deconstruction (4)	MCP	Jan 2021
Phase 2 – Takedown/land sale to MCP	MCP	Jan 2021
Phase 2 East – Approval of Final Map, Improvement Plans	City	Oct 2020
Phase 2 East – completion of horizontal improvements	MCP	Mar 2022
Phase 2 East – completion of vertical improvements	MCP	May 2024
Phase 2/3 AHU rental complex – commence construction (4)	MCP	Jan 2023
Phase 2 – Op Site 1A - Approval of Parcel Map,	City	May 2020
Phase 2 – Op Site 1A – Approval of Hotel Site Plan/Architectural Design (5)	City	Dec 2020
Phase 2 – Op Site 1A – Hotel – completion of horizontal improvements (5)	MCP	Jul 2022
Phase 2 – Op Site 1A – Hotel – completion of vertical improvements (5)	MCP	Aug 2024
Phase 2 – Op Site 1B/C - Approval of Final Map, Improvement Plans	City	Jul 2021

Notes:

- (1) Represents remaining primary SOP items as adopted in the 2010 Conforming Clarifications;
- (2) Acknowledgement of Excused Delay period; commencing February 1, 2012 and ending, on Oct 1, 2019 (with resolution of TI Invoice #2)
- (3) MCP outside dates will be reasonably extended if City does not meet its milestones; MCP to provide submittals for project milestones no later than 90 days prior to required City approval date.
- (4) Milestone items subject to building permit metering as defined in the DA as amended in 2019.
- (5) Subject to provisions relating to the purchase option for the Hotel site by the City
- (6) In the event MCP does not take down the entirety of Phase 3 by the outside date set forth in this SOP and provided that the City and Successor Agency are able to satisfy the conditions precedent on their part for the sale of the Phase 3 Property, the City or the Successor Agency may terminate MCP's option to purchase the Phase 3 Property.

Conforming Clarifications to the Schedule of Performance
November 22, 2019

Phase 2 – Op Site 1B/C – Completion of Horizontal Improvements	MCP	June 2022
Phase 2 – Op Site 1 B/C – Completion of Vertical Improvements	MCP	Apr 2024
Phase 2 West – Approval of Final Map, Improvement Plans	City	Dec 2023
Phase 2 West – Completion of horizontal improvements	MCP	Jan 2025
Dunes Park - City financing and development plan submitted to MCP	City	Jun 2022
Dunes Park – Completion of Minimum Improvements	City	Oct 2023
Phase 2 West – completion of vertical improvements	MCP	Jul 2027
Phase 3 – complete deconstruction	MCP	Mar 2024
Parcel W – City Park – complete deconstruction	City	Mar 2024
Phase 3 – Takedown/sale to MCP (6)	MCP	Apr 2024
Phase 3 – Approval of Tentative Maps	City	Apr 2024
Phase 3 – Approval of Final Map, Improvement Plans	City	Sep 2024
Phase 3 – completion of horizontal improvements	MCP	Jan 2026
Phase 3 – completion of vertical improvements	MCP	Dec 2028
Termination of Tax Increment payments to MCP for Housing Fund obligations (exclusive of debt service on bonds)	City	Oct 2027
Termination of Tax Increment payments to MCP for Non-Housing Fund obligations (exclusive of debt service on bonds)	City	Oct 2037

Notes:

- (1) Represents remaining primary SOP items as adopted in the 2010 Conforming Clarifications;
- (2) Acknowledgement of Excused Delay period; commencing February 1, 2012 and ending, on Oct 1, 2019 (with resolution of TI Invoice #2)
- (3) MCP outside dates will be reasonably extended if City does not meet its milestones; MCP to provide submittals for project milestones no later than 90 days prior to required City approval date.
- (4) Milestone items subject to building permit metering as defined in the DA as amended in 2019.
- (5) Subject to provisions relating to the purchase option for the Hotel site by the City
- (6) In the event MCP does not take down the entirety of Phase 3 by the outside date set forth in this SOP and provided that the City and Successor Agency are able to satisfy the conditions precedent on their part for the sale of the Phase 3 Property, the City or the Successor Agency may terminate MCP's option to purchase the Phase 3 Property.

