



AGENDA

Wednesday, August 31, 2016

5:30 P.M. Closed Session

6:30 P.M. Open Session

**CONTINUED SPECIAL MEETING
CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION,
AND SUCCESSOR AGENCY OF THE FORMER MARINA REDEVELOPMENT AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

VISION STATEMENT

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

MISSION STATEMENT

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

1. CALL TO ORDER



2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency Members)

Nancy Amadeo, David W. Brown, Gail Morton, Mayor Pro-Tem/Vice Chair Frank O'Connell, Mayor/Chair Bruce C. Delgado

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

- a. Conference with Legal Counsel - Anticipated Litigation – Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of CA Govt. Code Section 54956.9 – One Case **(Continued from August 29, 2016)**

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
5. OTHER ACTIONS ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting Resolution No. 2016-, approving the First Amendment to Operating Covenant and Agreement with Monterey Peninsula Hotels, LLC; and authorize the City Manager to execute amendment on behalf of the city subject to final review and approval by the City Attorney. ***Continued from August 29, 2016***

6. ADJOURNMENT:

CERTIFICATION

I, Anita Sharp, Deputy City Clerk, of the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at City Hall and Council Chambers Bulletin Board at 211 Hillcrest Avenue, Monterey County Library Marina Branch at 190 Seaside Circle, City Bulletin Board at the corner of Reservation Road and Del Monte Boulevard on or before 5:30 p.m, Tuesday, August 30, 2016.

ANITA SHARP, DEPUTY CITY CLERK

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

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

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

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

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

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

August 26, 2016

Item No. **5a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 31, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
APPROVING FIRST AMENDMENT TO OPERATING COVENANT AND
AGREEMENT WITH MONTEREY PENINSULA HOTEL GROUP LLC;
AND AUTHORIZE CITY MANAGER TO EXECUTE AMENDMENT
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2016-, approving First Amendment to Operating Covenant and Agreement with Monterey Peninsula Hotel Group LLC; and
2. Authorize the City Manager to execute the amendment on behalf of the city subject to final review and approval by the City Attorney.

BACKGROUND:

On December 17, 2013 the City Council adopted Resolution No. 2013-193, approving the Operating Covenant and Agreement for the Monterey Peninsula Hotel Group's Marriot/Springhill Suites Hotel ("EXHIBIT A")

The Monterey Peninsula Hotel Group LLC is requesting an amendment to the hotels Operating Covenant and Agreement. Copy of the proposed first amendment to the Operating Covenant and Agreement will be made available to the City Council on Monday, August 29, 2016

Respectfully Submitted

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2016-

APPROVING FIRST AMENDMENT TO OPERATING COVENANT AND AGREEMENT WITH MONTEREY PENINSULA HOTEL GROUP LLC; AND AUTHORIZE CITY MANAGER TO EXECUTE AMENDMENT SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, On December 17, 2013 the City Council adopted Resolution No. 2013-193, approving the Operating Covenant and Agreement for the Monterey Peninsula Hotel Group's Marriot/Springhill Suites Hotel

WHEREAS, The Monterey Peninsula Hotel Group LLC is requesting an amendment to the hotels Operating Covenant and Agreement.

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

1. Adopting Resolution No. 2016-, approving First Amendment to Operating Covenant and Agreement with Monterey Peninsula Hotel Group LLC; and
2. Authorize the City Manager to execute the amendment on behalf of the city subject to final review and approval by the City Attorney.

PASSED AND ADOPTED, at a Special meeting of the City Council of the City of Marina, duly held on the 31st day of August 2016 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

December 12, 2013

Item No. 11c

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 17, 2013

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2013- ,
APPROVING AN AGREEMENT BETWEEN CITY OF MARINA AND
PENINSULA HOTELS GROUP PROVIDING AN ECONOMIC INVESTMENT
INCENTIVE FOR A BOUTIQUE HOTEL PROJECT, AND; AUTHORIZING
THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE
CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE
NECESSARY BUDGETARY AND ACCOUNTING ENTRIES.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2013-, approving an agreement between City of Marina and Peninsula Hotels Group providing an economic investment incentive for the construction of a Marriot Springhill Suites Hotel, and;
2. Authorize the City Manager to execute the contract on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorize the Finance Director to make the necessary budgetary and accounting entries.

BACKGROUND:

In 1994 the United States Army closed military operations at Fort Ord as part of the Base Realignment and Closure (BRAC) process of the Department of Defense. The closure constituted a major and adverse event in the economy of the Monterey Peninsula and particularly in the City of Marina, within whose borders much of the base infrastructure was located.

To address these economic and environmental challenges, the BRAC process led to the formation as an Agency of the State of California the Fort Ord Reuse Authority (FOR A) and the approval of a Fort Ord Base Reuse Plan. FOR A's objective is to plan for and facilitate the reuse for civilian purposes of a major part of the lands of the former Fort Ord and in particular to finance deconstruction, provide environmental mitigation, new infrastructure and to foster economic development on the Peninsula to replace employment lost by the closure of military operations.

The City of Marina and Marina Community Partners (MCP) entered into a development agreement on July 8, 2005 for a development commonly referred to as the Dunes on Monterey Bay. The Dunes is a Planned Development Mixed Use District under the Base Reuse Plan and includes retail, office, hotel and residential uses. One of the purposes of this development is to eliminate blight, to foster economic regeneration in the City and in particular to generate new employment opportunities. The Specific Plan approved for the Dunes on Monterey Bay identifies a site for a "boutique" or mixed use hotel.

One of the areas of focus for the current and past City Councils has been sustainable economic development for the community. One of the goals of sustainable economic development is to improve the economic well being of a community through efforts that entail smart job creation, job retention, tax base enhancements and quality of life improvements. As there is no single definition for economic development, there is no single strategy, policy, or program for achieving successful economic development. Each community differs in their geographic strengths and weaknesses, and therefore has their unique set of challenges for economic development.

One tool that local, county and state governments have used increasingly over the past fifty years is economic development incentives. Economic development incentives are typically one component of a government's overall economic development program or strategy to retain existing jobs, create new jobs, grow the tax base, and strengthen local economies.

