SECOND
IMPLEMENTATION AGREEMENT
REGARDING UNIVERSITY VILLAGE

This Second Implementation Agreement ("Second Implementation Agreement") is entered into as of this fifth day of August, 2008 by and between the Marina Redevelopment Agency, a public entity ("Agency"), and Marina Community Partners, LLC, a Delaware limited liability company ("Developer"). The City of Marina ("City") has consented to this Agreement and approved certain undertakings in furtherance hereof pursuant to the Consent and Agreement of the City of Marina attached hereto following the signature page.

RECITALS

A. The Agency and the Developer entered into that Disposition and Development Agreement dated May 31, 2005, (the "DDA"). All initially capitalized terms used and not defined herein shall have the meanings set forth for them in the DDA; provided that references to "this Agreement" in the DDA, including but not limited to, sections of the DDA which are modified by this Second Implementation Agreement, shall mean the DDA as modified by the Implementation Agreement (referenced in Recital D hereof) and this Second Implementation Agreement.

B. Section 12.8 of the DDA provides that the parties to the DDA may enter into clarifying, interpretive and implementing addenda to the DDA from time to time.

C. Pursuant to the DDA, the Developer has acquired Phase 1 of the Site, has substantially completed construction of approximately 368,000 square feet of retail improvements on Phase 1A and expects to acquire Phase 2 and Phase 3 of the Site from the Agency and to develop on the remainder of Phase 1A, 1B and 1C, and Phases 2 and 3 a mixed use development consisting of retail, office, residential and hotel uses as well as various public amenities all in accordance with the Development Approvals including the Development Agreement entered into between the Developer and the City. The Developer is expected to acquire Phases 2 and 3 of the Site after meeting certain predisposition conditions as set forth in the DDA. Construction of the Development of the Site in accordance with the DDA is expected to occur pursuant to the Conforming Clarifications to the Schedule of Performance attached hereto.

D. The Developer and the Agency have previously entered into the Implementation Agreement dated September 6, 2006 ("Implementation Agreement").

E. The Agency and the City of Marina City Council, on January 7, 2008, approved a version of the Second Implementation Agreement which was never executed by the parties. Subsequent to the Agency's and City's approval of the Second Implementation Agreement and prior to execution of the Second Implementation Agreement, the Agency and the Developer determined that additional changes were required in order to ensure that the Development proceeds as contemplated in the DDA. This Second Implementation Agreement, upon approval by the Agency and the City, fully replaces

and supersedes the version of the Second Implementation Agreement approved by the City and the Agency on January 7, 2008.

F. The Developer has invoked an excused delay in the construction of the Development due to decreases in absorption rates for the sale of the homes and related impacts pertaining thereto which have substantially adversely affected the economic feasibility of the Development. Both the Developer and the Agency desire to proceed with the construction of the Development despite the current downturn in the market. In order to accommodate the changes in the market and ensure that the Development proceeds the Developer and the Agency are prepared to enter into this Second Implementation Agreement which makes certain revisions to the DDA. The Agency is prepared to enter into this Second Implementation Agreement and provide the additional assistance to the Development called for herein in consideration for the Developer waiving the excused delays currently invoked by the Developer and proceeding with the Development in accordance with the DDA as amended by the Implementation Agreement and Second Implementation Agreement.

G. The Agency and the Developer have determined that entering into this Second Implementation Agreement is in the Parties' best interest. The Agency and the Developer intend that this Second Implementation Agreement will clarify certain of the parties' obligations with respect to the timing and other matters related to development of the Development, and provide for the development of the Development consistent with the Development Approvals.

H. Upon approval and execution of this Second Implementation Agreement by the Agency and the Developer, Developer intends to proceed with the development of the Development in accordance with the Conforming Clarifications to the Schedule of Performance attached hereto and will continue to implement the marketing and community outreach program.

I. Pursuant to Health and Safety Code Section 33433, prior to approving this Second Implementation Agreement, the Agency has prepared a report including the information required by Health and Safety Code Section 33433 including a reuse appraisal and other information regarding the Development. The report and this Second Implementation Agreement have been made available to public for two weeks prior to the approval of this Second Implementation Agreement.

J. As part of the approval of this Agreement, the Agency and the City have made findings as required pursuant to Health and Safety Code Section 33445 that the payment of costs associated with public improvements by the Agency will be of benefit to the Project Area and will assist in the elimination of blight in the Project Area and that there are no other means of financing the public improvements. The City has consented to the payment of costs for such improvements as required pursuant to Health and Safety Code Sections 33445 and 33421.1.

K. Pursuant to the California Environmental Quality Act ("CEQA") and its implementing guidelines, the City (in its capacity as "lead agency") has prepared,

reviewed and certified an Environmental Impact Report ("EIR) for the Development and the DDA following conduct of a duly noticed public hearing. The Agency, in its capacity as a "responsible agency", has reviewed and approved the EIR. The EIR has served as the environmental documentation for the approval of this Second Implementation Agreement and nothing in this Second Implementation Agreement changes the analysis, recommendations and conclusions of the EIR or the mitigation measures adopted pursuant thereto.

L. This Agreement constitutes a contract, obligation and evidence of indebtedness within the scope and meaning of Government Code Section 53511 and is subject to the validation procedures of Code of Civil Procedure Sections 860 et seq. (collectively, the "Validation Statutes") in that it provides for satisfying financial obligations of the Agency for improvements and infrastructure to be owned by or maintained for the benefit of the Agency, City and the public generally in the Development and in the community and in addition the financing of affordable housing required in the implementation of the Development and the lack of a prompt validating procedures under the Validation Statutes would impair the ability of the Agency to make the binding financial commitments necessary under this Second Implementation Agreement and would impair the Agency's ability to operate and carry out its statutory purpose.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Definitions. Sections 1.1 (n), (bbb) and (lll) are hereby amended in it entirety to read as follows:

(n) "Assumed Household Size" means a household of three (3) persons in the case of a two-bedroom home and four (4) persons in the case of a three-bedroom home, five (5) persons in a four-bedroom home. This definition is utilized to calculate Affordable Low Income Housing Cost and the Affordable Moderate Income Housing Cost and is not intended to limit the number of people occupying a Home nor to project or estimate the population of the Development or any phase thereof.

(bbb) "Schedule of Performance" means the schedule of actions to be taken by the Parties pursuant to the DDA as amended by the Conforming Clarifications to the Schedule of Performance attached to the Second Implementation Agreement, subject to mutual extensions of the Parties and extensions under Section 12.4, to achieve disposition of the Site to the Developer and construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit F. Wherever the Schedule of Performance is referenced in this Agreement (including Exhibit F) such reference shall include extensions pursuant to Section 12.4 even where Section 12.4 is not specifically cited.

(lll) "Workforce Homes" means the approximately 62 Homes required to be sold at sales prices in accordance with Section 8.3 to Qualified Workforce Households.

2. Scope of Development and Phasing. Section 2.3(d) of the DDA is hereby amended to read as follows:

(d) Hotel Development. Up to an aggregate of 500 hotel rooms (the "Hotel Improvements"). The Developer is required to develop a minimum of 100 hotel rooms as part of Phase I. The remaining Hotel Improvements, up to but not to exceed 400 rooms, are to be developed in accordance with the terms of this Second Implementation Agreement and the Conforming Clarifications to the Schedule of Performance which require the Developer to commence construction of the Horizontal Improvements on Opportunity Phase 1A/B and designated by the Developer for the future construction of remaining Hotel Improvements within certain time frames. Notwithstanding the requirements to construct the Horizontal Improvements on Opportunity Phase 1A/B, the Developer shall not be required to construct the remaining Hotel Improvements until such time as the Developer has entered into a purchase and sale agreement or other agreement with a hotel developer in accordance with Section 4.11 of the DDA, and the Developer or the hotel developer, as applicable, shall not be in default with respect to the remaining Hotel Improvements unless the Developer or the hotel developer, as applicable, fails to complete construction of the remaining Hotel Improvements by the outside date shown on the Conforming Clarifications to the Schedule of Performance for completion of construction of the Phase III Vertical Improvements in which event the Agency may declare a Developer Event of Default subject to rights of cure pursuant to Section 11.4, the sole remedy for which shall be the exercise by the Agency of the right of reverter with respect to the site of the remaining Hotel Improvements.