Honorable Mayor and Members
of the Marina City Council

City Council meeting of
December 17, 2019

RECOMMENDATION TO 1) CONSIDER ADOPTING RESOLUTION NO. 2019-, APPROVING OPERATING AGREEMENT CLARIFYING AND MODIFYING CERTAIN PROJECT APPROVALS FOR THE SPECIFIC PLAN FOR THE DUNES ON MONTEREY BAY 2) CONSIDER ADOPTING RESOLUTION NO. 2019-, APPROVING MODIFICATIONS AND CONFORMING CLARIFICATIONS TO THE SCHEDULE OF PERFORMANCE FOR THE DUNES AT MONTEREY BAY, 3) AUTHORIZING THE CITY MANAGER TO ACCEPT THE HOUSING INVOICES SUBMITTED BY MARINA COMMUNITY PARTNERS RELATED TO PHASE 1 COSTS ASSOCIATED WITH THE CONSTRUCTION OF AFFORDABLE HOUSING AND 4) AUTHORIZING CITY MANAGER TO EXECUTE THESE AGREEMENTS, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council and the Successor Agency Governing Board:

- 1) Consider adopting Resolution No. 2019-, approving:
 - (a) Operating Agreement (The Dunes on Monterey Bay), including all exhibits thereto;
 - (b) Clarifying Modifications to the Schedule of Performance;
 - (c) Housing Invoice No. 2 submitted by MCP pursuant to Section 8.4 of the DOA;
 - (d) Execution by the City and Developer of a written acknowledgment of the duration and date of termination of the Excused Delay; and
 - (e) Other actions necessary to implement the above agreements, documents and actions.

BACKGROUND:

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

The project was subsequently renamed The Dunes on Monterey Bay. The DDA and the Development Agreement contemplated additional implementation agreements as the development project proceeded. Section 12.8 of the DDA provides that the parties may enter into clarifying, interpretive and implementing addenda to the DDA from time to time.

Subsequent to approval of the DDA, the Specific Plan and the Development Agreement the Marina Redevelopment Agency accepted an Excused Delay Letter from MCP allowing for delay in construction of the Development due to absorption decreases in the housing market and authorizing renegotiations of the financial terms of the DDA.

Despite the excused delay from the downturn in the housing market, MCP desired to move forward with the project and the Marina Redevelopment Agency and MCP in August 2008 entered into a Second Implementation Agreement amending certain provisions of the DDA and pledging to MCP certain tax increment revenues generated by the Dunes project in order to assist the project in achieving financial feasibility.

In February 2012 all redevelopment agencies in the State of California were dissolved in accordance with State law and successor agencies were formed to carry out the ongoing obligations of the former redevelopment agencies. The City of Marina elected to serve as the successor agency to the former Marina Redevelopment Agency. The dissolution of the Marina Redevelopment Agency introduced uncertainty into the Dunes project regarding the ability of the project to obtain the full benefits of the tax increment pledged to MCP in the Second Implementation Agreement as well as the ability of the Successor Agency to issue bonds secured by the tax increment funds as required by the Second Implementation Agreement.

The dissolution of redevelopment agencies produced a flurry of litigation with over 80 cases filed on a variety of issues interpreting the dissolution law. The original dissolution law was amended several times with significant revisions causing additional levels of uncertainty. The DDA for the Dunes project was challenged by the Department of Finance on more than one occasion as to whether it constituted an enforceable obligation.