Economic development incentives are typically only used for certain targeted industries or businesses and need to be structured to maximize the potential effectiveness of the incentives. "Best practices" for incentives typically require:

- The incentive be aligned with a clearly articulated economic development strategy with specific goals and objectives
- A cost-benefit analysis be conducted and consideration be given for the potential decisiveness of the incentive
- The incentive be aligned with a specific business need
- The incentive include clear performance standards and mechanisms for monitoring performance.

ANALYSIS

The City of Marina is currently in discussions with the Peninsula Hotels Group who is interested in building an upscale hotel in Marina. Peninsula Hotels Group has approached Marina Community Partners and has a Letter of Intent to purchase land at approximately the northeast corner of 2nd Avenue and 10th Street to build a 110 to 125 room Marriott Springhill Suites Hotel. As proposed, the hotel group will purchase the site from Marina Community Partners in the first quarter of 2014 and will complete construction by the summer of 2015. The Peninsula Hotels Group is requesting that the City of Marina provide up to a \$1 million dollar economic investment incentive to assist with the construction of the hotel, the mitigation of the additional development costs incurred being under the Ford Ord Base Reuse Plan, and offset costs incurred by impact, plan check and permit fees. The hotel is projected to pay a total of \$826,673 to the City of Marina for impact fees (\$737,798) and planning and permit fees (\$88,875). Additionally the hotel is projected to pay approximately an additional \$200,000 in fees to other governmental agencies.

Tourism plays a significant role in the economy of the Monterey Peninsula area bringing in millions of dollars of spending. The primary beneficiaries of the tourism dollars have typically been the cities south of Marina including Monterey, Pacific Grove, Carmel, Seaside and Monterey County. One of the major revenue sources for cities driven by the tourism industry is resort revenue taxes, specifically transient occupancy tax (TOT) and sales taxes, that are largely paid by visitors to the City, effectively lowering the tax burden of the residents of Marina.

Having an upscale hotel such as the Marriott Springhill Suites will bring more tourist to Marina and more tourism revenue dollars to the City. Primarily by creating a new TOT revenue source, which is 10% to 12% of gross hotel occupancy revenue. Secondarily, an upscale hotel will attract more tourist with more disposable income and due to proximity to other Marina businesses, will likely spend more money in Marina; ultimately resulting in greater success for our local businesses and greater sales tax revenue for the City.

To assist the Peninsula Hotels Group with the construction costs of the hotel and as an incentive to locate in Marina, and also as an incentive to expedite the construction process and submit design plans immediately so the hotel will be under construction in 2014 and be completed by summer 2015, the Peninsula Hotels Group is requesting that the City Council consider an incentive package up to \$ 1 million dollars. This incentive is proposed to not be paid from any existing General Fund revenues. The proposal consists of initially waiving the impact, plan check, and permit fees due to the City until the hotel construction is completed. Once completed new revenue generated from the TOT will be used to pay the effected impact fee funds. The proposal is for the City to recover or recoup the impact fees from TOT revenue in years 1-4 of operations of the hotel.

The strategy behind the incentive for the hotel is to get a major upscale hotel to locate in our City that will generate new annual revenue for the General Fund projected to be approximately \$500,000 annually. It is expected that the hotel will:

- Provide accommodations for parents visiting CSUMB students, clients of the new VA/DoD clinic, and will tap into the upscale tourist market currently staying in cities south of Marina.
- Support and enhance the surrounding Dunes development and businesses throughout Marina
- Significantly increase our General Fund revenue tax base through TOT and property taxes
- Support the moving forward of Fort Ord land development which has stalled, this helps in the removal of blight
- Support efforts to expand tourism efforts in Marina

The firm of Keyser Marston Associates was hired to evaluate the fiscal and economic benefits associated with the proposed Marriott Springhill Suites hotel. Included with their evaluation is a tax revenue analysis, an economic impact analysis, a qualitative review of the benefits of the hotel, and recommendations for protecting the City's investment. (**"EXHIBIT A"**)

The report concludes that the Marriott Springhill Suites proposed by Peninsula Hotels Group according to an operating projection prepared by PKF Consulting estimates that the hotel will open with an average annual room rate of \$150 per night and an occupancy rate of 70%, with room rates and occupancy rates increasing over time. This level of performance will translate into approximately \$487,000 of average annual TOT revenue during the first year of operation. Additionally, the hotel is expected to generate approximately \$23,000 of annual property tax in-lieu of VLF revenue.

The hotel is expected to employ 110 people with a payroll of approximately \$3.6 million. The expenditures of the employees, hotel guests, and the hotel will have an amplifying effect throughout the City. Using the IMPLAN model, it is estimated the hotel will support a total of

165 jobs and \$5.2 million of annual payroll throughout the County.

As TOT revenue is generated, the Peninsula Hotels Group is requesting that the City apply 50% of the TOT revenue for the first 48-months of operation toward the funding of impact, plan check, and permit fees invested in the project and owed to the City. The remaining 50% TOT revenue will go to the General Fund as new tax revenue. Once the four years is up, 100% of TOT revenue will go to the General Fund. Any unpaid portion of the impact, permit and plan check fee calculation (that would have been paid but for this incentive agreement) shall become due and owing to the City by the Peninsula Hotel Group and shall bear interest at the prime rate.

Keyser Marston makes the following recommendations if the City elects to go forward with the hotel as follows:

1. The hotel must include at least 100 rooms and 1,000 square feet of meeting space.
2. The hotel must be under the Marriott Springhill Suite brand.
3. As an incentive to the hotel opening no later than December 31, 2015, the City will apply 50% of the transient occupancy tax revenue generated and remitted by the hotel during the hotel’s first 36 or 48 months of operation toward replacement of uncollected/waived impact fee funds to the maximum of \$825,000 to \$ 1 million dollars.
4. In the event that the allocation of the 50% of the TOT generated by the hotel during the first three or four operating years with the cumulative allocation capped at \$ 1 million is insufficient to fund 100% of the approximately \$825,000 of fees, the hotel developer will be obligated to fund the outstanding balance.
5. In the event that the hotel closes or fails within the first 10 operating years, the hotel owner will be obligated to refund to the City 100% of the City’s investment in fees not to exceed \$ 1 million.