Section 2.3(e) of the DDA is hereby amended to read as follows:

(e) Below Market Rate Housing Requirements. No less than 25% of the Residential Units must be Below Market Rate Housing, as follows: (a) Six percent (6%) of all Residential Units must be affordable to and occupied by Very Low Income Households ("Very Low Income Units"); (b) a sufficient number of all Residential Units must be affordable to and occupied by Low Income Households ("Low Income Units") such that when added to the Very Low Income Units, a total of thirteen percent (13%) of all Residential Units are Very Low Income Units and Low Income Units; (c) a sufficient number of Residential Units must be affordable to and occupied by Moderate Income Households ("Moderate Income Units) such that when added to the Very Low Income Units and the Low Income Units, a total of twenty percent (20%) of all Residential Units are Very Low Income Units, Low Income Units and Moderate Income Units. In addition to the above requirements a sufficient number of all Residential Units must be affordable to and occupied by Workforce Households such that a total of five percent (5%) of the Residential Units are Workforce Homes. For purposes of counting Residential Units and required percentages of Below Market Rate Housing under this Agreement, if a fraction results, it shall be rounded down if the fraction is less than 1/2 and rounded up if the fraction is 1/2 or greater except in the required percentages for the Very Low Income Units where any fraction shall result in a rounding up. The Below Market Rate Housing shall be subject to the restrictions set forth in Article 8 of the DDA and the Developer and

the Agency shall participate in the financing of the Affordable Housing as set forth in Article 8 of the DDA as amended by this Second Implementation Agreement.

Section 2.3(i)(i) of the DDA as amended by the Implementation Agreement is hereby further amended to read as follows:

(i) Phase I. Phase I is expected to consist of the following:

Up to 537 Residential Units including all of the Very Low Income Units and subject to subsection (e) above, approximately 33 of the Low Income Units as well as approximately 26 of the Workforce Units. Phase I is also expected to include up to 635,000 square feet of Retail Improvements, a minimum 100 room hotel and 239,000 square feet of Business Park Improvements. Phase I shall consist of approximately 132 acres. Phase I has been further split into Phase IA, IB and IC pursuant to the Implementation Agreement. Phase IA consists of approximately 368,000 square feet of Retail Improvements on that portion of Phase 1 as shown on Exhibit A attached to the Implementation Agreement. Phase IB shall consist of approximately 81 residential units, up to 150,000 square feet of Retail Improvements, 239,000 square feet of Business Park Improvements on that portion of Phase I as shown on Exhibit A attached to the Implementation Agreement and 108 Affordable Rental Units. Phase 1B shall also include that parcel adjacent to the Phase IA regional retail to be developed with retail pads located in the area bounded by Second Avenue on the East, General Stillwell Drive on the North and the West and the unnamed existing access road on the South and a the existing brick building located South of the regional retail center. Phase 1B shall include at least one restaurant located either on one of the retail pads described in the sentence above or the existing brick building. The Phase IB retail located in the area designated as the "Village Square/Village Promenade" in the Specific Plan is subject to the Quality Retail Tenant Guidelines attached hereto as Exhibit L. Phase IC shall consist of 348 residential units and a minimum 100 room hotel and may consist of an additional approximately 80,000 square feet of Retail Improvements to be located on that portion of Phase I as shown on Exhibit A attached to the Implementation Agreement.

Developer is required to develop as part of Phase I the Phase I Minimum Improvements which consist of a minimum of 250,000 square feet of Retail Improvements, at least 50,000 of which must be located in the Village Square/Village Promenade portion of the Development, at least one restaurant outside of the Village Square/Village Promenade portion of the Development which may be located as a separate pad developed as part of the 100 room hotel, 30,000 square feet of Business Park Improvements (a part of which may be provided in mixed use buildings comprising the Retail Improvements) and a minimum 100 room hotel.

Notwithstanding the above, anything in the Schedule of Performance or Conforming Clarifications thereto or the DDA as amended by the Implementation Agreement and this Second Implementation Agreement, construction of the Very Low Income Units and the Low Income Units (the Affordable Rental Units) as part of Phase I shall not be required until such time as Developer obtains a closure letter or a letter of no further action indicating that the site is suitable for residential development in accordance with

applicable Hazardous Materials Laws, provided, however, if the Developer has not obtained a closure letter or no further action letter by the outside date shown on the Conforming Clarifications to the Schedule of Performance for such letter to be obtained, the Agency and the Developer shall meet and confer upon an alternative site for constructing the required Affordable Rental Units. The Agency and the Developer shall act reasonably to provide a feasible alternative site for the Affordable Rental Units. If the Developer and the Agency are not able to agree upon an alternative site for construction of the Affordable Rental Units within ninety (90) days of the outside date shown on the Conforming Clarifications to the Schedule of Performance for commencement of construction of the Affordable Rental Units and subject to the dispute resolutions provisions under Section 11.9, the Agency may declare a Developer Event of Default pursuant to Section 11.4 with respect to the Affordable Rental Units.

To the extent the Development plans for Phase I include the development of live-work units, the Agency and the Developer agree that the originally contemplated number of live-work units may not be economically feasible in the current market. The Developer, at its election, subject to obtaining any necessary permits and approvals, may replace any of the proposed live work units other than those live/work units that front on the linear park from the proposed town square south to 9th Street, with town homes or similar residential units.

The first two sentences of Section 2.3(i)(iv) are hereby amended to read as follows:

Opportunity Phase 1A/B may be developed with up to 400 hotel rooms. Opportunity Phase IA/B for purposes of timing shall be developed in accordance with the Conforming Clarifications to the Schedule of Performance and this Second Implementation Agreement.

3. Deconstruction. Section 3.1 is hereby amended to add the following:

Developer, pursuant to the terms of the FORA MOA and the terms of this Agreement, shall undertake deconstruction of the property owned by the Developer, the Agency or the City within the Specific Plan area, except for the former fire station and other structures located on that City owned land designated as Parcel X and the building containing the roller rink. To the extent that Developer undertakes any deconstruction on property owned by the Agency or the City that is not part of the Site to be conveyed to the Developer pursuant to this Agreement, the City or the Agency, as appropriate shall indemnify the Developer for any liability related to hazardous materials associated with such deconstruction and shall be responsible for signing any waste manifest required.

4. Commencement of Deconstruction. Section 3.4 of the DDA is hereby amended to read as follows:

Commencement of Deconstruction. The Developer shall submit plans to the City for necessary permits for the deconstruction, obtain permits for the deconstruction and

commence deconstruction and rough grading of each Phase of the Site within the times set forth in the Conforming Clarifications to the Schedule of Performance.

5. Completion of Deconstruction. Section 3.5 of the DDA is hereby amended to read as follows:

Completion of Deconstruction. Subject to extension pursuant to Section 12.4, the Developer shall complete deconstruction of each Phase of the Site within the times set forth in the Conforming Clarifications to the Schedule of Performance.

6. Conditions to Conveyance of Phase II. Section 4.12 of the DDA is hereby amended to read as follows:

Conditions of Conveyance of Phase II. Developer recognizes that the creation of jobs as well as achieving a jobs/housing balance and developing the Site to ensure a positive fiscal benefit to the City are essential goals of the Agency. In recognition of this goal, it is essential that the Development include all components currently contemplated. In order to ensure that the Development proceeds in accordance with the Parties' expectations and to ensure that construction proceeds on the nonresidential portions of the Development, it shall be a condition to conveyance of Phase II of the Site to the Developer that the Developer submits design review applications, Horizontal Improvements permit applications, all applications necessary for the construction of the Vertical Improvements other than building permits and begin construction of the Horizontal Improvements and the Vertical Improvements for the Phase IB retail and business park improvements and the minimum 100 room Hotel Improvements no later than the outside dates shown on the Conforming Clarifications to the Schedule of Performance. It shall also be a condition of conveyance of Phase II of the Site that the Developer shall be in compliance with the Conforming Clarifications to the Schedule of Performance subject to any extension of time pursuant to Section12.4.

