

ORDINANCE NO. 2022-05

**AN ORDINANCE OF THE CITY OF MARINA APPROVING AN
AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE
MARINA STATION PROJECT**

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

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

WHEREAS, the City and Creekbridge Homes, LLC previously entered into that certain Development Agreement dated as of March 4, 2008 (the "Development Agreement"), pursuant to which the City and Developer agreed to certain matters with respect to the development of a mixed use project including 1320 residential units, approximately 60,000 square feet of retail space, approximately 144,00 square feet of office, approximately 652,000 square feet of industrial space as well as approximately 52 acres of open space and parks along with roadways and other infrastructure serving the development (the "Project") on certain real property consisting of approximately three hundred twenty (320) acres, located in the northern section of the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement; and

WHEREAS, Creekbridge Homes, LLC elected not to proceed with the development of the Project in accordance with the Development Agreement and Creekbridge Homes, LLC's rights and obligations under the Development Agreement were assumed by the owner of the Property at the time, the Armstrong Family.

WHEREAS, The Armstrong Family subsequently sold the Property to Valle del Sol Properties, LLC a California limited liability company, the 2004 Ramirez Family Revocable Trust dated January 16, 2004 and Restated on June 14, 2013 and the Villam Legacy Irrevocable Trust dated October 16, 2017 (collectively the "Subsequent Owner");

WHEREAS, Subsequent Owner has entered into an agreement with 3rd Millennium Partners, a California corporation ("3MP") to act as developer of the Property and the City has approved the assignment of the rights and obligations under the Development Agreement to 3MP pursuant to the terms of an Assignment and Assumption Agreement meeting the requirements of Article 5 of the Development Agreement;

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

WHEREAS, the development of the Project has been delayed and the Developer has requested that the City approve an extension of the Development Agreement to account for those delays; and

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

WHEREAS, on March 4, 2008, the City certified the Final Environmental Impact Report for the Project (State Clearing House Number 2005061056) (the "Final EIR"); and

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

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

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on July 8, 2021, on amending the Development Agreement consistent with the terms of the First Amendment to the Development Agreement during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, following said public hearing, the Planning Commission recommended approval of the Amendment to the Development Agreement; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on June 21, 2022, held a duly noticed public hearing on the Amendment to the Development Agreement during which public hearings, the City Council received comments from the Developer, project consultants, City staff, and members of the general public; and

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

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

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

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

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

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

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The Final EIR;
- (c) The City's General Plan;
- (d) The Marina Zoning Map;
- (e) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Final EIR, the Specific Plan, the General Plan Amendments, the Development Agreement, the Amendment and other actions relating to the Property;
- (f) All documentary and oral evidence received at public hearing or submitted to the Planning Commission or City during the comment period relating to the Amendment; and
- (g) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

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

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

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

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

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

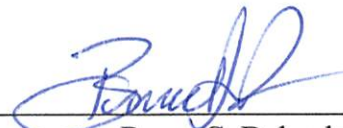
THE FOREGOING ORDINANCE was first read at a regular meeting of the Marina City Council on the 21st day of June 2022, continued to July 19, 2022, continued to August 3, 2022 and was passed and adopted at a regular meeting of the Marina City Council on the 16th day of August, 2022.

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Berkley



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Deputy City Clerk