



AGENDA

Tuesday, January 11, 2022

5:00 P.M. Closed Session

6:00 P.M. Open Session

SPECIAL MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2022-134, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of December 16, 2022, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast “live” on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

PARTICIPATION

You may participate in the City Council meeting in real-time by calling Zoom Meeting via the weblink and phone number provided at the top of this agenda. Instructions on how to access, view and participate in remote meetings are provided by visiting the City’s home page at <https://cityofmarina.org/>. Attendees can make oral comments during the meeting by using the “Raise Your Hand” feature in the webinar or by pressing *9 on your telephone keypad if joining by phone only. If you are unable to participate in real-time, you may email to marina@cityofmarina.org with the subject line “Public Comment Item#__” (insert the item number relevant to your comment) or “Public Comment – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 5:00 p.m. on the day of the meeting. All comments received will become part of the record. Council will have the option to modify their action on items based on comments received.

AGENDA MATERIALS

Agenda materials, staff reports and background information related to regular agenda items are available on the City of Marina’s website www.cityofmarina.org. Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet will be made available on the City of Marina website www.cityofmarina.org subject to City staff’s ability to post the documents before the meeting

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. CALL TO ORDER



2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

Cristina Medina Dirksen, David Burnett, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*

a. Real Property Negotiations

i. Property: A portion of Opportunity Phase 1A "Hotel Site" at The Dunes at Monterey Bay

Negotiating Party: Dadwal Management Group

Negotiator: City Manager

Terms: Price and Terms

b. Conference with Legal Counsel, anticipated litigation, significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9 – one potential case.

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

5. CONSENT AGENDA *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*

a. ADOPTION OF RESOLUTIONS:

- i. City Council consider adopting Resolution No. 2022-, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, making certain findings; and authorizing the City to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period January 11, 2022 through February 10, 2022.

6. OTHER ACTION:

- a. City Council consider adopting Resolution No. 2022-, authorizing the City Manager to enter into a Hotel Development Agreement with Dadwal Management Group or its designee for the development of Hotels on Opportunity Stie 1a in the Dunes Development.

7. ADJOURNMENT:

CERTIFICATION

I, Anita Sharp, Deputy City Clerk, of the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at City Hall and Council Chambers Bulletin Board at 211 Hillcrest Avenue, Monterey County Library Marina Branch at 190 Seaside Circle, City Bulletin Board at the corner of Reservation Road and Del Monte Boulevard on or before 6:00 p.m., Friday, January 7, 2022.

ANITA SHARP, DEPUTY CITY CLERK

City Council, Airport Commission and Redevelopment Agency meetings are recorded on tape and available for public review and listening at the Office of the City Clerk and kept for a period of 90 days after the formal approval of MINUTES.

City Council meetings may be viewed live on the meeting night and at 12:30 p.m. and 3:00 p.m. on Cable Channel 25 on the Sunday following the Regular City Council meeting date. In addition, Council meetings can be viewed at 6:30 p.m. every Monday, Tuesday and Wednesday. For more information about viewing the Council Meetings on Channel 25, you may contact Access Monterey Peninsula directly at 831-333-1267.

Agenda items and staff reports are public record and are available for public review on the City's website (www.cityofmarina.org), at the Monterey County Marina Library Branch at 190 Seaside Circle and at the Office of the City Clerk at 211 Hillcrest Avenue, Marina between the hours of 10:00 a.m. 5:00 p.m., on the Monday preceding the meeting.

Supplemental materials received after the close of the final agenda and through noon on the day of the scheduled meeting will be available for public review at the City Clerk's Office during regular office hours and in a 'Supplemental Binder' at the meeting.

Members of the public may receive the City Council, Airport Commission and Successor Agency of the Former Redevelopment Agency Agenda at a cost of \$55 per year or by providing a self-addressed, stamped envelope to the City Clerk. The Agenda is also available at no cost via email by notifying the City Clerk at marina@cityofmarina.org

*ALL MEETINGS ARE OPEN TO THE PUBLIC. THE CITY OF MARINA DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES. Council Chambers are wheelchair accessible. meetings are broadcast on cable channel 25 and recordings of meetings can be provided upon request. to request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call (831) 884-1278 or e-mail: marina@cityofmarina.org. requests must be made at least **48 hours** in advance of the meeting.*

Honorable Mayor and Members
of the Marina City Council

City Council Special Meeting
of January 11, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION 2022-, RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD JANUARY 11, 2022, THROUGH FEBRUARY 10, 2022, PURSUANT TO BROWN ACT PROVISIONS.

REQUEST:

It is requested that the City Council consider:

- (1) Adopting Resolution No. 2022-, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”) making certain findings and authorizing the City to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period January 11, 2022, through February 10, 2022.

BACKGROUND:

Government Code §54953(e) allows cities to continue to meet remotely during states of emergency proclaimed by the Governor under modified Brown Act requirements that are similar to but not identical to the rules and procedures established by the prior Executive Orders of Governor Newsom relating to the relaxation of certain Brown Act requirements during the COVID-19 pandemic.

Government Code §54953(e) authorizes local agencies to use teleconferencing without complying with teleconferencing requirement imposed by the Brown Act during a declared state of emergency when state or local health officials have imposed or recommended measures to promote social distancing during the proclaimed state of emergency or when the legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

At a special meeting held on October 5, 2021, the City Council adopted Resolution 2021-104 regarding the Brown Act making certain findings, and authorizing the City to implement remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) for the period October 5, 2021 through November 4, 2021; subsequently on November 2, 2021, the Council adopted Resolution 2021-113 extending that period until December 2, 2021; on November 16, 2021, the Council adopted Resolution 2021-118 extending that period until December 16, 2021, and on December 14, 2021, the Council adopted Resolution 2021-134 extending the period during which remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) to January 13, 2022.

ANALYSIS:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 which among other things rescinded his prior Executive Order N-29-20 and set the date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant surged in California, the legislature took action to extend the COVID-19 exemptions to the Brown Act's teleconference requirements, subject to some additional requirements. Assembly Bill 361 amended Government Code §54953 and allowed a local agency to use teleconferencing in any of the following circumstances without complying with certain Brown Act provisions:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote taken at a meeting held for the purpose described in 2 above, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under any of these circumstances would be required to follow certain requirements listed in the attached Resolution, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies. The City of Marina currently adheres to the listed requirements.

Government Code §54953(e)(3) provides that if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the exemption to the Brown Act teleconferencing requirements:

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: the state of emergency continue to directly impact the ability of members to meet safely in person or State or local officials continue to impose or recommend social distancing measures.

The goal of Government Code §54953 as revised by AB 361 is to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies by allowing broader access through teleconferencing options. The current version of Government Code §54953 became effective on September 16, 2021, with a sunset of the present version on January 1, 2024.

FISCAL IMPACT: None identified.

CONCLUSION:

This request is submitted for City Council consideration and possible adoption of a resolution proclaiming a local emergency persists, re-ratifying the proclamation of a state of emergency by Governor Newsom on March 4, 2020, and re-authorizing remote teleconference meetings of the City Council of the City of Marina and its constituent bodies for the period January 11, 2022 through February 10, 2022, pursuant to Brown Act provisions.

Respectfully submitted,

Robert W. Rathie

Robert Rathie
City Attorney's Office
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD JANUARY 11, 2022, THROUGH FEBRUARY 10, 2022, PURSUANT TO BROWN ACT PROVISIONS.

WHEREAS, the City of Marina is committed to preserving and nurturing public access and participation in meetings of the City Council and its constituent bodies; and

WHEREAS, all meetings of City of Marina's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the City Council previously adopted a Resolution No. 2021- on October 5, 2021, Resolution 2021-113 on November 2, 2021, Resolution 2021-118 on November 16, 2021, and Resolution 2021-134 on December 14, 2021, finding that the requisite conditions exist for the City Council and its constituent bodies to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the City Council must reconsider the circumstances of the state of emergency that exists in the City, and the City Council has done so; and

WHEREAS, emergency conditions persist in the City, specifically, the March 4, 2020, proclamation by the Governor of a state of emergency in the State of California due to COVID-19 and the March 13, 2020, proclamation of a state of emergency in the City of Marina by the City Manager, as the City's Director of Emergency Services, due to COVID-19 which was subsequently ratified by the City Council on March 17, 2020, and after having been supplemented twice, and both proclamations of states of emergency remain in effect; and

WHEREAS, on September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies,, attached hereto as **Attachment 1**; and

WHEREAS, the City Council does hereby find that as of January 6, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as high with 1,075 active cases currently reported in Monterey County with a case rate of 247.66 individuals per 100,000 persons; 1,153 cases of the dangerous Delta and Omicron variants of COVID-19 have been identified to date in Monterey County; and the California Department of Public Health reports 20.3% of staffed adult ICU beds are available in Bay Area reporting region which includes Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to recognize and affirm a local emergency exists and re-ratify the proclamation of state of emergency by the Governor of the State of California and to recognize the County of Monterey Health Department's recommendation regarding social distancing; and

WHEREAS, as a consequence of the local emergency persisting, the City Council does hereby find that the City Council and its constituent bodies shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the City of Marina will continue to implement the following measures for meetings of its City Council and its constituent bodies:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any action taken during such a service disruption could be challenged under the Brown Act's existing challenger provisions).
- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.

- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Affirmation that Local Emergency Persists. The City Council hereby reconsiders the conditions of the state of emergency in the City and proclaims that a local emergency persists throughout the City, and:

(a) On September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies; and

(b) As of January 6, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as high with 1,075 active cases currently reported in Monterey County with a case rate of 247.66 individuals per 100,000 persons; 1,153 cases of the dangerous Delta and Omicron variants of COVID-19 have been identified to date in Monterey County; and the California Department of Public Health reports 20.3% of staffed adult ICU beds are available in Bay Area reporting region which includes Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City.

