ORDINANCE NO. 2023-04

AN ORDINANCE OF THE CITY OF MARINA APPROVING A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT WITH WATHEN COSTANOS PETERSON HOMES, INC FOR THE SEA HAVEN PROJECT (FORMERLY MARINA HEIGHTS)

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

WHERAS, the City and Cypress Marina Heights, LLC ("Developer") previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the "Development Agreement"), pursuant to which the City and Developer agreed to certain matters with respect to the development of 1,050 homes (the "Project") on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12^{th} Street in the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement; and

WHEREAS, the City and the Developer have amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the "Implementation Agreement"); and

WHEREAS, the Developer assigned portions of its rights and obligations under the Development Agreement to Wathen Castanos Peterson Homes, Inc. and Wathen Castanos Peterson Homes, Inc. ("Developer") and the City entered into the First Amendment to the Development Agreement (the Development Agreement, as so previously amended by the Implementation Agreement and the First Amendment to the Development Agreement, being referred to herein as the "Amended Development Agreement"); and.

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 Tentative Map and certified an EIR (collectively the "Project Approvals"); and

WHEREAS, consistent with the Project Approvals, the Developer is in the process of developing the Project on the Project Site; and

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

WHEREAS, on November 25, 2003, the City certified the Final Environmental Impact Report for the Project and on March 3, 2004 the City approved a supplement to the EIR (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 Amended 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 Second 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 February 9, 2023, on amending the Development Agreement consistent with the terms of the Second 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 Second Amendment to the Development Agreement to the City Council; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on March 7, 2023, held a duly noticed public hearing on the Second 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;

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 Amended Development Agreement and the Second Amendment to the Development Agreement as shown in **EXHIBIT A** and 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 Second 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 Second 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 Second Amendment to the Development Agreement is in conformity with public convenience, general welfare and good land use practice;

(d) The Second Amendment to the Development Agreement will not be detrimental to the public health, safety and general welfare;

(e) The Second Amendment to the Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

(f) The Second 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 Second 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 First Amendment and the Second 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 First Amendment and the Second 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 Second 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 and records the Second 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 Second Amendment to the Development Agreement and the Amended Development Agreement pursuant to the terms of the Amended Development Agreement as amended by the Second 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 7th day of March 2023, and was passed and adopted at a regular meeting of the Marina City Council on the 21st day of March 2023.

AYES, COUNCIL MEMBERS: McCarthy, Visscher, Biala, Medina Dirksen, Delgado
NOES, COUNCIL MEMBERS: None
ABSTAIN, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None

____
Bruce C. Delgado, Mayor

ATTEST:

____
Anita Sharp, Deputy City Clerk

EXHIBIT A

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement (the "Second Amendment") is made and entered into as of the last date a party affixes its signature hereto (the "Effective Date"), by and between the CITY OF MARINA (the "City"), on the one hand, and WATHEN CASTANOS PETERSON HOMES, INC. ("Developer"), on the other hand. The City and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

I.

RECITALS

WHEREAS, on March 3, 2004, the City and Cypress Marina Heights, LLC ("Cypress") entered into that certain Final Development Agreement (the "Development Agreement"), under which the City and Cypress agreed to certain matters regarding the development of approximately 1,050 homes and other improvements (the "Project") on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement.

WHEREAS, the City and Cypress subsequently amended the Development Agreement with that certain Implementation Agreement dated October 11, 2007 (the "Implementation Agreement") (the Development Agreement, as so previously amended by the Implementation Agreement, being referred to herein as the "Amended Development Agreement").

WHEREAS, Cypress partially assigned the Amended Development Agreement to Developer pursuant to that Partial Assignment and Assumption Agreement dated April 12, 2018, and Developer has assumed certain obligations under the Amended Development Agreement.

WHEREAS, on July 3, 2018, the City and the Developer entered into the First Amendment to Development Agreement (the "First Amendment") a copy of which is attached and incorporated herein as Exhibit E, which, among other things, modified the Parties' respective obligations concerning the construction of Sea Haven Park.

WHEREAS, the City and Developer now seek to amend certain provisions of the Amended Development Agreement, as amended by the First Amendment, to facilitate development of the Project and clarify the Parties' respective obligations, including the construction of Sea Haven Park, the imposition of new development fees, and the mitigation of *sand gilia* habitat.

WHEREAS, the Parties now desire to amend the Amended Development Agreement as amended by the First Amendment pursuant to the terms of this Second Amendment.

II.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

A. Development and Timing. Section 5 of the First Amendment is hereby deleted in its entirety and replaced with the following:

The Below Market Rate Homes are an important but complex component of the Project. The Project Approvals require that all product types be disbursed throughout the Project Site and integrated throughout the Project. Although the Development Agreement required that the Developer develop the Below Market Rate Homes in a manner proportionate to construction of the Market Rate Homes, the Parties agreed pursuant to the terms of the Tolling Agreement entered into by the Developer and the City, as amended, to postpone construction of the Below Market Rate Homes while the Parties negotiated new terms for the development and sale of the Below Market Rate Homes.

The Below Market Rate Homes shall be developed in accordance with the following provisions, which shall supersede any prior approvals or agreements between the Parties related to the Below Market Rate Homes that are inconsistent with the provisions set forth below.

(a) Developer shall be responsible for developing 210 Below Market Rate Homes consisting of 51 townhomes affordable to Moderate Income Households with incomes not exceeding 120% of Area Median Income ("Moderate Income Townhomes"), 51 townhomes affordable to 135% AMI Households ("Workforce Townhomes"), 23 cottages affordable to 150% AMI Households ("Workforce Cottages") and 85 bridge homes ("Bridge Homes").

(b) For purposes of this Section the following terms shall have the meaning specified below. Terms not otherwise defined in this Section shall have the meaning set forth in the BMR Policies and Procedures:

"Area Median Income" shall mean the median gross yearly income, adjusted for Assumed Household Size, in the County of Monterey, California, as published from time to time by California Department of Housing and Community Development ("HCD"). In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City and Developer shall mutually agree on other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

"Assumed Household Size" shall be determined in accordance with the BMR Policies and Procedures.

"BMR Policies and Procedures" shall mean City's Below Market Rate Homeownership Administrative Policies and Procedures as currently in effect as of the Effective Date of this Second Amendment. If the City amends the BMR Policies and Procedures during the term of this Agreement, the amended policies shall only apply to the Developer if the Developer consents to such amendments.

"Housing Cost" shall mean home purchasers' total housing cost including mortgage expenses, taxes and insurance, homeowner association dues, utilities, and an allowance for maintenance and repairs

"Moderate Income Households" shall mean households with an income at or below One Hundred Twenty Percent (120%) of Area Median Income adjusted for household size.