7. Section 4.13 Conditions to Conveyance of Phase III. Section 4.13 of the DDA is hereby amended to read as follows:

Conditions to Conveyance of Phase III. As a condition of conveyance of Phase III of the Site, Developer shall at a minimum have installed the roof structure on at least 500,000 square feet of non-residential uses and all of the Below Market Rate Housing to be included in Phase I and II other than Below Market Rate Housing to be constructed in the model complex, or, if the Developer reasonably demonstrates to the Agency's satisfaction that the foregoing condition is not feasible under the logical sequence of development under the Conforming Clarifications to the Schedule of Performance, then the condition shall be satisfied prior to the issuance of the first building permit in Phase III or such later time as determined by the Agency staff in the exercise of its reasonable discretion. It shall also be a condition of conveyance of Phase III of the Site that the Developer shall be in compliance with the Conforming Clarifications to the Schedule of Performance subject to any extension of time pursuant to Section 12.4. Notwithstanding anything in this Section 4.13, Developer shall not be obligated to construct the Affordable Rental Units included as part of Phase I as a condition of conveyance of

Phase III unless Developer has received a closure letter or letter of no further action certifying that the property upon which the Affordable Rental Units are to be developed is suitable for residential development pursuant to Hazardous Materials Laws with sufficient time to allow for construction of the Affordable Rental Units prior to conveyance of Phase III, as determined by the Developer in the exercise of its reasonable discretion.

8. Purchase Price. Section 5.1(a) is hereby amended to read as follows:

Section 5.1(a) Sale and Purchase.

(a) The Purchase Price for each Phase of the Site shall be the fair reuse value as determined consistent with the fair reuse valuation prepared and included in the report prepared in the same form and content as the report required to be prepared pursuant to Health and Safety Code Section 33433("Reuse Valuation"). Developer has previously paid Six Million Dollars ($6,000,000) as the Purchase Price for Phase I of the Site (the "Phase I Purchase Price"). Based on the Reuse Valuation dated as of July 2008, the Purchase Price for Phase II of the Site shall be Thirteen Million Five Hundred Thousand Dollars ($13,500,000) (the "Phase II Purchase Price") and the Purchase Price for Phase III of the Site shall be Twenty Three Million Five Hundred Thousand Dollars ($23,500,000) (the "Phase III Purchase Price"). For purposes of this Agreement, the purchase price for each Opportunity Phase shall be deemed included in the Purchase Price set forth above for the applicable Phase to which the Opportunity Phase is attached.

9. Payment of Purchase Price. The first paragraph of Section 5.2 of the DDA is amended to read as follows:

Section 5.2 Payment of Purchase Price. The Developer shall pay the Purchase Price for each Phase in cash at time of close of Escrow for such Phase, provided, however, in the event the Developer requests conveyance of an Opportunity Phase prior to conveyance of the applicable Phase associated with such Opportunity Phase and the Developer has met all the conditions precedent to the conveyance of the Opportunity Phase, the Developer shall pay the portion of the Phase purchase price attributable to the Opportunity Phase in accordance with the schedule of Opportunity Phase Purchase Prices attached as Exhibit J to this Second Implementation Agreement at the time of conveyance of the Opportunity Phase and the applicable Phase Purchase Price shall be reduced in accordance with Exhibit J, provided, however, if Opportunity Phase 1A/B is conveyed prior to conveyance of Phase II, the Opportunity Phase 1A/B Purchase Price set forth in Exhibit J shall be paid on the earlier of (i) at time of the conveyance of Phase II to the Developer or (ii) the date the Developer transfers Opportunity Phase 1A/B to an entity that assumes the Developer's obligations to develop Opportunity Phase 1A/B. At time of payment of the Phase II Purchase Price, Agency shall credit to the Developer the amount of Four Hundred Sixty Seven Thousand Dollars ($467,000) toward the Phase II Purchase Price from the portion of the Phase II Purchase Price retained by the Agency as a reduction of the Phase I Purchase Price resulting from unforeseen development costs associated with Phase I of the Development.

10. Additional Purchase Price. Section 5.3(a)(ix) is hereby amended to change 22% to 9% and to change all references to 22% in Section 5.3(b) to 9%.

11. Development Costs. Section 5.3(a)(ii) is hereby amended in its entirety to read as follows:

(ii) "Development Costs" means all third party out-of-pocket predevelopment, planning and development costs and expenses paid by the Developer in implementation of and pursuant to the ANE, the DDA as amended by the Implementation Agreement and this Second Implementation Agreement and the Development Approvals to acquire, own, hold, develop or sell all or any part of the Development which shall include but not be limited to, land payments including Profit Participation Payments, all reasonable development fees, management fees or other amounts paid by the Developer to affiliates of the Developer for services rendered in connection with the Development, including, without limitation, costs of defending and/or enforcing its rights under the Development Approvals and the DDA as amended by the Implementation Agreement and this Second Implementation Agreement, provided, however any amounts paid to Developer Affiliates shall exclude any amounts that exceed the costs that would have been incurred by the Developer had the Developer obtained the relevant services or goods from a third party on an arms' length basis, except those amounts paid to Developer Affiliates that do not exceed the amounts set forth in Exhibit K. Development Costs shall exclude (a) the repayment of the principal and interest of any loan obtained by the Developer but shall include the payment of debt service costs, costs associated with the issuance and redemption or removal of the lien of community facilities district bonds associated with the Development; (b) any distributions, preferred return or other capital return to the members of the Developer; (c) any costs incurred by the Developer or its members related to responding to and participating in any Developer selection process for the Development; (d) any contributions made to political candidates, ballot measures, political actions committees or otherwise related to political causes; (e) any costs associated with the Developer limited liability company formation; and (f) any charitable contributions or other contributions to community organizations not specifically required by the Agency or the City under the terms of or in the implementation of the DDA as amended by the Implementation Agreement and the Second Implementation Agreement or the Development Approvals.

12. Gross Cash Receipts. Section 5.3(a)(iv) is hereby revised in its entirety to read as follows:

(iv) "Gross Cash Receipts" means all cash revenues received by the Developer from any source whatsoever in connection with the sale, exchange or disposition of all or any part of the Development, which shall include, but not be limited to, any tax increment funds received by Developer to date pursuant to Section 6.14, 6.15 and 8.4 of this DDA, any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Development, and proceeds from any assessment or special tax districts formed for purposes of providing funds for costs associated with the Development, but shall exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer. Gross

Cash Receipts shall be attributed to the Developer for purposes of the Profit Participation Payment calculation when actually received by Developer, except for the estimate of tax increment funds to be received by the Developer as calculated pursuant to subsection (d) of this Section 5.3. If the Developer sells the residential properties or the commercial properties to entities other than the Developer Affiliates and receives a promissory note or other financing device as part of the sale or disposition, Gross Cash Receipts shall include the discounted present value of the note or financing device when delivered to the Developer calculated at a discount rate of 250 basis points above the ten year Treasury Bill rate most recently quoted at the time the note or financing device is delivered or other commercially reasonable discount rate agreed to by the Parties. Gross Cash Receipts shall include any Profit Participation Interest and Commercial Profit Participation received by the Developer pursuant to Developer's Operating Agreement, as those terms are defined in the Developer's Operating Agreement.

13. Project Commencement and Phase Completion. Sections 5.3(a)(v) and 5.3(a)(vi) of the DDA are hereby deleted.

14. Payments. Section 5.3(b) is hereby amended in its entirety to read as follows:

(b) Payments. Subject to subsections (c) through (f) of this Section 5.3, the Developer shall pay to the Agency an amount equal to fifty percent (50%) of the amount by which the cumulative Unleveraged Cash Flow as of January 1, 2004 to the date of each Annual Accounting as set forth in subsection (d) and at Final Completion, as applicable, exceeds the IRR. For purposes of this subsection (b) of this Section 5.3, cumulative Unleveraged Cash Flow shall be calculated consistent with the Development Costs and the Gross Cash Receipts to be included in the Annual and Final Accountings pursuant to Subsection (d) below of this Section 5.3.