Section 3. Re-ratification of Governor's Proclamation of a State of Emergency. The City Council hereby reconsiders and re-ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Marina, the City Council and its constituent bodies, are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect on immediately upon its adoption and shall be effective until the earlier of (i) February 10, 2022, or such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Marina and its constituent bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held this 11th day of January 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



COUNTY OF MONTEREY HEALTH DEPARTMENT

Elsa Mendoza Jimenez, Director of Health

Administration Animal Services Behavioral Health Clinic Services
Emergency Medical Services Environmental Health Public Administrator/Public Guardian Public Health

Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies

Issued: September 22, 2021

The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.

Honorable Mayor and City Council Members

City Council Special Meeting
of January 11, 2022

THE CITY COUNCIL OF THE CITY OF MARINA APPROVE RESOLUTION NO 2022-, AUTHORIZING THE CITY MANAGER TO ENTER INTO A HOTEL DEVELOPMENT AGREEMENT WITH DADWAL MANAGEMENT GROUP OR ITS DESIGNEE FOR THE DEVELOPMENT OF HOTELS ON OPPORTUNITY SITE 1A IN THE DUNES DEVELOPMENT

REQUEST.

It is requested that the Marina City Council

1. Approve Resolution 2022-, authorizing the City Manager to enter into a Hotel Development Agreement with Dadwal Management Group or its designee for the development of Hotels on Opportunity Site 1a in the Dunes Development.

BACKGROUND:

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

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

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

Among other provisions, the Operating Agreement made clarifying changes to the schedule of performance that required that MCP to obtain approval of the Hotel Site Plan/Architectural Design for the hotel to be constructed on Opportunity Site 1A no later than December 2020. The Operating Agreement also required that MCP enter into an agreement with a hotel developer for a hotel development consisting of not less than 150 rooms by December 2020. The Operating Agreement granted the City an option to acquire the approximately 9.5-acre Hotel Site located on Opportunity Site 1A with the backbone infrastructure and utility improvements to the Hotel Site installed if MCP was unable to enter into an agreement with the hotel developer by December 2020. Pursuant to the Operating Agreement, the City's option grants the City the right to acquire the Hotel Site for a purchase price of \$3,600,000.

On December 22, 2020, MCP gave the City notice that it would not be able to enter into an agreement with a hotel developer as called for in the Operating Agreement and acknowledging the City's option to acquire the Hotel Site. Under the terms of the Operating Agreement, the City has one year to exercise its option by giving an Option Exercise Notice. Once the City gives the Option Exercise Notice, the City has 60 days to close escrow on the Hotel Site. On December 6, 2021, the City Council authorized the City Manager to exercise the Option and on December 20, 2021 notice was sent to MCP exercising the City's options to acquire the Hotel Site. Based on the terms of the Operating Agreement, the City has 60 days to close escrow on the Hotel Site.

ANALYSIS:

Since MCP gave the City notice that it would not meet the deadline for entering into an agreement with a hotel developer, the City has been engaged in discussions with several hotel developers in an effort to attract a high-quality hotel development to the Hotel Site. On August 17, 2021, the City Council heard presentations from four hotel developers interested in the Hotel Site. Based on direction from the City Council, staff has been diligently negotiating the terms of a Hotel development agreement with Dadwal Management Group (Developer). The Developer is proposing to develop the Hotel Site in two phases. The first phase would consist of a dual hotel comprised of a 90 room Element hotel and a 110 room AC Hotel as well as additional amenities and parking. Phase Two would consist of an additional 100 room hotel. The Developer has demonstrated a feasible financing plan for Phase One of the proposed development and has evidenced sufficient cash to pay the required \$3.6 million purchase price for the Hotel Site.

Pursuant to the terms of the Hotel Development Agreement, the City will give MCP the required Option Exercise Notice and subsequently assign its rights to acquire the Hotel Site to the Developer. The Developer must meet certain conditions before the City will assign its rights to acquire the Hotel Site, as follows:

1. The Developer must provide the City with a feasible financing plan for Phase 1 of the hotel development;
2. The Developer must provide the City with an executed hotel operating agreement with Marriott International for both hotels included within Phase 1;
3. The City and the Developer must have agreed on the terms of a Hotel Operating Covenant to be recorded on the Hotel Site requiring that the Hotel Site continue to be used for Hotel uses for an agreed upon time period; and
4. The Developer must present the City with evidence of the availability of the \$3.6 million purchase price in cash.

Satisfaction of these conditions ensures that the Developer can satisfy the requirements for acquisition of the Hotel Site and has a feasible plan for development of Phase 1 of the Hotel Site before the City allows the Developer to take title to the Hotel Site. If for any reason the Developer cannot meet the conditions to assignment within the time required in the Hotel Development Agreement, the City will have time to move forward with acquiring the Hotel Site and seeking a new hotel developer.

The Hotel Development Agreement sets forth a process for the Developer to obtain City approval for the development of both phases of the hotel and includes a schedule of performance for City approvals, commencement of construction and completion of construction. Included within the City approval process will be any environmental review required for the Hotel Development under the California Environmental Quality Act (CEQA), if any. The Hotel Development Agreement will include a schedule of performance that will set a date by which Phase 1 of the hotel development must be complete, subject to excused delays.

The Developer is proposing a design build construction contract with Klassen Construction. Klassen Construction is based in Bakersfield and has built numerous hotel projects in the Central Valley and has substantial experience designing and constructing commercial and public buildings. Klassen Construction has been in business since 1977. Klassen has submitted a proposal to the Developer for the design and construction of Phase 1. The Hotel Development Agreement requires that the Developer submit a construction contract with Klassen to the City for its review prior to commencement of construction. The construction contract must be consistent with the proposal submitted by Klassen, the cost of the contract must be consistent with the approved financing plan and the contract must also require the payment of prevailing wages. Additionally, the Developer is indemnifying the City for any claims that may be asserted under the prevailing wage laws and rules.

The Hotel Development Agreement also includes a timeline and process for the City to approve Phase 2 of the development consisting of a 110-room hotel. Prior to commencement of construction of Phase 2, the Developer will have to secure City approvals for the development and provide the City with a feasible financing plan. Additionally, the Developer is required to provide the City with an agreement with a national hotel chain for the Phase 2 hotel with a quality similar to a Hyatt House. The Schedule of Performance requires that the Phase 2 development must commence construction before the City issues a certificate of completion of Phase 1. If the Developer is unable to commence construction on Phase 2 within that time, the City can declare the Developer in default, terminate the Hotel Development Agreement and exercise its option to acquire the Phase 2 portion of the Hotel Site.

On December 6, 2021 the Council discussed the Hotel Development Agreement and gave staff direction on revisions to the agreement. The attached agreement incorporates the comments from the Council including (1) requiring that the hotel development meet a minimum standard of LEED Platinum (See Section 3.1) and (2) a formula for setting the purchase price for the City's purchase option of the undeveloped portion of the Hotel Site if the Developer is unable to meet the requirements for development of Phase 2 of the hotel development based on the ratio of the phase 2 property to the total acreage of the Hotel Site (See Section 8.4(b)). Additionally, the scope of development including the representations made by the developer in their presentation to the Council has been completed (**"EXHIBIT D"**) and a preliminary financing plan for Phase 1 (**"EXHIBIT C"**) has been completed.

It should be noted that one subject discussed on December 6, 2021 was the need for the Developer to subdivide the property into the Phase 1 and Phase 2 parcels so that financing for each phase could be separated and the City could exercise its option to purchase on Phase 2 if the Developer failed meet the requirements for development of Phase 2. Since the December 6, 2021 meeting, it has come to staff's attention that the Hotel Site is already subdivided into two parcels as noted in **EXHIBIT A**.

City Staff and consultants continue to work with the Developer to complete the terms of the Hotel Development Agreement and the Developer has agreed in concept to the terms in the agreement attached but there are still some issues to address. Staff does not expect that there will be significant changes to the agreement once the Developer's attorney has reviewed the agreement but is asking the City Council to give the City Manager the authority to make non-substantive changes to the Agreement, subject to the approval of the City attorney, after receiving comments from the Developer. If the Developer has substantive changes, staff will return to the City Council early next year for further approvals.

CEQA

The certified and approved EIR has served as the environmental documentation for the approval of the Hotel Development Agreement and nothing in the Hotel Development Agreement changes the analysis, recommendations and conclusions of the EIR or the mitigation measures adopted in May of 2005. The Hotel Development Agreement contemplates the same development originally proposed and studied for the EIR. However, before the City grants final regulatory approval of the development proposed in the Hotel Development Agreement, the City will once again evaluate the development proposed to determine if it is consistent with the EIR and whether additional environmental analysis is required.

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

For these reasons the City have concluded that no additional environmental analysis is required and that the Certified EIR is the appropriate environmental document for the Hotel Development Agreement approval.

FISCAL IMPACT

Development of the hotels on the Hotel Site will result in significant benefits to the City including an increase in transient occupancy tax, event and meeting space that does not current exist in the City and opportunities to attract additional visitors to the City.

Respectfully submitted

Karen Tiedemann
Special Counsel

REVIEWED/CONCUR

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO ENTER INTO A HOTEL DEVELOPMENT AGREEMENT WITH DADWAL MANAGEMENT GROUP OR ITS DESIGNEE FOR THE DEVELOPMENT OF HOTELS ON OPPORTUNITY SITE 1A IN THE DUNES DEVELOPMENT

WHEREAS, the Marina Redevelopment Agency and Marina Community Partners, LLC ("MCP") entered into the University Villages Disposition and Development Agreement dated May 31, 2005 ("DDA") granting MCP the option to acquire approximately 290 acres of property for the development of a mixed-use development ("Development"); and

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

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

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

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

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

WHEREAS, the City has been engaged in discussions with hotel developers related to the development of hotels and the Hotel Site and after consideration of proposals from hotel developers determined, that Dadwal Management Group ("Developer") has the necessary expertise and experience to develop the Hotel Site with up to three hotels with a total of 300 hotel rooms plus additional amenities and parking; and

WHEREAS, the City has prepared a Hotel Development Agreement with the Developer that provides for the development of the Hotel Site consistent with the terms of the Hotel Development Agreement and assigns to the Developer the City's right to acquire the Hotel Site, provided certain terms and conditions are met; and

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

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

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to enter into the Hotel Development Agreement with the Developer substantially in the form on file with the City Clerk, subject only to such changes as are approved by the City Manager and the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is authorized to take such other actions as are necessary to implement the terms of the Hotel Development Agreement, including, but not limited to, executing escrow agreements, assignment and agreements and other agreements that are consistent with the terms of the Hotel Development Agreement.