"135% AMI Households" shall mean households with an income at or below One Hundred Thirty Five Percent (135%) of Area Median Income adjusted for household size.

"150% AMI Households" shall mean households with an income at or below One Hundred Fifty Percent (150%) of Area Median Income adjusted for household size.

(c) Maximum Sales Price.

The Maximum Sales Price for the Below Market Rate Homes shall be determined by the City in accordance with the City's BMR Policies and Procedures provided maximum pricing for each home type shall be as set forth below:

(i) The Maximum Sales Price for Moderate Income Townhomes shall not exceed the purchase price that would result in a monthly Housing Cost not exceeding thirty-five percent (35%) of One Hundred Twenty Percent of Area Median Income.

(ii) The Maximum Sales Price for the Workforce Townhomes shall not exceed the purchase price that would result in a monthly Housing Cost not exceeding thirty-five percent (35%) of One Hundred Thirty Five Percent (135%) of Area Median Income.

(iii) The Maximum Sales Price for the Workforce Cottages shall not exceed the purchase price that would result in a monthly Housing Cost not exceeding thirty-five percent (35%) of One Hundred Fifty Percent (150%) of Area Median Income.

(iv) The Maximum Sales Price for the Bridge Homes shall not exceed the purchase price that would result in a monthly Housing Cost not exceeding forty percent (40%) of One Hundred Fifty Percent (150%) of Area Median Income.

(d) Below Market Rate Home Sizes.

Collectively, all one hundred two (102) Moderate and Workforce Townhomes shall be 2-bedroom units. Fifteen (15) of the Workforce Cottages will be 2-bedroom units and eight (8) of the Workforce Cottages shall be the Plan 3, 3-bedroom unit, a depiction of which is attached hereto as Exhibit "A."

No more than twenty percent (20%) of the Bridge Homes will be the Plan 5, 4-bedroom units, a depiction of which is attached hereto as Exhibit "B," and none of the Bridge Homes will be 2-bedroom units.

(e) Sale of Below Market Rate Homes.

The City is expected to administer the Below Market Rate Home program for the Project, including providing the Developer with lists of qualified buyers pursuant to the BMR Policies and

Procedures ("Qualified Buyers List"). To the extent that the City is delayed in providing the Qualified Buyers List to the Developer, the Developer may select Qualified Buyers for the Below Market Rate Homes, provided, however, the City Staff must verify the Qualified Buyers eligibility for the Below Market Rate Home within ten (10) business days after the date on which Developer provides all necessary information regarding the Qualified Buyer to the City. Approval of the Qualified Buyers shall be in accordance with the BMR Policies and Procedures, and all supporting documentation set forth in the BMR Policies and Procedures shall be required for the City to approve or disapprove a Qualified Buyer. The City may, at its election, contract with an outside agency to review and approve or disapprove Qualified Buyers, provided, Developer shall not be responsible for the cost of such outside agency. Nothing herein prevents the City from charging the homebuyers a fee for costs associated with the review and approval or disapproval of Qualified Buyers. In order to provide the City with time to create a Qualified Buyer List, Developer shall, when it is issued a building permit for a Below Market Rate Home, notify the City of the type of home (i.e. Moderate Income Townhome, Workforce Townhome, etc.) and the expected completion date of such Below Market Rate Home. Developer shall provide City with regular updates as construction proceeds on the Below Market Rate Homes.

All Below Market Rate Homes shall be sold subject to a forty-five (45) year resale restriction that will ensure that the Below Market Rate Homes will remain affordable during this period. Additionally, homebuyers of Below Market Rate Homes will be required to execute a promissory note and Deed of Trust, both in favor of the City providing the City with a share of the equity on the home if the Below Market Rate Home is sold prior to the expiration of the resale restriction with such equity share decreasing over time and eliminated after the homebuyer has owned the home for twenty (20) years. The amount of the equity share shall be determined based on the difference between the initial Maximum Purchase Price and the market purchase price of the Below Market Rate Home. The form of the resale restriction, promissory note and any other documents required by the City related to the sale of the Below Market Rate Homes shall be provided by the City and shall be in accordance with the BMR Policies and Procedures. Notwithstanding the foregoing, the promissory note, Deed of Trust, or any other document described herein shall be subordinate to Qualified Buyer's commercial financing required or necessary to purchase the Below Market Rate Home.

Notwithstanding anything to the contrary, nothing in the Development Agreement, as amended, permits the City to withhold the issuance of building permits or certificates of occupancy on Market Rate Homes, provided Developer has made, or is making, a good faith effort to construct and sell Below Market Rate Homes, and, any such delay in the construction or sale of Below Market Rate Homes arises in whole or in part from the City's failure or delay in developing an Affordable Housing Program, or providing Qualified Buyers to purchase Below Market Rate Homes. Notwithstanding the above, the City may withhold building permits for Market Rate Homes in Phase V of the Project until the Developer has been issued building permits for all of the Market Rate and Below Market Rate Homes in Phase IV of the Project.

Consistent with the Project Approvals, the Developer shall construct the Below Market Rate Homes in a manner proportionate to construction of the Market Rate Homes, as shown in the following table:

Type of Product	Phase II	Phase III	Phase IV	Phase V	Total

Total BMR Homes	36	83	66	25	210
Total Market Rate	264	212	222	142	840
Total Homes Per Phase	300	295	288	167	1050

As a result of the Parties ongoing negotiations, construction of the Below Market Rate Homes for Phases II have been delayed. In order to ensure that the Below Market Rate Homes will be constructed in proportion with the Market Rate Homes going forward and to address the delay in construction of Below Market Rate Homes, the Developer shall commence construction of at least five (5) Below Market Rate Homes in Phase II before the end of the first calendar quarter of 2023, commence construction of an additional seven (7) Below Market Rate Homes in Phase II no later than the end of the second calendar quarter of 2023, commence construction of no fewer than nine (9) Below Market Rate Homes in Phase III before the end of the third calendar quarter of 2023 and commence construction of no fewer than nine (9) Below Market Rate Homes in Phase III before the end of the fourth calendar quarter of 2023. In addition, the Developer shall commence construction of the Moderate Income and Workforce Townhomes within sixty (60) days of receipt of all approvals and building permits and shall commence construction of at least six (6) Townhome units each quarter.

B. **New Fee**. Section 2.7.1.2, established by Section 6 of the First Amendment, is hereby deleted in its entirety and replaced with the following:

2.7.1.2 New Fee.

(a) From and after the Effective Date of this Second Amendment, the Developer shall pay to the City at the time of issuance of any building permit the New Fee as that term is defined in the First Amendment and in accordance with City Council Resolution No. 2020-83. The New Fee replaces the levy previously assessed by the Fort Ord Reuse Authority ("FORA") Basewide Community Facilities District (the "FORA Fee"), the collection of which ceased June 30, 2020.