15. Timing of Payments. Section 5.3(c) is hereby amended in its entirety to read as follows:

(c) Developer shall provide to this Agency no later than one hundred and eighty (180) days after the end of each calendar year the audited Annual Accounting statements required pursuant to Section 5.3(d). Based on such reporting, when the IRR, as defined in Section 5.3(a)(ix), has been achieved, beginning in the next annual reporting time period and annually thereafter, seventy-five percent (75%) of the Profit Participation earned as of that point in time shall be paid to the Agency. All amounts of the Agency's estimated Profit Participation Payment paid to the Agency pursuant to this provision shall be deemed an estimated partial payment of the Profit Participation Payment payable to the Agency and shall be subject to adjustment as set forth in the following paragraph.

If the Developer, in the exercise of its sole business judgment, determines that it may be entitled under the provisions of subsection (d) of this Section 5.3 to a refund of any amount of a Profit Participation Payment, the Developer may elect to deposit into an escrow account any portion of the amount of a Profit Participation Payment that is payable by the Agency to FORA, to be released to FORA or returned in whole or in part

to the Developer based on the results of the Final Accounting under subsection (d); provided that the Developer shall hold harmless the Agency from any liability to FORA for the Developer's escrow of such portion of the Profit Participation Payment.

16. Final Accounting. Section 5.3(d) is hereby amended in its entirety to read as follows:

(d) Annual and Final Accounting. Developer shall maintain accurate books and records setting forth all components used for determining the Agency's Profit Participation Payment. Within ninety (90) days after the end of each calendar year, the Developer shall undertake to prepare a complete accounting including computations setting forth, on an aggregate to date, the total Development Costs and the Gross Cash Receipts for the Development. In connection with such Annual Accounting, Developer shall also prepare a reconciliation of the aggregate Profit Participation Payments paid and shall prepare a complete cash flow statement for the Development setting forth in the aggregate Development Costs including Development Costs incurred prior to January 1, 2004 and Gross Cash Receipts including in Gross Cash Receipts an estimate of all tax increment funds including bond proceeds to be paid to the Developer pursuant to Sections 6.14, 6.15 and 8.4 of the DDA as amended by the Implementation Agreement and this Second Implementation Agreement as such provisions are implemented by the Tax Increment Financing Plan and Agreement which are generated by the assessed valuation of the Development as of the date of the Annual Accounting and determining the aggregate Profit Participation Payment due for the calendar year of such annual accounting (the "Annual Accounting"). Developer shall retain an independent third party accounting firm acceptable to the Agency to conduct an audit of each Annual Accounting. Such audited Annual Accounting shall be delivered to the Agency within one hundred eighty (180) days after the end of each calendar year. If the audited Annual Accounting shows that the Developer's payments of installments of Profit Participation Payments as required pursuant to Section 5.3(c) above, are, in the aggregate less than the total amount owed to the Agency pursuant to Section 5.3(c) above, the Developer shall pay to the Agency the deficiency within thirty (30) days after delivery of the audited Annual Accounting. If the audited Annual Accounting shows that the Agency has received installments of Profit Participation Payments that, in the aggregate, exceed the total amount owed to the Agency pursuant to Section 5.3(c) above, the Agency, at its sole discretion shall elect either to (i) pay the amount of the overpayment attributable to the Agency's portion of the Profit Participation Payment to the Developer within thirty (30) days of the receipt of the Annual Accounting, or (ii) execute for the Developer's benefit a promissory note promising to pay the portion of the overpayment attributable to the Agency's portion of the Profit Participation Payment from the Agency receipt of tax increment revenue from the Project Area and pledging tax increment revenue for such overpayment, which pledge of non-housing fund tax increment revenue will be subordinate only to any bonds issued by the Agency to pay for costs associated with the Development and any statutory obligations of the Agency, provided, however the Developer may offset future Profit Participation Payments with the amounts owed to the Developer by the Agency in accordance with any note given pursuant to this Section. The Agency shall be required to make payments to the Developer under any note given

pursuant to this Section 5.3(d) only to the extent the Agency receives tax increment from the Project Area and such tax increment is not previously encumbered or required to be paid to other agencies pursuant to statutory requirements.

The Agency and the Developer shall have ninety (90) days after receipt of the audited Annual Accounting to accept or challenge the Profit Participation Payment as reflected in the Annual Accounting. If neither party disputes the audited Annual Accounting within the 90-day period, the audited Annual Accounting shall be deemed approved and shall determine the Profit Participation Payment calculation for that year. In the event the Developer or Agency disputes the audited Annual Accounting, the Agency and the Developer shall meet and confer in an effort to reach a mutual agreement on the Profit Participation Payment. If the Agency and the Developer are not able to reach mutual agreement upon the Profit Participation Payment within sixty (60) days of the receipt by either party of the other party's objection to the audited Annual Accounting, Agency and Developer shall mutually select an auditor to conduct an independent audit of the Annual Accounting. If the Agency and the Developer cannot agree on a different auditor, each party may select an auditor who will then mutually select a third auditor to perform an audit of the Annual Accounting, which audited Annual Accounting shall determine the Profit Participation Payment for that year. In the event the audited Annual Accounting demonstrates that the Profit Participation Payments paid to the Agency exceed the amounts owed to the Agency pursuant to Section 5.3(c) above, the Agency shall not be responsible for the return of any portion of the Profit Participation Payment that the Agency is required to pay to FORA and which the Agency has paid to FORA.

The Developer shall prepare a final accounting for the Development ("Final Accounting") and have such final Annual Accounting upon Final Completion of the Development unless the Developer and the Agency mutually agree to an alternative date for preparation of the Final Accounting. The Final Accounting shall be prepared in accordance with the preparation of the Annual Accountings as set forth above. The time periods for acceptance and challenge of the Final Accounting shall be as set forth above for the Annual Accounting and any challenge to the Final Accounting shall be resolved as set forth above for resolution of challenges to the Annual Accountings. Upon determination of the Profit Participation Payment in the Final Accounting, the Developer, to the extent indicated in the Final Accounting, shall pay to the Agency the remaining payment of Profit Participation Payment including the twenty five percent (25%) of the Profit Participation Payment withheld annually from payment to the Agency under Section 5.3(c) above. If the Final Accounting shows that the Agency has received payments of Profit Participation Payment that exceed the total amount owed to the Agency, the Agency, at its sole discretion shall elect either to (i) pay the amount of the overpayment attributable to the Agency's portion of the Profit Participation Payment to the Developer within thirty (30) days of the receipt of the Final Accounting, or (ii) execute for the Developer's benefit a promissory note promising to pay the portion of the overpayment attributable to the Agency's portion of the Profit Participation Payment from the Agency receipt of tax increment revenue from the Project Area and pledging tax increment revenue for such overpayment, which pledge of non-housing fund tax increment revenue will be subordinate only to any bonds issued by the Agency to pay for costs associated

with the Development and any statutory obligations of the Agency. The Agency shall be required to make payments to the Developer under any note given pursuant to this Section 5.3(d) only to the extent the Agency receives tax increment from the Project Area and such tax increment is not previously encumbered or required to be paid to other agencies pursuant to statutory requirements.

Notwithstanding the above, the Agency at any time may request and shall be entitled to receive from Developer copies of the periodic reports respecting Development Costs and Gross Cash Receipts that Developer prepares for distribution to the Developer's members in accordance with the Developer's Operating Agreement.