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

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 11th of January 2022, by the following vote.

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBER:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

HOTEL DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF MARINA,

AND

DADWAL MANAGEMENT GROUP

TABLE OF CONTENTS

Page

ARTICLE 1. DEFINITIONS	2
Section 1.1 <u>Definitions</u>	2
Section 1.2 <u>Exhibits</u>	5
ARTICLE 2. ASSIGNMENT OF OPTION	6
Section 2.1 <u>Assignment</u>	6
Section 2.2 <u>Conditions Precedent to Assignment</u>	6
Section 2.3 <u>Close of Escrow on Hotel Site</u>	7
ARTICLE 3. DESIGN AND PREDEVELOPMENT REQUIREMENTS.....	7
Section 3.1 <u>Design in Conformance with Scope of Development and Concept Design Drawings</u>	7
Section 3.2 <u>Project Documents</u>	7
Section 3.3 <u>Submittal and Review of Design and Construction Documents</u>	8
Section 3.4 <u>Approval of Project Documents</u>	8
Section 3.5 <u>New Material Concerns</u>	9
Section 3.6 <u>Approval Process</u>	9
Section 3.7 <u>No Change in Project Documents</u>	9
Section 3.8 <u>Additional Permits and Approvals</u>	9
Section 3.9 <u>City Review</u>	10
Section 3.10 <u>Phase 1 Construction Contract</u>	10
Section 3.11 <u>Phase 2 Design and Predevelopment Conditions</u>	10
ARTICLE 4. CONSTRUCTION OF THE IMPROVEMENTS	12
Section 4.1 <u>Commencement of Construction</u>	12
Section 4.2 <u>Completion of Construction</u>	12
Section 4.3 <u>Construction Pursuant to Scope and Plans</u>	12
Section 4.4 <u>Mechanics' Liens</u>	13
Section 4.5 <u>Compliance with Applicable Law</u>	13
Section 4.6 <u>Certificate of Completion</u>	13
Section 4.7 <u>Prevailing Wages</u>	13
Section 4.8 <u>Progress Reports</u>	14
Section 4.9 <u>Entry by the City</u>	15
Section 4.10 <u>Non-Discrimination During Construction; Equal Opportunity</u>	15
Section 4.11 <u>Insurance Requirements</u>	16
ARTICLE 5. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION.....	17
Section 5.1 <u>Use of the Project</u>	17
Section 5.2 <u>Maintenance</u>	17
Section 5.3 <u>Developer To Indemnify City</u>	18
Section 5.4 <u>Hazardous Materials</u>	18
Section 5.5 <u>Taxes</u>	19
Section 5.6 <u>Non-Discrimination</u>	19
Section 5.7 <u>Mandatory Language in All Subsequent Deeds, Leases and Contracts</u>	20

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
ARTICLE 6. ASSIGNMENT AND TRANSFERS.....	21
Section 6.1 <u>Definitions</u>	21
Section 6.2 <u>Purpose of Restrictions on Transfer</u>	21
Section 6.3 <u>Prohibited Transfers</u>	21
Section 6.4 <u>Permitted Transfers</u>	21
Section 6.5 <u>Effectuation of Permitted Transfers</u>	22
Section 6.6 <u>Change in Hotel Operator</u>	22
ARTICLE 7. SECURITY FINANCING AND RIGHTS OF HOLDERS	22
Section 7.1 <u>No Encumbrances Except for Development Purposes</u>	23
Section 7.2 <u>Holder Not Obligated to Construct</u>	23
Section 7.3 <u>Notice of Default and Right to Cure</u>	23
Section 7.4 <u>Right of City to Cure</u>	23
Section 7.5 <u>Modifications</u>	24
ARTICLE 8. DEFAULT AND REMEDIES	24
Section 8.1 <u>Application of Remedies</u>	24
Section 8.2 <u>Fault of City</u>	24
Section 8.3 <u>Fault of Developer</u>	24
Section 8.4 <u>Option to Purchase</u>	25
Section 8.5 <u>Plans, Data and Approvals</u>	26
Section 8.6 <u>Rights and Remedies Cumulative</u>	26
Section 8.7 <u>Survival</u>	27
ARTICLE 9. GENERAL PROVISIONS	27
Section 9.1 <u>Identity of Developer</u>	27
Section 9.2 <u>Notices, Demands and Communications</u>	28
Section 9.3 <u>Non-Liability of Officials, Employees and Agents</u>	28
Section 9.4 <u>Enforced Delay</u>	28
Section 9.5 <u>Submittals and Approvals</u>	29
Section 9.6 <u>Inspection of Books and Records</u>	29
Section 9.7 <u>Title of Parts and Sections</u>	29
Section 9.8 <u>Applicable Law</u>	29
Section 9.9 <u>Severability</u>	29
Section 9.10 <u>Binding Upon Successors; Covenants to Run With Land</u>	29
Section 9.11 <u>Parties Not Co-Venturers</u>	30
Section 9.12 <u>Entire Understanding of the Parties</u>	30
Section 9.13 <u>City Approval</u>	30
Section 9.14 <u>Discretion Retained By City</u>	30
Section 9.15 <u>Counterparts</u>	30
Section 9.16 <u>Amendments</u>	30
Section 9.17 <u>Recordation of Memorandum of Agreement</u>	30
Section 9.18 <u>Standard of Approval</u>	30
Section 9.19 <u>Indemnity: City</u>	30

TABLE OF CONTENTS
(Continued)

Page

Section 9.20 <u>Effectiveness of Agreement</u>	30
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HOTEL DEVELOPMENT AGREEMENT

THIS HOTEL DEVELOPMENT AGREEMENT (this "Agreement") is made as of _____, 202_, by and among the City of Marina, a municipal corporation (the "City"), and Dadwal Management Group, a _____ ("Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. Capitalized terms used herein are defined in Article 1 of this Agreement.
- B. The former Redevelopment Agency of the City of Marina entered into a Disposition and Development Agreement with Marina Community Partners, LLC, a Delaware limited liability company ("MCP") dated May 31, 2005 as modified by an Implementation Agreement dated September 6, 2006 and a Second Implementation Agreement dated August 5, 2008 (collectively referred to as the "DDA") and as further modified by that certain Operating Agreement Clarifying and Modifying Certain Project Approvals for the Specific Plan for the Dunes on Monterey Bay dated December 17, 2019 ("Operating Agreement").
- C. The City and MCP also entered into that certain Development Agreement dated June 7, 2005 ("Development Agreement").
- D. Under the terms of the DDA and the Development Agreement, MCP was granted certain rights to develop a mixed-use project on an approximately 290-acre portion of the former Fort Ord (the "Property") including up to 1237 residential units, 750,000 square feet of retail space, 760,000 square feet of business park development and up to 500 hotel rooms (the "Project").
- E. In accordance with the terms of the entitlements and approvals for the Project, a portion of the Property identified as Opportunity Site 1A, as more particularly described in Exhibit A attached and incorporated herein ("Opportunity Site 1A"), is designated for the development of visitor servicing uses including hotel uses. In accordance with the terms of the DDA as amended by the Operating Agreement, MCP acquired Opportunity Site 1A in _____, 2020.
- F. In accordance with the terms of the Operating Agreement, MCP was required to enter into an agreement with a hotel developer for the development of at least 150 hotel rooms on Opportunity Site 1A by the time set forth in the Operating Agreement. Under the terms of the Operating Agreement, if MCP failed to enter into an agreement with a hotel developer as required, the City was granted an option to acquire a portion of Opportunity Site 1A designated as Parcels A and B as shown on Exhibit A (the "Hotel Site") for a purchase price of Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Hotel Site Purchase Price"). On December 22, 2020 MCP gave notice to the City that it was unable to enter into an agreement

with a hotel developer ("Notice of Hotel Option"), which notice gave the City one year to exercise its option to acquire the Hotel Site.

G. The Developer submitted a proposal to the City for the development of three hotels on the Hotel Site to be developed in two Phases. Phase 1 is proposed to consist of two hotels, an Element with 90 rooms and an AC with 110 rooms to be developed on Parcel A of the Hotel Site. Phase 2 is proposed to consist of a third hotel with an additional 100 rooms to be developed on Parcel B of the Hotel Site. Collectively, Phase 1 and Phase 2 are referred to as the Hotel Development. Developer's proposed Hotel Development is described in more detail in the Scope of Development attached and incorporated herein as Exhibit D. The Hotel Development is expected to generate approximately \$2 million per year in transient occupancy tax to the City and create 200 to 300 jobs.

H. The Developer has provided the City with a Preliminary Financing Plan for Phase 1 of the Hotel Development that demonstrates that Developer has sufficient cash equity to finance the acquisition of the Hotel Site and letters of interest from lenders and equity resources to develop Phase 1 of the Hotel Development, a copy of which is attached and incorporated herein as Exhibit C.

I. In accordance with the terms of the Operating Agreement, the City intends to exercise its option to acquire the Hotel Site by giving MCP an Option Exercise Notice, on or before December 22, 2021 and then assign its option to acquire the Hotel Site to the Developer to facilitate the development of the Hotel Development in exchange for Developer's agreement to construct the Hotel Development in accordance with the terms of this Agreement.

J. The City has determined that the Developer has the necessary expertise, and that the development of the Hotel Development is financially feasible based on the Preliminary Financing Plan.

NOW, THEREFORE, in reference to the foregoing Recitals in consideration of the promises, covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

- (a) "Agreement" shall mean this Hotel Development Agreement.
- (b) "Building Permit" shall mean the building permit issued by the City evidencing its approval for the construction of Phase 1 or Phase 2 of the Hotel Development.
- (c) "Business Day" shall mean a calendar day which is not a weekend day or a federal or State holiday and on which the City is open for business.