(b) The City shall pay from the New Fee the Regional Development Impact Fee assessed by the Transportation Agency for Monterey County ("TAMC") for each residential building permit issued by the City.

C. **Park Fees**. Section 2.8.2(i), established by Section 7 of the First Amendment, is hereby deleted in its entirety and replaced with the following:

City and Developer have reached agreement regarding the design of the Sea Haven Park ("Park") as attached hereto as Exhibit "C." The current estimated budget for the agreed upon Park is $3,600,000.00 ("Park Budget"), a copy of which is attached hereto as Exhibit "D." Developer has previously committed to paying not more than Three Million Dollars ($3,000,000) toward the design, engineering, construction, and improvements of the Park ("Developer's Contribution"). In order to fund the costs of construction of the Park that exceed the Developer's Contribution, the Developer agrees that if the Developer is able to obtain release of the Habitat Mitigation Funds referenced in Section 2.14.3, Developer shall be obligated to increase the Developer's Contribution to the Park by the amount of the Habitat Mitigation Funds. Notwithstanding the fact that the costs of the Park exceed the Developer's Contribution, the Developer agrees to commence construction of the Park no later than (a) 90 days from date Developer receives the Habitat Mitigation Funds, provided all necessary improvement plans and specifications have been approved by the City, and all required permits issued; or, (b) 90 days from the date the City approves an agreed upon value engineered City Park. For avoidance of doubt, if the Developer seeks to make any changes in the Park design, all such changes must be approved by the City Council. The agreed upon design of Park includes four pickle ball courts ("Pickle Ball Courts") and Kompan play equipment ("Play Equipment"). Initially the parties contemplated Developer contributing $300,000 of Developer's Contribution to the Play Equipment and City contracting and paying for the Pickle Ball Courts, an estimated $300,000 improvement. To facilitate development of the Park, the Parties agree that Developer will directly contract for the construction and installation of the Pickle Ball Courts and pay for the same from Developer's Contribution; and, the City will directly contract for the purchase and installation of Play Equipment, including the surface beneath the Play Equipment, the cost of which is estimated to be $1.6 million, which is not part of the Park Budget, nor part of Developer's Contribution.

The following paragraph is added to the end of Section 2.8.2(v):

To ensure that Developer receives the full benefit of the $900,000 credit following the construction of the Park, in the event the Park is not completed at or before the time in which only 100 lots in the Project remain undeveloped, Developer shall place the Park Fees for the remaining 100 units, in the amount of $9,008.00/DU, in an interest-bearing escrow or trust account pending the completion of the Park for the purpose of holding the fees, which escrow or trust account will be governed by instructions, a copy of which will be provided to the City that will prohibit the release of the funds in the account to the Developer until the Park is complete. By depositing such fees into the account, Developer will be deemed to have complied with any obligation to pay Park Fees for any such unit. Upon completion of the Park, Developer's Park Fee for any remaining units shall be waived, and the funds in the escrow account will be disbursed to Development pursuant to written release instructions received by both the City and Developer.

D. **Sand Gilia Mitigation.** The following section is added to the Amended Development Agreement as amended by the First Amendment after Section 2.13:

2.14 Sand Gilia Mitigation

2.14.1. Developer intends to mitigate for the Project's impacts to *sand gilia* habitat through proposed restrictions on a portion of an approximately 3.91-acre property adjacent to the Project to be acquired by the Developer (the "Proposed

Mitigation Property"). Upon the approval by the California Department of Fish & Wildlife ("CDFW") of any self-mitigation proposal by Developer on the Proposed Mitigation Property, the Developer shall provide notice (the "Self-Mitigation Notice") to the City of such approval, and a summary of Developer's costs to self-mitigate supported by invoices or estimates prepared by technical experts (the "Self-Mitigation Costs"). Said Self-Mitigation Costs include all costs incurred by the Developer to ensure the use of the Proposed Mitigation Property as mitigation for the Project and shall include the lower of the appraised value of the Proposed Mitigation Property or the actual amount paid by the Developer for the Proposed Mitigation Property, consultant fees, and those costs identified in the CDFW approved Mitigation and Monitoring Plan, including short term costs and any endowment required to fund the long-term costs associated with maintaining the Proposed Mitigation Property.

After Developer provides the Self-Mitigation Notice to the City, Developer shall be entitled to release of the funds retained in the escrow established by the Parties pursuant to the Tolling Agreement in an amount equal to $1,600,000 ("Self-Mitigation Offset"). Upon release of the funds in escrow to the Developer, the Developer shall assume all obligations related to the Sand Gilia Mitigation and the City shall have no responsibility related to the Sand Gilia Mitigation for the Project. The Developer shall make diligent efforts to obtain an incidental take permit from CDFW using the Proposed Mitigation Property in a timely manner and will provide the City with copies of any applications or other materials submitted to CDFW related to Developers self-mitigation proposal. The Developer shall provide the City with regular, but no less frequently than quarterly, written reports on the progress on obtaining the incidental take permit.

2.14.2. If the Developer is unable to obtain CDFW's approval for the Sand Gilia Mitigation on the Proposed Mitigation Property, the Developer can request in writing that the City provide a conservation easement on a portion of the Fort Ord Landfill, which is now controlled by the City, to satisfy Developer's Sand Gilia Mitigation obligation (the "Conservation Easement"), as required by CDFW sufficient to allow Developer to pull permits and commence construction on Phase 5b of the Project. The City agrees to provide the Conservation Easement and to assume responsibility for the long-term management and funding of the Conservation Easement as required by CDFW to serve as mitigation for the Developer's incidental take of sand gilia associated with construction of Phase 5b. The City shall be responsible for the long-term management and funding of the Conservation Easement. The City's ability to provide a Conservation Easement on the landfill property is subject to the approval of CDFW. The City and the Developer shall work cooperatively to obtain CDFW's approval of the Conservation Easement within twelve (12) months of the City receipt of Developer's notice requesting that the City provide the Conservation Easement. In the event that CDFW approves the Conservation Easement the City shall be entitled to release of any funds held in the escrow account established by the Parties pursuant to the Tolling Agreement in accordance with that certain Settlement Agreement dated November ______, 2022 entered into by and between the Parties.

2.14.3 Upon the approval of the use of the Proposed Mitigation Property for the mitigation of the sand gilia, the Developer will take all commercially reasonable efforts to acquire the approximately $716,000.00 held by California Bank & Trust deposited by Cypress Marina Heights, LLC for habitat mitigation, including but not limited to *sand gilia* mitigation (the "Habitat Mitigation Funds") and upon release of such funds to Developer, Developer shall be obligated to increase the Developer's Contribution to the Park by the amount of the Habitat Mitigation Funds. For avoidance of doubt, the Habitat Mitigation Funds do not include the second account at California Bank & Trust containing approximately $327,000 which, if released, are to be retained by Developer.