17. Audit Rights. Section 5.3(e) is hereby amended in its entirety to read as follows:

(e) Audit Rights. The Agency shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Gross Cash Receipts, Development Costs and the Profit Participation Payment. Such audit shall be conducted during normal business hours upon five (5) business days notice at the principal place of business of the Developer and other places where records are kept and shall be concluded within one hundred eighty (180) days of the commencement of such audit or such other reasonable period of time as determined by the mutual agreement of the Parties. Agency shall not be entitled to more than one audit for any particular calendar year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to a previously audited year. The Agency shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Profit Participation Payment, Developer shall immediately pay any such deficiency with interest at the then applicable Local Agency Investment Fund (in which City general funds are invested) interest rate, determined as of and accruing from the date that said payment should have been made. In addition, if Developer's Annual Accounting shall have been determined to have understated the Agency's Profit Participation Payment in any calendar year by more than five percent (5%), the Developer shall pay, in addition to the interest charges referenced above, all of the Agency's reasonable costs and expenses connected with the audit or review of Developer's accounts and records. All such payments shall be paid by the Developer within ten (10) days of receipt of written notice to Developer of such underpayment. Notwithstanding the above, acceptance by the Agency of the audited Annual Accounting as set forth in Section 5.3(d) above shall be deemed to have fulfilled the Agency's audit rights of all information included in the audited Annual Accounting.

18. Fair Price for Sales to Vertical Builders. Subsection (c) of Section 5.4 is hereby amended in its entirety to read as follows:

(c) Developer shall provide to the Agency the full terms and conditions of any non residential sale, including closing statements and copies of the purchase and sale agreement or other agreement evidencing the terms in order for the Agency to verify the

Fair Price. If the Agency determines within forty-five (45) days of receipt of all required information from the Developer that the portion of the Site was sold for an amount that is less than Fair Price, the Agency shall so inform the Developer and the Agency and the Developer shall have fifteen (15) days after delivery of the Agency notice in which to resolve any such dispute. If the Agency and the Developer cannot resolve any such dispute within fifteen (15) days of receipt of the Agency's notice disputing Fair Price, the Agency and the Developer shall attempt to mutually agree upon the appointment of a real estate economist or appraiser ("Referee") to determine the Fair Price. If the Parties cannot agree upon a mutually acceptable Referee within thirty (30) days of receipt of the Agency's notice of dispute of value, each party shall appoint a Referee within ten (10) days. The two Referees appointed by the Parties shall meet and mutually select a third real estate economist or appraiser to determine Fair Price. Within ten (10) days of the appointment of the Referee selected to determine Fair Price, each party shall submit to the Referee its determination of Fair Price as well as any supporting documentation. Within fifteen (15) days of receipt of the Parties' submittals, the Referee shall determine Fair Price and the determination of the Referee shall be binding on the Parties and shall be the Fair Price to be used in determined the Profit Participation Payment.

Exhibit K attached to the DDA is hereby amended in its entirety and replaced with Exhibit K attached hereto.

19. Permits and Approvals for Vertical Improvements. Section 6.5 of the DDA is hereby amended in its entirety to read as follows:

6.5 Permits and Approvals for Vertical Improvements. No later than the dates specified in the Conforming Clarifications to the Schedule of Performance, the Developer shall have obtained the permits and approvals necessary for the construction of the Vertical Improvements for each Phase of the Development. The Schedule of Performance as amended by the Conforming Clarifications to the Schedule of Performance sets forth in detail the various permits and approvals necessary for each Phase of Vertical Improvements. The Developer shall be determined to have satisfied this Section 6.5 with respect to each Phase of the Development upon obtaining the permits and approvals indicated in the Conforming Clarifications to the Schedule of Performance within the time set forth in the Conforming Clarifications to the Schedule of Performance. The Developer's applications for the permits and approvals for the Vertical Improvements shall be consistent with the Development Approvals. The Agency shall render all reasonable assistance to the Developer in obtaining the permits and approvals necessary for the Vertical Improvements.

Notwithstanding the above, in the event the Developer has not obtained all of the following within the time set forth in the Conforming Clarifications to the Schedule of Performance for obtaining permits and approvals for the Vertical Improvements for the Village Square/Village Promenade portions of Phase 1B, the Developer, upon providing written notice to the Agency, shall be entitled to a six month extension of the time set forth in the Conforming Clarifications to the Schedule of Performance for obtaining the permits and approvals for the Village Square/Village Promenade portion of the Vertical Improvements for Phase 1B; (i) executed leases for at least one anchor tenant in the

Village Square/ Village Promenade portion of Phase 1B of the Development consisting of a tenant of 30,000 square feet or more (ii) executed leases for one half of the remaining retail space in Village Square/Village Promenade portion of Phase 1B; and (iii) commitments for financing for the construction of the Village Square/Village Promenade portion of Phase 1B which are subject only to those conditions typical for commercial construction loans. Developer must provide the Agency with notice of the six month extension pursuant to this Section 6.5 on or before the outside date for performance for obtaining the permits and approvals for the Village Square/Village Promenade portion of the Vertical Improvements for Phase 1B in order to obtain the extension of time provided for herein.

20. Progress Reports. Section 6.11 of the DDA is hereby amended to add the following paragraph.

Every three months, commencing no later than ninety (90) day after the Effective Date of the Second Implementation Agreement, the Developer shall meet with Agency staff and present to the Agency staff verbal marketing and leasing progress presentations for retail portions of Phase 1B. Such marketing and leasing progress presentations must demonstrate that the Developer is using commercially reasonable efforts to market and lease the retail space in Phase 1B in a timely manner consistent with the Conforming Clarifications to the Schedule of Performance. Notwithstanding the requirement for quarterly marketing and leasing progress presentations, the Agency shall not be entitled to retain or disclose any proprietary information provided by the Developer to Agency staff as part of the progress presentations. Consistent with the foregoing sentence, the quarterly presentations provided by the Developer to Agency staff are solely for the purpose of monitoring the progress and conformance of the Developer's marketing and leasing obligations with the Conforming Clarifications to the Schedule of Performance and any information provided to the Agency will be used only for those purposes.

21. Payment of Infrastructure. A new Section 6.14 is hereby added to the DDA to read as follows:

6.14 Infrastructure Improvements. The Reuse Valuation dated July 2008 shows that the continued development of the Development pursuant to this DDA and the Development Approvals can only occur if the Agency contributes to a portion of the substantial and extraordinary costs incurred by the Developer for the Horizontal Improvements (including costs incurred by the Developer for land development and on-site and off-site public and utility improvements) in order to implement this DDA and the Development Approvals. The provisions of this Section are in consideration of, and a material inducement for, the Developer to enter into this Second Implementation Agreement and rescind its excused delay referenced in Recital E. As between Developer and Agency, Developer shall be responsible for the payment of all costs associated with construction of the Development including both Horizontal Improvements and Vertical Improvements except that the Agency shall pay or reimburse the Developer for Development Costs applicable to Horizontal Improvements from one hundred percent (100%) of Available Non-Housing Tax Increment Funds (as defined below) from the date of this Second Implementation Agreement until and through the fiscal year 2029-2030,

including proceeds of bonded indebtedness or other debt incurred by the Agency prior to 2030 in order to provide the Available Non-Housing Tax Increment Funds to the Developer in accordance with the schedule for construction. For purposes of this Section, Available Non-Housing Tax Increment Funds shall mean all of the tax increment revenue received by the Agency from the Development pursuant to Health and Safety Code Sections 33492.71(c)(1)(B) and 33492.71(c)(1)(D) after deduction and retention by the Agency of ten percent (10%) of all amounts annually allocated to the Agency pursuant to Health and Safety Code Sections 33492.71(c)(1)(B) and 33492.71(c)(1)(D) to be used for administrative costs associated with the Development and such other deductions as set forth in the Tax Increment Financing Plan and Agreement. Without limiting or otherwise conditioning the Agency's obligations and pledge of Available Non-Housing Tax Increment Funds under this Section, the Agency and the Developer have agreed upon a tax increment financing plan and agreement approved concurrently with and dated as of the date of this Second Implementation Agreement (the "Tax Increment Financing Plan and Agreement") setting forth in greater detail the provisions for the calculation and timing of the payment of Available Non-Housing Tax Increment. Such Tax Increment Financing Plan and Agreement includes provisions for the issuances of tax increment bonds at times mutually agreed to by the Agency and the Development taking into account the timing of Horizontal Improvements, the flow of Available Non-Housing Tax Increment and the desire to minimize issuance costs and other costs such as reserve accounts, associated with any such bonds. If the Parties are unable to agree upon the financing as set forth in the Tax Increment Financing Plan and Agreement they will be bound by the dispute resolution provisions of Section 11.9. All Available Non-Housing Tax Increment Funds shall be used to pay or reimburse the Developer for Eligible Costs associated with the Development as provided above in this Section and the Tax Increment Financing Plan and Agreement.