- (d) "CEQA" shall mean the California Environmental Quality Act.
- (e) "Certificate of Completion" shall mean a certificate issued by the City to the Developer pursuant to Section 4.6 of this Agreement.
- (f) "City" shall mean the City of Marina, California, a municipal corporation.
- (g) "City Approvals" shall mean, collectively, zoning approvals, use permit and any other discretionary approvals required for construction of the Hotel Development. For definitional purposes in this Agreement, "City Approvals" do not include the Building Permit.
- (h) "Completion Date" shall mean that date on which the City issues a Certificate of Completion for each Phase of the Hotel Development.
- (i) "Concept Design Drawings" shall mean the drawings attached to the Scope of Development.
- (j) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.
- (k) "Design Development Drawings" shall mean the design development drawings described in Section 3.3 of this Agreement.
- (l) "Developer" shall mean Dadwal Management Group, a _____ and its permitted assigns.
- (m) "Developer Event of Default" shall mean any default by the Developer as set forth in Section 8.3, subject to any applicable notice and cure rights set forth therein.
- (n) "Disposition and Development Agreement" means the Disposition and Development Agreement dated as of May 31, 2005 by and between the City and MCP as amended by the Implementation Agreement dated September 6, 2006 and the Second Implementation Agreement dated August 5, 2008.
- (o) "Effective Date" shall mean the date which is the latest of (i) the date this Agreement is executed by the Developer, and (ii) the date the City Council approves and the City executes this Agreement.
- (p) "Final Construction Drawings" shall mean the construction drawings described in Section 3.4 of this Agreement.
- (q) "Financing Plan" shall mean the Developer's plan for financing each Phase of the Hotel Development submitted to the City pursuant to Section 2.2.

(r) "Hazardous Materials" shall mean:

(1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code at such time;

(2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time;

(3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1521 et seq.), Safe Drinking Water Act (42 U.S.C. Section 3000 (f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 1300 et seq.) at such time; and

(4) any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Project.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial property, or commonly used or sold by hardware, home improvement stores, or medical clinics and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(s) "Hazardous Materials Laws" shall mean all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Project or any portion thereof.

(t) "Hotel Development" shall mean (i) the acquisition of the Hotel Site and (ii) the development of Phase 1 and Phase 2 of the Improvements as more fully set forth in the Scope of Development.

(u) "Hotel Operating Agreement" shall mean the operating agreement or operating agreements between the Developer and the Hotel Operator for the operation of each of the hotels included in the Scope of Development.

(v) "Hotel Operator" shall mean for Phase 1 of the Hotel Development Marriott International, Inc. (or another hotel management company approved by the City in its sole discretion) and its approved successors and assigns.

(w) "Improvements" shall mean the (i) the 90 room Element hotel; (ii) the 110 room AC hotel; (iii) the 100-room hotel included as part of Phase 2 and (iv) related improvements and landscaping to be constructed on and within the Property in conformance with the Scope of Development.

(x) "Parties" shall mean the City and the Developer.

(y) "Phase 1" shall mean Phase 1 of the Hotel Development consisting of a dual hotel comprised of a 90 room Element hotel and a 110 room AC hotel, a package of amenities, landscaped gardens and parking as specified in the Scope of Development attached as Exhibit D to be developed on Parcel A of the Hotel Site.

(z) "Phase 2" shall mean Phase 2 of the Hotel Development consisting of a 100-room hotel to be constructed on Parcel B of the Hotel Site.

(aa) "Preliminary Financing Plan" shall mean the proposed plan of financing attached as Exhibit C.

(bb) "Project Documents" shall mean the design and construction documents developed pursuant to Section 3.3 of this Agreement.

(cc) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the acquisition of the Hotel Site and the construction of both Phase 1 and Phase 2 of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit B.

(dd) "Schematic Design Drawings" shall mean the drawings for the Project described in Section 3.4 of this Agreement.

(ee) "Scope of Development" shall mean the description of the basic physical characteristics of the Hotel Development, including the size specifications of the hotels and amenities on each of the Parcels that comprise the Hotel Site, which will serve as a basis for the Developer's application for the City Approvals and for the preparation of the Project Documents and including the features from the Developer's proposal included within the Scope of Development. The Scope of Development is attached to this Agreement as Exhibit D.

(ff) "Term" shall mean the term of this Agreement, commencing as of the date of this Agreement and ending on the earlier of (i) fifty-five (55) years following the date of this Agreement or (ii) the date of any termination of this Agreement in accordance with the provisions hereof.

(gg) "Transfer" shall mean a transfer of this Agreement or a transfer of an interest in the Developer, as more particularly described in Section 6.1

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Schedule of Performance
Exhibit C:	Preliminary Financing Plan
Exhibit D:	Scope of Development
Exhibit E:	Memo of Agreement

ARTICLE 2.
ASSIGNMENT OF OPTION

Section 2.1 Assignment. The City has or will exercise its option to acquire the Hotel Site on or before December 22, 2021. Subject to the Developer meeting the conditions set forth in Section 2.2, the City shall assign to the Developer its right to acquire the Hotel Site in accordance with the City's Option Exercise Notice and the terms and conditions in the Operating Agreement and Developer shall accept the assignment of the City's right to acquire the Hotel Site.

Section 2.2 Conditions Precedent to Assignment. The City's obligation to assign its rights to acquire the Hotel Site to the Developer is contingent on the Developer meeting the following conditions within the times set forth in the Schedule of Performance:

(a) Updated Financing Plan. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City, for the City's review and approval, an updated Financing Plan for Phase 1. The updated Financing Plan shall include: (1) a projected cost estimate breakdown for Phase 1 of the Hotel Development based upon design documents and contemplated government permits and approvals; (2) a true copy of each letter of interest from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Phase 1 Improvements; (3) a sources and uses table identifying the proposed use of each source of funding for the Phase 1 Improvements during the construction period; (4) evidence, reasonably satisfactory to the City, that the Developer is contributing equity in an amount not less than twenty percent (20%) of the total cost of development of Phase 1 of the Improvements; (5) evidence reasonably satisfactory to the City that the Developer has sufficient additional sources of funds available and is committing such sources of funds to cover the difference, if any, between projected costs of development of Phase 1 of the Improvements and the amount available to the Developer from external sources; and (6) evidence satisfactory to the City in its sole discretion that the Developer has sufficient liquid assets to pay the Hotel Site Purchase Price.

The City's review of the updated Financing Plan for Phase 1 shall be for the sole purpose of determining if the contemplated financing will be reasonably available, will provide sufficient funds for acquisition of the Hotel Site in accordance with the Option and development of the Phase 1 of the Hotel Development consistent with the terms of this Agreement, the proposed use of the funds comply with the requirements of the funding source and the funds will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

(b) Hotel Operating Agreement. The Developer shall have entered into the Hotel Operating Agreement or Agreements for the Phase 1 hotels with Marriott International, Inc.

(c) Hotel Operating Covenant. The Parties have agreed to the form of a hotel operating covenant to be recorded against Parcel A of the Hotel Site (the "Hotel Operating Covenant"). The Hotel Operating Covenant shall require that the Hotel Development be used for hotel and related uses for a term of no less than thirty (30) years following the date of the

Certificate of Completion for the Phase 1 Improvements and shall contain such other provisions as mutually acceptable to the Parties.

(d) Hotel Site Purchase Price. Developer shall have provided evidence to the City of the availability of the Hotel Site Purchase Price in the form of cash. Such evidence shall be in the form of bank statements demonstrating liquid deposits in the amount of the Hotel Site Purchase Price.

Section 2.3 Close of Escrow on Hotel Site. Upon satisfaction of the conditions set forth in Section 2.2, the City shall assign its right to acquire the Hotel Site to the Developer with the understanding that Developer is obligated to close escrow within sixty (60) days of the date of the City's Option Exercise Notice to MCP. If for any reason the Developer has not demonstrated to the City's satisfaction that it will close escrow on the Hotel Site within the sixty (60) days, the City may terminate the assignment and immediately proceed to close escrow on the Hotel Site. Developer hereby grants the City a power of attorney coupled with an interest to take all actions necessary to achieve the close of escrow on the Hotel Site including transfer of the Hotel Site to the City if for any reason Developer fails to perform its obligations under the terms of the Option or fails to enforce the terms of the Option against MCP as set forth in the Operating Agreement. Developer recognizes that the City is entering into this Agreement with Developer to ensure that the Hotel Site is developed with a hotel or hotels that provide significant benefits to the City and that Developer's obligation to perform under the terms of the Option is an essential term of this Agreement, the failure of which will deprive the City of the benefits of the terms of this Agreement.

ARTICLE 3. DESIGN AND PREDEVELOPMENT REQUIREMENTS

Section 3.1 Design in Conformance with Scope of Development and Concept Design Drawings. In designing and constructing the Hotel Development, the Developer shall cause all subsequent design documents to be substantially consistent with the Scope of Development attached as Exhibit D and the Schematic Design Drawings. The Scope of Development and the Schematic Design Drawings shall establish the baseline design standards from which the Developer shall prepare all subsequent Project Documents. In addition the Developer shall design the Hotel Development to a minimum standard of environmental sustainability to qualify for a LEED Platinum or higher rating and include within the features of the Hotel Development those features that are set forth in the Developer's proposal that is attached to the Scope of Development

Section 3.2 Project Documents. The Developer shall cause its architect to proceed diligently and within the times set forth in the Schedule of Performance to prepare Design Development Drawings and Final Construction Drawings for each phase of the proposed Hotel Development, substantially consistent with the Scope of Development and the Schematic Design Drawings, including, without limitation, such drawings as may reasonably be required to show the location, bulk, height and other principal external features of the proposed Hotel Development. In connection with its submittal to the City for its approval, the Developer shall

provide to the City such elevations, sections, plot plans, specifications, diagrams and other design documents at each of the stages described in Section 3.4 ("Project Documents"), as may reasonably be required by the City for its review. The Project Documents shall incorporate the relevant mitigation measures adopted in conjunction with its CEQA review and final approval of each Phase of the Hotel Development and any conditions imposed by the City's entitlement process.