The included Operating Covenant and Agreement is drafted at the economic investment incentive of \$825,000 over three years, which is less than the requested \$ 1 million dollars by the Peninsula Hotels Group. (“**EXHIBIT B**”)

If the Council wants to approve this Operating Covenant and Agreement for an economic investment incentive with the Peninsula Hotels Group, staff will need direction from the City Council at what level of economic investment incentive and other terms and conditions you would like in the Agreement.

As noted in the Keyser Marston report, a hotel development of this caliber will bring a number of positive benefits to the City of Marina. In addition to increasing tax revenues, the hotel will create and support over 100 new jobs. The hotel will enhance and support retail, dining and other businesses in Marina and will support a growing tourist industry.

FISCAL IMPACT:

It is estimated that once the hotel is open it will generate \$500,000 annually for the General Fund in TOT revenue.

CONCLUSION:

This request is presented for City Council consideration and possible action.

REVIEWED/CONCUR:

Layne Long, City Manager

RESOLUTION NO. 2013-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN AGREEMENT BETWEEN CITY OF MARINA AND PENINSULA HOTELS GROUP PROVIDING AN ECONOMIC INVESTMENT INCENTIVE FOR A BOUTIQUE HOTEL PROJECT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE NECESSARY BUDGETARY AND ACCOUNTING ENTRIES.

WHEREAS, in 1994 the United States Army closed military operations at Fort Ord as part of the Base Realignment and Closure (BRAC) process of the Department of Defense. The closure constituted a major and adverse event in the economy of the Monterey Peninsula and particularly in the City of Marina, within whose borders much of the base infrastructure was located; and

WHEREAS, The City of Marina and Marina Community Partners (MCP) entered into a development agreement on July 8, 2005 for a development commonly referred to as the Dunes on Monterey Bay. The Dunes is a Planned Development Mixed Use District under the Base Reuse Plan and includes retail, office, hotel and residential uses; and

WHEREAS, one of the purposes of this development is to eliminate blight, to foster economic regeneration in the City and in particular to generate new employment opportunities. The Specific Plan approved for this project identifies a site for a “boutique” or mixed use hotel; and

WHEREAS, the City of Marina has been in discussions with the Peninsula Hotels Group who is interested in building an upscale hotel in Marina; and

WHEREAS, the Peninsula Hotels Group is proposing that the City of Marina provide a \$1 million dollar economic investment incentive to assist with the construction of the hotel, the mitigation of the additional development costs incurred being under the Ford Ord Base Reuse Plan, and offset costs incurred by impact, plan check and permit fees; and

WHEREAS, To assist the Peninsula Hotels Group with the construction costs of the hotel and as an incentive to locate in Marina, and also as an incentive to expedite the construction process and submit design plans immediately so the hotel will be under construction in 2014 and be completed by summer 2015, it is proposed that the City Council consider an incentive package up to \$ 1 million dollars. This incentive is proposed to not be paid from any existing General Fund revenues. The proposal consists of paying the impact, plan check, and permit fees due to the City after the hotel construction is completed and the City is collecting TOT revenue.

WHEREAS, having an upscale hotel such as the Marriott Springhill Suites will bring more tourist to Marina and more tourism revenue dollars to the City. An upscale hotel will likely attract tourist with more disposable income and who will likely spend more money in Marina, ultimately resulting in greater success for our local businesses and greater sales tax revenue for the City; and

WHEREAS, to stimulate and induce the immediate development of the project timelines have been establish for beginning construction and completion of the project; and

WHEREAS, the City has determined that a hotel will enhance the economic development and the future well being and quality of life of the citizens of Marina and is in the best interests of the City.

WHEREAS, on June 18, 2013 the City Council of the City of Marina declared a fiscal emergency; and

WHEREAS, no single action of the city will resolve the current fiscal emergency, this agreement will be a fiscally positive step in closing the city's on-going revenue/expenditure gap and is a step towards ending the fiscal emergency.

NOW, THEREFORE IT BE RESOLVED that:

1. The hotel must include at least 100 rooms and 1,000 square feet of meeting space.
2. The hotel must be under the Marriott Springhill Suite brand.
3. As an incentive to the hotel opening no later than October 1, 2015, the City will apply 50% of the transient occupancy tax revenue generated and remitted by the hotel during the hotel's first 48-months of operation toward funding up to the approximately \$825,000 for the deferred impact, plan check, and permit fees owed to the City and to assist with other construction costs up to a maximum of \$ 1 million dollars.
4. In the event that the allocation of the 50% of the TOT generated by the hotel during the first four operating years with the cumulative allocation capped at \$ 1 million is insufficient to fund 100% of the approximately \$825,000 of fees, the hotel developer will be obligated to fund the outstanding balance.
5. In the event that the hotel closes or fails within the first 10 operating years, the hotel owner will be obligated to refund to the City 100% of the City's investment in fees not to exceed \$ 1 million.

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

1. Adopting Resolution No. 2013-, approving an agreement between City of Marina and Peninsula Hotels Group providing an economic investment incentive in the amount of \$1 million for the construction of a Marriot Springhill Suites Hotel, and;
2. Authorize the City Manager to execute the contract on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorize the Finance Director to make the necessary budgetary and accounting entries.

Resolution No. 2013-
Page Three

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th day of December 2013 by the following vote:

AYES, COUNCIL MEMBERS
NOES, COUNCIL MEMBERS
ABSENT, COUNCIL MEMBERS
ABSTAIN, COUNCIL MEMBER

Bruce C. Delgado, Mayor

ATTEST:

Anita DeAmaral, Acting Deputy City Clerk



KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

To: Mr. Layne Long, City Manager
City of Marina

From: Debbie Kern

Date: December 13, 2013

Subject: Preliminary Working Draft – Evaluation of Potential Impacts of Proposed Hotel Development

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
REED T. KAWAHARA
DAVID DOEZEMA

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMNEY

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has evaluated the potential fiscal and economic benefits that would be generated by the development of a 110-room hotel at the Dunes at Monterey Bay. The hotel is developer is requesting a financial incentive from the City of Marina in the form of the payment of all development fees, which total approximately \$1 million¹. The purpose of KMA's assignment is to evaluate the net benefits to be generated by the hotel to assist the City Council in rendering decision regarding the provision of assistance. This memorandum summarizes the findings of our analysis.