The Successor Agency to the former Redevelopment Agency finally issued bonds as required by the Second Implementation Agreement in 2018 only after appealing a denial from the Department of Finance on the authority to issue such bonds. In the course of the bond issuance, the City disputed certain invoices that MCP submitted regarding affordable housing costs to be reimbursed with Housing Tax Increment. MCP and the City agreed to delay resolution of the dispute of the housing invoice until after issuance of the bonds.

As a result of the uncertainty resulting from redevelopment dissolution MCP invoked an Excused Delay under the DDA effective as of February 1, 2012 and continuing.

Subsequent to the issuance of the bonds, MCP and the City engaged in discussions in an effort to resolve their dispute regarding the housing invoice as well as other disputes related to the schedule of performance and certain aspect of the project approvals. In accordance with the provisions of the DDA and the Development Agreement, the parties agreed to engage in mediation. As a result of the mediation and on-going negotiations, MCP and the City have reached tentative agreement on disputes regarding the DDA and the Development Agreement and are proposing to enter into two agreements to resolve these disputes and to address certain aspects of the project that cause significant financial feasibility challenges to the development: Operating Agreement Clarifying and Modifying Certain Project Approvals for the Specific Plan for the Dunes on Monterey Bay and the Modification and Conforming Clarifications to the Schedule of Performance.

In addition, the City is withdrawing its objection to the housing invoice submitted by MCP for affordable housing tax increment in recognition that the housing invoice allocates costs of the development in a manner consistent with the California Redevelopment law and the previously approved housing invoices.

PROJECT STATUS

The DDA contemplated the development of the Dunes in three phases. MCP took title to Phase 1 of the project and immediately commenced construction of the regional retail center. Despite the recession and other challenges, MCP has completed the majority of the development contemplated for Phase 1. As a precondition of commencing construction of Phase 1, MCP removed 390 blighted structures. To date MCP has completed the following development in Phase 1:

Retail Development	430,875 square feet
Hotel	106 rooms
CHOMP	63,000 square feet
VA	140,000 square feet
Residential	
Market rate units	315 homes
Workforce Homes	17 homes
Affordable apartments	108 apartments

The remaining portions of Phase 1 to be completed are 27,000 square feet of retail improvements in the Village Promenade area, 74 townhomes and 9 workforce homes.

The development completed to date generates annual sales tax and transient occupancy tax for the City of Marina of approximately \$4.4 million and provided over \$25 million in one-time impact fees for road improvements, park improvements and other public improvements.

OPERATING AGREEMENT AND MODIFICATIONS TO SCHEDULE OF PERFORMANCE:

MCP desires to move forward with Phase 2 of the Dunes development but certain aspects of the original project approvals present economic challenges to the development. The proposed Operating Agreement includes certain revisions to the project approvals in order to address economic feasibility issues. The proposed revisions to the project are discussed below.

Affordable Housing.

The Specific Plan for the Dunes contemplated that Phases 2 and 3 would include for-sale housing affordable to low- and moderate-income households. The development of for-sale affordable housing results in a significant financial burden on the development of Phases 2 and 3, causing a financing gap in the range of \$22 million. MCP has requested that the City agree that rather than development 140 for sale homes, MCP be allowed to develop the 140 units as rental units in two different complexes. The apartments in the rental complexes would be affordable to very low- and low-income households.

In the course of the discussions with MCP, the City requested and MCP agreed that the 140 rental units would be developed on property located in Phase 3 of the development site, but that development of the affordable units would occur during construction of Phase 2. The development of the affordable rental units in Phase 3 will result in MCP paying additional land sales purchase price to the City for the portion of Phase 3 on which the affordable rental units will be developed. Additionally, the development on Phase 3 property will result in deconstruction of portions of Phase 3 earlier than projected. The additional land sales revenues from the affordable housing development site in the range of \$6 million depending upon the site selected for the development of the affordable rental units. The Operating Agreement and the

Memorandum of Agreement making Clarifications and Minor Modifications to the Schedule of Performance require that MCP commence construction of the affordable rental complexes no later than January 2023. If MCP is unable to commence construction of the affordable complexes in accordance with the schedule of performance the City will be entitled to stop issuing building permits for market rate homes after 150 building permits have been issued.