Section 3.3 Submittal and Review of Design and Construction Documents. Within the times set forth in the Schedule of Performance, the Developer shall submit to the City the Project Documents for each Phase of the Hotel Development in the following stages based on the Concept Design Drawings:

(a) Schematic Design Drawings. The Schematic Design Drawings shall Logically Evolve, as defined below, from the approved Concept Design Drawings, by clearly defining the development of the Improvements. These drawings shall include floor plans, elevations, features in public areas, landscape features, locations for signs, parking facilities with all spaces indicated, building sections indicating general construction techniques and major building materials under consideration, potential exterior materials, the colors and textures to be used, and the off-site public improvements to be implemented by the Developer. Key interior, exterior, and structural dimensions shall be established and a detailed tabulation of floor area by use provided.

(b) Design Development Drawings. The Design Development Drawings shall be based on the Schematic Design Drawings and the Scope of Development. The Design Development Drawings shall indicate estimated wall thickness, structural dimensions, and delineation of site features and elevations, the building core, materials and colors, landscaping, a refined exterior signage plan and other features reasonably required by the City. The drawings shall fix and describe all design features, as well as the size, character, and quality of the entire Hotel Development as to architectural, structural systems. Key details shall be provided in preliminary form. Samples of key materials to be used in publicly visible areas shall accompany the Design Development Drawings submittal.

(c) Final Construction Drawings. The Final Construction Drawings are to be a continuation of approved Design Development Drawings. The Final Construction Drawings must provide all the detailed information necessary to obtain a building permit to build the Improvements including complete building, mechanical systems, site, landscape, exterior and signage construction details, requirements, standards, and specifications. The Developer shall provide additional material samples upon the reasonable request of the City.

Section 3.4 Approval of Project Documents. Within the times set forth in Section 3.6, the City, in its proprietary capacity and not its regulatory capacity, shall have the right to review and approve the Project Documents. The purpose of the City's review of the Project Documents pursuant to this Agreement is to ensure consistency with the Scope of Development, the provisions of this Agreement, and conformance to the DDA. For purposes of this Article 3, the phrase "Logical Evolution" or "Logically Evolve" means a refinement or amplification of the Concept Design Drawings into subsequently approved architectural drawings and design material which flow naturally and foreseeably therefrom, which reflect good architectural and

engineering design and local construction practices, code requirements, applicable plan check and permit conditions, and the timely availability of materials.

Section 3.5 New Material Concerns. If the City determines that there are material changes which are not Logical Evolutions from previously approved Project Documents or which raise material concerns that were not reviewable in previously approved Project Documents, in approving or disapproving such Project Documents, the City shall act in its reasonable discretion. Any disapproval of the new Project Documents shall be in writing and shall state the reasons for the City's disapproval.

Section 3.6 Approval Process. The City shall approve or disapprove submittals under this Article 3 within thirty (30) days of receipt of the submittal from the Developer. Failure of the City to approve or disapprove such submittals within thirty (30) days shall be deemed to be approval of such submittals. In the event the City disapproves a submittal of the Project Documents pursuant to Section 3.4 or Section 3.5, the City shall submit a list of reasons for such disapproval to the Developer, together with its notice of disapproval. Upon receipt of such a list, the Developer shall have fifteen (15) business days to resubmit a revised submittal. Again, upon the City's receipt of a revised submittal, the City shall have ten (10) business days (or in the event City Council action is required as soon as reasonably possible) to approve or disapprove of the revised design. If, in the City's reasonable judgment, City Council action is not required to consider the revised submittal, failure to approve or disapprove within ten (10) business days shall be deemed to be approval of such change. The times for approval of the Project Documents set forth in the Schedule of Performance shall be automatically adjusted to reflect time for the Developer to make resubmittals, if required to obtain the City approval, as allowed by this Section 3.6.

Section 3.7 No Change in Project Documents. Subject to the provisions of Section 3.6, once the City has approved Final Construction Drawings for a specific phase, the Developer shall not make any material changes (as defined in Section 4.3(b) below) in those documents which would materially impact the matters set forth in Section 3.4 without the prior written approval of the City, acting in its reasonable discretion and within the time periods set out in Section 3.6, provided, however, that after the commencement of construction, any document submitted to the City for its approval shall be reasonably approved or disapproved, within ten (10) business days following receipt by the City. Failure of the City to approve or disapprove a submittal within the time periods set forth above shall constitute approval of the submittal.

Section 3.8 Additional Permits and Approvals. Within the time specified in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all permits and approvals necessary to construct the Phase 1 Improvements including the City Approvals and the Building Permit. All applications for such permits and approvals shall be consistent with the approved Project Documents. The Developer shall not obtain a building permit for a phase of construction until the City has approved the Final Construction Drawings for that phase. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

Section 3.9 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Hotel Development, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Hotel Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

Section 3.10 Phase 1 Construction Contract. Developer has represented to the City that it intends to enter into a design/build construction contract for Phase 1 of the Hotel Development with Klassen Construction generally on the terms of that certain proposal submitted by Klassen to Developer dated November 8, 2021 ("Klassen Proposal"). No later than the time specified in the Schedule of Performance, the Developer shall submit to the City for review and approval a copy of the construction contract with Klassen Construction that includes all improvements and sustainability features specified in the Scope of Development and is substantially consistent with the terms set forth in the Klassen Proposal ("Klassen Contract"). The City's review and approval of a proposed Klassen Contract shall be limited to a determination of the following in the exercise of the City's reasonable judgment: that the scope and cost of work have been clearly fixed and are consistent with the scope and cost set forth in the Project Documents, the Financing Plan and the Klassen Proposal, that the construction contract requires the payment of prevailing wages consistent with Section 4.7, and that the provisions of Klassen Contract are consistent with the provisions of this Agreement. The City shall approve or disapprove the Klassen Contract within fifteen (15) days following the date of the submission of the construction contract. The City's failure to either approve or disapprove the proposed Klassen contract within such fifteen (15) day period shall be deemed approval. Any disapproval of the Klassen Contract shall state in writing the reasons for disapproval and the changes which the City requests. The Developer shall thereafter submit, or cause to be submitted, a revised Klassen contract to the City for its approval within ten (10) days of the City notification of disapproval. If the revised Klassen Contract is disapproved, then the Developer shall have an additional ten (10) days to submit a further revised Klassen Contract. The periods for submission of a revised Klassen Contract, review, and approval or disapproval shall continue to apply until a construction contract for Phase 1 has been approved by the City.

Section 3.11 Phase 2 Design and Predevelopment Conditions.

(a) Phase 2 Financing Plan. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City, for the City's review and approval, a Financing Plan for Phase 2. The Phase 2 Financing Plan shall include: (1) a projected cost estimate breakdown for Phase 2 of the Hotel Development based upon design documents and contemplated government permits and approvals; (2) a true copy of each letter of interest from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Phase 2 Improvements; (3) a sources and uses table identifying the proposed use of each source of funding for the Phase 2 Improvements during the construction period; (4) evidence, reasonably satisfactory to the City, that the Developer is contributing equity in an amount not less than twenty percent (20%) of the total

cost of development of Phase 2 of the Improvements; and (5) evidence reasonably satisfactory to the City that the Developer has sufficient additional sources of funds available and is committing such sources of funds to cover the difference, if any, between projected costs of development of Phase 2 of the Improvements and the amount available to the Developer from external sources.

The City's review of the Financing Plan for Phase 2 shall be for the sole purpose of determining if the contemplated financing will be reasonably available, will provide sufficient funds for development of the Phase 2 of the Hotel Development consistent with the terms of this Agreement, the proposed use of the funds comply with the requirements of the funding source and the funds will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

(b) Hotel Operating Agreement. No later than the time specified in the Schedule of Performance, the Developer shall have entered into a Hotel Operating Agreement for the Phase 2 hotel with a national hotel brand of a quality comparable to a Hyatt House, which Hotel Operating Agreement shall be subject to approval of the City. The City shall approve the Hotel Operating Agreement if it is with an operator of similar quality as Hyatt House and the terms are substantially similar to the terms for the Hotel Operating Agreement for Phase 1 of the Hotel Development.

(c) Phase 2 Design and Construction Documents. No later than the times specified in the Schedule of Performance, the Developer shall have submitted Project Documents for Phase 2 of the Hotel Development consistent with the requirements of Section 3.3 and the City shall have approved such Project Documents consistent with Sections 3.4 and 3.5.

(d) Additional Permits and Approvals. Within the time specified in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all permits and approvals necessary to construct the Phase 2 Improvements including the City Approvals and the Building Permit. All applications for such permits and approvals shall be consistent with the approved Phase 2 Project Documents. The Developer shall not obtain a building permit for the Phase 2 construction until the City has approved the Final Construction Drawings for Phase 2. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

(e) Phase 2 Construction Contract. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City for review and approval a copy of the construction contract for Phase 2 of the Hotel Development. The City's review and approval of a proposed Phase 2 construction contract shall be limited to a determination of the following in the exercise of the City's reasonable judgment: that the scope and cost of work have been clearly fixed and are consistent with the scope and cost set forth in the Project Documents and the Phase 2 Financing Plan, that the construction contract requires the payment of prevailing wages consistent with Section 4.7, and that the provisions of Phase 2 construction contract are

consistent with the provisions of this Agreement. The City shall approve or disapprove the Phase 2 construction contract within fifteen (15) days following the date of the submission of the construction contract. The City's failure to either approve or disapprove the proposed Phase 2 construction contract within such fifteen (15) day period shall be deemed approval. Any disapproval of the Phase 2 construction contract shall state in writing the reasons for disapproval and the changes which the City requests. The Developer shall thereafter submit, or cause to be submitted, a revised Phase 2 construction contract to the City for its approval within ten (10) days of the City notification of disapproval. If the revised Phase 2 construction contract is disapproved, then the Developer shall have an additional ten (10) days to submit a further revised Phase 2 construction contract. The periods for submission of a revised Phase 2 construction contract, review, and approval or disapproval shall continue to apply until a construction contract for Phase 2 has been approved by the City.

ARTICLE 4. CONSTRUCTION OF THE IMPROVEMENTS

Section 4.1 Commencement of Construction. The Developer shall commence construction of each Phase of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on each Phase on the date the Developer starts physical work on the applicable portion of Hotel Site pursuant to a valid Building Permit from the City.

