

RESOLUTION NO. 2015-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA (THE "CITY") APPROVING A LEASE AGREEMENT AND GRANT OF EASEMENTS BETWEEN THE CITY, AS LANDLORD, AND PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION, AS TENANT (THE "TENANT"), FOR CERTAIN PORTIONS OF PRESTON PARK (THE "LEASE AGREEMENT"), AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT, ON BEHALF OF THE CITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUCH OTHER DOCUMENTS AS ARE NECESSARY TO COMPLETE THE ACQUISITION OF PRESTON PARK FROM FORA, AND IMPLEMENT THE LEASE OF CERTAIN PORTIONS OF PRESTON PARK TO THE TENANT

WHEREAS, the City has been engaged in litigation with FORA regarding the ownership of certain real property located in the City of Marina, currently owned by FORA, and commonly referred to as "Preston Park" (the "Property" or "Preston Park"). The Property is more particularly described in the staff report accompanying this Resolution (the "Staff Report"), and generally consists of approximately 96 acres and is improved with existing multi-family housing improvements (collectively, such portion of the Property and the improvements thereon are referred to as the "Housing Improvements") and multiple private roadways serving the Property (collectively, such portion of the Property and the improvements thereon are referred to as the "Roadway Improvements");

WHEREAS, the City and FORA have reached agreement on the terms of a settlement regarding the on-going litigation, and the City and FORA have entered into the Purchase Agreement whereby the City will purchase Preston Park from FORA for a purchase price of \$35,000,000 (the "Purchase Price");

WHEREAS, in order to effectuate and complete the acquisition of the Property pursuant to the Purchase Agreement, the City will need to execute certain other documents with FORA, including, but not limited to, a bill of sale, assignment and assumption of leases, assignment and assumption of service contracts, general assignment of intangibles, a certificate of acceptance, a preliminary change of ownership form, escrow instructions and other documents, agreements, or certificates (collectively, the "Ancillary Purchase Documents");

WHEREAS, in order obtain financing necessary to pay the Purchase Price, and to provide for the long-term operation of the Housing Improvements, the City previously authorized the formation of the Preston Park Sustainable Community Nonprofit Corporation ("Tenant"). The Tenant is a California nonprofit public benefit corporation and the board of directors of the Tenant consists of the members of the city council of the City of Marina;

WHEREAS, the specific corporate purpose of the Tenant is to lessen the burdens of government by assisting the City in the acquisition, ownership, and operation of the Property. The Tenant was formed for the benefit of, and to carry out the purposes of, the City by helping the City engage in certain financing transactions necessary for the acquisition of the Property pursuant to the Purchase Agreement, and thereby lessen the burdens of government. The Tenant was formed as an entity all the income of which is excluded from gross income for federal income tax purposes under Section 115(1) of the Internal Revenue Code of 1986, as amended;

WHEREAS, the execution of the Lease Agreement shall lessen the burdens of government of the City, and, the Tenant's operation of the Housing Improvements pursuant to the Lease Agreement, the Tenant will perform an essential function of the City;

WHEREAS, pursuant to Health & Safety Code Section 37388, the City is authorized to lease property owned by the City, for up to fifty (50) years, to a nonprofit corporation for a housing development;

WHEREAS, the Lease Agreement provides that the City, as landlord, shall lease the Housing Improvements to the Tenant for fifty (50) years, and that the Tenant shall pay an initial upfront rent of \$35,000,000 and annual additional rent equal to any remaining cashflow generated by the Tenant's operation of the Housing Improvements, if any, as more particularly set forth in the Lease Agreement;

WHEREAS, the Lease Agreement also provides that the City shall grant a non-exclusive access easements over the Roadway Improvements for the benefit of the Tenant, the Tenant's residents, and others, until the earlier of the expiration of the Lease Agreement, or the dedication by the City of the Roadway Improvements as public right of way (collectively, the "Access Easements"). Under the Lease Agreement, the City is responsible for the maintenance and repair of the Roadway Improvements;

WHEREAS, in order to effectuate and complete the lease of the Housing Improvements to the Tenant, and the grant of the Access Easements, pursuant to the Lease Agreement, the City will need to execute certain other documents with the Tenant, including, but not limited to, a memorandum of lease, assignment and assumption of leases, assignment and assumption of service contracts, general assignment of intangibles, and other documents, agreements, or certificates (collectively, the "Ancillary Lease Documents");