To the fullest extent provided by law, the obligations of the Agency under this Agreement to provide the Available Non-Housing Tax Increment Funds, including the obligations set forth in Section 6.15 below, shall constitute binding contractual obligations of the Agency according to their terms which shall be secured by a prior pledge of tax increment generated to the Agency from the Development and shall constitute indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan. From time to time, if feasible under the circumstance, the Agency, at the Developer's request and in accordance with the Tax Increment Financing Plan and Agreement, shall issue its tax allocation bonds or other debt instruments to repay such indebtedness owed to the Developer in whole or in part. Except for any such bonds, the pledge and indebtedness of the Agency as referenced in this Section 6.14 and in Section 6.15 shall be senior to any Agency bonded indebtedness or other indebtedness or form of obligation incurred after the date of approval by the Agency of this Second Implementation Agreement. The pledge and indebtedness of this Agency to the Developer under this Section have been included in greater detail in the Tax Increment Financing Plan and Agreement and shall be evidenced by a promissory note of the Agency in form and substance satisfactory to the Developer to be delivered by the Agency at such time as may be requested by the Developer. The payments by the Agency under this Section 6.14 as implemented by the Tax Increment Financing Plan and Agreement, and the promissory note shall be due without any right of offset, deduction or

retention for any reason, including but not limited to any default by the Developer under the DDA or termination of the DDA.

22. MCWD Fees. A new Section 6.15 is hereby added to the DDA to read as follows:

6.15 MCWD Fees. The Pro Forma includes an estimate for MCWD connection and capacity fees for sewer and water associated with all aspects of the Development. In the event the actual MCWD fees increase above the amount shown in the Pro Forma, the Agency shall pay from Available Non-Housing Tax Increment Funds an amount equal to fifty percent (50%) of the amount by which the MCWD fees exceed the amount projected in the Pro Forma for the market rate Residential Units including the Workforce Homes, the Retail Improvements, the Business Park Improvements and the Hotel Improvements and from Net University Villages/Marina Heights Low and Moderate Income Housing Fund an amount equal to fifty percent (50%) of the amount by which the MCWD fees exceed the amount projected in the Pro Forma for the Affordable Housing ("Agency Share of MCWD Fee Increases"). To the extent necessary to meet its obligations pursuant to this Section 6.15, the Agency's commitment of Available Non-Housing Tax Increment Funds set forth in Section 6.14 above may be extended beyond fiscal year 2029-2030 to the last date that the Agency is eligible to collect tax increment revenue pursuant to the Redevelopment Plan, and the Agency's commitment of Net University Villages/Marina Heights Low and Moderate Income Housing Funds set forth in Section 8.4 may be extended beyond fiscal year 2019-2020 to the last date the Agency is eligible to collect tax increment revenue pursuant to the Redevelopment Plan, provided, however, the Agency obligations to provide Available Non-Housing Tax Increment Funds and University Villages/Marina Heights Low and Moderate Income Housing Funds pursuant to this Section 6.15 for the Agency's Share of MCWD Fee Increases shall not exceed the amount necessary to cover the Agency's Share of MCWD Fee Increases. The provisions for the calculation and payment of the Agency's Share of MCWD Fees have been set forth in greater detail in the Tax Increment Financing Plan and Agreement first referenced in Section 6.14 above, and shall be evidenced by a promissory note in form and substance satisfactory to the Developer to be delivered by the Agency at such time as may be requested by the Developer. The payments required by the Agency under this Section 6.15, as implemented by the Tax Increment Financing Plan and Agreement and the promissory note shall be due without any right to offset, deduction or retention for any reason, including, but not limited to any default by the Developer under the DDA or termination of the DDA for any reason.

23. Taxes. Section 7.6 of the DDA is amended in its entirety to read as follows:

Taxes. The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery of possession of the Site or any portion thereof. The Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale

thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto for the initial fully assessed value based on a completely improved parcel provided such assessment is contested within 180 days of Developer's receipt of written notice of the assessed valuation. Except as provided in the preceding sentence Developer agrees that it shall not contest the amount of the assessed valuation on any portion of the Site owned by the Developer in connection with the amount of the assessed value of the Site during the first five (5) years following the earlier of receipt of a Partial Certificate of Completion or Final Certificate of Completion for the applicable portions of the Site or the full assessment of the improvements constructed on the applicable portion of the Site appear on the assessment rolls. Nothing contained herein shall prevent the Developer from applying for and obtaining any property tax exemption available for the Affordable Housing.

24. Sale of Affordable Homes. Section 8.2(a) of the DDA is hereby amended to read as follows:

(a) The Developer pursuant to this Agreement and the Development Approvals is required to sell or cause to be sold by the Affordable Housing Developer fifty-three (53) of the Residential Units to be developed within the Development at Affordable Low Income Housing Costs to Qualified Low Income Homebuyers in accordance with the provisions of this Section 8.2 and as part of Phase III on lots to be supplied to the Affordable Housing Developer by the Developer with the subsidy payment pertaining thereto as provided in the Pro Forma. In addition, the Developer is required to sell or cause to be sold by the Affordable Housing Developer eighty-seven (87) of the Residential Units (or such other number of Residential Units required in accordance with Section 2.3(e) above) to be developed within the Development at Affordable Moderate Income Housing Costs to Qualified Moderate Income Homebuyers in accordance with the provisions of this Section 8.2 on lots to be supplied to the Affordable Housing Developer by the Developer with the subsidy payment pertaining thereto as provided in the Pro Forma. At least fifty-nine (59) of the Moderate Income Units must be developed as part of Phase II. The remaining Moderate Income Homes must be developed as part of Phase III. Provided that in each Phase of the Development at least twenty-five percent (25%) of the Residential Units are Below Market Rate Units, the Developer may allocate units among the affordability categories. For purposes of this Agreement, the number of Affordable Housing Units is determined based on the assumption that the Development Approvals will allow 1237 Residential Units to be developed as part of the Development. In the event, for any reason, the Development Approvals allow fewer than 1237 Residential Units, then subject to Section 2.2(e), the number of Affordable Housing Units shall be reduced to the number of units required to meet the percentages set forth in Section 2.2(e). Upon conveyance of any portion of the Site to be developed with Affordable Housing the Agency shall record against the applicable portion of the Site the Agency Affordability Covenants insuring that the Affordable Housing is developed.

25. Sale of Workforce Homes. Section 8.3(a) of the DDA is amended to read as follows:

(a) The Developer, pursuant to this Agreement and the Specific Plan, is required to sell not less than Sixty Two (62) of the Residential Units to be developed within the Development at Affordable Workforce Housing Costs to Qualified Workforce Homebuyers; provided, however, if the Development Approvals allow fewer than 1237 Residential Units in the Development, then, subject to Section 2.2(e), the number of Workforce Homes shall be limited to five percent (5%) of the total number of Residential Units allowed in the Development Approvals.

A new sentence is added to the end of Section 8.3(b) to read as follows:

In determining sales prices for the Workforce Homes, all of which are projected to be three bedroom homes, the Developer may use an assumed household size that does not exceed 5 persons per household.

26. Agency Assistance for Affordable Housing. Section 8.4 of the DDA is amended in its entirety to read as follows:

Section 8.4 Agency Assistance For Affordable Housing. Developer or the Affordable Housing Developer pursuant to the Affordable Housing MOA, shall be responsible for the development of the Below Market Rate Housing required to be developed pursuant to this Article Eight and shall be responsible for all costs associated with the development of such Below Market Rate Housing, except as set forth herein.

