

RESOLUTION NO. 2016-84

A RESOLUTION OF 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 LLC TO WC MARINA,  
LLC AND A PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT  
FOR THE MARINA HEIGHTS OPTION AGREEMENT FROM CYPRESS  
MARINA HEIGHTS LLC TO WC MARINA, LLC

WHEREAS, The City of Marina (the "City"), the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, At the regular meeting of March 4, 2004, the City Council adopted Ordinance No. 2004-06 adopting the Final Development Agreement for the Marina Heights Project, and;

WHEREAS, the City and the Successor Agency to the Redevelopment Agency of the City of Marina on February 17, 2016 pursuant to Resolution No. 2016-24 approved adding Wathen Castanos as a Pre-Approved Builder to the list of Pre-Approved Builders attached to the Option Agreement; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with WC Marina, LLC, a wholly owned subsidiary of Wathen Castanos, assigning to WC Marina, LLC the rights and obligations under the Final Development Agreement relevant to the portion of the project being transferred to WC Marina, LLC; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with WC Marina, LLC assigning to WC Marina, LLC the rights and obligations under the Option Agreement relevant to the portion of the project being transferred to WC Marina, LLC; and

WHEREAS, Cypress Marina Heights, LLC and WC Marina, LLC have requested that the City consent to the Partial Assignment and Assumption of the Development Agreement; and

WHEREAS, Cypress Marina Heights, LLC and WC Marina LLC have requested that the City and the Successor Agency consent to the Partial Assignment and Assumption Agreement of the Option Agreement; and

WHEREAS, the staff report accompanying this resolution provides additional information on the assignments of rights and obligations to the WC Marina, LLC under the Development Agreement and the Option Agreement;

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

1. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and WC Wathen, LLC of the Final Development Agreement substantially in the form on file with the City Clerk and authorizes the City Manager to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.

2. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and WC Wathen, LLC of the Option Agreement substantially in the form on file with the City Clerk and authorizes the City Manager to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.
3. Authorizes the City Manager to take all actions necessary to implement the Partial Assignment and Assumption Agreements and to execute such documents as are necessary to implement the Partial Assignment and Assumption Agreements.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7<sup>th</sup> day of June 2016, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

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, LP  
AND DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF MARINA AND  
CYPRESS MARINA HEIGHTS, LP

This Implementation Agreement dated 10/11, 2007 is entered into by and among the Redevelopment Agency of the City of Marina, a public body, corporate and politic (the "Agency"), the City of Marina, a municipal corporation (the "City") and Cypress Marina Heights, LP, a California limited partnership ("Developer") in order to set forth the parties' understanding with regards to the implementation of that certain Option Agreement by and among the parties dated November 14, 2002 and that certain Development Agreement by and between the City and the Developer dated March 20, 2004.

RECITALS

- A. The parties entered into that certain Option Agreement dated November 14, 2002 ("Option Agreement") which provided the Developer with the option to acquire certain property (the "Property") located in the City of Marina on the Former Fort Ord Army base under certain terms and conditions.
- B. The City and the Developer entered into that certain Development Agreement dated March 20, 2004 pursuant to Government Code Section 65864 ("Development Agreement").
- C. Upon acquisition of the Property by the Developer, the Developer is obligated to construct on the Property a residential development in accordance with the terms and conditions of the Option Agreement.
- D. The Developer has met the terms of the Option Agreement with regards to the exercise of the Option and has acquired the Property. Developer has commenced construction on the Property for the portion of the Property identified as Phase 1 in the Subdivision Map for the Property and to date has installed the backbone infrastructure necessary for Phase 1.
- E. Developer intends to proceed with the required construction on the Property in accordance with the terms of the Option Agreement and is using commercially reasonable efforts to complete the construction on the Property. Developer has determined that the Schedule of Benchmarks, incorporated into the Option Agreement as

Exhibit D and as Exhibit D of the Development Agreement and updated as a result of unavoidable delays pursuant to that certain Letter Agreement dated April 27, 2006, is not a commercially reasonable development schedule and is proposing an alternative development schedule in accordance with this Implementation Agreement.