E. **Conflict.** In the event of a conflict between the terms and conditions of this Second Amendment and the terms and conditions of the Development Agreement, the terms and conditions of this Second Amendment shall control.

F. **No Further Modification.** Except as set forth in this Second Amendment, all other terms and provisions of the Development Agreement are hereby ratified and confirmed and shall be and remain unmodified and in full force.

G. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. It shall be necessary to account for only one fully executed counterpart in proving this Agreement.

WATHEN CASTANOS PETERSON HOMES, INC.

Dated: ____________________, 2022

By: ______________________________
Name: ____________________
Title: ____________________________

CITY OF MARINA

Dated: ____________________, 2022

By: ______________________________
Name: ____________________
Title: ____________________________

ATTEST:

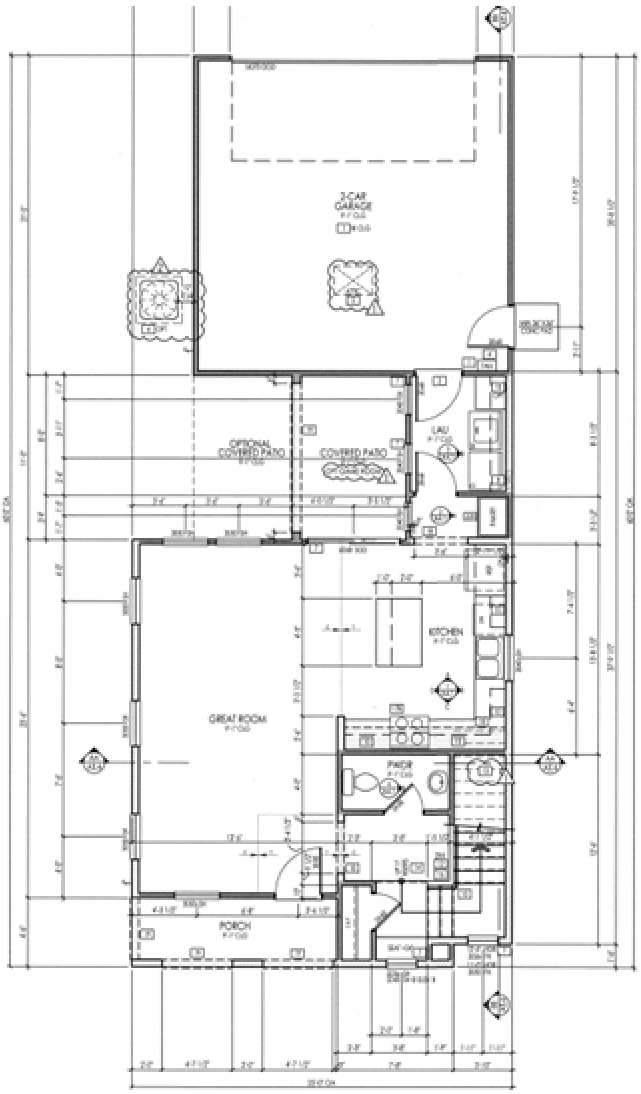
Dated:_____________________, 2022

By: ______________________________

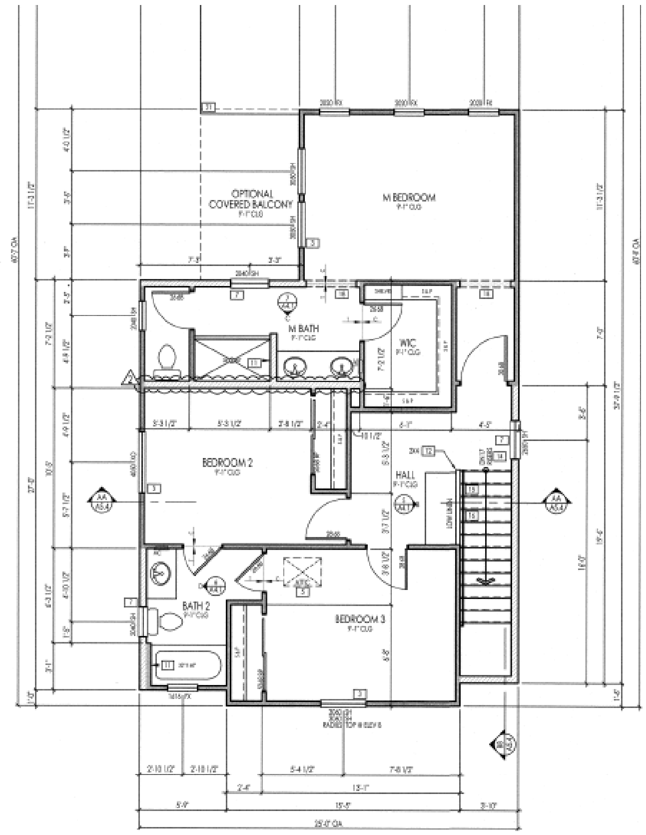
APPROVED AS TO FORM:

Dated:______________________, 2022 By: ________________________________

EXHIBIT A TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
Workforce Cottages

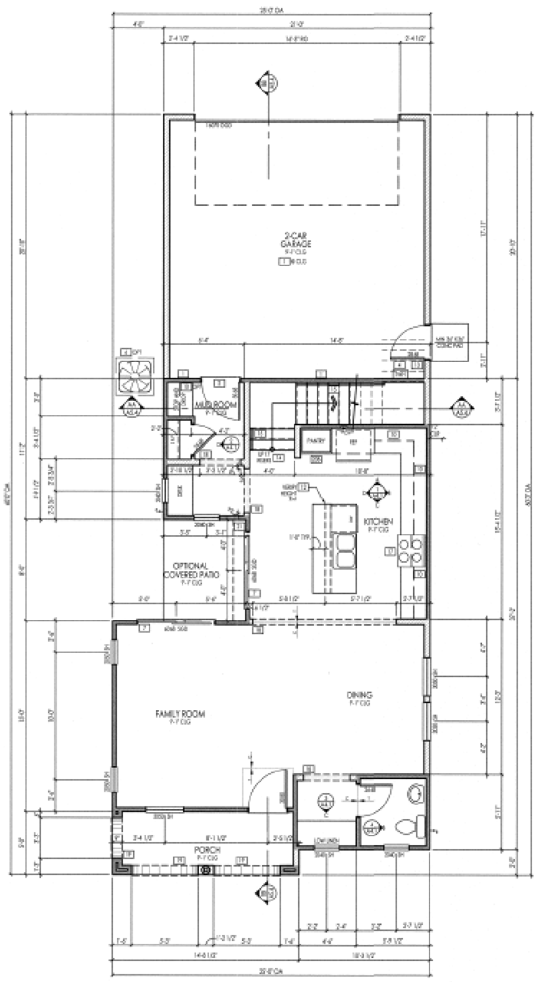


ELEVATION "A" & "B"
FIRST FLOOR PLAN
1/4" = 1'-0"