(a) The Reuse Valuation dated July 2008 shows that the development of the Affordable Housing can only occur with a subsidy from the Developer ("Developer Subsidy"). In accordance with the provisions of this Section 8.4, the Agency shall reimburse the Developer for the Developer Subsidy (including costs of Vertical Improvements, and costs of Horizontal Improvements attributable to the Affordable Housing pursuant to Health and Safety Code Section 33334.2(e)(i) and (e)(2)(A)) from deposits by the Agency to the Low and Moderate Income Housing Fund as set forth below.

The Agency shall pay to the Developer periodically an amount equal to the Net University Villages/Marina Heights Low and Moderate Income Housing Fund, as defined below, beginning in the first fiscal year after execution of this Second Implementation Agreement and continuing through fiscal year 2019/2020, provided, however, (i) in no event shall the amounts paid by the Agency pursuant to this Section 8.4 exceed the actual amount of the Developer Subsidy, or such lesser amount as set forth below in the event only a portion of the Development is completed (ii) Developer shall only use such funds for costs of related to the construction of the Affordable Housing and (iii) the total amount of Net University Villages/Marina Heights Low and Moderate Income Housing Funds allocated for costs of Horizontal Improvements pursuant to Health and Safety Code Section 33334.2(e)(1) and (e)(2) (A) shall be limited to Eighteen Million Dollars ($18,000,000). For purposes of this section the Net University

Villages/Marina Heights Low and Moderate Income Housing Fund shall mean the amounts annually deposited by the Agency in the Low and Moderate Income Housing Fund attributable to tax increment generated by the Development and the development of that portion of the Project Area commonly known as Marina Heights through fiscal year 2019/2020 including net bond proceeds (to the extent bonds are issued) that are secured by the Low and Moderate Income Housing Fund attributable to the Development and the development of the Marina Heights portion of the Project Area minus an annual administrative allowance equal to ten percent (10%) of the annual amounts required to be deposited in the Low and Moderate Income Housing Fund and minus any debt service payments required to pay bonded indebtedness secured by the Low and Moderate Income Housing Fund deposits generated by the Development and the Marina Heights development. The Agency will use its best efforts to issue bonds, subject to the approval of the Developer, to be secured by the deposits to the Low and Moderate Income Housing Fund resulting from the Development and the Marina Heights Development and shall include in its payments to the Developer the net proceeds of any such bond issuance after payment of issuance costs and any reserve requirements. Prior to the Agency making any payments to the Developer pursuant to this Section 8.4, the Developer shall present to the Agency invoices for costs incurred for Horizontal Improvements and, for costs associated with Vertical Improvements, financial statements showing with sufficient detail for the Agency to verify the numbers, the costs of developing the Vertical Improvements and the revenue/funds received or projected to be received by the Developer from the sale of the Vertical Improvements. The Developer shall provide such a statement of costs and revenue associated with the Vertical Improvements based on projections prior to the commencement of construction of each lot or parcel of such Vertical Improvements and at such other times as requested by the Agency and shall provide final statements of costs and revenues at completion of each Phase of the Development. The Agency shall review such statements and if the Agency disputes any such costs or revenues within 45 days of receipt of such statement, the Agency shall provide notice to the Developer of such dispute and request a meeting with the Developer to review the statements. The Agency shall have the right to inspect the Developer's books and records to verify the statements submitted by the Developer. The maximum amount of the Agency Affordable Housing Subsidy shall be the amount of the Developer Subsidy as demonstrated in the statement of costs and revenues presented by the Developer. If the DDA is terminated prior to the completion of construction of the Affordable Housing, the Developer shall repay to the Agency any Net University Villages/Marina Heights Low and Moderate Income Housing Funds paid to the Developer and not expended for eligible Affordable Housing costs.

The Agency Affordable Housing Subsidy paid to the Developer attributable to the Affordable Housing to be developed as part of Phase I shall be up to $12,564,000. The Agency Affordable Housing Subsidy paid to the Developer attributable to the Affordable Housing to be developed as part of Phase II shall be up to $18,430,000. The balance of the Agency Affordable Housing Subsidy shall be available for Phase III. If for any reason, the Developer fails to complete construction of the Development and the Affordable Housing as contemplated herein, the Agency Affordable Housing Subsidy shall be limited to the amount of the Agency Affordable Housing Subsidy attributable to the portion of the Affordable Housing completed.

(b) To the fullest extent provided by law, the obligations of the Agency under this Agreement to provide financial payments to the Developer under this Agreement (including, but not limited to obligations of the Agency under Section 5.3(d) and Article 8 of this Agreement) shall constitute binding contractual obligations of the Agency according to their terms which shall be secured by a prior pledge of tax increment generated to the Agency from the Development and shall constitute indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan. From time to time, if feasible under the circumstance, the Agency, at the Developer's request, shall issue its tax allocation bonds or other debt instruments to repay such indebtedness owed to the Developer in whole or in part. Except for any such bonds, the pledge and indebtedness of the Agency as referenced in this subsection (b) shall be senior to any Agency bonded indebtedness or other indebtedness or form of obligation incurred after the date of approval by the Agency of this Agreement. The provisions for the calculation and payment of the Agency Affordable Housing Subsidy have been included in greater detail in the Tax Increment Financing Plan and Agreement first referenced in Section 6.14 above, and shall be evidenced by a promissory note in form and substance satisfactory to the Developer to be delivered by the Agency at such time as may be requested by the Developer. The payments required by the Agency under this Section 8.4 as implemented by the Tax Increment Financing Plan and Agreement, and the promissory note shall be due without any right of offset, deduction or retention for any reason (including but not limited to any default by the Developer under this DDA or termination of this DDA for any reason).

(c) In the event legislation is passed prior to the sale of the Moderate Income Units or the Low Income Units that allows for the Agency to obtain production housing credits pursuant to Health and Safety Code Section 33413 for the Moderate Income Units or Low Income Units while using a higher percentage of household income for Monthly Housing Costs than assumed in the Pro Forma or if FORA reduces its CFD fees for some or all of the Below Market Rate Housing, the Developer shall pay to the Agency any net increase in the Purchase Price that results from the increased home sales prices or the reduced FORA CFD fees. The Agency agrees, for the benefit of the Developer, that it shall make any such increase in the Purchase Price available to FORA as a loan to cover any shortfall in financing for deconstruction costs that may occur.

27. Survival. Section 11.5 of the DDA is hereby amended in its entirety to read as follows:

Survival. Upon termination of this Agreement under Section 11.2, 11.3 or 11.4 of this Article 11, the following provisions of this Agreement shall survive to the extent necessary to give them effect: the waiver and the indemnification obligations in Sections 5.10, 7.3, 7.4(b), 7.4(d), 7.7, 7.9, 8.2(e), 8.3(d), Article 9, Article 10, and Article 11, and any financial obligations of the Agency which are due to the Developer under Sections 5.3, 6.14 , 6.15, 8.1, 8.4 and 11.9(e). This Section 11.5 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

28. Excused Delay; Extension of Times for Performance. Section 12.4 of the DDA is hereby amended in its entirety to read as follows:

Excused Delay; Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather which prevents, limits, retards or hinders the ability to perform; environmental conditions, known, pre-existing or discovered, delaying construction or development, including delays resulting from investigation and/or remediation of such conditions; initiatives, referenda, litigation or administrative proceedings challenging the Development Approvals, the Development or this Agreement; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency shall not excuse performance by the Agency); economic or product demand declines that make it not commercially feasible to proceed with development of the Site or a Phase thereof; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. For purposes of this Section 12.4 an Excused Delay for economic or product demand declines that make it not commercially feasible to proceed with development of the Site or a Phase thereof shall be limited to a decline of twenty-five percent (25%) or more in market demand or absorption rates for sales of residential lots, sales of homes or sales or leasing of nonresidential properties in the preceding three months prior to the month in which the party seeks relief pursuant to this Section from those market demand and absorption factors assumed in the Pro Forma as updated for the Second Implementation Agreement. Market demand or absorption rates shall be determined based on a recognized independent market report for Monterey County. Excused Delay shall also include (provided the Party seeking the extension is acting with reasonable diligence) an additional reasonable periods (a) required to complete compliance with and certification of any subsequent environmental analysis and documentation required for the Development or any portion thereof, and (b) required to complete any pending application or request before the Agency for an action or approval under this Agreement or before the City for an action or approval under the Development Approvals, including Subsequent Development Approvals (as defined in the Development Agreement.) An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

29. Excused Delay. Developer has previously provided the Agency with notice of events triggering an Extension of Time for Performance pursuant to Section 12.4 of the DDA. Upon execution of this Second Implementation Agreement by the Agency and the Developer, and consent to this Second Implementation Agreement by the City, the

Developer shall be deemed to have withdrawn any notices of Excused Delay previously provided to the Agency.