F. The Agency and the City have determined that the approval of the schedule of benchmarks attached to this Implementation Agreement represents a commercially reasonable schedule for the development of the Property and is in accordance with the provisions of the Options Agreement and the Development Agreement requiring the Developer develop the property in accordance with the Schedule using commercially reasonable efforts.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency, the City and the Developer agree as follows:

1. The Option Agreement is hereby revised to incorporate a new Exhibit D, Schedule of Benchmarks, in accordance with Exhibit A of this Implementation Agreement.
2. The Development Agreement is hereby revised to incorporate as new Exhibit D, Schedule of Benchmarks, in accordance with Exhibit A of this Implementation Agreement.
3. Effectiveness of Implementation Agreement. This Implementation Agreement is dated for convenience only and shall only become effective on the date which is the latest of (i) the date this Implementation Agreement is executed by the Developer, (ii) the date this Implementation Agreement is executed by the Agency and the City.
4. Counterparts. This Implementation 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.
5. No Other Changes, Consistency. Notwithstanding any changes and deletions contained herein, all other provisions of the Option Agreement and the Development Agreement remain the same. In the event of any conflict between the terms of the Option Agreement and this Implementation Agreement, the terms of this Implementation Agreement shall govern. In the event of any conflict between the terms of the Development Agreement and this Implementation Agreement, the terms of this Implementation Agreement shall govern.

IN WITNESS WHEREOF, authorized representatives of the Parties have duly executed this Implementation Agreement as of the day and year first above written.

DEVELOPER:

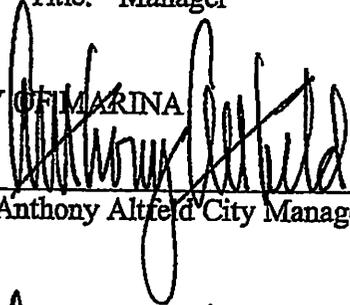
CYPRESS MARINA HEIGHTS, L.P.,  
a California limited partnership

By: Chadmar/Watt Marina Partners LLC,  
a California limited liability, its  
General Partner

By:   
Name: Charles R. Lande  
Title: Manager

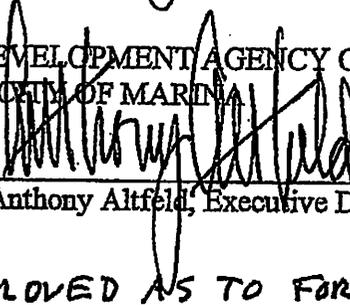
CITY:

CITY OF MARINA

By:  10-10-07  
Anthony Altfeld, City Manager

AGENCY:

REDEVELOPMENT AGENCY OF  
THE CITY OF MARINA

By:  10-10-07  
Anthony Altfeld, Executive Director

APPROVED AS TO FORM:

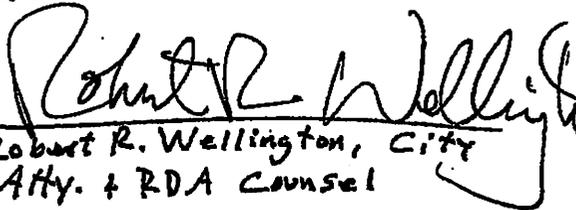
  
Robert R. Wellington, City  
Atty. & RDA Counsel

EXHIBIT A

Schedule of Benchmarks

- |    |   |                  |
|----|---|------------------|
| 1. | Receipt of Permits and Approvals and expiration of contest and appeal periods | Completed        |
| 2. | Submission of Construction Plan Drawings for first phase of infrastructure    | Completed        |
| 3. | Submission of the financing plan for first phase of infrastructure            | Completed        |
| 4. | Close of Escrow   | Completed        |
| 5. | Development of Homes  |                  |
|    | 299 homes including<br>22 Workforce homes and<br>12 Moderate Income homes     | January 31, 2011 |
|    | 106 homes including<br>9 Bridge Homes   | January 31, 2012 |
|    | 106 homes including<br>9 Bridge Homes   | January 31, 2013 |
|    | 106 homes including<br>9 Bridge Homes   | January 31, 2014 |
|    | 106 homes including<br>9 Bridge Homes   | January 31, 2015 |

106 homes including  
9 Bridge Homes

January 31, 2016

106 homes including  
9 Bridge Homes

January 31, 2017

106 homes including  
9 Bridge Homes

January 31, 2018

28 homes including  
9 Bridge Homes

January 31, 2019

RESOLUTION NO 2016-02 (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ACTING AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY CONSENTING TO A PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE OPTION AGREEMENT FOR THE MARINA HEIGHTS PROJECT FROM CYPRESS MARINA HEIGHTS LLC TO WC MARINA, LLC