I. HOTEL BENEFITS

A. Background and Description of the Hotel

A hotel has been a desired anchor for the Dunes since the project's inception in 2005. Generally, hotels generate more tax revenue per square foot than any other land use. In addition to being a key source of revenue to the City, a hotel would be an important amenity to the commercial components of the Dunes and would serve to accelerate the development of the restaurants and office components.

It is our understanding that the site being considered is a 4.5-acre site at the northeast corner of 2nd Avenue and 10th Street within the Dunes at Monterey Bay. As proposed, the hotel owner would purchase the site from MCP in the first quarter of 2014 and

¹ Includes fees to the City and other jurisdictions. Fees to the City total approximately \$825,000.

complete construction by the summer of 2015. The hotel is proposed to be branded as a Springhill Suite by Marriott. The hotel will include between 100 and 125 rooms and 1,000 to 2,000 square feet of meeting space.

As an incentive for selecting the Marina site and expediting the completion of the hotel, the hotel owner is requesting that the City defer the payment of fees and apply 50% of the transient occupancy tax (TOT) actually generated by the hotel toward the payment of \$1 million of fees. The City has prepared a counter offer of deferring up to \$825,000 of City fees and applying 50% of the TOT generated by the hotel during its first three operating years toward payment of the fees. The cumulative amount of TOT to be applied to the fees (and accrued interest) will be capped at \$825,000. In the event that the cumulative deposits of TOT over the 3-year term are insufficient to fully fund the entire \$825,000 of fees, the hotel owner will be obligated to fund the remaining balance.

B. Fiscal Benefits of the Hotel

As noted previously, hotels yield more tax revenue per square foot than any other type of land use. The major sources of recurring General Fund revenues to be generated by the hotel are transient occupancy tax revenues (TOT) and property tax in-lieu of motor vehicle license fees (VLF)². The City's current TOT rate is 12% of room revenues due to the passage of Measure M, which increased the rate from 10% to 12% through December 30, 2015. While the additional 2% levy may be extended through a new ballot measure, for purposes of this analysis it has been conservatively assumed that the TOT rate will decline to 10% as of January 1, 2016.

An operating projection recently prepared for the hotel by PKF Consulting estimates that the hotel will open with an average annual room rate of \$150 per night and occupancy rate of 70%, with room rates and occupancy rates increasing over time. This level of performance will translate into approximately \$487,000 of average annual TOT revenues during the first operating year and \$469,000 during the second operating year. The projected decline in TOT between the first and second operating years is due to the assumed decline in the TOT rate to 10% per year starting on January 1, 2016. Upon stabilization, the hotel is anticipated to sustain an average annual occupancy rate of 75% and a 3% average annual increase in room rates. Based on anticipated hard

² While the property will also generate property tax revenue, these revenues will be distributed to multiple taxing agencies, including FORA, in accordance with the regulations that govern properties within redevelopment project areas, and the amount to accrue to the General Fund (if any) will not be significant. Additional relatively minor revenue sources that have not been evaluated but will be generated include: sales tax revenues, business license fees, and utility franchise fees.

construction costs and land costs totaling approximately \$15 million³, the hotel will generate approximately \$23,000 of annual property tax in-lieu of VLF revenue⁴.

General Fund revenues from the hotel are anticipated to approximate \$509,000 during the first operating year, \$493,000 during the second operating year and \$515,000 in the third year. Under these projections, a 50% allocation of TOT towards fees would be sufficient to fund approximately \$273,000 of fees over the three-year period. Given that the project owes approximately \$825,000 of fees to the City, under the PKF projections, the hotel owner would be obligated to fund the remaining balance of \$102,000 of fees at the completion of the hotel's third operating year.

It is projected that the City would net approximately \$266,000 of revenue during the first operating year, \$258,000 in the second operating year, \$269,000 in the third year, and in excess of \$530,000 per year, thereafter⁵.

Estimated Annual Primary Sources of General Fund Revenues from Proposed Hotel

	<i>First Op Year.</i>	<i>2nd Op. Year</i>	<i>3rd Op. Year</i>	<i>Stabilized</i>
	<i>Fiscal</i>	<i>Fiscal</i>	<i>Fiscal</i>	<i>Annual Fiscal</i>
	<i>Benefits</i>	<i>Benefits</i>	<i>Benefits</i>	<i>Benefits</i>
TOT Revs.	\$487,000	\$469,000	\$491,000	\$506,000
City Prop. Tax In Lieu of VLF	\$ 23,000	\$23,000	\$24,000	\$ 24,000
Gross GF Rev.	\$509,000	\$493,000	\$515,000	\$530,000
(Less application of 50% of TOT to Pmt. of City Fees)	\$243,000	\$235,000	\$245,000	\$0
Ann. General Fund Revs.				
Net of Pmt. of Permit Fees	\$266,000	\$258,000	\$269,000	\$530,000

While the PKF analysis did not address the impact that the proposed hotel would have on any specific existing hotel in Marina or group of hotels in Marina, the study did conclude that the subject hotel would not have a deleterious impact, in general, on the performance of competing properties in the marketplace. Therefore, it is likely that a significant portion of the TOT revenues to be generated by the subject hotel will represent net new revenues to the City rather than a transfer of sales from one hotel to another.

³ Valuation estimate prepared by PKF Consulting.

⁴ Pursuant to SB 1096, the City receives \$1.52 of revenue for every \$1,000 increase in assessed valuation.

⁵ While hotels do not generate a need for city services equivalent to residential uses, they do generate some police and fire protection calls. The cost of providing these services has not been estimated in this analysis.

C. Economic Benefits of the Hotel

The economic impacts to be generated from the on-going operations of the hotel are summarized in the following table. It is estimated that the hotel will employ approximately 110 people, with a total payroll of approximately \$3.6 million. The expenditures of the employees, hotel guests, and the hotel will have a ripple effect throughout the County. Using the IMPLAN model, it is estimated that the hotel will support a total of 165 jobs and \$5.2 million of annual payroll throughout the County.