WHEREAS, the acquisition of the Property by the City, pursuant to the Purchase Agreement, and the lease of the Housing Improvements, and the grant of the Access Easements, pursuant to the Lease Agreement, are categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 of the CEQA Guidelines, as more particularly described in the Staff Report; and

WHEREAS, the City has determined that the acquisition of the Property pursuant to the Purchase Agreement, and the lease of the Housing Improvements to the Tenant, pursuant to the Lease Agreement, are in the best interests of the City, all as more particularly set forth in the Staff Report accompanying this Resolution. The Staff Report is hereby incorporated by reference in this Resolution and, together with the above recitals form the evidentiary basis and establish the analytical route for reaching the ultimate findings and conclusions contained in this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina does hereby:

1. Approve the Lease Agreement;
2. Authorize the City Manager, or his designee, to execute the Lease Agreement substantially in the form on file with the City Clerk subject to such changes are approved by the City Manager and the City Attorney, as evidenced by the City Managers signature on the Lease Agreement, and any and all other documents as may be necessary to acquire the Property from FORA, lease the Housing Improvements to the Tenant, and grant the Access Easements, and to execute any other documents necessary to accomplish the purposes of this Resolution, including, but not limited to the Ancillary Purchase Documents and the Ancillary Lease Documents; and

3. Authorize the City Manager, or his designee, to file a Notice of Exemption in accordance with CEQA;
4. Ratify, authorize, and approve any and all acts previously taken by the City Manager, or any other agent of the City, in connection with the matters authorized by the foregoing resolutions, including, but not limited to, the execution of the Purchase Agreement.

PASSED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held on the 9<sup>th</sup> day of September, 2015, by the following votes:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Brown

ABSTAIN, COUNCIL MEMBERS: None

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Bruce Delgado Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

RESOLUTION NO. 2015-01 (PPSC-NPC)

A RESOLUTION OF THE BOARD OF DIRECTORS OF PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION (THE "CORPORATION") APPROVING THE ACQUISITION OF THE LEASEHOLD INTEREST IN CERTAIN PORTIONS OF PRESTON PARK; APPROVING THE FINANCING BY TPB INVESTMENTS, INC. (THE "LENDER") IN THE AMOUNT NOT TO EXCEED \$36,000,000 FOR THE ACQUISITION; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE LEASE AGREEMENT, LOAN AGREEMENT, PROMISSORY NOTE, AND DEED OF TRUST ON BEHALF OF THE CORPORATION AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE SUCH OTHER DOCUMENTS AS ARE NECESSARY TO IMPLEMENT THE LEASE AND CONSUMMATE THE FINANCING

WHEREAS, the City of Marina has been engaged in litigation with Fort Ord Reuse Authority ("FORA") regarding the ownership of certain real property located in the City of Marina, currently owned by FORA, and commonly referred to as "Preston Park" (the "Property" or "Preston Park"). The Property consists of approximately 96 acres and is improved with existing multi-family housing improvements (collectively, such portion of the Property and the improvements thereon are referred to as the "Housing Improvements") and multiple private roadways serving the Property (collectively, such portion of the Property and the improvements thereon are referred to as the "Roadway Improvements");

WHEREAS, the City and FORA have reached agreement on the terms of a settlement regarding the on-going litigation, and the City and FORA have entered into the Purchase Agreement whereby the City will purchase Preston Park from FORA for a purchase price of \$35,000,000 (the "Purchase Price");

WHEREAS, in order obtain financing necessary to pay the Purchase Price, and to provide for the long-term operation of the Housing Improvements, the City previously authorized the formation of the Corporation;

WHEREAS, the Corporation shall acquire a leasehold interest in the Housing Improvements from the City for the amount of the Purchase Price and enter into the Lease Agreement with the City, as landlord, for a term of fifty (50) years, and that the Corporation shall pay a rent equal to any remaining cashflow generated by the Corporation's operation of the Housing Improvements, if any, as more particularly set forth in the Lease Agreement;

WHEREAS, the Lease Agreement also provides that the City shall grant a non-exclusive access easements over the Roadway Improvements for the benefit of the Corporation, the Corporation's residents, and others, until the earlier of the expiration of the Lease Agreement, or the dedication by the City of the Roadway Improvements as public right of way (collectively, the "Access Easements"). Under the Lease Agreement, the City is responsible for the maintenance and repair of the Roadway Improvements;