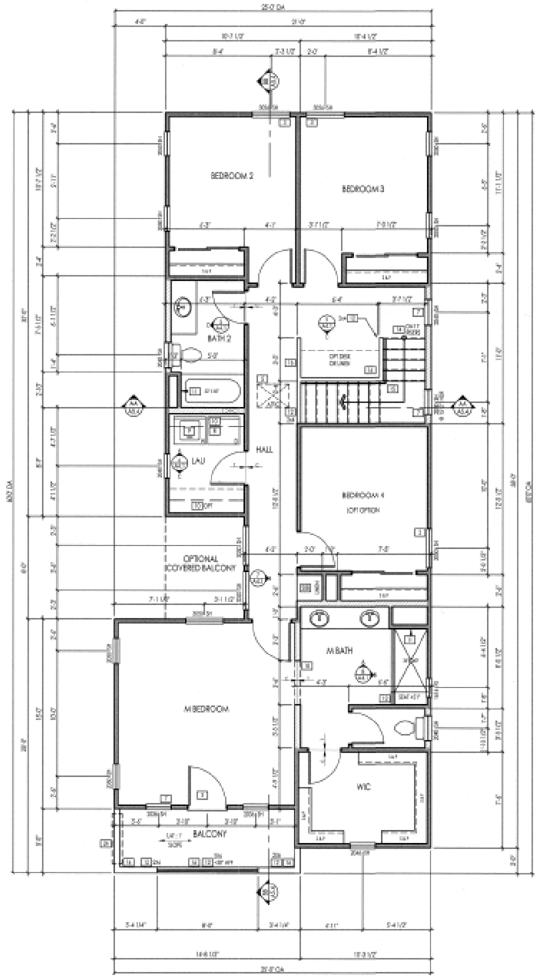
ELEVATION "A" & "B"
SECOND FLOOR PLAN
1/4" = 1'-0"

EXHIBIT B TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
Bridge Homes



ELEVATION "A"
FIRST FLOOR PLAN
1/4" = 1'-0"

661\03\3471238.1



SECOND FLOOR PLAN
1/4" = 1'-0"

EXHIBIT C TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

City Park Plan

661\03\3471238.1

EXHIBIT D TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

Current Park Budget

WALLACE GROUP®

PROJECT: SEA HAVEN

CLIENT: WATHEN CASTANOS HOMES

PROJECT NO. 1493-0001-02

3-Oct-22

Engineer: EB

Checked by: BEK

CITY PARK

OPINION OF PROBABLE CONSTRUCTION COSTS - 2nd Submttal Plan Set

NO.	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE		TOTAL
	SITE CLEARING, DEMOLITION AND EARTHWORK					
1	CLEARING AND GRUBBING	LS	1	50,000.00	$	50,000.00
2	EARTHWORK/EXCAVATION/GRADING	CY	10,000	20.00	$	200,000.00
				Sub Total	$	250,000.00
	HARDSCAPE					
3	CONCRETE PAVING	SF	15,336	14.00	$	214,704.00
4	CONCRETE PAVING (NATURAL GRAY, STAMPED - 'WOOD DECK'))	SF	1,350	18.00	$	24,300.00
5	DECOMPOSED GRANITE	SF	19,600	8.00	$	156,800.00
6	MINOR CONCRETE (SEAT WALLS)	LF	120	250.00	$	30,000.00
7	/	LF	0	0.00	$	-
				Sub Total	$	426,000.00
	RECREATION					
8	PICKLEBALL COURTS	LS	1	300,000.00	$	300,000.00
9	/	SF	0	0.00	$	-
10	/	SF	0	0.00	$	-
				Sub Total	$	300,000.00
	CIVIL IMPROVEMENTS					
11	HMA (TYPE A FOR TRAILS / ROADS)	TON	979	200.00	$	195,800.00
12	CLASS 2 AGGREGATE BASE	CY	1,000	100.00	$	100,000.00
13	DRAINAGE STRUCTURES	EA	4	3,000.00	$	12,000.00
14	MINOR CONCRETE (6"CURB)	LF	1,983	18.00	$	35,694.00
15	PAVEMENT DELINEATION	LS	1	6,000.00	$	6,000.00
16	NEW DRIVEWAY ENTRY	LS	1	20,000.00	$	20,000.00
17	TRASH ENCLOSURE	LS	1	22,000.00	$	22,000.00
				Sub Total	$	391,000.00
	UTILITIES					
18	6" HDPE DR 11 RW PIPELINE	LF	50	200.00	$	10,000.00
19	TIE-IN TO EXISTING 8" RW PIPELINE, METER AND METER BOX	LS	1	3,500.00	$	3,500.00
20	MCWD NON-POTABLE WATER METER FEE	LS	1	125,000.00	$	125,000.00
21	1" POTABLE WATER BACKFLOW DEVICE	EA	1	2,500.00	$	2,500.00
22	MCWD POTABLE WATER METER FEE	LS	1	5,000.00	$	5,000.00
23	1" POTABLE WATER SERVICE TO RESTROOM & BBQs	LS	1	25,000.00	$	25,000.00
24	4" SEWER LATERAL & CLEANOUTS	LF	750	50.00	$	37,500.00
25	ELECTRICAL	LS	1	100,000.00	$	100,000.00
				Sub Total	$	309,000.00
	LANDSCAPE PLANTING					
26	PLANTING AREAS - NATIVE HYDROSEED	SF	302,335	0.27	$	81,630.45
27	PLANTING AREAS - TRANSITION	SF		2.00	$	-
28	PLANTING AREAS - ACCENT	SF	25,346	2.00	$	50,692.00
29	PLANTING AREAS -TURF	SF	116,775	0.50	$	58,387.50
30	15 GALLON TREES	EA	147	250.00	$	36,750.00
31	24" BOX TREES	EA	3	1,500.00	$	4,500.00
32	MULCH	CY	235	125.00	$	29,335.65
33	IRRIGATION (TURF)	SF	116,775	2.00	$	233,550.00
34	IRRIGATION (SHRUBS)	SF	25,346	2.00	$	50,692.00
35	IRRIGATION (TREES)	EA	150	100.00	$	15,000.00
34	90 DAY MAINTENANCE	LS	1	12,000.00	$	12,000.00
				Sub Total	$	573,000.00
	MISCELLANEOUS					
35	BENCHES	EA	8	2,800.00	$	22,400.00
36	PICNIC TABLES - 8'	EA	8	6,800.00	$	54,400.00
37	PICNIC TABLES - ROUND	EA		1,000.00	$	-
38	BIKE RACKS (5 BICYCLE SINGLE-SIDED RACK)	EA	3	500.00	$	1,500.00
39	BBQ GRILL	EA	2	500.00	$	1,000.00