WHEREAS, The City of Marina and the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, the Redevelopment Agency of the City of Marina was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Redevelopment Agency's rights and obligations under the Option Agreement; and

WHEREAS, the City and the Successor Agency to the Redevelopment Agency of the City of Marina on February 17, 2016 pursuant to Resolution No. 2016-24 approved adding Wathen Castanos as a Pre-Approved Builder to the list of Pre-Approved Builders attached to the Option Agreement; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with WC Marina, LLC assigning to WC Marina, LLC the rights and obligations under the Option Agreement relevant to the portion of the project being transferred to WC Marina, LLC; and

WHEREAS, Cypress Marina Heights, LLC and WC Marina LLC have requested that the Successor Agency consent to the Partial Assignment and Assumption Agreement of the Option Agreement; and

WHEREAS, the staff report accompanying this resolution provides additional information on the assignments of rights and obligations to the WC Marina, LLC under the Option Agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina acting as the Governing Board of the Successor Agency to the Redevelopment Agency of the City of Marina hereby:

1. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and WC Wathen, LLC of the Option Agreement substantially in the form on file with the City Clerk and authorizes the City Manager, acting as the Executive Director of the Successor Agency to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.
2. Authorizes the City Manager, acting as the Executive Director of the Successor Agency to take all actions necessary to implement the Partial Assignment and Assumption Agreements and to execute such documents as are necessary to implement the Partial Assignment and Assumption Agreements.

Resolution No. 2016-02

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PASSED AND ADOPTED by the City Council of the City of Marina acting as the Governing Board of the Successor Agency to the Redevelopment Agency of the City of Marina at a regular meeting duly held on the 7<sup>th</sup> day of June 2016, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of June 7, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,  
CONSENTING TO A PARTIAL ASSIGNMENT AND ASSUMPTION  
AGREEMENT FOR THE MARINA HEIGHTS DEVELOPMENT  
AGREEMENT FROM CYPRESS MARINA HEIGHTS LLC TO WC  
MARINA, LLC AND A PARTIAL ASSIGNMENT AND ASSUMPTION  
AGREEMENT FOR THE MARINA HEIGHTS OPTION AGREEMENT  
FROM CYPRESS MARINA HEIGHTS LLC TO WC MARINA, LLC**

**CITY COUNCIL ACTING AS THE GOVERNING BOARD OF THE  
SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT  
AGENCY CONSENTING TO A PARTIAL ASSIGNMENT AND  
ASSUMPTION AGREEMENT FOR THE OPTION AGREEMENT FOR  
THE MARINA HEIGHTS PROJECT FROM CYPRESS MARINA  
HEIGHTS LLC TO WC MARINA, LLC**

**REQUEST:**

It is recommended that the City Council:

1. Consider adopting Resolution No. 2016-, consenting to the Partial Assignment and Assumption Agreement for the Marina Heights Development Agreement from Cypress Marina Heights, LLC to WC Marina, LLC and Partial Assignment and Assumption Agreement for the Marina Heights Option Agreement from Cypress Marina Heights LLC to WC Marina, LLC.
2. Consider adopting Successor Agency Resolution No. 2016- (SA-MRA), consenting to a Partial Assignment and Assumption Agreement of the Option Agreement for the Marina Heights Project from Cypress Marina Heights LLC to WC Marina, LLC.

**BACKGROUND:**

The City of Marina, the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. (“Developer”) entered into an Option Agreement dated November 14, 2002. The Option Agreement provided Cypress Marina Heights with the option to acquire a 248-acre site comprised of a portion of the Abrams Park and Upper Patton Park sections of the former Fort Ord. The Option Agreement stipulated the terms and conditions for development of 1050 residential units on the property, with development contemplated in phases. At the time the Option Agreement was entered into the City of Marina and the Developer entered into an initial statutory development agreement pursuant to Government Code Section 65864. The initial statutory development agreement was replaced by the final development agreement approved by the City Council on March 3, 2004 (“Development Agreement”). At the regular meeting of March 3, 2004, the City Council approved the Final Environmental Impact Report, General Plan Amendments, Zoning Ordinance and Map Amendments, Tentative Map, and Final Development Agreement for the Marina Heights Project.

The former Redevelopment Agency transferred the Property to the Developer in accordance with the Option Agreement terms in 2006. Upon dissolution of the Marina Redevelopment Agency in accordance with State law, the Option Agreement transferred to the Successor Agency to the Marina Redevelopment Agency. The City Council acts as the governing board of the Successor Agency.