WHEREAS, in order to effectuate and complete the lease of the Housing Improvements from the City, and the grant of the Access Easements, pursuant to the Lease Agreement, the Corporation will need to execute certain other documents with the City, including, but not limited to, a memorandum of lease, assignment and assumption of leases, assignment and assumption of service contracts, general assignment of intangibles, and other documents, agreements, or certificates (collectively, the "Ancillary Lease Documents");

WHEREAS, in order to acquire the leasehold interest in the Housing Improvements from the City, the Corporation shall obtain a loan from the Lender in the amount not to exceed Thirty Six Million Dollars (\$36,000,000) (the "Acquisition Loan"); and

WHEREAS, in order to consummate the Acquisition Loan, the Corporation will need to execute certain other documents with the Lender, including but not limited to, a loan agreement, promissory note, deed of trust, and other documents, agreements, or certificates (collectively, the "Loan Documents").

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Corporation do hereby:

1. Approve the acquisition of the leasehold interest in the Property;
2. Approve the Lease Agreement substantially in the form on file with the City Clerk of the City subject to such changes as are approved by the Executive Director and the Corporation's counsel as evidenced by the Executive Director's signature on the Lease Agreement;
3. Approve the Acquisition Loan;
4. Authorize the Executive Director, or his designee, to execute the Lease Agreement, and any and all other documents as may be necessary to acquire the leasehold interest in the Property from the City, obtain the Access Easements from the City and obtain the Loan, including, but not limited to the Ancillary Lease Documents, the Loan Documents; and
5. Ratify, authorize, and approve any and all acts previously taken by the Executive Director, in connection with the matters authorized by the foregoing resolutions, including, but not limited to, the execution of the Purchase Agreement.

PASSED AND ADOPTED by the Board of Directors of the Corporation at a special meeting duly held on the 9<sup>th</sup> day of September, 2015, by the following votes:

AYES, BOARD MEMBERS: Amadeo, Morton, O'Connell, Delgado

NOES, BOARD MEMBERS: None

ABSENT, BOARD MEMBERS: Brown

ABSTAIN, BOARD MEMBERS: None

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Bruce Delgado Chair

ATTEST:

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Anita Sharp, Secretary

September 3, 2015

Item No. **3a**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of September 9, 2015

Chair and Members of the Board  
Preston Park Sustainable Community Nonprofit Corporation

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2015-, OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A LEASE AGREEMENT AND GRANT OF EASEMENTS BETWEEN THE CITY, AS LANDLORD, AND PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION, AS TENANT (THE "TENANT"), FOR CERTAIN PORTIONS OF PRESTON PARK (THE "LEASE AGREEMENT"), AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUCH OTHER DOCUMENTS AS ARE NECESSARY TO COMPLETE THE ACQUISITION OF PRESTON PARK FROM FORA, AND IMPLEMENT THE LEASE OF CERTAIN PORTIONS OF PRESTON PARK TO THE TENANT**

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2015- OF THE BOARD OF DIRECTORS OF PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION (THE "CORPORATION") APPROVING THE ACQUISITION OF THE LEASEHOLD INTEREST IN CERTAIN PORTIONS OF PRESTON PARK; APPROVING THE FINANCING BY TPB INVESTMENTS, INC. (THE "LENDER") IN THE AMOUNT NOT TO EXCEED \$36,000,000 FOR THE ACQUISITION; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE LEASE AGREEMENT, LOAN AGREEMENT, PROMISSORY NOTE, AND DEED OF TRUST ON BEHALF OF THE CORPORATION AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE SUCH OTHER DOCUMENTS AS ARE NECESSARY TO IMPLEMENT THE LEASE AND CONSUMMATE THE FINANCING**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Consider adopting Resolution No. 2015-, approving a Lease Agreement and Grant of Easements between the City as Landlord and Preston Park Sustainable Community Nonprofit Corporation, a Tenant (the "Tenant"), for certain portion of Preston Park (the "Lease Agreement"), authorizing the City Manager to execute the Lease Agreement, on behalf of the City and authorizing the City Manager to Execute such other documents as are necessary to complete the acquisition of Preston Park from FOR A and implement the Lease of certain portions of Preston Park to the Tenant.