Section 4.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of each Phase of the Improvements and shall complete construction of each Phase of the Improvements within the time set forth in the Schedule of Performance. As between the City and the Developer, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction.

Section 4.3 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements substantially in accordance with the Scope of Development, the approved Final Construction Drawings, the City Approvals, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for City approval any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements or the public areas of the interior of the Hotels, including but not limited to the lobbies, or which would require an amendment to any City Approval prior to making such change (each, a "Material Change"). The City shall approve or disapprove a proposed Material Change within fifteen (15) days after receipt by the City. Failure to approve or disapprove within fifteen (15) days shall be deemed to be approval of such change. If the City rejects the proposed Material Change, then the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 4.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Completion by the City and the termination of this Agreement.

Section 4.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 *et seq.* of the California Labor Code, but only to the extent applicable), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Hotel Site.

Section 4.6 Certificate of Completion. When the obligations of the Developer under this Article 4 have been met with respect to each Phase, the Developer may request that the City issue a certificate to such effect for the applicable Phase (a "Certificate of Completion") in a form recordable in the Official Records, which the City shall provide within thirty (30) days of such a request if the Developer has met the requirements for such issuance. The City shall issue the Certificate of Completion upon the completion of the following obligations: (i) the City has issued a certificate of occupancy or a temporary certificate of occupancy for the applicable Phase of the Improvements, (ii) the Developer has caused the completion of construction of the applicable Phase of the Improvements in substantial accordance with the Final Construction Drawings and the Scope of Development, and (iii) the Developer has completed all of the obligations set forth in this Agreement to be completed prior to the completion of the applicable Phase of the Improvements, as reasonably determined by the City. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Developer required by Section 4.7, or to any holder of deed of trust securing money loaned to finance any Phase of the Hotel Development or any portion thereof. If the Developer requests issuance of a Certificate of Completion, but the City refuses, then the City shall provide the Developer with a written explanation of its refusal within ten (10) days of the Developer's request.

Section 4.7 Prevailing Wages. The Developer shall pay or cause to be paid to all workers employed in connection with the development of the Improvements, not less than the

prevailing rates of wages, as provided in the statutes applicable to public work contracts, including without limitation the Fort Ord Reuse Authority Master Resolution and Sections 1770-1780 of the California Labor Code.

(a) The Developer shall monitor and enforce the prevailing wage requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that the Developer fails to monitor or enforce these requirements against any contractor or subcontractor, the Developer shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if the Developer was the actual employer, and the City may declare the Developer in default of this Agreement and pursue any of the remedies available under this Agreement.

(b) Any contractor or subcontractor who is at the time of bidding debarred by the Labor Commissioner pursuant to Section 1777.1 of the California Labor Code is ineligible to bid on the construction of the Improvements or to receive any contract or subcontract for work covered under this Agreement. The Developer agrees to include, or cause to be included, the requirements of this Section 4.7 in all bid specifications for work covered under this Agreement.

(c) The Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the City, its council members, officers, directors, employees and agents ("Indemnified Parties") against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer and its contractors) to pay prevailing wages as determined pursuant to the FORA Master Resolution or the Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Improvements. The Developer's obligation to indemnify, defend and hold harmless under this Section 4.7(c) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

The Developer agrees to include, or cause to be included, the above provision, to be applicable to contractors and subcontractors, in each contract and subcontract for work covered under this Agreement.

Section 4.8 Progress Reports. Until a Certificate of Completion has been issued by the City for a Phase, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 4.9 Entry by the City. Until a Certificate of Completion has been issued by the City for a Phase, the Developer shall permit the City, through its officers, agents, or employees, to enter the Hotel Site during normal business hours after reasonable notice to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Hotel Site for compliance with this Agreement. Additionally, until a Certificate of Completion has been issued by the City for any Phase of the Hotel Development, the Developer shall retain at the Hotel Site, or such other location reasonably acceptable to the City, all original receipts, invoices, contracts, agreements or other paperwork documenting the expenditure of all funds for labor and materials related to the applicable Phase of the Hotel Development. Upon reasonable notice to the Developer, the City shall have access to all such original documentation for review and/or duplication. The City is under no obligation to (a) supervise construction, (b) inspect the Hotel Site, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 4.10 Non-Discrimination During Construction; Equal Opportunity. The Developer, each for itself and its successors and assigns, and transferees of its obligations under this Agreement, agrees that in the construction of the Improvements provided for in this Agreement:

(a) It will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, medical condition, age, marital status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) acquired or perceived, or retaliation for having filed a discrimination complaint. The Developer will ensure that applicants that are employed by the Developer's contractors, and that their employees, are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) It will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(c) It will cause the foregoing provisions to be inserted in all contracts for the construction of the Improvements entered into by the Developer after the Effective Date of this Agreement and shall make a good faith effort to ensure that its general contractor shall insert the foregoing provisions in the general contractor's subcontracts; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Section 4.11 Insurance Requirements.

At all times during the term of this Agreement, Developer shall maintain the following forms of insurance:

(a) Worker's Compensation insurance and Employer's Liability insurance, with limits of not less than One Million Dollars (\$1,000,000) each accident for bodily injury, One Million Dollars (\$1,000,000) for bodily injury by disease and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(b) Broad Form Commercial General Liability insurance with a combined single limit per occurrence, of not less than One Million Dollars (\$1,000,000) each occurrence and not less than Ten Million Dollars (\$10,000,000) in the annual aggregate for Bodily Injury and Property Damage, and including coverage for Contractual Liability, Personal Injury, Products and Completed Operations. The limits of liability of the insurance coverage may be provided by a combination of primary and excess liability insurance policies, provided that not less than Two-Million Dollars (\$2,000,000) of such coverage shall be carried as primary insurance and provided further that the limitation on the amount of insurance shall not limit the responsibility of the Developer to indemnify the City or pay damages of injury to persons or property resulting from the Developer's activities or the activities of any other person or persons for which the Developer is otherwise responsible. The insurance described in this subsection may be carried under a blanket policy for commercial general liability to include other locations, however, the City shall have the right to require an increase in the aggregate limits accordingly. All insurance carried pursuant to this subsection shall name the City as additional insureds.

(1) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, providing coverage for all owned, non-owned and hired vehicles.

(2) A Builders Risk policy shall be provided during the course of construction to meet the property insurance requirements. Builder's Risk insurance covering the Improvements during the course of the construction phase (and Property Insurance thereafter) covering all risks of loss, excluding earthquake, flood or other risks customarily excluded from "All-Risks" coverage in an amount equal to full replacement cost, including all improvements at the time of loss.

(3) Property insurance covering the Hotel Site for all risks of loss, including fire, earthquake (but only if required in connection with the construction financing or if it is commercially affordable at a reasonable price and with a reasonable deductible) and flood, if applicable, for one hundred percent (100%) of the replacement value.

(c) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Improvements under direct contract with the Developer to maintain insurance of the types and in at least the minimum limits described in subsections b.(1), b.(2), and b.(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (d). below. Subcontractors working on the Hotel Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections

b.(1), b.(2), and b.(3) above unless otherwise approved by the City. The Developer shall cause any architects and engineers working on the Hotel Development under direct contract with the Developer to maintain Professional Liability insurance with limits not less than One Million Dollars (\$1,000,000). Commercial General Liability insurance policies to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City, its councilmembers, officers, agents, and employees.

(d) General Requirements. The required insurance shall be provided under an occurrence form.

Commercial General Liability, and Automobile Liability insurance policies shall be endorsed to name as additional insureds the City and its councilmembers, officers, agents, and employees. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City set forth in Section 9.2 below.

(e) Cancellation. With respect to the interest of the City, such insurance shall not be cancelled, reduced in coverage or limits or non-renewed, except after thirty (30) days written notice by receipted delivery has been given the City's and the City's respective risk management department.

(f) Certificates of Insurance. Upon the City's request, the Developer shall provide certificates of insurance, in a form reasonably acceptable to the City, evidencing compliance with the requirements of this Section.

ARTICLE 5. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 5.1 Use of the Project. Throughout the term of this Agreement, the Developer shall not use or operate the Hotel Development for any use other than the as contemplated in this Agreement or for such other uses as may be consistent with all City and other governmental approvals. The Developer shall use the Hotel Development for the operation of three hotels consistent with the Scope of Development for a term of not less than thirty (30) years following the date of the issuance of the final Certificate of Completion.

Section 5.2 Maintenance. The Developer hereby agrees that prior to completion of construction of the Improvements, the Hotel Site shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once each Phase of the Hotel Development is Completed, the completed Phase shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of

such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against any portion of the Hotel Site not complying with this Agreement. The foregoing provisions shall be a covenant running with the land until expiration of the Term of this Agreement, enforceable by the City and its successors and assigns.

Section 5.3 Developer To Indemnify City. Except as expressly provided in this Agreement, the Developer shall indemnify, defend, and hold the Indemnified Parties harmless against all claims for bodily injury, death or property damage which arise out of or in connection with entry onto, ownership of, occupancy in, or construction on the Hotel Site by the Developer or its contractors, subcontractors, agents, employees or tenants. This indemnity obligation related to the Indemnified Parties shall not extend to any claim to the extent arising solely from the Indemnified Parties' gross negligence or willful misconduct, and shall survive both the issuance of a Certificate of Completion by the City and termination of this Agreement.

Section 5.4 Hazardous Materials.

(a) Certain Covenants and Agreements. Following obtaining possession of the Hotel Site, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Hotel Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Hotel Site in violation of any applicable law;

(2) The Developer shall keep and maintain the Hotel Development and each portion thereof in compliance with, and shall not cause or permit the Hotel Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Hotel Development or any portion thereof, pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Hotel Development or any portion thereof relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Hotel Site in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Hotel Development, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Hotel

Development under any Hazardous Materials Laws. If the City reasonably determines that the Developer is not adequately responding to a Hazardous Material Claim, the City shall have the right, upon ten (10) days written notice to the Developer, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 5.3, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnified Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Hotel Development; (2) the presence in, on or under the Hotel Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Hotel Site; or (3) any activity carried on or undertaken on or off the Hotel Development, subsequent to the conveyance of the Hotel Site to the Developer, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Hotel Site, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Hotel Site (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Hotel Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The foregoing indemnity of an Indemnified Party shall not apply to any claim based solely on such Indemnified Party's gross negligence or willful misconduct.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 5.4(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Hotel Site and/or the presence within the Hotel Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 5.5 Taxes. The Developer shall pay when due all real property taxes and assessments assessed and levied on Hotel Development and the Improvements. The Developer may, however, contest the validity or amount of any tax, assessment, or lien on the Hotel Development and the Improvements.