MCP has also agreed to make a one-time contribution to the City of \$200,000 to provide the City with funds to administer the affordable housing program. The \$200,000 will be paid to the City at the time that MCP acquires the property for the affordable rental housing developments.

Allowing affordable rental housing to be developed instead of for-sale housing reduced the subsidy gap created by the affordable housing and assists in making Phases 2 and Phase 3 financially feasible.

Dunes Park Improvements.

The DDA requires MCP to pay the City, in addition to park impact fees, \$3 million toward the development of the Dunes Park. as part of the negotiations with MCP, the City requested and MCP agreed that the \$3 million contribution, which was agreed to in 2005 should be inflated by the increase in the costs of living, bringing the contribution to \$4,670,000. In addition, MCP has agreed to make an additional contribution to the Dunes Park development in the amount of \$3,800,000 to be paid to the City at the time that MCP commences construction of the 140 affordable rental units. This increases the total contribution toward the Dunes Park to \$8.47 million. The City will be responsible for the design, development and construction of the Dunes Park.

MCP has requested that the linear parks included in the Specific Plan be reduced from a width of 100 feet to 70 feet and clarification that a community center is not required on Parcel G of the development site.

Hotel Development

The development plan for the Dunes project contemplated a maximum of 500 hotel rooms. To date 106 hotel rooms have been developed. Opportunity Site 1A on the development plan was contemplated as a site for development of a hotel with 150—200 rooms. MCP is working with hotel developers on developing the site with a hotel. Hotel developers negotiating with MCP have indicated that in order to develop a hotel on the site, they would require that City to provide a transient occupancy tax rebate of some amount. The specific request for a transient occupancy tax rebate has not been made by a hotel developer yet but MCP expects that any developer will request such a rebate. The City is not being asked to contemplate a transient occupancy tax rebate at this time and any such rebate would be at the discretion of the City Council.

Development of the Hotel site is an important part of the overall development of the project and any hotel development will provide significant revenues to the City in the form of transient occupancy taxes. In order to preserve the City's opportunities to obtain development of a hotel on Opportunity Site 1A, MCP has offered the City an option to acquire the hotel site in the event that MCP is not able to complete an agreement with a hotel developer. The City would have the option to purchase the 9.6-acre site for \$3.6 million. If the City exercised the option to acquire the hotel, the City would acquire the site with the existing blighted buildings removed and backbone infrastructure installed to the property. The City option gives the City the opportunity to attempt to bring a hotel developer to the community if MCP should be unable to do so.

FORA Fees

Upon dissolution of the Fort Ord Reuse Authority ("FORA") the community facilities district fees currently collected by FORA will also dissolve. MCP has agreed to continue to pay equivalent fees to the City or other regional entities to ensure the continuation of funding for regional improvements, including habitat management, transportation improvements and other public improvements. The agreement with MCP mirrors the agreement that the City previously entered into with the developers of the Sea Haven development and ensure that the City will be able to continue the infrastructure improvements that were originally contemplated to be completed by FORA.

Arts District and Chapel Building

MCP has agreed to relinquish its rights to acquire the Arts District and the Chapel building without any reduction in the purchase price for Phase 2 or Phase 3.

Promenade Minimum Improvements

27,000 square feet of retail improvements remains to be developed in the Village Promenade area. As part of the schedule of performance clarifications, MCP has agreed to complete construction of the remaining 27,000 square feet of retail improvements, including the necessary infrastructure improvements by December 2022. If MCP is unable to complete the retail improvements in accordance with the schedule of performance the City will be entitled to stop issuing building permits for market rate homes after 150 building permits have been issued,

Phase 3

The conforming clarifications to the schedule of performance require that MCP acquire Phase 3 of the project no later than April 2024. The Operating Agreement provides that if MCP has not met the conditions precedent to acquisition of Phase 3 and acquired the Phase 3 property by that schedule of performance date, MCP will relinquish its rights to acquire the Phase 3 property and the Development Agreement and DDA will terminate with respect to Phase 3. Additionally, any water allocation not needed to complete other portions of the development will be returned to the City.