Recurring Annual Economic Impact of Hotel

	<i>Direct Economic Impacts</i>	<i>Total Direct, Indirect, and Induced Impacts on Monterey County</i>
Total Employment	110	165
Total Payroll	\$3.6 million	\$5.2 million

II. SUMMARY OF IMPACTS AND RECOMMENDATIONS FOR STRUCTURING CITY INCENTIVE

Based on the findings of the fiscal analysis, the City's investment of up to \$825,000⁶ of TOT in order to secure the proposed hotel would benefit the City of Marina. Upon stabilization in the fourth operating year, the hotel is anticipated to generate over \$530,000 of annual revenue to the City of Marina's General Fund, which is a significant amount of new revenue to the City. Given that the City's assistance would be in the form of an application of actual TOT generated by the hotel during its first three operating years up to a total of \$825,000⁷, no current City resources would be need to be expended. And, based on the operating projections for the hotel, it is estimated that the 50% TOT allocation towards fees will be sufficient to fund approximately \$723,000 of fees, resulting in hotel owner being obligated to fund the remaining \$102,000 of fees owed to the City.

If the City elects to go forward with the hotel, we recommend that the business terms be structured as follows:

1. The hotel must include at least 100 rooms and 1,000 square feet of meeting space;
2. The hotel must be branded as a Springhill Suites by Marriot.

⁶ Represents total fee cost before accrued interest

⁷ Inclusive of accrued interest

To: Mr. Layne Long, City Manager

December 13, 2013

Subject: Evaluation of Impacts of Proposed Hotel Development

Page 5

3. As an incentive for the hotel opening by no later than December 2015, the City will apply 50% of the transient occupancy tax revenue generated by the hotel during the hotel's first 36-months of operation toward funding up to \$825,000 of permit fees owed by the Project.
4. In the event that the allocation of 50% of the TOT generated by the hotel during the first three operating years is insufficient to fund 100% of the \$825,000 of deferred fees, the hotel developer will be obligated to fund the outstanding balance.
5. The City will have the right to approve any proposed changes in branding or management.
6. In the event that the hotel closes or fails to secure the City's approval of any changes in branding or management within the first 10 operating years, the hotel owner will be obligated to refund to the City 100% of the City's investment.

Recording Requested By
and When Recorded Mail To:

City of Marina
211 Hillcrest
Marina, CA 93933
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27380

_____SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

OPERATING COVENANT AND AGREEMENT

This Operating Covenant and Agreement (the "**Agreement**") is made as of the ____ day of December____, 2013, by and between the City of Marina, a charter city (the "**City**") and Peninsula Hotel Groups, a _____ (the "**Hotel Developer**"), with reference to the following.

RECITALS

A. The City and Marina Community Partners ("**MCP**") entered into that certain Development Agreement dated July 8, 2005 and recorded in the Official Records of Monterey County as Document No. 2005080655 on August 5, 2005, as modified by that Administrative Modification to Development Agreement dated May 28, 2010 and that Second Administrative Modification to Development Agreement dated March 29, 2013 (collectively, the "**Development Agreement**") with regards to that certain development commonly referred to as the Dunes on Monterey Bay. The Dunes development is a mixed use development including retail, office, hotel and residential uses.

B. MCP entered into a Disposition and Development Agreement with the former Redevelopment Agency of the City of Marina dated as of May 31, 2005 as modified by that certain Implementation Agreement Regarding University Village dated September 6, 2006 and that certain Second Implementation Agreement dated August 5, 2008, that certain University Villages Settlement Agreement between MCP, the City of Marina and Save Our Peninsula Committee and that certain Order of The Court of Appeal dismissing appeal filed September 20, 2006 and that certain Stipulation Between Plaintiffs Monterey/Santa Cruz County Building And Construction Trades Council; International Brotherhood of Electrical Workers, Local 234; Mechanical Contractors Council of Central California and Ranae and William Gary Martin and Defendants Marina Community Partners, LLC' Shea Properties LLC; W.L. Butler Construction, Inc.; City of Marina Redevelopment Agency and Board of the City of Marina Redevelopment Agency; Cypress Marina Heights LP and East Garrison Partners I LLC and Order of Approval filed October 9, 2008 (collectively, the "**DDA**")

setting forth rights, terms, conditions and requirements for the acquisition and development of certain real property described therein (the “*Site*”) and referred to originally as University Villages and currently referred to as the Dunes. The City has succeeded to the former Redevelopment Agency’s rights and obligations under the DDA.

C. Hotel Developer is proposing to acquire certain property consisting of a portion of the Site and more particularly described in Exhibit A attached hereto (“**Property**”) upon which Hotel Developer proposes to develop a hotel containing between 100 and 125 rooms and approximately 1,000 to 2,000 square feet of meeting space to be operated as a Marriott Springhill Suites (“**Hotel**”).

D. The City and MCP have determined that the Hotel is an important catalyst for the continued development of the Dunes Project and that development of the Hotel will provide substantial direct and indirect benefits to the City, including transient occupancy tax revenues, increased property tax revenues and increased jobs in the region.

E. The City has determined that the development and operation of the Hotel in accordance with this Operating Covenant is in the best interest of the City and will provide significant benefits to the City and the community and therefore is willing to enter into this Agreement to provide financial assistance to the Hotel Developer in accordance with the terms and conditions set forth below and in exchange for the Hotel Developer’s agreement to operate the Hotel in accordance with the terms and conditions of this Agreement.

NOW, therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

1. Impact Fees. Notwithstanding anything in the Development Agreement or City ordinances regarding impact fees to the contrary, City Impact Fees, City plan check and permitting fees (collectively, the City Impact Fees, the City plan check and permitting fees are referred to herein as “City Fees”) estimated to total \$825,000 will be paid as follows: upon opening of the Hotel, the Hotel Developer shall remit to the City the Transient Occupancy Tax due from the operations of the Hotel in accordance with the City Transient Occupancy Tax Ordinance. The City shall upon receipt of each payment of Transient Occupancy Tax, allocate fifty percent (50%) of each payment to the payment of the City Fees until the earlier of (i) the third anniversary of the opening of the Hotel; or (ii) the payment in full of the City Fees plus interest on the City Fees accruing from the date that City Fees would be due pursuant to the Development Agreement or City ordinances at the rate of three and one quarter percent (3.25%) interest compounded annually. If by the third anniversary of the opening of the Hotel, 50% of the transient occupancy tax received by the City from the operation of the Hotel is not sufficient to fully pay the City Fees plus interest, the Hotel Developer shall within thirty days of the third anniversary of the opening of the Hotel, pay to the City the difference between the City Fees plus interest and 50% of the transient occupancy tax collected from the Hotel operations since the opening of the Hotel. For purposes of this Agreement, the City Impact Fees shall be defined as set forth in the Development Agreement.