It is recommended that the Board of Directors of the Corporation:

1. Consider adopting Resolution no. 2015- of the Board of Directors of Preston Park Sustainable Community Nonprofit Corporation (the "Corporation") approving the acquisition of the leasehold interest in certain portions of Preston Park; approving the financing by TPB Investments, Inc. (the "Lender") in the amount not to exceed \$36,000,000 for the acquisition; authorizing the Executive Director to execute the Lease Agreement, Loan Agreement, Promissory Note, and Deed of Trust on behalf of the Corporation and authorizing the Executive Director to execute such other documents as are necessary to implement the Lease and consummate the financing

## **BACKGROUND:**

The City of Marina has been engaged in litigation with the Fort Ord Reuse Authority (“FORA”) regarding the ownership of the Preston Park. The City and FORA have reached agreement on the terms of a settlement and have entered into a Purchase and Sale Agreement whereby the City will purchase Preston Park from FORA. Upon acquisition of Preston Park the City plans to lease the residential portions of the Preston Park property to the newly formed Preston Park Sustainable Community Nonprofit Corporation. Acquisition costs for the property are expected to be financed with a loan from TPB Investments, Inc., a wholly owned subsidiary of Western Alliance Bank to Preston Park Sustainable Community Nonprofit Corporation in the amount not to exceed \$36,000,000.

## **ANALYSIS:**

The City of Marina has been engaged in litigation with FORA regarding the ownership of Preston Park since 2013. The City and FORA recently settled the litigation and entered into a Purchase and Sale Agreement. The terms of the Settlement Agreement with FORA require that the City obtain a loan commitment no later than May 31, 2015 and must close on the purchase of the property no later than September 15, 2015. Under the terms of the Purchase and Sale Agreement, the City is to acquire FORA’s interest in Preston Park for \$35,000,000.

In order to pay the required purchase price as well as financing and closing costs, financing from a private lender is necessary. The lender will require the loan to be secured by a deed of trust on the property. Because of limitations on the City’s ability to enter into debt obligations, the financing of the property acquisition will be accomplished by the City leasing to the Preston Park Sustainable Community Nonprofit Corporation the residential portions of the Preston Park property (“**EXHIBIT A**”). The City will retain the park and the major roads which will become public streets. The Preston Park Sustainable Community Nonprofit Corporation will give the lender a leasehold deed of trust to secure the acquisition loan. After payment of the loan debt service and operating costs, the Preston Park Sustainable Community Nonprofit Corporation will pay to the City all net revenues as rent for the property. The lease has a 50 year term as allowed by law.

Preston Park Sustainable Community Nonprofit Corporation has executed a term sheet with Western Alliance Bank to obtain a loan for the required acquisition costs. The Western Alliance loan is a ten year loan with interest only payments for the first five years. Beginning in the sixth year, the loan will be amortizing with interest and principal payments required based on a 25 year amortization schedule. The full amount of principal and interest will be due at the end of ten years. Interest on the loan is variable set at the one month LIBOR index plus 3.75%, adjusting monthly. Currently the interest rate would be 3.95%. Payments of interest during the first five years of the loan term would be due semi-annually on March 1st and September 1st of each year. Based on the current LIBOR index, the interest only debt service payments on the loan during the first five years should not result in the revenues from the property that currently flow to the City to be reduced, but over the life of the loan when principal payments are required and as LIBOR changes, the debt service payments will change and will impact the City's cash flow. The loan can be prepaid at any time without penalty or costs (“**EXHIBIT B**”).

The Loan documents require that the Corporation maintain certain deposits to a capital reserve account. The amount to be deposited each month is \$61,247.25. During the sixth year of the loan, the Corporation can prepare a physical needs assessment that could result in a decrease in the required deposits.

If there were a default under the Loan, the lender would be able to foreclose on the Corporation's leasehold interest in Preston Park but would not be able to foreclose on the City's interest in the underlying property.

**FISCAL IMPACT:**

The Lease with Preston Park Sustainable Community Nonprofit requires the Corporation to pay to the City each month the net revenue from the Property after payment of all property expenses including payment of the debt service on the loan from Western Alliance. Based on the initial projected interest rate on the loan, it is expected that the City will continue to receive at least the same amount of revenue from Preston Park as currently received although a change in interest rates, rents or property operating costs could result in a decrease in that revenue.

**CONCLUSION:**

This request is submitted for City Council and the Board of Directors of Preston Park Sustainable Community Nonprofit Corporation for consideration and possible action.

Respectfully submitted,

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Layne Long  
City Manager  
City of Marina