40	TRASH AND RECYCLE RECEPTACLES WITH LIDS	EA	10	5,000.00	$	50,000.00
41	DISC GOLF TARGETS (SET OF 9)	LS	1	6,500.00	$	6,500.00
42	WOOD AND WIRE 4' TALL DOG PARK FENCE AND GATES	LF	928	60.00	$	55,680.00
43	DOG PARK AMENITIES	LS	1	5,000.00	$	5,000.00
44	PARK ENTRY SIGN	EA	1	15,000.00	$	15,000.00
45	16 FOOT MANUAL SWING GATE & RECEIVER POST	EA	2	3,500.00	$	7,000.00
46	RESTROOM	LS	1	475,000.00	$	475,000.00
				Sub Total	$	693,000.00
				Base Total	**$**	**2,942,000.00**
	ADMINISTRATIVE					
	MOBILIZATION (2.5%)	**LS**	**1**		**$**	**74,000.00**
	CONTINGENCY (10%)	**LS**	**1**		**$**	**294,000.00**
	CONSULTANTS / SOFT COSTS (10%)	**LS**	**1**		**$**	**294,200.00**
				Grand Total	**$**	**3,604,200.00**
	DEVELOPER CONTRIBUTION				**$**	**3,000,000.00**
	AMOUNT REMAINING				**$**	**604,200.00**

ADDITIONAL NOTES: WALLACE GROUP MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, THAT ACTUAL COSTS WILL NOT VARY FROM THE AMOUNTS INDICATED AND ASSUMES NO LIABILITY FOR SUCH VARIANCES.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made as of this day of 3rd, July, 2018, by and between the CITY OF MARINA, a California municipal corporation (the "City"), and WATHEN CASTANOS PETERSON HOMES, INC, a Delaware corporation ("Developer"), with reference to the following facts and circumstances (the City and Developer are sometimes referred to herein collectively as the "Parties", and each individually as a "Party"):

RECITALS:

A. Cypress Marina Heights, LLC and the City previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the "Development Agreement"), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development of 1,050 homes (the "Project") on certain real property consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement.

B. The City and Cypress Marina Heights, LLC have amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the "Implementation Agreement") (the Development Agreement, as so previously amended by the Implementation Agreement, being referred to herein as the "Amended Development Agreement").

C. The first phase of the Project consisting of roads and utilities has been substantially completed.

D. Development is underway of the first residential phase of the Project which consists of 300 homes.

E. Cypress Marina Heights, LLC has partially assigned the Development Agreement to Developer pursuant to that Partial Assignment and Assumption Agreement dated April 12, 2018 and Developer has assumed certain obligations under the Development Agreement.

F. Each of the City and Developer are requesting modifications to the Amended Development Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City, including but not limited to 210 Below Market Rate Homes (defined herein) and construction of the Sea Haven Park.

G. The Parties now desire to amend the Amended Development Agreement pursuant to the terms of this Amendment.

AGREEMENT:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **<u>Defined Terms</u>**. All terms defined in the Amended Development Agreement when used herein shall have their respective meanings as set forth in the Amended Development Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an "Article" or a "Section" shall refer to the applicable Article or Section of the Amended Development Agreement, unless otherwise specifically provided.

2. **<u>Defined Terms Expressly Amended or Superseded by this Amendment</u>**.

(a) Section 1.1.2 which defines "Affiliate" is hereby deleted in its entirety.

(b) Section 1.1.4 which defines "Benchmarks" is hereby deleted in its entirety. Accordingly, the clause "but consistent with the Benchmarks," as the same appears in the first line of Section 2.12.1, is hereby deleted.

(c) Section 1.1.9 is hereby deleted in its entirety and replaced with the following:

> "**City Impact Fees**" shall mean (a) during the Original Term, only those development impact fees of the City (and only in the amounts) set forth in Exhibit B to this Agreement (the "Original City Impact Fees"); and (b) during the Extended Term, any lawful development impact fees, taxes or assessments lawfully adopted by the City and applicable to residential developments within the City in effect or adopted by the City Council after 12:01 a.m. on November 30, 2018, as such fees may be adopted or amended from time to time during the Extended Term. (the "Updated City Impact Fees").

(d) Section 1.1.11 is hereby deleted in its entirety and replaced with the following:

> "**Developer**" shall mean Wathen Castanos Peterson Homes, Inc. and their successor and assigns.

(e) The clause "listed on Exhibit B to this Agreement" in item (iii) of Section 1.1.16 is hereby deleted.

(f) Section 1.1.30 which defines "Project Approvals" is modified to clarify Section 1.1.30.5 and to add the following permits and approvals granted or to be granted to Developer by the City for the Project to those already enumerated in Sections 1.1.30.1 through 1.1.30.6:

1.1.30.5 Tentative Tract Map No. 1478 approved by City Council Resolution No. 2004-44

1.1.30.7 Resolution No. 2006-56, approving Phase 1 Final Map and a Subdivision Improvement Agreement

1.1.30.8 Resolution No. 2006-225, A Resolution if the City Council of the City of Marina Approving the Affordable Housing Program for the Marina Heights Subdivision

1.1.30.9 Resolution No. 2006-228, approving Phase 2 Final Map and a Subdivision Improvement Agreement for the First 299 Residential Units

1.1.30.10 Implementation Agreement Regarding that Certain Option Agreement by and among the Redevelopment Agency of the City of Marina, the City of Marina and Cypress Marina Heights L.P. and that Certain Development Agreement by and between the City of Marina and Cypress Marina Heights L.P. dated October 11, 2007

1.1.30.11 Resolution No. 2016-23, Issuing a Notice of Compliance by Cypress Marina Heights L.P. Relating to the Development Agreement for the Marina Heights Project

1.1.30.12 Resolution No. 2016-24, Approving Designating Wathen Castanos Homes as an Approved Builder Under the Marina Heights Option Agreement

1.1.30.13 Resolution No. 2016-84, by the City Council of the City of Marina Consenting to a Partial Assignment and Assumption Agreement for the Marina Heights Development Agreement from Cypress Marina Heights L.L.C. to WC Marina L.L.C. and a Partial Assignment and Assumption Agreement for the Marina Heights Option Agreement from Cypress Marina Heights LLC to WC Marina LLC

1.1.30.14 Resolution No. 2017-01, of the City Council of the City of Marina Acting on Behalf of the City of Marina and the Successor Agency to the City of Marina Redevelopment Agency Approving Designating Granville Homes and/or Valley Coastal Development, LLC as a Pre-Approved Homebuilder Pursuant to the Marina Heights Option Agreement

1.1.30.15 Ordinance No. 2018-05, approving First Amendment to Development Agreement by and between the City of Marina and Wathen Castanos Peterson Homes, Inc.