Notwithstanding anything above, if the Hotel Developer has incurred the obligation to pay all or any portion of the City Fees and for any reason, the following conditions are not satisfied as set forth below, the Hotel Developer shall be obligated to pay the City Fees plus interest in full, or any

portion that remains unpaid at the time the condition fails within thirty (30) days of receipt of notice from the City of the failure if such failure remains uncured after expiration of the thirty days:

(i) the Hotel upon completion of construction contains a minimum of 100 rooms and a minimum of 1,000 square feet of meeting space;

(ii) the Hotel must be branded as a Springhill Suites by Marriott,

(iii) the Hotel must open for business no later than December 31, 2015

(iv) to the extent feasible, the Hotel Developer shall use local contractors and local labor in the construction of the Hotel

(v) the Hotel Developer will seek LEED certification for the Hotel at the highest level possible while still complying with the specifications of the Marriott Springhill Suite brand.

2. Covenant for Continuous Operation. The City is entering into this Agreement and providing the benefits set forth in Section 1 to the Hotel Developer in consideration of and as a material inducement for constructing, opening and operating the Hotel and the economic development and public benefits resulting therefrom and in exchange for the Hotel Developer granting to the City this operating covenant in accordance with the terms and conditions set forth herein. The Hotel Developer covenants and agrees that for a period of ten (10) years commencing on the date the Hotel opens for business (the "**Term**"), the Hotel Developer will operate the Hotel in accordance with this Agreement and with the requirements of the DDA

For the duration of the Term, the Hotel shall be open for business to the general public, and Hotel Developer shall operate the Hotel on a continuous basis three hundred and sixty-five (365) days a year. Notwithstanding the foregoing, Hotel Developer shall have no obligation to operate the Hotel in the event of: war, insurrection, strike, lockout, riot, flood, earthquake, fire, quarantine restriction, freight embargo, court order, severe and adverse weather, or any other similar cause beyond the reasonable control and without the fault of Hotel Developer (each a "**Closure Event**") provided that such Closure Event has a material adverse impact on Hotel Developer's ability to operate the Hotel using commercially reasonable efforts. The Parties agree and acknowledge that in no event shall Hotel Developer's lack of funds to operate the Hotel in accordance with this Agreement constitute a "Closure Event". Within three (3) business days following a Closure Event Hotel Developer shall deliver to the City a written notice of such Closure Event and Hotel Developer's anticipated schedule for returning the Hotel to operation in accordance with this Agreement.

3. Enforcement; Runs With the Land. The Hotel Developer, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement and any amendments thereto shall immediately be recorded by the Hotel Developer at no expense to the City, in the Official Records of Monterey County, California and returned to the City as soon as possible following recording. The covenants set forth in this Agreement shall run with the land, and shall to the fullest extent permitted by law and equity, bind all successors in title to the Property for the benefit and in favor of and enforceable by the City. This Agreement shall constitute a lien on the Property with respect to the Hotel Developer's obligation to pay any portion of the City Impact Fees. The City shall be entitled to (a) institute legal action to enforce performance and observance of these covenants, (b) enjoin acts

which are violative of these covenants, and (c) exercise any other legal or equitable right or remedy with respect to these covenants. In addition to the remedies above, if for any reason the Hotel Developer fails to operate the Hotel in accordance with this Agreement for the entire Term, and such failure continues for thirty days after receipt of written notice from the City, in addition to any other remedies the City shall be entitled to recover the full amount of the City Fees plus interest at the rate set forth in Section 1.

4. Agreement Binding Upon Successors and Assigns. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors in office and assigns. In the event of a conveyance of the Property during the Term of this Agreement, the Hotel Developer shall require its grantee to assume its obligations under this Agreement.

5. Execution of Other Agreements. The Hotel Developer agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict herewith.

6. Amendments, Modifications, and Waivers. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the Hotel Developer and the City. The Hotel Developer shall record such amendment, modification, and/or waiver at no expense to the City.

7. Severability. The invalidity, in whole or in part, of any of the provisions set forth above shall not affect or invalidate any remaining provisions.

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

9. Headings. The title and headings of the various sections hereof are intended as a means of reference and are not intended to place any construction on the provisions hereof.

AS OF THE DATE FIRST WRITTEN ABOVE, the parties evidence their agreement to the terms of this Agreement by signing below:

CITY

CITY OF MARINA, a charter city

By: _____
Layne Long
City Manager

HOTEL DEVELOPER

PENINSULA HOTEL GROUPS

By: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Recording Requested By
and When Recorded Mail To:

City of Marina
211 Hillcrest
Marina, CA 93933
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27380

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OPERATING COVENANT AND AGREEMENT

This Operating Covenant and Agreement (the "**Agreement**") is made as of the 31st day of March, 2014, by and between the City of Marina, a charter city (the "**City**") and Monterey Peninsula Hotels Group, LP, a California limited partnership (the "**Hotel Developer**"), with reference to the following.

RECITALS

A. The City and Marina Community Partners ("**MCP**") entered into that certain Development Agreement dated July 8, 2005 and recorded in the Official Records of Monterey County as Document No. 2005080655 on August 5, 2005, as modified by that Administrative Modification to Development Agreement dated May 28, 2010 and that Second Administrative Modification to Development Agreement dated March 29, 2013 (collectively, the "**Development Agreement**") with regards to that certain development commonly referred to as the Dunes on Monterey Bay. The Dunes development is a mixed use development including retail, office, hotel and residential uses.