30. Exhibits. The following exhibits attached to this Second Implementation agreement replace the corresponding Exhibits of the DDA

Exhibit A Conforming Clarifications to the Schedule of Performance (replacing Exhibit F of the DDA - Schedule of Performance and ExhibitsB1, B2 and B3 attached to the Implementation Agreement)

Exhibit J- Opportunity Parcel Land Values

Exhibit K- Residual Value Formulas

Exhibit L – Quality Retail Guidelines

31. Strategic Development Center Administrative Fees. In partial consideration for the Agency entering into this Second Implementation Agreement the Developer agrees that it shall, in addition to any other fees Developer is obligated to pay pursuant to the DDA as amended by the Implementation Agreement and the Development Agreement, pay to the Agency on a quarterly basis in advance the estimated overhead costs incurred by the Agency associated with the administration and project management of the construction of the Development commencing upon execution of this Second Implementation Agreement and continuing until (i) issuance of the Final Certificate of Completion for the commercial portion of the Development and the acceptance of all Horizontal Improvements for the residential portion of the Development regardless of any excused delay pursuant to Section 12.4, or (ii) the exercise by the Agency of the rights of reverter under this Second Implementation Agreement for the substantial portion of the balance of the property then owned by the Developer or the DDA is terminated, whichever occurs first. The fees paid by the Developer pursuant to this Section 31 shall be subject to and included within the maximum fees to be paid by the Developer pursuant Section 2 of Exhibit D of the Development Agreement and shall be deemed Development Costs under Section 5.3(a)(ii). Upon execution of this Second Implementation Agreement, Developer shall deposit with the Agency the amount of Seventy Five Thousand ($75,000), which amount represents the Agency's current estimate of the quarterly payments requirement pursuant to this Section. Developer shall deposit the required quarterly payments with the Agency on the first day of July, October, January and April each year. The annual amount of administrative costs shall be reviewed and updated each year in conjunction with the Agency's budgeting process. At least quarterly the Agency shall provide the Developer with an accounting of costs incurred to date as well as the Agency's estimate of the next three months of costs to be incurred ("Agency Quarterly Report"). At the end of each quarter, the Developer and the Agency shall determine the Agency's actual overhead costs for such quarter and make appropriate adjustments to the next deposit by the Developer to reflect the actual overhead costs for that preceding quarter. Failure of the Developer to deposit the funds set forth in the

Agency Quarterly Report in a timely fashion shall be considered a default pursuant to the DDA as amended by the Implementation Agreement and the Second Implementation Agreement, subject to dispute resolution and rights to cure pursuant to Article 11.

32. Conforming Clarifications to Schedule of Performance. Attached to this Second Implementation Agreement is Exhibit A, Conforming Clarifications to Schedule of Performance. Exhibit A replaces the Schedule of Performance attached to the DDA as Exhibit F and Exhibits B1, B2 and B3 attached to the Implementation Agreement dated September 6, 2006.

33. Application of Article 11. Notwithstanding any provision to the contrary in this Second Implementation Agreement, the Conforming Clarifications to the Schedule of Performance shall be subject to the Excused Delay provisions of Section 12.4 and all disputes between the Parties or any alleged Developer Events of Default shall be subject to the dispute resolution provisions of Section 11.9 and rights to cure under Article 11.

34. Effectiveness of Implementation Agreement. This Second Implementation Agreement is dated for convenience only and shall only become effective on the date which is the latest of (i) the date this Second Implementation Agreement is executed by the Developer, (ii) the date this Second Implementation Agreement is approved and executed by the Agency and (iii) the date this Second Implementation Agreement is consented to by the City and the City consent is executed.

35. Counterparts. This Second Implementation Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

36. No Other Changes, Consistency. Notwithstanding any changes and deletions contained herein, all other provisions of the DDA as amended by the Implementation Agreement and the Second Implementation Agreement remain the same. In the event of any conflict between the terms of the DDA, as amended and this Second Implementation Agreement, the terms of this Second Implementation Agreement shall govern.

IN WITNESS WHEREOF, authorized representatives of the Parties have duly executed this Second Implementation Agreement as of the day and year first above written.

"AGENCY"

August 5, 2008 MARINA REDEVELOPMENT AGENCY

ATTEST:

By: _____ 09-05-08
Executive Director

By: _____ 9.5.08
Agency Secretary

Approved as to form:

By: _____
Agency Counsel

"DEVELOPER"

August 5, 2008

MARINA COMMUNITY PARTNERS, LLP,

a Delaware limited liability company

By: Shea Homes Limited Partnership, a California limited partnership, its managing member

By: _____
_____, Authorized Agent

By: _____
Robert V. Claflin, Authorized Agent

By: SHEA PROPERTIES, LLC
a Delaware limited liability company
Its member

661\05\553039.12
8/27/2008

By: _____

Name Robert M. Burke
Title Assistant Secretary

By: _____

Name JULIA GUIZAN
Title ASSISTANT SECRETARY

By: CENTEX REAL ESTATE CORPORATION, a Nevada corporation, Managing General Partner, Its member

By: _____

John Ochsner
Executive Vice President
North Pacific Region

CONSENT AND AGREEMENT OF THE CITY OF MARINA

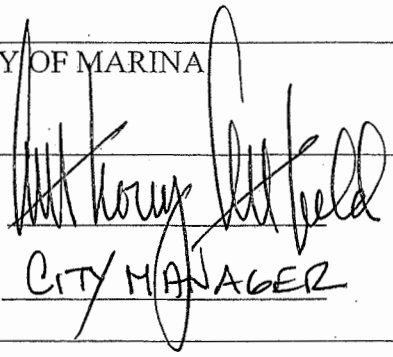
In implementation of the Redevelopment plan for the Marina Redevelopment Project and pursuant to Section 33220 of the California Redevelopment Law (Health and Safety Code section 33000 et seq.), the City of Marina hereby consents to the terms of the foregoing Second Implementation Agreement ("Second Implementation Agreement") between the Marina Redevelopment Agency and Marina Community Partners, LLC, and does hereby agree, for itself and its officers, departments, boards and agencies:

1. To cooperate with the Agency and the Developer in implementing the provisions of the Second Implementation Agreement.

2. To consider and act upon, in a timely and good faith manner, the matters submitted to it by the Agency and developer; and

3. To undertake, in a timely and good faith manner, subject to applicable legal requirements, and subject to the terms of that certain Development Agreement between the City and Developer, dated as of July 8, 2005 (as may be amended from time to time) and consistent with the Development Approvals referenced in the DDA, those obligations, responsibilities and actions required of the City under and in furtherance of the DDA and to satisfy the conditions precedent to the conveyance of the Site and Phases thereof to the Developer pursuant to the DDA and the Second Implementation Agreement.

4. At the request of the Agency from time to time, to report to the Agency concerning the status and implementation of the Development Approvals, and the Agency may conclusively rely on such report as to the matters contained therein.

	CITY OF MARINA
Dated: as of 09.05.08	By:  Its: CITY MANAGER