The Final Development Agreement establishes the development rights for the Marina Heights project. The Final Development Agreement and the Option Agreement also address project timing and fees. The Final Development Agreement and the Option Agreement include a Schedule of Benchmarks setting out the expected time frames for development of the property. The original Schedule of Benchmarks was amended by the First Implementation Agreement that was approved by the City Council in October 2007.

Development of the Project has been delayed as a result of a variety of factors, including litigation and the recession. The Developer is now in the process of negotiating with homebuilders for the transfer of portions of the property and the development of the planned homes. In order to facilitate the transfers to the homebuilders, the City and the Successor Agency, at a joint meeting on February 17, 2016, conducted a review of the Development Agreement and the Option Agreement. The review was to determine whether there were any defaults under either agreement and to authorize the issuance of estoppel certificates indicating that there are no defaults if the review found that there were no defaults. At the conclusion of the review of the Agreements, the Council determined that at that time there were no defaults under either Agreement and authorized the City Manager to execute the requested estoppel certificates.

Also at the February 17, 2016 meeting the Developer requested that the City and the Successor Agency approve adding Wathen Castanos to the Pre-Approved Builders list attached to the Option Agreement. The Council, acting both on behalf of the Successor Agency and behalf of the City approved the request to add Wathen Castanos to the Pre-Approved Builders list and authorized the City Manager to execute a Second Amendment to the Option Agreement to add Wathen Castanos to the list.

The Developer and Wathen Castanos have now requested that the City and the Successor Agency consent to Partial Assignment and Assumption Agreements assigning to WC Marina, LLC, a subsidiary of Wathen Castanos, the obligations under the Development Agreement and the Option Agreement that are relevant to the portion of the property being acquired by Wathen Castanos. As part of the Consent the City and the Successor Agency are being asked to sign, the City and the Successor Agency are acknowledging that the Option Agreement, the Development Agreement and the Schedule of Benchmarks do not require the developer to complete the construction of the improvements but only to make commercially reasonable efforts to complete construction of the improvements in accordance with the Schedule. Additionally, the City and the Successor Agency are being asked to acknowledge that the right to repurchase the property in the option agreement is not effective as to the property acquired by Wathen and that the City and the Successor Agency intend to consider amendments to the Option Agreement and Development Agreement to amend the Schedule of Benchmarks.

#### **ANALYSIS:**

The Development Agreement includes the Schedule of Benchmarks for the development of the Project, as amended by the Implementation Agreement. The Development Agreement, at Section 2.6 provides that the "Developer shall use all commercially reasonable efforts to develop and construct the Project within the time frames shown in the Benchmarks, a listing of which is attached as Exhibit D." Section 2.6 goes on to state that if the Developer fails to perform within the time period set forth in the Schedule of Benchmarks, the City can declare the Developer in default but Developer shall not be default for as long as the Developer makes all reasonable efforts to diligently, continuously and in good faith work toward such performance. Thus the Development Agreement does not require that the Developer complete the Project in accordance with the timing set out in the Schedule of Benchmarks but rather requires that the Developer use commercially reasonable efforts to construct the Project within the timeframes.

The Option Agreement contains similar language that the developer is to use commercially reasonable efforts to construct the improvements but does not actually require the developer to construct the improvements.

The Consents to the Assignment and Assumption Agreements also request that the Successor Agency acknowledge that the right of repurchase included in the Option Agreement is not applicable to the property transferred to Wathen Castanos. The Option Agreement included a right of repurchase that ran to the former Redevelopment Agency. Under the terms of the Option Agreement, the former Redevelopment Agency could exercise the right of repurchase if the Developer was in default. The former Redevelopment Agency was required to pay fair market value for the property acquired. The Redevelopment Dissolution Law prohibited redevelopment agencies, prior to dissolution, from undertaking certain activities, including the acquisition of property by any means. These prohibitions carry over to the Successor Agency. Based on this, the Successor Agency would not have the authority to acquire the property if the conditions for exercise of the option to acquire were met and also would not have a source of funds to use to acquire the property. Acknowledgement that the right of repurchase does not apply to the property acquired by Wathen Castanos does not compromise any right that the Successor Agency could actually exercise.

**FISCAL IMPACT:**

Development of the Project will increase the property tax available to the City thereby increasing general fund revenues.

**CONCLUSION:**

The staff report is submitted for City Council review and possible direction.

Respectfully submitted,

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Layne Long  
City Manager  
City of Marina