B. MCP entered into a Disposition and Development Agreement with the former Redevelopment Agency of the City of Marina dated as of May 31, 2005 as modified by that certain Implementation Agreement Regarding University Village dated September 6, 2006 and that certain Second Implementation Agreement dated August 5, 2008, that certain University Villages Settlement Agreement between MCP, the City of Marina and Save Our Peninsula Committee and that certain Order of The Court of Appeal dismissing appeal filed September 20, 2006 and that certain Stipulation Between Plaintiffs Monterey/Santa Cruz County Building And Construction Trades Council; International Brotherhood of Electrical Workers, Local 234; Mechanical Contractors Council of Central California and Ranae and William Gary Martin and Defendants Marina Community Partners, LLC; Shea Properties LLC; W.L. Butler Construction, Inc.; City of Marina Redevelopment Agency and Board of the City of Marina Redevelopment Agency; Cypress Marina Heights LP and East

Garrison Partners I LLC and Order of Approval filed October 9, 2008 (collectively, the “**DDA**”) setting forth rights, terms, conditions and requirements for the acquisition and development of certain real property described therein (the “**Site**”) and referred to originally as University Villages and currently referred to as the Dunes. The City has succeeded to the former Redevelopment Agency’s rights and obligations under the DDA.

C. Hotel Developer is proposing to acquire certain property consisting of a portion of the Site and more particularly described in Exhibit A attached hereto (“**Property**”) upon which Hotel Developer proposes to develop a hotel containing between 100 and 125 rooms and approximately 1,000 to 2,000 square feet of meeting space (“**Hotel**”).

D. The City and MCP have determined that the Hotel is an important catalyst for the continued development of the Dunes Project and that development of the Hotel will provide substantial direct and indirect benefits to the City, including transient occupancy tax revenues, increased property tax revenues and increased jobs in the region.

E. The City has determined that the development and operation of the Hotel in accordance with this Operating Covenant is in the best interest of the City and will provide significant benefits to the City and the community and therefore is willing to enter into this Agreement to provide financial assistance to the Hotel Developer in accordance with the terms and conditions set forth below and in exchange for the Hotel Developer’s agreement to operate the Hotel in accordance with the terms and conditions of this Agreement. The City Council at its meeting on December 17, 2013 and pursuant to Resolution No. 2013-193 authorized the execution of this Agreement and determined that the Hotel will provide economic development benefits to the City and that this Agreement was in the best interests of the City.

NOW, therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

1. Impact Fees. (a) Notwithstanding anything in the Development Agreement or City ordinances regarding impact fees to the contrary, the City agrees to defer payment of the City Impact Fees estimated to total \$737,800 associated with the construction of the Hotel and to accept payment of such City Impact Fees as set forth below if the following conditions are met:

(i) the construction plans for the Hotel approved by the City in connection with the issuance of the building permit for the Hotel contain a minimum of 100 rooms and a minimum of 1,000 square feet of meeting space and the Hotel is constructed in accordance with the approved construction plans;

(ii) the Hotel Developer submits evidence to the City that it has entered into an operating agreement with a hotel operator to operate the hotel as either a Springhill Suites by Marriot, a Hampton Inn and Suites by Hilton, an Aloft by Starwood or a Hyatt Place by Hyatt,

(iii) the Hotel must commence construction, as evidenced by the issuance of a building permit for vertical improvements and the issuance by the Hotel Developer to its construction contractor of a notice to proceed no later than December 31, 2014;

(iv) the Hotel must open for business no later than July 30, 2016, provided however, such date may be extended for six months upon the occurrence of Unforeseen Events as defined below.

(v) to the extent feasible, the Hotel Developer shall use local contractors and local labor in the construction of the Hotel and shall provide to the City evidence of its efforts to solicit bids from local contractors prior to issuance of the building permit for the Hotel;

(vi) the Hotel Developer will seek Leadership in Energy and Environmental Design (LEED) certification for the Hotel at the highest level possible while still complying with the specifications of the selected hotel operator.

(b) Provided, all of the above conditions are met and continue to be met for the term of this Agreement, the City Impact Fees shall be paid as follows: the Hotel Developer shall remit to the City the Transient Occupancy Tax due from the operations of the Hotel in accordance with the City Transient Occupancy Tax Ordinance. The City shall, upon receipt of each payment of Transient Occupancy Tax, allocate fifty percent (50%) of each payment toward the payment of the City Impact Fees until the earlier of (i) the fourth anniversary of the opening of the Hotel, or the fifth anniversary if Unforeseen Events occurs; or (ii) the payment in full of the City Impact Fees. If after the fourth anniversary of the opening of the Hotel (or the fifth anniversary of the opening of the Hotel if Unforeseen Events occur) the City Impact Fees have not been fully paid, the Hotel Developer shall, pay to the City within thirty days the difference between the City Impact Fees plus interest on the City Impact Fees accruing from the date that City Impact Fees would have been due but for this Agreement pursuant to the Development Agreement or City ordinances at the rate of three and one quarter percent (3.25%) interest compounded annually ("Interest") and 50% of the Transient Occupancy Tax collected from the Hotel operations since the opening of the Hotel. For purposes of this Agreement, the City Impact Fees shall be defined as set forth in the Development Agreement. Notwithstanding anything above, the Hotel Developer shall be obligated to pay planning and permit fees estimated to be \$88,875 at the time of submission of the plans and applications for permits for the Hotel.

If, prior to the fourth anniversary of the opening of the Hotel (or the fifth anniversary of the opening of the Hotel if Unforeseen Events occur) the City Impact Fees have been fully paid through the allocation of 50% of the Transient Occupancy Tax received from operation of the Hotel, the City, shall pay to the Hotel Developer 50% of the Transient Occupancy Tax received by the City from operation of the Hotel for the immediately prior calendar quarter until the earlier of (x) the fourth anniversary of the opening of the Hotel (or the fifth anniversary of the opening of the Hotel if Unforeseen Events occur) or (y) 50% of the total Transient Occupancy Tax received from the Hotel since the opening of the Hotel equals \$1,000,000. The City shall make any payment due to the Hotel Developer pursuant to this section 1(b) within ten business (10) days after the end of each calendar quarter with the first payment due after the first full calendar quarter after the payment in full of the City Impact Fees. The amount paid by the City to the Hotel Developer is to be used toward construction costs associated with the Hotel including the payment of impact fees due to other governmental entities.

If at any time during the term of this Agreement the Hotel Developer fails to meet any of the conditions set forth in Section 1(a) above, the City Impact Fees plus Interest remaining unpaid at the

time the condition fails shall be due in full within thirty (30) days of receipt of notice from the City of the failure if such failure remains uncured after expiration of the thirty days.