3. **New Defined Terms Added to the Amended Development Agreement by this Amendment.**

(a) **"Below Market Rate Homes"** or "BMR Homes" shall mean the 210 Residential Units consisting of 51 townhomes affordable to moderate income families, 51 townhomes and 23 cottages affordable to "workforce" families and the 85 "bridge homes" whose sales price is determined by the Option Agreement.

(b) **"Extended Term"** shall commence at 12:01 a.m. on November 30, 2018 and then terminate at 12:01 a.m. November 30, 2030.

(c) **"Market Rate Homes"** shall mean the 840 Residential Units which are not Below Market Rate Homes.

(d) **"Original Term"** shall mean the period commencing on the Effective Date and terminating at 12:01 a.m. on November 30, 2018.

4. **Term**. Section 1.2.2 is hereby deleted in its entirety and replaced with the following:

> The Term of this Agreement shall commence on the Effective Date and shall continue until, and then terminate at 12:01 a.m. on November 30, 2030 (the "Term"), unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement. The term of this Agreement has been negotiated to allow for the occurrence of possible Force Majeure Events and it shall not be extended due to the occurrence of Force Majeure Events without express action of the City extending the term.

5. **Development and Timing**. The second through fifth sentences of Section 2.6.1 are hereby deleted in their entirety and replaced by the following:

> The Below Market Rate Homes are an important, but complex component of the Project. The Project Approvals, including the General Plan and Specific Plan, allow a jump start to the Project, meaning a period in the early years of construction of the Project when the Developer has the right to develop 115 Market Rate Homes (the "Jump Start Homes") prior to developing the Below Market Rate Homes. The Project Approvals require that all product types be disbursed throughout the Project Site and integrated throughout the Project. Consistent with the Project Approvals, the Developer intends to construct the Below Market Rate Homes in a manner proportionate to construction of the Market Rate Homes, as shown in the following table:

Type of Product	Phase II	Phase III	Phase IV	Phase V	Total
Total BMR Homes	36	83	66	25	210
Total Market Rate Homes	264	212	222	142	840
Total Homes Per Phase	300	295	288	167	1050

> As shown in the table above, and in accordance with the Project Approvals, Below Market Rate Homes will total 20% of the total Project. The percentage of Below Market Rate Homes per phase ranges from 12% to 28%.
>
> All of the Below Market Rate Homes per phase of the Project, as shown in the table above, shall have "Commenced Construction" before the first certificate of occupancy is issued for the next phase; provided, however, that Developer may develop the phases shown in the table out of sequence. In the alternative, following completion of the Jump Start Homes, whenever Developer has Completed Construction on approximately 200 Market Rate Homes, Developer shall not receive a certificate of occupancy for additional Market Rate Homes until Developer has Commenced Construction on approximately 30 Below Market Rate Homes; provided, however, that at Project completion the total Below Market Rate Homes shall not be less than 20% of the total Project. "Commenced Construction" shall mean that Developer has received a building permit from the City, that site work has commenced and the Developer continues to construct the home expeditiously such that

the construction of the Below Market Rate Homes shall proceed on the same time line as the Market Rate Homes which are generally projected to be complete 12 months after construction commences.

Notwithstanding the above, if at any time Developer is unable to sell more than eight (8) BMR Homes for a period of six months after completion of such BMR Homes despite commercially reasonable efforts to find Qualified Buyers, the Developer shall have no obligation to Commence Construction on additional BMR Homes until the earlier of (a) the City and the Developer reaching agreement on changes to the BMR Homes sales program that address constraints to the sale of the BMR Homes and the unsold BMR Homes are sold; (b) the City providing the Developer a list of Qualified Buyers pursuant to the City's Below Market Rate Housing Policies and Procedures and the unsold BMR Homes are sold; or (c) notwithstanding (a) and (b) above, the unsold inventory of BMR Homes is fewer than eight (8) units.

The City is expected to administer the affordable housing program for the Project, including but not limited to providing the Developer with a list of qualified buyers (the "Qualified Buyers List") for the Below Market Rate Homes. To the extent that the City is delayed in providing the Qualified Buyers List to Developer, the Developer may select Qualified Buyers for the Below Market Rate homes, provided, however, City Staff must verify the Qualified Buyers eligibility for the Below Market Rate Homes on or before the tenth (10th) business day after the date on which the Developer provides the Qualified Buyers List to the City. City shall not withhold certificates of occupancy for Market Rate Homes under this Section if the City has caused a delay in the development of the Below Market Rate Homes.

6. **Fees.** Section 2.7.1 is hereby deleted in its entirety and replaced with the following:

2.7.1.1 During the Original Term, Developer shall be obligated to pay only the Original City Impact Fees as set forth in Exhibit B attached hereto and incorporated herein by this reference, and the City shall not impose or exact any additional fees, whether through the exercise of the police power, the taxing power, or any other means. During the Extended Term, Developer shall be obligated to pay the Updated City Impact Fees. Notwithstanding anything set forth in this Section 2.7.1.1 or in Section 2.3, during the Extended Term the Developer shall be obligated to pay any lawful and lawfully imposed fees, taxes or assessments adopted by the City subsequent to the Effective Date applicable to residential development projects within the City, including new development impact fees that were not previously included in the Original City Impact Fees.

2.7.1.2 FORA Fee. (a) City and Developer acknowledge that (i) Developer is currently obligated to pay at time of issuance of building permit a one-time special assessment per residential unit levied by the Fort Ord Reuse Authority ("FORA") Basewide Community Facilities District in the amount of $23,837, which may be adjusted (the "FORA Fee"); (ii) FORA may be dissolved in 2020 and some or all of its obligations may be transferred to local agencies. In the event that FORA is dissolved Developer acknowledges that it will no longer be obligated to pay the FORA Fee to FORA. Developer further acknowledges that City may assume certain obligations of FORA currently paid by FORA with the FORA Fee or assume obligations to collect fees or assessments from property owners and developers to pay for obligations currently covered by the FORA Fee and assumed by other public entities and that City will need to collect a fee comparable to the FORA Fee to cover such obligations.

(b) Developer agrees to cooperate with the City in addressing the replacement of the FORA Fee, including the following:

(i) Developer shall vote for inclusion of any property owned by Developer for which the FORA Fee has not already been paid within assessment districts or community facilities districts formed by the City or another regional entity, and shall pay such fees as may be imposed by such assessment districts or community facilities districts, provided such fees are lawful and lawfully imposed, and such fees do not exceed the FORA Fee in effect at the time of FORA's dissolution subject to annual adjustments equal to the lesser of (1) five percent (5%) or (2) the percentage change since the immediately preceding fiscal year in the Engineering News Record's Construction Cost Index applicable to the Marina area ("FORA Fee Adjuster").