Section 5.6 Non-Discrimination. The Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or

of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Hotel Development, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or employees in the Hotel Site or the Hotel Development. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 5.7 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or other real property conveyance contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Hotel Site or the Hotel Development shall contain the following language:

(a) In Deeds:

"Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, or employees in the land herein leased."

(c) In Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any

person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees of the land."

ARTICLE 6. ASSIGNMENT AND TRANSFERS

Section 6.1 Definitions. As used in this Article 8, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Hotel Site, or any part thereof or any interest therein or of the Hotel Development or any portion thereof constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than 20% ownership interest in the Developer, or any contract or agreement to do any of the same, provided that such transfer does not result in a change of Control.

Section 6.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Hotel Site and its subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Hotel Site to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 6.1 above is for practical purposes a transfer or disposition of the Hotel Site.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 6.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 6 shall apply from the date of this Agreement until a Certificate of Completion is issued by the City for each Phase. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 6.4 Permitted Transfers. Notwithstanding the provisions of Section 6.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 6.5):

- (a) Any Transfer creating a Security Financing Interest.
- (b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.
- (c) Any Transfer resulting directly from the death or mental incapacity of an individual.
- (d) The conveyance or dedication of a portion of the Hotel Site to any public entity, including a public utility, required to allow for the development of the Improvements.
- (e) The granting of temporary or permanent easements or permits to facilitate development of the Hotel Development.
- (f) A Transfer otherwise approved by the City.

Section 6.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 6.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records (the "Assumption Agreement"), expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The Assumption Agreement shall be executed by Developer and the assignee or transferee and shall name the City as express third-party beneficiaries with respect to such agreement with a copy thereof delivered to the City and the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Hotel Development accruing from and after the date of such assignment or transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify City with respect to the Hotel Development, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

Section 6.6 Change in Hotel Operator. A change in the identity of the Hotel Operator, by way of transfer of the Hotel Operating Agreement or otherwise, shall constitute a Transfer requiring the prior written approval of the City. The City shall approve a replacement operator if the proposed operator is a nationally recognized hotel operator with equal or greater brand recognition as the Hotel Operator and the proposed operator has successfully operated one or more hotels comparable in quality to standards set forth for the Hotel Operating Agreement.

ARTICLE 7.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 7.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Hotel Site for the purpose of securing loans approved by the City pursuant to the approved Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development. Notwithstanding the above, the Developer may only secure loans obtained for purposes of constructing or operating Phase 1 of the Hotel Development with Parcel A of the Hotel Site and may only secure loans obtained for purposes of constructing or operating Phase 2 of the Hotel Development with Parcel B of the Hotel site and any such loans shall not include cross default provisions between Phase 1 and Phase 2 or any other financing obtained by the Developer.

Section 7.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Hotel Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 7.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's interest in the Hotel Site or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement.

Section 7.4 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the construction of applicable Phase of the Hotel Development, and the holder has not exercised its option to complete the construction of the applicable Phase of the Hotel Development, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default.

Section 7.5 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing for Hotel Development or any portion of the Hotel Development, request any modification of this Agreement in order to protect its interests in the Hotel Development or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

ARTICLE 8. DEFAULT AND REMEDIES

Section 8.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 8.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, the following event constitutes a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City breaches any material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of the above-described event, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty-day period (or, if the default is not reasonably susceptible of cure within such thirty-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the Developer elects to terminate this Agreement, the provisions of this Agreement that are specified to survive termination shall remain in full force and effect.

Section 8.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer fails to satisfy the conditions precedent to the assignment of the Option set forth in section 2.2 within the time set forth in the Schedule of Performance;

(2) The Developer fails to close escrow on the Hotel Site as required in Section 2.4;

(3) The Developer fails to construct the Improvements in the manner and by the deadlines set forth in Article 4 and the Schedule of Performance;

(4) The Developer fails to commence construction of Phase 2 within the time set forth in the Schedule of Performance;

(5) The Developer attempts or completes a Transfer except as permitted under Article 6.

(6) The Developer breaches any other material provision of this Agreement.

(7) Prior to the issuance of a Certificate of Completion by the City for any Phase, the Developer defaults under the construction or permanent lender documents and has not cured such default within the applicable time period contained therein.

(8) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events contained in Section 8.3(a)(1) or (2) this Agreement shall immediately terminate, the Assignment of the Option in Section 2.3 shall terminate, and the City shall have all rights and remedies under this Agreement. Upon the happening of any of the above-described events contained in Section 8.3 (a) (3), (4), (5),(6) and (7), the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 8.4 Option to Purchase.

(a) In addition to any other remedies that the City may have for a Developer Event of Default, the City shall have the additional right at its option to purchase the Hotel Site or any portion thereof that is not subject to a Certificate of Completion issued by the City with all improvements thereon. City shall give the Developer written notice of its intent to exercise its option to purchase the Hotel Site or any portion thereof within sixty (60) days following a Developer Event of Default. The City shall seek to close escrow on the purchase of the Hotel Site or any portion thereof subject to the City's Option within ninety (90) days of giving the option exercise notice.

(b) The purchase price for the Hotel Site or any portion thereof subject to the City's option shall be the amount paid by the Developer in cash to MCP to acquire the Hotel Site. If the City is only acquiring a portion of the Hotel Site, the purchase price for the portion acquired shall be a proportionate amount of the purchase price paid by the Developer to MCP to acquire the Hotel Site based on the square footage of the portion of the Hotel Site to be acquired by the City. By way of example, if the City exercises its option pursuant to this Section 8.4 as a result of the Developer failing to commence construction of Phase 2 of the Hotel Development within the times set forth in the Schedule of Performance but the City has issued a Certificate of Completion of Phase 1 of the Hotel Development, the City shall have the right to acquire Parcel B of the Hotel Site. The purchase price for Parcel B shall be \$1,008,000 which represents 28% of the Hotel Site Purchase Price. Parcel B consists of 2.66 acres and is 28% of the total square footage of the 9.53 acres Hotel Site.

(c) The City may assign its option to purchase the Hotel Site or any portion thereof without the consent of Developer.

(d) The City's option rights provided pursuant to this Section 8.4 shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit any Security Financing Interest with respect to the portion of the Hotel Site subject to the option granted herein, or any rights or interests provided in this Agreement for the protection of the older of a Security Financing Interest, provided that the Holder of such Security Financing Interest has elected to complete the Improvements in a manner provided in this Agreement.

(e) The City may record a memorandum of the City's Option on the Hotel Site and the Developer shall cooperate with such recordation.

Section 8.5 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 8.3, then the Developer shall promptly deliver to the City copies of all plans and specifications for the Hotel Development or the applicable Phase (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Hotel Development, and all applications for permits and approvals not yet obtained but needed in connection with the Hotel Development.

Section 8.6 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 8.7 Survival. Upon termination of this Agreement under this Article 8, the following provisions of this Agreement shall survive: the indemnification obligations in Sections 4.4, 4.7, 5.3, 5.4, and 9.19. This Section 8.7 exists for reference purposes only and does not alter the scope or nature of the surviving provisions.

ARTICLE 9. GENERAL PROVISIONS

Section 9.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date as follows:

(a) Organization. The Developer is a _____ company, duly organized, validly existing and in good standing under the laws of the State of _____, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. Unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative City affecting the Developer or the Hotel Development that would, if adversely determined, materially and adversely affect the Developer or the Hotel Development or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Hotel Development.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the date of this Agreement.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the development or operation of the Hotel Development, including but not limited to any partnership agreement, joint venture agreement, or loan agreement.

Until the expiration or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 9.1(a) not to be true, immediately give written notice of such fact or condition to the

City. The representations and warranties contained in this Section 9.1 shall be true for any transferee assuming the obligations of this Agreement as of the date of the Transfer.

Section 9.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City

The City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: City Manager

With copies to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Karen Tiedemann

Developer:

Dadwal Management Group

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 9.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 9.3 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or the City or for any amount which may become due to the Developer or on any obligation under the terms of this Agreement.

Section 9.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions (other than restrictions and governmental orders in place related to the COVID 19 pandemic as of the Effective Date); moratoria, or other governmental restrictions; freight embargoes; or court order; an act or omission of the other Party; or any other similar causes (other than lack of funds of the Developer or the Developer's inability to finance the Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause and the Party receiving such notice does not object to the extension within thirty (30) days of receipt of the notice. In no event shall the

cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by the Parties in writing.

Section 9.5 Submittals and Approvals. Various submittals are required by the Developer pursuant to this Agreement. As expressly provided by this Agreement, the City shall approve or disapprove certain submittals from Developer within specified timeframes or else such submittal shall be deemed approved by the City. Notwithstanding the provisions for deemed approval, no submittal or matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF
THE HOTEL AGREEMENT THAT FAILURE TO APPROVE OR DISAPPROVE THE
REQUESTED
MATTER WITHIN __ DAYS SHALL BE DEEMED AN APPROVAL.

Section 9.6 Inspection of Books and Records. The City has the right at all reasonable times and upon two (2) business days prior written notice to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

Section 9.7 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

Section 9.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 9.9 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.10 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Section 6.4. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land and shall bind all successors in title to the Hotel Site until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in

such contract, deed or other instrument, unless the City expressly releases Hotel Site, or the applicable portion of the Hotel Site, from the requirements of this Agreement.

Section 9.11 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.12 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Hotel Development.

Section 9.13 City Approval. Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or his or her designee, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or his or her designee, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City.

Section 9.14 Discretion Retained By City. The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City in the permit and approval process in connection with the Project.