Workforce Homes

The original development plan for the Project requires the development of 62 homes to be affordable to households with incomes not exceeding 150% of median income ("Workforce Homes"). MCP has provided 17 Workforce Homes in Phase 1 of the development. When the City originally considered the Workforce Homes, the City and MCP agreed that the home would be subject to a promissory in favor of the City granting the City an equity share in the appreciation.

Pricing for the Workforce Homes has been close to the price of market rate homes and burdening these homes with additional restrictions makes sales of the homes difficult. The Operating Agreement provides that if the market rate price of a home is not more than \$40,000 greater than the price of a Workforce Home as calculated in accordance with the DDA and the Implementing Agreements on Affordable housing, the Workforce Home can be sold without the encumbrance of a City promissory note requiring equity sharing.

Schedule of Performance

The Modification to the Schedule of Performance adjusts the schedule of performance to address the excused delay invoked by MCP as a result of the uncertainty caused by the dissolution of the former redevelopment agency. Included within these modifications are extensions of time for the collection of tax increment revenues by MCP. The DDA and the Second Implementation Agreement both contain excused delay provisions that extend all deadlines in the agreements in the case of an excused delay. The modifications to the schedule of performance are consistent with the provisions of the DDA and the Second Implementation Agreement.

Deconstruction

Under the Schedule of Performance, MCP is obligated to commence the deconstruction of buildings on Phase 2 property by no later than October 20, 2020 and to complete deconstruction by no later than January 2021. If MCP is unable to complete deconstruction in accordance with the schedule of performance the City will be entitled to stop issuing building permits for market rate homes after 150 building permits have been issued

CEQA

The certified and approved EIR has served as the environmental documentation for the Operating Agreement and nothing in the Operating Agreement changes the analysis, recommendations and conclusions of the EIR or the mitigation measures adopted in May of 2005. The Operating Agreement contemplates the same development originally proposed and studied for the EIR. It is expected that subsequent project approvals necessary for proceeding with the development of the Dunes will rely upon the EIR, including design approvals.

The adoption of the Operating Agreement does not change the number of residential units or the square footage of retail or commercial improvements or change the land uses for any properties within the development plan area. Additionally, there have not been any substantial changes to the project since the certification of the EIR, no new information has come available to the City that was not known at the time of certification of the EIR and there have not been any substantial changes with respect to the circumstances under which the Development is being undertaken.

For these reasons the Successor Agency and the City have concluded that no additional environmental analysis is required and that the Certified EIR is the appropriate environmental document for this Operating Agreement and the Modification to the Schedule of Performance.

Benefits to the City of Operating Agreement and Modifications to the Schedule of Performance:

Development of Phase 2 of the Dunes provides significant benefits to the City. These benefits are enhanced by the provisions of the Operating Agreement. Estimated benefits include:

- removal of 77 blighted structures
- complete of 56,000 square feet of retail space and 74 higher density residential units at the Promenade
- completion of a full-service hotel
- completion of 140 affordable rental apartments
- completion of 9 workforce homes

- \$17 million one-time general fund revenues
- \$2.1 million in additional annual sales tax and hotel tax revenues
- \$19.5 million in one-time impact fee revenues to the City.

One-Time Revenues include \$8.5 million in contributions to the Dunes Park and a \$200,000 one-time contribution to affordable housing administration.

Absent the Operating Agreement and the changes to the project approvals, it is unlikely that Phase 2 will proceed.

CONCLUSION:

The request is submitted for City Council and Successor Agency Board consideration and possible action.

Respectfully submitted,

Layne Long
City Manager
City of Marina