(ii) As part of the consideration for City's agreement to extend the term of this Agreement as set forth above, Developer agrees in the event that FORA is dissolved with respect to any property owned by Developer for which the FORA Fee has not already been paid, to pay to the City a new fee to replace the FORA Fee (the "New Fee"), provided that such New Fee:

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

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

(C) the City shall be responsible for distributing such applicable portions of the New Fee to other regional agencies, if any, that assume obligations that were previously funded by the FORA Fee.

(c) Whether the New Fee is a single fee and/or assessment or multiple fees and/or assessments, it shall not in the aggregate exceed the lesser of (1) the amount of the FORA Fee at the time of FORA's dissolution as increased by the FORA Fee Adjuster; or (2) the amount that when added to any FORA related development impact fee adopted by the City or other local entities or any special assessment or special tax imposed pursuant to subsection (b)(i) above does not exceed the FORA Fee at the of FORA's dissolution as adjusted by the FORA Fee Adjuster.

Notwithstanding anything set forth in this paragraph or the provisions of Sections 6.2 and 6.3, the provisions of this Section shall not be applicable to individual homeowners or assignees who took title to portions of the Property prior to the Effective Date of this Amendment and provided further, in no event shall the New Fee pursuant to subsection (b)(ii) and any assessment or special tax pursuant to subsection (b)(i) exceed the FORA Fee at the time of FORA's dissolution increased by the FORA Fee Adjuster. The limitations set forth herein on the amount of any fee imposed by the City or adopted by the City to replace the FORA Fee shall not in any way limit the City's ability to adopt and impose other development impact fees, special taxes, or assessments unrelated to the replacement of the FORA Fee.

7. **Park Fees.** Section 2.8.2 is hereby deleted in its entirety and replaced with the following:

During the Original Term, Developer shall pay Park Development Fees ("Park Fees") set forth in Exhibit B to this Agreement as part of the City Impact Fees. During the Extended Term, Developer shall pay the Park Fees included in the Updated City Impact Fees. The Park Fees shall be paid at the time of issuance of building permits for the applicable Residential Units. In addition to the Park Fees, Developer is obligated, pursuant to the conditions of approval of the Project, to pay up to $1.5 million for improvements to the adjacent 18 acre park ("Sea Haven Park") as such amount is increased by the increase in the Consumer Price Index since the approval of the Original Agreement in 2004 ("Sea Haven Park Fee"). The City and Developer agree that the Sea Haven Park Fee owed as increased by the increase in the Consumer Price Index is Two Million One Hundred Thousand Dollars ($2,100,000) as of the Effective Date of this Amendment.

Developer shall construct the Sea Haven Park, at Developer's expense, subject to the following conditions and limitations:

(i) The total cost of the Sea Haven Park to be paid by Developer shall not exceed Three Million Dollars ($3,000,000) including, but not limited to, design, engineering, construction and improvements. Nothing herein shall preclude the City from contributing additional funds to the construction of the Sea Haven Park.

(ii) The design of the Sea Haven Park shall be subject to review and approval by the City in accordance with the City's standard approval process. The design of the Sea Haven Park shall be mutually agreed to by the Developer and the City.

(iii) The Sea Haven Park shall be constructed expeditiously.

(iv) Upon completion of the Sea Haven Park, Developer shall be relieved of the Sea Haven Park Fee;

(v) Upon completion of the Sea Haven Park, Developer shall receive a fee credit, in an amount not to exceed nine hundred thousand dollars ($900,000) toward the Park Fees to be paid on the 750 units in Phases III-V ("Park Fee Credit"), with the Park Fee Credit to be divided equally among the 750 units in Phases III-V and to be taken for each unit only at such time as Developer is issued a building permit for the unit. The amount of the Park Fee Credit shall be determined by the City and Developer after completion of the Sea Haven Park based on Developer's submission of certified costs evidencing the total amount spent by the Developer for the development of the Sea Haven Park and shall not exceed the lesser of (A) Nine Hundred Thousand Dollars ($900,000) and (B) the total amount spent by the Developer for the development of the Sea Haven Park minus the Sea Haven Park Fee which is $2,100,000. The City and Developer shall enter into a separate development and reimbursement agreement prior to the construction of the Sea Haven Park; and

(vi) Upon completion of the Sea Haven Park, the cost of the Sea Haven Park maintenance shall be paid by the Sea Haven Home Owners Association. The maintenance cost to the Home Owners Association shall not exceed $12,000.00 per month. The City and Sea Haven Home Owner's Association shall enter into a maintenance agreement to be recorded against the property addressing the maintenance standards and responsibilities prior to completion of the Sea Haven Park and the City shall be a third party beneficiary of the covenants, conditions and restrictions of the Sea Haven Home Owners Association with respect to the provisions governing maintenance of the Sea Haven Park and such provisions shall not be subject to amendment without the consent of the City. Maintenance of the Sea Haven Park shall be performed by a contractor mutually selected by the City and the Developer and hired by the City. Maintenance costs may include establishment of reserve funds to replace park amenities as long as such costs do not exceed $12,000 per month.

8. **<u>Amendment of Agreement and Subsequent Approvals.</u>** The following paragraphs are added to the end of Article 3:

3.2.3. The Parties acknowledge that as the Project is developed, the Project Approvals may require modification or additional permits may be issued by the City (the "Subsequent Approvals"). In the event that Subsequent Approvals are approved or issued by the City, they shall automatically become part of the "Project Approvals."

3.2.4. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretations.

9. **Default**. Section 4.1.2.1 is hereby deleted in its entirety.

10. **Restrictions on Transfer**. Article 5 is hereby deleted in its entirety.

11. **Schedule of Benchmarks**. Exhibit D to the Development Agreement, as modified by the Implementation Agreement, is hereby deleted in its entirety.

12. **Conflict**. In the event of a conflict between terms and condition of this Amendment and the terms and conditions of the Amended Development Agreement, the terms and conditions of this Amendment shall control.

13. **No Further Modification**. Except as set forth in this Amendment, all other terms and provisions of the Amended Development Agreement are hereby ratified and confirmed and shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

"DEVELOPER":

WATHEN CASTANOS PETERSON HOMES, INC.,

By: ______________________
Its: President

"CITY":

CITY OF MARINA

By: ______________________
Name: LAYNE LONG
Title: CITY MANAGER

APPROVED AS TO FORM

x ______________________
FOR THE CITY ATTY
ROBERT RATHIE