Section 9.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 9.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 9.17 Recordation of Memorandum of Agreement. The Developer consents to the recordation of a memorandum of this Agreement in the Official Records against the Hotel Site.

Section 9.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 9.19 Indemnity: City. Except for the sole gross negligence or willful misconduct of the City, the Developer undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnified Parties from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement. The Developer's indemnification obligation under this Section 9.19 shall include but not be limited to any litigation related to any challenges made to the City's action regarding the approval of this Agreement or the environmental review conducted for the Hotel Development and the City's actions related thereto under CEQA.

Section 9.20 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

CITY:

Dated: _____

THE CITY OF MARINA, a municipal corporation

APPROVED AS TO FORM:

By: _____

By: _____
City Attorney

Date: _____

Goldfarb & Lipman LLP

By: _____
City Special Counsel

DEVELOPER:

Date: _____

By: _____

Name: _____

Its: _____

EXHIBIT A
(Legal Description of the Property)

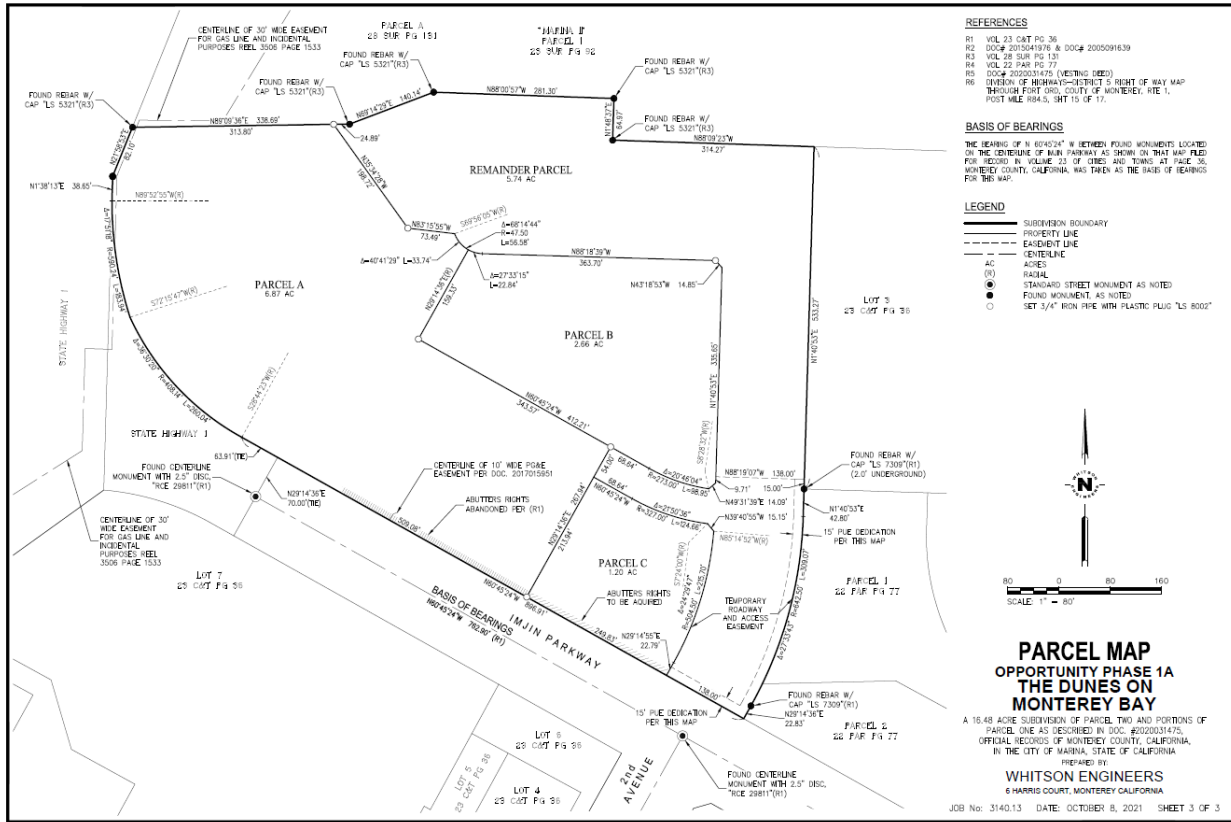


EXHIBIT B

(Schedule of Performance)

This Schedule of Performance summarizes the schedule for various activities under the Hotel Development Agreement (the "Agreement") to which this exhibit is attached. This Schedule of Performance shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect.

Action	Responsible Party	Projected Date
1. Developer submits updated Financing Plan for Phase 1 of the Hotel Development. (§2.2(a))	Developer	No later than January 30, 2022
2. Developer submits the Hotel Operating Agreement for Phase 1. (§2.2(b))	Developer	No later than January 30, 2022.
3. Developer and City have agreed on a form of Hotel Operating Covenant (§2.2(c))	Developer and City	No later than January 30, 2022
4. Developer deposits Hotel Site Purchase Price in escrow		At least 10 days before the close of escrow
5. Developer closes escrow on Hotel Site (§2.4)	Developer	No later than February 18, 2022 -Within 60 day of City's Option Exercise Notice to MCP
6. Developer submits Schematic Design Drawings for Phase 1 (§3.4(a))	Developer	
7. Developer submits Design Development Drawings for Phase 1 (§3.4(b))	Developer	
8. Developer submits Final Construction Drawings for Phase 1 (§3.4(c))	Developer	
9. Developer obtains City Approvals, Building Permit and other governmental approvals for Phase 1 (§3.9)	Developer	
10. Developer submits the Klassen Contract to the City (§3.11)	Developer	
11. Developer submits to the City evidence of financing commitments for Phase 1	Developer	
12. Developer commences construction of the Phase 1 Improvements (§4.1)	Developer	

13. Developer completes construction of the Phase 1 Improvements (§4.2)	Developer	
14. Developer submits hotel operating agreement for Phase 2 to the City for City approval.	Developer	
15. Developer submits detailed scope of development for Phase 2 to the City for City Approval.		
16. Developer submits Phase 2 Financing Plan (§3.12(a)).	Developer	
17. Developer submits Hotel Operating Agreement for Phase 2r (§3.12(b))	Developer	
18. Developer submits Schematic Design Drawings for Phase 2 (§3.4(a) and §3.12(c))	Developer	
19. Developer submits Design Development Drawings for Phase 2 (§3.4(b) and §3.12(c))	Developer	
20. Developer submits Final Construction Drawings for Phase 2 (§3.4(c) and §3.12(c))	Developer	
21. Developer obtains City Approvals, Building Permit and other governmental approvals for Phase 2 (§3.12(d))	Developer	
22. Developer submits Phase 2 construction contract to City and evidence of debt financing commitments (§3.12(e))	Developer	
23. Developer commences construction of Phase 2 Improvements (§4.1)	Developer	Prior to completion of construction of Phase I Improvements
24. Developer completes construction of Phase 2 Improvements (§4.2)	Developer	

Exhibit C

Preliminary Financing Plan

Sources	Amount
Developer Equity	\$16,199,150
Debt	\$57,433,350
Total Funds	\$73,632,500
Uses	
Land purchase price	\$3,600,000
Design build Turn Key Project	\$58,575,000
Pre-opening Expenses, Working Capital, and Other costs	\$1,000,000
Legal, Taxes & Insurance & Fees	\$5,957,500
Financing costs and interest	\$3,500,000
Contingency	\$1,000,000
Total costs	\$73,632,500

Exhibit D

Scope of Development

1. Proposed Development Plan:

Phase 1 – Dual Hotel

Brand 1 – Element Hotel -	90 rooms
Brand 2 – AC Hotel -	110 rooms
Gross Square footage of Hotel Building	135,000
Square footage of Lobby	5,000
Square footage of Food and Beverage	2,500
Square footage of pool	2,500
Square Footage of Recreation Fac.	5,000
Square footage of meeting space	8,000
Square footage of guest rooms	89,500
square footage of corridor and support	15,000
Square footage of back of house	5,000
Square Footage of walls/shafts	2,500
Rooftop	25,000
All amenities, including recreation	160,000
Parking	300 spaces
landscaped garden	

Phase 2 100 Room Hyatt Hotel or hotel of comparable quality subject to the approval of the City and 150 parking spaces

Excerpts from Developer's Proposal

Environmental Sustainability Features:

- ☐ Organic greenhouse Farm-to-Table restaurant with Roof-top Dining and biodynamic wine tasting venue with local sourcing
- ☐ Eco-themed and eco-enhanced Bar & Lounge style seating with views of magnificent Monterey Bay
- ☐ Integrated renewable energy sources such as solar panels, car charging stations and/or Eco-Vert wind turbines (to use Marina's high winds for energy generation)
- ☐ Roof-top gardens with inside building live plant walls to increase oxygenation and carbon capture with eco-recreation & wellness focus
- ☐ Contemporary LEED-qualified design using energy-efficient floor to ceiling glass throughout hotel & guest rooms
- ☐ Gold or Platinum LEED certification with radiant floor central heating and cooling, energy saving appliances etc.
- ☐ Rooftop and back patio would include gas fire pits to increase outdoor ambiance and energy saving
- ☐ Provide a sustainable hospitality training facility for interns and entry-level work-force from the one-of-a-kind Sustainable Hospitality Management Program at California State University, Monterey Bay(CSUMB) for local talent sourcing

Economic Benefits:

- ☐ Maximum TOT to Marina: \$2M=>\$4M/ yr. over 10 yrs. totaling to \$35 million(LE)
- ☐ No incentive sought in spite of loss in yr. 1
- ☐ ADR of \$230-\$330 likely to be exceeded with average yearly revenue of \$20M
- ☐ Economic multiplier for Marina and environs to exceed \$60M/yr. (\$600 million over 10 years) with 3.0 multiplier
- ☐ No competing hotel in MBR (no rate war)
- ☐ Direct (200-300) & indirect jobs for many
- ☐ Legacy project for Marina & MBR community with high LT “localism” impact
- ☐ Not money but community impact focus

Exhibit E
Memo of Agreement