(c) **Unforeseen Events.** For purposes of this Agreement Unforeseen Events shall mean acts of God, acts of the public enemy, war, insurrection, floods, earthquakes, fires, casualties or substantial downturn in the economy. A substantial downturn in the economy, for purposes of determining whether an Unforeseen Event has occurred, shall be deemed to have occurred if the City's Transient Occupancy Tax inclusive of the Transient Occupancy Tax received from the Hotel declines from the amount collected in 2012-13 by fifty percent (50%) or more.

2. **Covenant for Continuous Operation.** The City is entering into this Agreement and providing the benefits set forth in Section 1 to the Hotel Developer in consideration of and as a material inducement for constructing, opening and operating the Hotel in accordance with the conditions set forth in Section 1(a) above and the economic development and public benefits resulting therefrom and in exchange for the Hotel Developer granting to the City this operating covenant in accordance with the terms and conditions set forth herein. The Hotel Developer covenants and agrees that for a period of five (5) years commencing on the date the Hotel opens for business (the "**Term**"), the Hotel Developer will operate the Hotel in accordance with this Agreement and with the requirements of the DDA. If at any time during the Term of this Agreement the Hotel Developer fails to operate the Hotel in accordance with the terms of this Agreement and the conditions set forth in Section 1(a) above, the Hotel Developer shall immediately pay to the City the full amount of the City Impact Fees plus Interest plus any amounts paid by the City to the Developer pursuant to Section 1(b) above.

For the duration of the Term, the Hotel shall be open for business to the general public, and Hotel Developer shall operate the Hotel on a continuous basis three hundred and sixty-five (365) days a year. Notwithstanding the foregoing, Hotel Developer shall have no obligation to operate the Hotel in the event of: war, insurrection, strike, lockout, riot, flood, earthquake, fire, quarantine restriction, freight embargo, court order, severe and adverse weather, or any other similar cause beyond the reasonable control and without the fault of Hotel Developer (each a "**Closure Event**") provided that such Closure Event has a material adverse impact on Hotel Developer's ability to operate the Hotel using commercially reasonable efforts. The Parties agree and acknowledge that in no event shall Hotel Developer's lack of funds to operate the Hotel in accordance with this Agreement constitute a "Closure Event". Within three (3) business days following a Closure Event, Hotel Developer shall deliver to the City a written notice of such Closure Event and Hotel Developer's anticipated schedule for returning the Hotel to operation in accordance with this Agreement.

Nothing herein shall prevent the Hotel Developer from transferring the Hotel to a third party during the Term, provided, any such transferee shall be obligated to comply with the provisions of this Agreement for the Term of this Agreement.

3. **Enforcement; Runs With the Land.** The Hotel Developer, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement and any amendments thereto shall immediately be recorded by the Hotel Developer at no expense to the City, in the Official Records of Monterey County, California and returned to the City as soon as possible following recording. The covenants set forth in this Agreement shall run with the land, and shall to the fullest extent permitted by law and equity, bind all successors in title to the Property for the benefit and in favor of and

enforceable by the City. This Agreement shall constitute a lien on the Property with respect to the Hotel Developer's obligation to pay any portion of the City Impact Fees. The City shall be entitled to (a) institute legal action to enforce performance and observance of these covenants, (b) enjoin acts which are violative of these covenants, and (c) exercise any other legal or equitable right or remedy with respect to these covenants. In addition to the remedies above, if for any reason the Hotel Developer fails to operate the Hotel in accordance with this Agreement for the entire Term, and such failure continues for thirty days after receipt of written notice from the City, in addition to any other remedies the City shall be entitled to recover the full amount of the City Impact Fees plus Interest plus any amounts paid to the Hotel Developer by the City pursuant to Section 1(b) above.

4. Agreement Binding Upon Successors and Assigns. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors in office and assigns. In the event of a conveyance of the Property during the Term of this Agreement, the Hotel Developer shall require its grantee to assume its obligations under this Agreement.

5. Execution of Other Agreements. The Hotel Developer agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict herewith.

6. Amendments, Modifications, and Waivers. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the Hotel Developer and the City. The Hotel Developer shall record such amendment, modification, and/or waiver at no expense to the City.

7. Attorneys' Fees. In the event any legal actions is commenced to interpret or enforce the terms of this Agreement or to collect damages as a result of a breach, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action.

8. Severability. The invalidity, in whole or in part, of any of the provisions set forth above shall not affect or invalidate any remaining provisions.

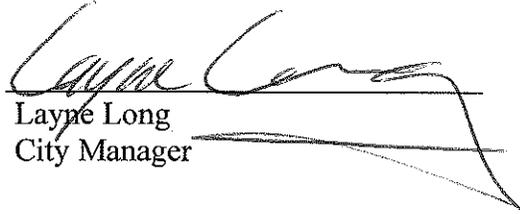
9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

10. Headings. The title and headings of the various sections hereof are intended as a means of reference and are not intended to place any construction on the provisions hereof.

AS OF THE DATE FIRST WRITTEN ABOVE, the parties evidence their agreement to the terms of this Agreement by signing below:

CITY

CITY OF MARINA, a charter city

By: 
Layne Long
City Manager

HOTEL DEVELOPER

MONTEREY PENINSULA HOTELS
GROUP, LP, a California limited
partnership

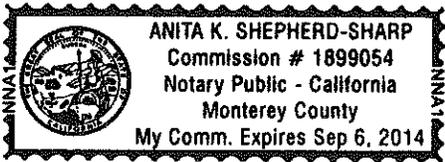
By: 
Harbhajan Dadwel

STATE OF CALIFORNIA)
)
COUNTY OF Monterey)

On March 31, 2014, before me, Anita K. Shepherd-Sharp, Notary Public, personally appeared Layne Hong, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



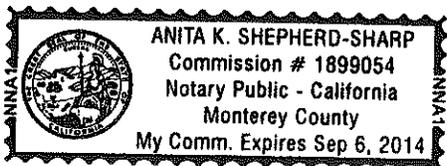
Anita K. Shepherd-Sharp
Name: Anita K. Shepherd-Sharp
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF Monterey)

On June 30, 2014, before me, Anita K. Shepherd-Sharp, Notary Public, personally appeared Harbhajan Dadwal, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Anita K. Shepherd-Sharp
Name: Anita K. Shepherd-Sharp
Notary Public

EXHIBIT A
PROPERTY LEGAL DESCRIPTION